

HUMAN AND SOCIAL DEVELOPMENT ISSUES.

- I. A SOCIAL CHARTER FOR INDIA - A PAPER WRITTEN FOR THE COUNCIL FOR SOCIAL DEVELOPMENT, NEW DELHI (CSDND) IN NOVEMBER 2002 IN THE CONTEXT OF PREPARATION OF COUNTRY PAPERS FOR A SAARC SOCIAL CHARTER.

A SOCIAL CHARTER FOR INDIA

WHAT SHOULD THE TONE OF THE CHARTER BE?

1. In examining the question as to why despite all the commitments made in the past by India in the SAARC and other international contexts including various summit meetings, very little progress has been achieved in regard to the actual achievements of the targets set, we come up on the inevitable conclusion that the absence of political will or, in other words, political honesty, is the main cause. Often, it is made to appear by Government representatives participating in SAARC and other international Conferences, merely on the basis of the pronouncements made in relation to the commitments by the political leaders, that just because these statements emanate from political leaders *ipso facto* those statements represent the presence of a political will. This of course is entirely untrue. Political will in simple terms is nothing but a political desire to do a certain thing. If the political leaders do not have the desire to do what they say they would do, that represents a lack of political will. Barring rare exceptions, the commitments and promises made have hardly been kept by the Indian political leadership either in the international context or in the national context in regard to social development issues. We, therefore, have here a problem of character at the political level. Thus, when we discuss lack of political will what we have to acknowledge is a deficit in character on the part of those who make these commitments. Put simply, it often emerges that many of these commitments made were actually not meant to be honoured. On the face of it, it may be either considered bad form or cynicism to put the problem across in this manner. However, while there

have been exceptions, by and large the failure to keep promises made at the highest levels and our own experience and knowledge in dealing with the political electives in the country confirm our worst fears that this is not cynicism but a sad truth. Therefore, in framing a social charter we have to face this stupendous problem of absence of political will on the part of our rulers, regardless of political party affiliations. This directly takes us to the whole question of governance and good governance because all conceivable ingredients of good governance get violated when political leadership tends to say things that it does not mean. Given the fact that India, beyond any doubt, possesses the kind of skilled and trained and highly educated manpower as part of its governance structures, and the fact that India is basically a sound, vibrant democracy notwithstanding all its faults, political will is what is at the bottom of the problem of social development. This is not to absolve the civil services who constitute the delivery system of their responsibility for our failures but the way our political electives have practised democracy for 50 years has encouraged in the civil services a belief that political promises are not meant to be kept. A decade and a half ago the Indian bureaucracy could have been justifiably described as “over developed” in relation to the political leadership at the national level and at the provincial level, with varying degrees of difference. But after 1985, it could be no more be said that the political electives in the various states have not exercised full control and authority over the civil service. At the national level this control was complete even by the early 1970s. Even before minority and coalition Governments became the order of the day in the 1990s this political control had become complete. Therefore, the political leadership in the country has to be held largely accountable for not delivering on the promises they made to the Indian people and in the international forums.

2. The question, therefore, that we have to straight away address is how to get the governments of the day at the Centre and in the States to make the right commitments, set the right targets and achieve them within a time frame and also, how to compel the Governments to become accountable and to be scrutinized whether the commitments and targets are being implemented according to the guidelines and

time frames. The question then is **not** simply framing commitments, setting targets, a time frame and laying down model systems of monitoring and evaluation. It is the question of **accountability** on the part of the Governments.

3. Accountability on the part of the Government can be enforced only if people have enforceable rights and are organized around them. The entire paradigm of accountability has therefore to be built around people's rights, guaranteed as entitlements through the Constitution and by laws and thus rendered enforceable and justiciable. That is at one level. Having done that (but laws do not mean much by themselves), the only way people can access those rights and even more importantly enforce those rights is through **organizing** themselves. Organization, therefore, is the starting point both for demanding and obtaining rights and thereafter in accessing those rights in terms of implementation of programmes and schemes concretizing those rights.
4. It would be appropriate at this stage to make the point that in one manner or another Independent South Asian Commission for Poverty Alleviation did make this point as long back as in 1993 in its report "Meeting the Challenge". It called for certain basic rights to the people, the social mobilization of the people and their organization around those rights to attain them. It emphasized the lead role of the State in framing the right kind of macro policies that were pro poor and for micro action involving the participation of the people at the grass roots level. The key role of NGOs in regard to the mobilization of the people was emphasised in this report. The SAARC Summit at Dhaka unanimously approved this report in 1993. However, the targets adopted in this report were never achieved. While we may concede that the targets may have been somewhat ambitious – there is nothing wrong about that-, that itself does not tell the whole story. The real story behind the non-fulfillment of the aspirations articulated in that report was absence of political will.
5. The main manifestation of this absence of political will can be seen from the failure of the Central Government and of the States to constitutionally and statutorily guarantee enforceable basic rights to the poor in areas like Food, Work, Shelter,

Health, Education, Credit and Information. These rights are not by any means new to India's own thinkers on poverty and development. We have articulated these over a long period in our country. These were the rights, which were also demanded by the Independent South Asian Commission for Poverty Alleviation for the SAARC poor. These were the very rights the Copenhagen World Summit on Social Development (WSSD) also demanded in its Declaration. Ironically, the inclusion of these rights in these documents happened on account of the active lobbying of the Indian delegates. These rights are articulated also in the Constitution of India. And these rights are also articulated in the International Convention on Economic, Social and Cultural rights, to which India is a signatory. Yet, no initiative came from the State to provide any of these rights as fundamental, enforceable rights. It fell to the lot of the Supreme Court of India and enlightened social activists through the mechanism of public interest litigation (PLI) to make, for example, Primary Education a fundamental right in India. Again the same Supreme Court of India is now doing its best to make the right to nutrition (food) a fundamental right even if partially through compelling the Governments to provide a cooked mid-day meal in the Primary Schools. Even while we highlight the noble role of the Supreme Court of India in regard to primary education, the absence of political will in regard to the same right needs to be juxtaposed to place the issue in perspective. In the year 1994 the then Prime Minister of India who was himself an unquestioned authority on education declared that in order to universalize primary education and provide Education for All, his Government and party would do every thing necessary to ensure an overall investment in education amounting to 6 percent of India's gross national product (GNP). This promise was also made in the election manifesto of the party to which the Prime Minister belonged, in the 1996 elections. Other Prime Ministers and parties who followed have made similar promise. The Eighth and the Ninth Five Year Plans have since gone by and the Tenth Five Year Plan is on the anvil. The figure of 6 percent of the GNP gets mentioned all the time but India has not gone beyond an expenditure of 3.4 percent of the GNP. Appropriate resource allocation is a sine qua non if Education for All is to become a reality. That is not happening. We can here see how we have reached in the political and social development life of our country a

stage where politicians do not mean what they say and the Supreme Court of India has to step in to interpret the Constitutional provision that refers to universal Primary Education as a directive principle of governance to provide the fundamental right to education to every child in the country. Considering that for decades together the country had believed that the articles in chapter IV of the Constitution of India containing the directive principles of State policy were not justiciable, the ultimate delivery of a right, which is a basic need, and an important dimension of poverty had to come only from the Supreme Court of India. This could easily have been done by the Central Government itself through an amendment to the Constitution of India but it was not to be because the Central Government or the State Governments had no will or desire to see that every child in India had access to education as a basic right. This speaks volumes of their commitment to the child as well as to education. Considering what literacy and education can do to the equity and equality of women in terms of their rights to wages, combating the reproductive burden, dignity, livelihood, as pregnant women and nursing mothers, as girl children and adolescent girls, this also highlights the commitment of the country's political leadership to the issues of gender. Considering what female literacy can do by way of equipping women in handling problems relating to nutrition and malnutrition, infant mortality, maternal mortality and child mortality and therefore to the whole question of population stabilization, the absence of responsible governance in regard to perhaps the most serious problem facing India, namely, galloping population also gets highlighted. All this is thus the antithesis of good governance, which is fundamental for implementing a social charter that would call for achievements of goals pertaining to food, work, education, health, shelter, sanitation, credit and other areas within a time frame.

6. Therefore, political honesty itself should be advocated as an essential and perhaps the first constituent of India's Social Charter.

II

7. The principle that is fundamental to a citizen's rights is equality based on the belief that all human beings are born free and equal in dignity, regardless of sex, religion, race, social origin, language, property, or other status and therefore entitled to enjoy certain civil, political, economic, social and cultural rights. Since the concept of Development itself is a comprehensive political, economic, social and cultural process which aims at the constant improvement of the well being of individuals and populations on the basis of their free and meaningful participation in development and the fair distribution of the resulting benefits, the right to such development is an inalienable human right.
8. Amongst the deprivations that constitute poverty are the denial of those needs we universally consider basic, namely, an adequate means of a household's livelihood in terms of monetary income; food; health; basic education and shelter. These needs have to be met for all in any decent society, and any civilization worth its name should treat the fulfillment of these needs as axiomatic. If these are the imperatives of a decent life with dignity, then these basic needs need to be treated as basic rights. This is what the Constitution of India has done and so have several important International Covenants and Declarations, the chief of them being the UDHR, 1948, the ICCPRs and the ICESCRS, 1966, the Declaration on the Elimination of Discrimination against Women, 1967 and the Convention on the Elimination of All Forms of Discrimination against Women, 1979, the Declaration of the Right to Development, 1986 and the Child Rights Convention, 1989.
9. When we talk of eradication of poverty in the context of the Right to Development, we are thinking of complete elimination of absolute poverty (or the "worst forms" of poverty) in the immediate future and reduction of inequalities progressively but steadily over the medium term so as to bridge those inequalities. It is in this view that poverty lines are drawn as far as absolute poverty is concerned based on the kinds of criteria that, for example, our Planning Commission has evolved. Of course, those criteria are thoroughly inadequate and outmoded. But even by those standards and definitions our absolute poverty figures are staggering. And if we reach out in to the

realm of social indicators which are not factored into the methodologies for determination of absolute poverty in India, and further desegregate them into their status in specific regions and among specific populations we not only understand the stupendous magnitudes of inequalities between regions and classes of our people but how inadequate our very concept of poverty determination and measurement is.

10. Be that as it may and going by what ever methodologies we currently use, with appropriate adjustments made, it has been clearly established that during the 1990's, corresponding to the period of the so-called economic reforms and globalisation, regional disparities increased. Economic inequality also increased within states, within urban areas and between urban and rural areas. Social progress was uneven, slowed down in some fields and even showed regression in certain others. The already better off states grew more rapidly than the poorer states. Even in the better off states where urban populations enjoyed substantial per capita expenditure, higher income groups among them enjoyed even larger increases. The pervasive increase in economic equality, a new phenomenon in our economy, was also accompanied by a marked slow down in the rate at which infant mortality has been declining. Against a reduction of 30 percent in the 1980's, it was only 12.5 in the 1990's, with no change at all during the 2nd half of the decade. Bangladesh's IMR which was 91 in 1990 came down to 61 in 1999 against India's 71. Over all reduction in absolute poverty - not with standing the figures being officially projected - appears to be no better than the earlier rates of progress, with serious urban-rural distortions. Real agricultural wages which are a good poverty indicator grew during the 1990's only at 2.5 percent per year as against 5 per cent in the decade previous to that. The female: male ratio among children declined from 945 in 1991 to 927 girls per 1000 boys in 2001.

(Angus Dayton and Jean Dreze – EPW – 7th September 2002.)

11. It is often written that the poor should be main streamed implying that the non-poor are the main stream. While there is nothing wrong about it since the poor are on the margins and therefore need to be brought into focus, our approach should be to take the stand that the poor **are** the main stream. Therefore, all policies should conform to their needs.

12. The Social Charter should not be apologetic in the sense of subordinating the rights of the poor to the needs of “growth”. The Social Charter should shun defensive methods and expressions like “human face”, “safety nets” etc. True, many UN documents are framed in this vary manner with Indians participating in such drafting but this is because it has not always been possible for India to prevail on the rest of the world, especially the western world in this regard. Surely, however, at least in the South Asian context India should lead to reverse the global trend by taking the initiative in this regard. In this effort a rights-based approach would give us considerable scope because when we articulate certain rights of the poor as inalienable and non-negotiable the question of their interests being subordinated to the mechanisms of growth should not arise.
13. In India we began right by catering to the needs of the poor. Mid-way the right of the people to their basic needs was forgotten and political populism took over. Once that happened, anti-poverty programmes came to be looked upon as political patronage and not as the poor people’s rights to social development and to their livelihood. All this is also indicative of absence of political will. The will to the extent it exists is only to use these programmes as patronage so as to create a sense of further expectations and hope. The approach is reap to political returns by kindling hope but never to fully satisfy those hopes by eradication of the absolute poverty of the people in terms of certain basic dimensions of poverty manifested as certain basic needs of the poor such as total freedom from hunger, full employment, minimum and equal wages, food and nutrition security to the entire household especially the girl child, the adolescent girl, the pregnant woman, the nursing mother and all children in general up to the age of 14. There is also cause for suspicion in the way the political attitudes manifest them selves in the formulation of anti-poverty programmes. While half-hearted measures like an Employment Assurance Scheme (EAS) rather than an Employment Guarantee Scheme are taken at one level, a programme like land reforms, which would clearly aim at reduction of inequalities immediately and also in the long run, has never even been attempted. Thus in the two important dimensions

of fighting poverty – (a) whether it be in the eradication of absolute poverty or (b) reduction of inequalities there is a clear lack of will.

14. This ambiguity has manifested itself in regard to all the basic needs of the people, namely, food and nutrition, health, sanitation, drinking water, shelter, education, employment, credit and information. Part of the problem has also been with the way our Constitution was originally framed. Part-III spoke of civil and political rights while Part-IV spoke of economic and social rights and explicitly and implicitly it came to be understood in the country that the Part-IV rights were not justiciable. This was a tantalizing situation for the poor for they were told that good governance meant that it was the State's duty to provide free and compulsory primary education, the right to work etc, while at the same time the citizen had no means to enforce good governance! Thus, the political electives could always plead that they were doing their best and simultaneously justify the violation of all constitutionally given principles of good governance pointing to lack of resources.

15. Despite the grave failures in India's policies and programmes designed for the poor, the fact should be acknowledged that in most of our policies and programmes we have the incipient ingredients of a great social charter. Only we need to carry those concepts boldly forward by developing them to their logical ends. In other words, our policies and programmes have been well conceived up to a point but have lacked the bold leap that would have distinguished them as path-breaking efforts. This can be easily illustrated. Let us take for example the concept of Right to Work, enshrined in the ICESCRs. Public employment works in the rural areas have been a part of our anti-poverty efforts for at least 30 years in India with the clearly stated object of creating employment. In the late 70s we introduced a food component as part of the wages in these programmes for work. The NREP, RLEGP and the JRY all had considerable budgetary allocations made aiming at several million man-days of work. In the State of Maharashtra we established the principle of Right to Work through an Employment Guarantee Scheme (EGS). The Employment Assurance Scheme of 1993 was conceived in the Prime Minister's Office as an effort at guaranteeing employment to the rural poor in 1772 most backward blocks of the country. However,

the lack of political will failed at the very threshold of giving the rural poor an enforceable Right to Work. The result was what should have been announced in 1993 as an Employment **Guarantee** Scheme turned out to be an Employment **Assurance** Scheme. The difference between two is the latter is not an entitlement that can be enforced in the court of law though if we look at the original draft of the scheme it would be clear that it had all the ingredients of a guarantee. It is this lack of will to go the whole logical hog that has plagued our poverty eradication efforts.

16. Since 1987 many of us have been advocating the conversion of the ICDS Anganwadis into Crèches. The difference between the two as advocated by us lay in the fact that we wanted Anganwadi timings of 8.00 AM to 1.00 PM changed to 8.00 AM to 5.00 PM with additional workers so that the toiling women rural labourers could leave safely their young infants, specially those under three years of age in the care of the Crèche workers during the hours they have to work in the field earning their daily bread and come over to the Crèche twice or thrice during the period to breast feed their babies. A Crèche would thus have served the cause of the 0-3 cohort much better considering that that cohort hardly derives any benefit from the ICDS Anganwadi. It would have served as a guarantee for the security of the very small children whom no mother would leave unless there were enough workers in an institution to give them close care, which in turn meant the mother can securely earn her daily wages which is so fundamental for her right to livelihood. It would have provided employment to a few hundred thousand more rural women particularly adolescent girls. Also, that would have been a starting point for training the village women particularly adolescent girls in leadership roles over the medium and long term through managing the Crèche by turns so that both rights of the children and of the women in their respective spheres could have been safe guarded and advanced. While the Government certainly have done a lot to expand the ICDS and incurred expenditure including by borrowing, the “leap” required in terms of a new vision to guarantee the rights of children and women through the imaginative and creative step of converting the Anganwadis into Crèches was never taken.

17. Another such example is the Indian Public Distribution system (PDS). It was never really used as an infrastructure to fight poverty through an integrated effort at household food security, food for work programmes and nutritional needs of ICDS and other child nutrition programmes. An example how the Parliament failed in relation to decentralized self governance as an important ingredient of good governance can be seen from its failure, while bringing in the 73rd Amendment to the Constitution, to directly empower the Gram Panchayats as institutions of self Government by needlessly leaving the powers of delegation in the hands of the State Legislatures which really meant State Governments.
18. However, having said all this, the point remains to be made that in all these efforts and programmes we have the beginnings of what can become the basis for true enforceable rights. Also, fortunately for the poor of India, a combination of the practice of the principle of public interest litigation and the social activism of the Supreme Court of India have in recent times is changing the situation for the poor. Thanks to this, the right to primary education is today a fundamental right (the Unnikrishnan case). The right to work is today a fundamental right to the extent that the survival of a family depends entirely on such employment. The right to shelter is a fundamental right today. What is interesting in these developments is that the Supreme Court has converted these basic needs of our people which would be conceptually considered rights as coming in the domain of the ESCRS and presumed to be covered in Part IV of our Constitution into enforceable rights by taking recourse to the provisions in Part III of the Constitution.

We should press these advantages forward and articulate a Charter that would call for the Rights to Food, Work, Health, Shelter, Education, Information and Credit to become enforceable fundamental rights, for the reasons presented in this paper.

19. When we propose certain rights as enforceable and that they be mandated in the country's social charter, we should still bear in mind the lack of will that has hitherto characterized the country's political life. In order to compel the political leadership to

implement the social charter, we need the mobilization of the people through a comprehensive national, social campaign touching every household in the country on these rights. The campaign would have to explain to the people how and why those rights are important to them and how dramatically their lives and the lives of their families and children can change if they access those rights. Unless the masses at large internalize these benefits in their own minds and are convinced about them we would not be able to create the momentum necessary for a participative national movement that alone can pressure the complacent political electives to bestir themselves. Such a national campaign should have a national direction and guidance though obviously its action programme has to be implemented in the villages and towns. We need a National Campaign Committee outside the Government to conduct this campaign and monitor the results. The National Campaign Committee should have for its members activist experts in the areas of food and nutrition security, employment, health, education, shelter, credit, information and social integration. This idea should be proposed for being mandated in the Social Charter. Also, parallel action by activists would be the real key to the success of the Charter for mere acceptance of this idea by the Government in a SAARC Summit is no guarantee to its honest implementation. Organization of the people is the key to obtain for them their rights.

II. RIGHTS AS IN THE CONSTITUTION OF INDIA AND THE INTERNATIONAL COVENANTS AND DECLARATIONS.

The Universal Declaration of Human Rights 1966 proclaims the following:

- (i) Every one has the right to recognition everywhere as a person before law, equal before law and entitled without discrimination to equal protection of the law.
- (ii) Every one has the right to an effective remedy by competent national judicial and other tribunals to enforce fundamental rights granted by the Constitution or by law.
- (iii) Every one has the right to freedom of residence within the borders of one's country.
- (iv) Women are entitled to equal rights in marriage.
- (v) Every one has the right to freedom of opinion and expression; of peaceful assembly and association, including the right to form trade unions for protection of their interests.
- (vi) Every one has the right to take part in the Government of the country, directly or through freely chosen representatives.
- (vii) Every one has the right to equal access to public services in the country.
- (viii) Every one is entitled to realization of the economic, social and cultural rights indispensable for dignity and the free development of personality as also to social security.
- (ix) Every one has the right to work, free choice of employment and favorable conditions of work and to protection against unemployment.
- (x) Every one, without discrimination has the right to equal pay for equal work. Such remuneration should ensure for their entire family an existence worthy of human dignity.
- (xi) Every one has the right to a standard of living adequate for the health of the family including food, clothing, housing and medical care and necessary social services and social security in the event of unemployment sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond one's control.
- (xii) Motherhood and childhood are entitled to special care and assistance.

(xiii) Every one has the right to education, which shall be free and compulsory in the elementary and fundamental stages.

(xiv) In the exercise of rights and freedoms every one shall show due recognition and respect for the rights and freedoms of others.

1. For the citizens to enjoy these rights the States have an obligation to create appropriate conditions, without distinction and discrimination of any kind such as sex, religion, social origin, birth or status, race or language. The States shall play a pro-active role including through legislation and creation of institutions in protecting and promoting these rights.
2. These fundamental rights and freedoms have been spelt out in the ICCPRs as those relating to an inherent right to life; freedom from slavery and forced or compulsory labour; liberty of movement and right to choice of residence; equality before law and equal protection of the law and before courts and tribunals; right to privacy, freedom of thought and religion; freedom of expression and right to peaceful assembly and association with others; to marry freely and with one's full consent; equality of rights and responsibilities of spouses in marriage including their obligations to children; children's right to proper protection from family, society and State; the right to vote and to be elected at periodic elections by universal and equal suffrage; and rights of minorities to their culture, religion and language.
3. These rights and freedoms have been advocated in the ICESCRs as all economic, social and cultural rights such as the right to work which is freely chosen and remunerated with fair wages equally for men and women that would provide a decent living for themselves and their families; safe and healthy conditions at work including rest and leisure; right to organise for promotion and protection of economic and social interests; social security and social insurance; marriage with the free consent of intending spouses; special protection to mothers before and after child birth with adequate social security benefits; special measures of protection to children from economic and social exploitation and from work harmful to their health and

development; setting age limits below which paid employment of child labour should be prohibited and punished; right to every one to an adequate standard of living including adequate food, clothing and housing and continuous improvement of living conditions; freedom from hunger and specific programmes needed for this purpose; to improve methods of production, conservation and distribution of food by use of technical and scientific knowledge by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems; right to the highest attainable standard of physical and mental health including through provision for reduction of infant mortality and for the healthy development of the child; right to free and compulsory primary education, technical and vocational secondary education and education directed at strengthening respect for human rights; and to the benefits of scientific progress for the citizen and the duty of the State to promote the development and diffusion of science and culture.

4. **Elimination of discrimination and the recognition and promotion of the equal rights of women and men are the bed rock of all the Declarations and Conventions.** However, continuing discrimination and perpetuation of inequalities between men and women led to the Declaration on the Elimination of Discrimination against women in 1967 and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. The Declaration, in addition to the rights already articulated in the documents discussed, called for the abolition of existing laws, customs, regulations and practices discriminatory against women; establish adequate legal protection for equal rights for women in particular and embody them in the constitution and other laws; educate public opinion and direct national aspirations towards eradication of prejudices, customs and practices based on the idea of the inferiority of women; right to hold public office and exercise all public functions guaranteed by legislation; right to hold and dispose of property; prohibition of child marriage; combating of all forms of trafficking and exploitation of women; equal rights with men in education at all levels in economic and social life - in employment, in remuneration, in social security in respect of unemployment, sickness, old age and other incapacity to work, and to non-discrimination in the

effective right to work in the event of marriage or maternity. Going further, the CEDAW made a direct reference to women in poverty and their least access to food, health, education, training and opportunities for employment and other needs. It called for family education that would promote the understanding of maternity as a social function and the common responsibility of men and women in the upbringing and development of children with the child's interest as the primordial consideration; eliminate discrimination in political and public life against women; laid down detailed principles in Article 10 as how discrimination against women, through the right to education, can be eliminated from the pre-school stage through equal opportunities; it called for the Right to Work, equal remuneration, social security, particularly in case on any kind of incapacity; right to protection of health and safety in working conditions. In the context of the effective right to work for women, CEDAW called for "the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities..... through promoting the establishment and development of a net work of child-care facilities". On the health side, the State should take all measures to ensure access to health care services including those related to family planning; all appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation. CEDAW demands the right to credit as part of the measures to eliminate discrimination against women in other areas of economic and social life and calls for special attention to the rights of rural women in the context of the discrimination they face; the more than equal role they play in the economic survival of families; their right to participate in and benefit from rural development including planning and implementation. The State should ensure the right to women to organise self-help groups to access equal economic opportunities and to equal treatment in land and agrarian reforms. The State should facilitate the enjoyment of adequate living conditions particularly in relation to housing, sanitation, electricity and water supply.

5. The Convention on the Rights of the Child (CRC) is rooted in the UDHR proclamation that childhood is entitled to special care and assistance and the

conviction that the family should be afforded protection and assistance to achieve this goal. This special care is a need before as well as after birth. Non-discrimination is again a vital safeguard and the “best interests” of the child is the governing principle. Right to life is an inherent right and the State has to ensure the survival and development of the child, ensuring that both parents have the primary and common responsibilities for this. The child has the same rights as the adult in regard to freedom of thought and expression and right to information. So are the rights to association and assembly and privacy. The State shall ensure the provision of development institutions, facilities and services for the care of the children including those of the working parents and thus render all appropriate assistance to the parents. It is thus a close, combined state-family effort. Article 23 mandates the recognition of the special rights of the disabled child to special care, including through free assistance designed to ensure the promotion of the special child’s self reliance and active participation in the community. This should ensure effective access to education, training, health care and rehabilitation services, preparation for employment and recreation opportunities – **all these towards the objective of the fullest possible social integration.** For this international cooperation in the areas of preventive health care, functional treatment, methods of rehabilitation, education and vocational services is recommended. In Article 24 the right of the child to health of the highest standards and therefore to health care services leading to the goals of diminishing infant and child mortality rates and disease and malnutrition, is mandated. Clean drinking water, adequate nutritious foods and environmental sanitation are to be ensured by the State. The State has to ensure pre-natal and post-natal health care for mothers and they, their children and the entire community should have access to education and support in the use of basic knowledge of child health and nutrition, breast feeding, hygiene and environmental sanitation. Traditional practices prejudicial to child health should be abolished. To ensure the right to adequate mental, physical and social development of the child and thus the right standard of living, the State should devise support programmes including for provision of free material assistance in the areas of nutrition, clothing and housing, as also for social security. The State should make primary education compulsory and

available free to all, encourage development of secondary education including vocational education so as to make it accessible to all and take measures to reduce drop out rates. The child should be protected from economic exploitation and from any work that would interfere with education or that is hazardous or harmful to the child's physical, mental or social development and the State shall legislate and administer measures to ensure this through appropriate penalties and effective enforcement. The State shall take measures to prevent traffic in children.

6. The Declaration on the Right to Development, 1986 recalls the need for the urgent implementation of the ICCPRs and the ICESCRs by removing all obstacles stressing **the indivisibility and interdependence of all human rights and freedoms**. It calls for equality of opportunity for all in access to basic resources, education, health services, food, housing, employment and fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Economic and social reforms should be carried out to eradicate social injustices. Responsibility for development is also thrown mutually – individually and collectively - on society so that an appropriate political, social and economic order for development is created. The right to development thus is an inalienable human right by virtue of which every human person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. For this, relevant policies, legislative and other measures should be formulated at the national and international levels.

The Common strands in all these Declaration and Conventions are:

- (i) Rights derive from the inherent dignity of the human person.
- (ii) Equal and inalienable rights for all.
- (iii) Enjoyment of all rights is also enjoyment of freedom. The ideal aimed at is free human beings enjoying civil, political, economic, social and cultural rights in an environment free from fear and want.
- (iv) States and all organs of the State have an obligation to promote these freedoms and rights; and so do individuals and the community. Thus, the State, the

individual and the society should all together engender an enabling environment to create, foster and promote these rights through positive action.

(v) These Human Rights should be protected by the Rule of Law.

7. The most important rights articulated in these Declarations and Convention which I believe urgently relevant to an Indian Social Charter in terms of basic needs are:

- (i) The Right to Food.
- (ii) The Right to Work.
- (iii) The Right to Shelter.
- (iv) The Right to Health.
- (v) The Right to Education.
- (vi) The Right to Information.
- (vii) The Right to Credit and
- (viii) The Right to Democracy.

The Indian Charter should call for all these Rights to be made fundamental and enforceable.

Also of great significance is the fact that the Declarations and Conventions, in addition to the rights already discussed, call for the abolition of existing laws, customs, regulations and practices discriminatory against women; to establish adequate legal protection for equal rights for women in particular and embody them in the constitution and other laws; to educate public opinion and direct national aspirations towards eradication of prejudices, customs and practices based on the idea of the inferiority of women; to eliminate discrimination in political and public life against women; abolish traditional practices prejudicial to child health. The Constitution of India clearly states that even a custom having the force of law could be hit by Article 14. Article 17 of the Constitution of India that abolishes untouchability represents an effort to liberate the society from blind and ritualistic adherence and traditional beliefs that are without moral or legal base.

These are important prescriptions because the calls given in the ICCPRs and ICSECRs and in the Declaration on the Right to Development about “individuals having duties to other individuals and to the community to which they belong” could be amenable to misinterpretation in India, especially in today’s political context. This point has been repeatedly and comprehensively made over a period by Dr. Vina Mazumdar in her writings in the context of women’s struggle against patriarchy. Her warnings in the context of equality have, therefore, to be borne in mind in the process relating to the advocacy of the rights of the poor, of women and children, especially in the current Indian milieu.

- 8. In determining whether these rights have been translated into reality the ultimate touch stone should be to see whether these rights have been conceived in the context of women and looked upon as women’s rights in the first place and fulfilled accordingly. The realization of these rights in the form of benefits should also have to be judged in terms of the protection that infants and children, particularly girl children and differently-abled children get in regard to their own needs, including their special needs.**
9. Each of these rights is so inextricably interwoven with the other rights in the real life of a human being that as we discuss each one of them, the others will naturally coalesce into them. In fact, none of these rights can really stand by itself for the human person to fully benefit by it. That is why, it would not be meaningful to the life of a person, especially to a woman, if merely some of these are guaranteed as enforceable and others as non-enforceable.
10. I have included the Right to Democracy as an all embracing right because it is only this right that gives the scope for all other rights to be articulated freely on the one hand and creates the space for the establishment of a free and independent judiciary that can uphold and enforce the rights of the individual against the State whose duty it is to ensure and promote these rights. An independent and free judiciary can exist only in a genuine democracy and this should be remembered even by peoples of countries like ours who may be currently enjoying democratic freedoms because

these freedoms can never be taken for granted. Eternal vigilance is the price of freedom. Thus, yet again, all these rights have to be mutually reinforced.

11. I have separated in this paper the provisions of the Constitution of India from the main elements of the International Conventions and Declarations so as to use the latter as the touch stone to examine what the former guarantees to the citizens of India in general and the poor in particular in terms of their basic needs as per international norms and standards. I have mentioned, alongside, the pronouncements of the Supreme Court of India in interpreting what the various Constitutional provisions provide to the citizen by way of Civil, Political, Economic, Social and Cultural Rights. As we all endeavour to formulate our thoughts as to what sort of a Social Charter we should give ourselves and our country, these pronouncement of the highest tribunal of our land gives us an idea as to where we stand in regard to what we need and therefore an idea of what our next steps should be.

12. Generally it is believed that the political and civil rights in India are guaranteed under part III of the Constitution, that is, the Chapter on Fundamental Rights and that the Economic, Social and Cultural Rights are covered under part IV of the Constitution as Directive Principles of State Policy. Till very recently it has been the common understanding that only the rights guaranteed under part III were justiciable and those under the Directive Principles were not. However, in path breaking judgements the Supreme Court of India, thanks to the mechanism of Public Interest Litigation (PIL), has granted to the citizens of India certain economic and social rights mentioned in Part IV through enlightened interpretation of the rights guaranteed under part III. In other words, for the people of India certain Economic and Social Rights have been reached through the interpretation of their Political and Civil Rights. This is extremely interesting because conventionally, certainly in Europe and the United States, it had always been believed in influential circles that a clear dichotomy exists between political and civil rights on the one hand and the economic, social and cultural rights on the other. The Indian Supreme Court has put paid to all such meaningless distinctions. It is obvious that the great steps taken by the Supreme Court of India are in no small measure due to the existence of the International

Conventions on PCR and ESCR and the UN Declaration on the Right to Development to which India is a signatory.

13. Though the Constitution of India came to be written much earlier than the International Covenants on PCR and ECR, thanks to the concepts incorporated therein having been universally accepted much earlier and incorporated in large measure in the United Nations Declaration on Human Rights (UDHR), 1948 we see many of our own Constitutional provisions are in tune with the International Conventions on ESCR and PCR. Thus Articles 14 to 17 on Right to Equality reflects Articles 6 and 7 of the UDHR. Article 19 which guarantees the protection of certain rights regarding freedom of speech etc., relates to Articles 13, 20, 23 and 29 of the UDHR; to Article 22 of the ICCPR; to Articles 6 and 7 of the ICESCR. Article 20 relates to Article 11 (2) of the UDHR and Article 15 (1) of the ICCPR. Article 21 that protects life and personal liberty in the Indian Constitution relates to Articles 3 and 9 of the UDHR and Article 9 of the ICCPR. Article 22 relates to Articles 9 and 14 of the ICCPR. Article 23 which prohibits traffic in human beings and forced labour relates to Article 4 of the UDHR and Article 8 of the ICCPR. Article 24 that prohibits employment of children in factories and other hazardous employment relates to the ICESCR. Article 25 which guarantees the rights to freedom of religion relates to Article 18 of the UDHR and Article 19 of the ICCPR.

14. Article 14 mandates to every person equality before law and equal protection of the laws. This relates to Articles 6 and 7 of the UDHR. This is a corollary to the concept of the Rule of Law, accepted by the constitution. It implies non-discrimination and aims at striking down invidious or arbitrary hostile discrimination or oppression of inequality. There can be no discrimination between persons. Even a custom having the force of law could be hit by Article 14. Also, the principle of equality mandated here can be invoked to enforce the provisions of the Equal Remuneration Act, 1976, a cardinal principle of gender equality and equity that finds place in part IV of the constitution in Article 39. Again, the principle of equal pay for equal work and in that context the obligation of the Government to be a model employer in terms of wages payable to those it employs is enforceable under Article 14. **Since this is**

concomitant to the principle of Right to Work embodied in Article 41, we see how a fundamental right can be invoked to enforce a principle finding place in Part IV of the constitution. While we may not be able to judicially enforce the principle of minimizing inequalities of income enshrined in Article 38(2), surely Article 14 can be invoked in many cases to achieve the same objective. The finding that Shelter is a fundamental right and that there should be a National Housing Policy came from the Supreme Court in the context of the rights enshrined in Article 14 and 21.

15. The battle against discrimination is carried forward in Article 15. Discrimination is specifically, explicitly mentioned and the Article protects in wide terms all citizens against discrimination on grounds of religion, race, caste, sex and place of birth. In India discrimination is common on all these grounds. Thus, in mandating against such discrimination, the constitution is in harmony with the UDHR, the Declaration of the Right to Development, the ICCPRs, ICESCRs and the Convention on the Rights of the Child in regard to the rights recognized in those documents. (In addition the Declaration of the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) mandate against discrimination specific to the circumstances and conditions that govern women). This constitutional mandate extends to political and other rights and 15(1) permeates the electoral rights as well. Also, reservation for women candidates for selection to or posts under the state professional colleges or special provision in respect of employment does not offend Article 15(3).
16. Article 16 gives effect to the principles of equality before law guaranteed by Article 14 and prohibition of discrimination in Article 15, in matters of employment.
17. Article 17 that abolishes untouchability represents an effort to liberate the society from blind and ritualistic adherence and traditional beliefs that are without moral or legal base. Equality for the Dalits and freedom to them from discrimination and the principle of social integration are all embodied in this Article. Article 17 specifically makes “untouchability” an offence and makes it punishable.

18. Article 19 gives the citizens the right, among other things, to freedom of speech and expression, to assemble peaceably and to form associations or unions. These are civil rights and are treated as distinct Fundamental Rights. The same is true of Articles 21 and 22. The importance of Articles 21 and 19 is that if one loses one's personal liberty, one loses all the other attributes of freedom enshrined in Article 19. This is why in a society like ours social and economic rights like education and a certain standard of living are necessary for the poor because in their absence they, as we frequently see, are the natural candidates for loss of freedom through detention on the flimsiest of grounds. Once that happens, further loss of livelihood occurs causing even more immiseration.

19. The importance of Article 19 also lies in the fact that it gives the poor the all-important right to organise themselves in defence of and in the demand for their economic and social rights. Thus the right to freedom of speech and expression carries with it the right to propagate one's views and opinions and to impart and acquire information about common interests. This is of paramount importance in a democracy where Governments that are not sensitive to the needs of the poor can even be changed, through the exercise of this right.

20. The interpretation of Article 21 that guarantees protection of life and personal liberty has travelled a long way to include the Right to Livelihood. It does not mean merely that life can not be extinguished except according to the procedures laid down in law. That is but one aspect of the right to life. An equally important fact of that right is the right to livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life (AIR 1986 Supreme Court 188). **In terms of health, this right to live includes the right to safe water and so does a citizen's**

right to expect a local body or Government to provide sanitation. In terms of women's rights, under this article a woman is entitled to privacy and no one can invade her privacy.

21. The citizens have a fundamental right to Education and that right flows from Article 21. The contents and parameters of this right to Education have to be determined in the light of the Directive Principles in Articles 45 and 41. Thus every child has a right to free education until he completes the age of 14 years. **This finding is the Unni Krishnan case (AIR 1993 Supreme Court 2178) clarifies that the right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the Directive Principles in Part IV of the Constitution.**

22. It is this interpretation of the Supreme Court made even earlier in 1958 (AIR 1958 Supreme Court 956) that the directive principles of state Policy cannot be entirely ignored by the court in determining the scope and ambit of the Fundamental Rights relied upon by or on behalf of any person, that has brought hope and optimism to the poor. This interpretation is a source of great strength to pro-poor activists who now look up to the instrumentality of public interest litigation, to convert the directive principles into enforceable, fundamental rights. The mandate of Article 37 is that while the Directive Principles of State Policy shall not be enforceable by any court, the principles are "nevertheless fundamental in the governance of the country" and "it shall be the duty of the State to apply these principles in making laws". Addressed to the court, what the injunctions mean is that while courts are not free to direct the making of legislation, courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy.

23. The scope and ambit of Article 21 has been further widened in Bandhua Mukti Morcha v Union of India which lays down that every one in this country has the right to live with human dignity, free from exploitation. This right also includes protection

of health and strength of workers, -men and women-, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. Having an eye to the scope and effect of Articles 21, 23, 39(e), (f), 41 and 42 it was suggested that it is necessary to examine the relevant enactments passed by the Central and State Governments on subjects like bonded labour and child labour. **Article 21 protects the right to livelihood as an integral facet of the right to life.**

24. Life in Article 21 means something more than mere animal existence. Life in its expanded horizon includes all that give meaning to a man's life including his tradition, culture and heritage and protection of that heritage in its full measure would certainly come within the compass of Article 21.

25. **Right to life includes Right to Health.** Supreme Court has held that failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.

26. The expression "life and personal liberty" includes a variety of rights, though they are not enumerated in part III of the Constitution, provided that they are necessary for the full development of the personality of the individual and can be included in the various aspects of the liberty of the individual. If the rights to free speech, assembly and association are necessary for development of human personality, they are liberties which are spelt out not only by Article 19(1)(a), (b) and (c) but also by Article 21.

27. Right to residence and right to life have a bearing on each other. **Right to Shelter is a fundamental right which springs from the right to residence assured in Article 19(1)(e) and the right to life under Article 21 of the Constitution.**

28. Article 23 prohibits traffic in human beings and forced labour and declares any contravention of the provision an offence. Non-payment of minimum Wages to workmen employed on public works offends the provisions of Article 23 of the Constitution. The Supreme Court has held that rehabilitation assistance to bonded

labour must be adequate and that unless there is effective rehabilitation the purpose of the Bonded Labour System (Abolition) Act 1976 would not be fulfilled. We can interpret this to include child labour also since much of child labour is the result of children pledged by parents against debt incurred by them. Article 23 of the Constitution prohibits traffic in human beings and begar and other similar forms of forced labour. Article 24 mandates that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. Though we have on the statute book the Abolition of the Bonded Labour System Act, 1976 and the Child Labour (Prohibition and Regulation) Act, 1986, the mandate of the Supreme Court itself about their implementation in the PUCL and MC Mehta cases and the involvement of the NHRC in implementing that mandate, the indifference of the State Governments to those orders highlight the need for new strategies to be thought of in the context of a Social Charter in regard to bonded labour and child labour.

29. We may mention here that in Part IV again Article 42 makes it the obligation of the State to make provision for securing just and humane conditions for work. There are several other Articles in Part IV of the Constitution which indicate that it is the State's obligation to create a social atmosphere befitting human dignity for citizens to live in.
30. Article 32 of the Constitution of India provides for the right to Constitutional remedies i.e. for enforcement of rights conferred by part III. This relates to Article 28 of the UDHR.
31. Under Part IV the Constitution of India lays down the Directive Principles of State Policy. The significance of the Directive Principles lies in the fact that "in determining the scope and ambit of the Fundamental Rights relied upon by or on behalf of any person, the Court may not entirely ignore these Directive Principles but should adopt the principle of harmonious constructions and should attempt to give effect to both as much as possible". This interpretation of the Supreme Court made in 1957 was further strengthened by the Supreme Court in another pronouncement in

1976 when it stated “Where two judicial choices are available, the construction in conformity with the social philosophy of Part IV has preference”. The Supreme Court has also held in 1997 that the Directive Principles in the constitution are forerunners of the UN Convention on Right to Development as an inalienable human right and every person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms would be fully realized. These principles are imbedded as integral part of the Constitution in the Directive Principles. Therefore, the Directive Principles now stand elevated to inalienable fundamental human rights. They are justiciable by them selves. Social and Economic democracy is the foundation for stable political democracy (AIR 1997 Supreme Court 645 – quoted at page 81- HK Saharay). We need to examine this pronouncement more closely to see whether new rights accrue to the poor.

32. Article 38 directs the state to secure a social order in which social, economic and political justice shall inform all institutions of the national life and directs the State to strive in particular to minimize in equalities in income and eliminate in equalities in status, facilities and opportunities not only amongst individuals but also amongst the groups of people residing in different areas or engaged in different vocations. Article 39 is an extremely important one and lays down that the State shall direct its policy towards securing that men and women equally have the right to an adequate means of livelihood; that there is equal pay for equal work for both men and women; that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that child hood and youth are protected against exploitation and against moral and material abandonment. This Article 39 also calls upon the State to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and

means of production to the common determinant. This key article of our Constitution relates to Articles 3, 6 and 7 of the ICESCRs and Article 23 (2) of the UDHR. It is under this Article that the Supreme Court has declared in a judgement as early as in 1958 that a “statutory minimum wage is the **minimum** which is prescribed by the statute and that it may be higher than the bare substance or minimum wage, providing for some measure of education, medical requirements and amenities. This concept of minimum is in harmony with the advance of thought in all civilized countries and approximates to the statutory minimum wage which the State should try to achieve having regard to the Directive Principles of State Policy” (AIR 1958 SC 578-quoted in H K Saharay page 285). It is while interpreting Article 39 (b) and (c) that the Supreme Court declared that “the greatest incentive for maximum production is the feeling of identity and security which is possible only if the ownership of land is with the tiller” (AIR 1987 SC 1518- H K Saharay page 286). As regards the doctrine equal pay for equal work, while dealing with various of kinds of circumstances the Supreme Court has emphasized the role of the Government as a model employer. Specifically dealing with daily wage employees, the Supreme Court averred “ the Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers even in the employment of persons on daily-wages basis and the argument that the doctrine of ‘equal pay for equal work’ is an abstract doctrine should ill-come from the mouth of the State” (AIR 1986 SC 584- H K Saharay-page 288). On equal pay for equal work the Universal Declaration of Human Rights 1948 proclaims that all human beings are born free and equal in dignity and are entitled to all rights and freedoms set forth therein without any discrimination as to sex. Article 7 of the International Covenant on Economic and Cultural Rights 1966 provides *inter alia* that there shall be equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men with equal pay for equal work. It would be appropriate to recall the report of the National Committee on the status of women “Toward Equality” published in 1975 which led to the Equal Remuneration Act 1976.

33. While dealing with Article 39 (f) the Supreme Court in *Sheela Barse v Union of India* AIR 1986 stated that “a child below the age of the 16 years is a national asset. The State is under duty to look after the child with a view to ensuring full development of its personality.”
34. Speaking about economic growth and development, the Supreme Court has said “... economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people. Man has to be focal point of development... This is apart from the mandate of the Directive Principles contained Articles 38,39,41,42,43 and 47 of the Constitution”. (AIR 1995 SC 1617 – Saharay page 290)
35. Articles 39 (e), 39 (f), 41, 45 and 47: Child Labour. In *M.C. Mehta v State of TN* the Supreme Court has held that strictly speaking a strong case exists to invoke the aid of Article 41 of the Constitution regarding the right to work and to give meaning to what has been provided in Article 47 relating to raising of standard of living of the population and Article 39 (e) and (f) as to non-abuse of the tender age of children and giving opportunities and facilities to them to develop in a healthy manner, for asking the State to see that an adult member of the family, whose child is in employment in a factory or a mine or in other hazardous work, gets a job anywhere else, in lieu of the child. This would also see the fulfillment of the wish contained in Article 41.
36. The right to free legal services embodied in Article 39-A is an essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a Constitutional right given to an accused person on account of reasons such as poverty and indigence (AIR 1979 SC 1369). Voluntary organisations and social action groups must be encouraged and supported by the State in operating the legal aid programme. Legal aid is needed for the purpose of reaching social justice to the people. (AIR 1986 SC 1322 and 2195). This pronouncement of the Supreme Court gives great space in furthering the capacity of the poor and pro-poor activists in their battles for basic rights.

37. In AIR 1995 SC 1512 the Supreme Court strengthens the role of the village Panchayats by laying down that under Article 40 the village panchayats, however organised, have to be equipped with such powers and authority as may be necessary to enable them to function as units of Self-Government. There is, however, no doubt that where the Article speaks of village panchayats as units of Self-Government, it has in view the organisation of the lowest level units of self-governance in the hierarchy of self-governing, democratic, policy making administrative units. Thus, while organising the village panchayats, what is necessary to be kept in mind is (a) that they are to be self-governing units, at the lowest end of democratic policy (b) that being self-governing units, those who are governed by them and for whose benefit they are going to operate, will have either a direct or an effective indirect representation in them (c) that they will have an effective say in the conduct of the affairs including its plans, policies and programmes and their execution and that (d) thus they will have not only a sense and satisfaction of participation but also an experience in the governance of their own affairs (Saharary Page 292).

38. Article 41 of the Constitution refers to the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want, “within the limits of its (state) economic capacity and development”. **On Right to Education, however, the Supreme Court has this to say: “Without making the right “right to education” under Article 41 a reality the Fundamental Rights under Chapter III shall remain beyond the reach of the large majority which is illiterate. The “right to education”, therefore, is concomitant to the Fundamental Rights enshrined under Part III of the Constitution” (AIR 1992 SC 1858). This is reaffirmed in the Unni Krishnan case (A P AIR 1993 SC 2178). The line we may have to take in the coming days before the Supreme Court and in the formulation of the Social Charter would be that the untrammelled corruption practised by the State agencies no more justifies the need for the limits assumed on the State’s economic capacity for development by the Court. Our case for declaring the Right to Work should point out that if only corruption which is antithetical to development is**

abstracted from the estimates of availability of resources, resources can never be a constraint in the achievement of this right. Article 41 relates to Article 23 (1) of the UDHR and Articles 6-7 of the ICESCR 1966).

39. The Constitution has expressed a deep concern for the welfare of the workers and has provided in Article 42 that the State shall make provision for securing just and humane condition of work as also for maternity relief. This Article relates to Articles 23 and 25 of the UDHR 1947 and Articles 7 and 10(2) of the ICESCR 1966.
40. Article 43 lays down that the State shall endeavour to secure to all workers - agricultural, industrial or otherwise, - work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. This relates to Articles 24,25,26 and 27 of the UDHR 1948 and Articles 11 and 15 of the ICESCR 1966.
41. The concept of “living wage” means that every male earner should be able to provide for his family not only the essentials of food, clothing and shelter, but a fair measure of frugal comfort and an ability to provide for old age or evil days. Fair wage lies between the concept of minimum wage and the concept of a living wage. The concept of fair wages involves a rate sufficiently high to enable the worker to provide “a standard family with food, shelter, clothing, medical care and education of children appropriate to his status. A fair wage thus is related to a fair work load and the earning capacity. The living wage concept is one or more steps higher than fair wage. Article 43 lays down that the political aim in India is “living wage” (AIR 1966 SC 305 – Saharary 293-294).
42. Article 45 mandates the State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years. This relates to Article 26(1) of the UDHR and Articles 13 and 14 of the ICESCR 1966. This can be done through Government, aided, private and other types of schools. We have already discussed the right to education in the context of the Unni Krishnan case.

43. Article 46 calls for the promotion of the educational and economic interest of SC's, STs and other weaker sections by the State with special care and the state shall protect them from social injustice and all forms of exploitation. The obligation of the Government to assign Government lands to weaker sections and regularise possession is implied in Article 46 and Articles 38 and 39 (b).
44. Article 47 mandates that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as amongst its primary duties. This Article relates to Article 25 of the UDHR 1948 and Article 12 of the ICESCR 1966. Under this Article the State is under a duty to take steps to improve public health.
45. Sustainable development concept comes from Article 48 A. "The Precautionary Principle" and "The Polluter Pays" principle are essential features of Sustainable Development. The Precautionary Principle means the State Government and the statutory authorities should anticipate, prevent and attack the causes of environmental degradation. Considering that in India, as seen earlier, the State itself has constitutional responsibilities to provide certain public health services particularly sanitation and safe drinking water, we can make a case for making sanitation a justiciable right the enforcement of which will include assisting the poor private households through subsidies and making such services and arrangements a part of its shelter policy. If the State does not accept this responsibility the State in India should be held to be a polluter. The right punishment to the State should be then be to make it take all measures to provide complete sanitation coverage to the entire population of rural India within a time frame. It is not for the State to state that it is not a priority issue for it because "when the court is called upon to give effect to the Directive Principle and fundamental duty such as protecting and improving the natural environment, the court cannot shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority" (AIR 1987 SC 1109).

The analysis above and in Chapter I shows that there is more than enough room for us to demand that the Rights to Food, Work, Health, Shelter, Education, Information and Credit be declared enforceable rights in India and action taken to implement the relevant programmes for their fulfillment.

In the following Chapters we shall see how these have to be translated into concrete action plans so these rights become a reality.

III. FOOD AND NUTRITION SECURITY

(A) Food Security

1. Notwithstanding the kind of figures given out by Government agencies, around a third of all our people live below the poverty line and when the Country is struck by a drought, this figure can easily go up to 40 percent of the entire rural population by not more. Therefore, categories of poor like the land less agricultural labourers, marginal farmers, small farmers and even medium farmers in drought prone areas constantly live in vulnerable conditions in terms of access to the minimum needs of food, wages, employment, health, education and other basic needs. In such a situation of inequality created essentially by unequal asset endowment and poor credit facilities, markets as solutions to people's problems as being advocated by some at present is a myth.
2. The only visible institution, a limited one and with several faults, that we have as answer to this question as an alternative to the market in regard to food grains - essentially cereals - is the Public Distribution System (PDS). But then it has been poorly organized in India and has been subjected to many kinds of experimentation especially by the Center.
3. This Public Distribution System or the alternate market must be organized in a manner that takes into account factors like production in a given area, productivity, wages, the numbers of days of employment available in a year and wage levels during the days when work is available. We all know the facts relating to these factors in areas that do not have assured irrigation facilities, such area being 70 percent of the cultivable land in our Country. Thanks to the lack of access to the market, the poor living in the unirrigated, non-green revolution areas remain under nourished because of lack of full employment and adequate wages. In this context it should be recognised that minimum wages mostly remain on paper because of the lack of the enforcement of the concept in our country. We should also remember that while the

minimum support prices which are relevant exclusively to the surplus farmers are revised every year invariably, minimum wages for rural labour is revised on average once in three years and, however, hardly ever enforced. The Food Corporation of India (FCI) is bound to purchase cereals delivered by the surplus farmers at the minimum support prices fixed and to store such purchases. The hefty minimum support and procurement prices fixed and paid by the Government of India to the surplus farmers and millers and the procurement costs and tariffs as also the storage and transport costs over long distances and the incidental losses lead to the constant revision upward of the issue prices for the public distribution system. This and the constant preoccupation of the Government of India to cut down consumer subsidies so as to satisfy fiscal deficit targets have rendered it unaffordable for the poor to buy these cereals from the fair price shops. We, therefore, have an anomaly here. One could understand if these poor could not access these food grains in the regular imperfect market of inequalities but what is tragic is that even from the alternate market which is what the concept of the Public Distribution System stands for, these poor stand excluded. In other words, the Government in India has failed to reconcile the interests of the surplus farmers with the hungry and the deprived rural labour who contribute to this surplus by their toil. That is why we have food insecurity in India even though the godowns of the Food Corporation of India are overflowing with food grains. Considering that the major criterion according to which we in India determine poverty is the ability to access the minimum energy needs through food required by a human being, we can understand how by sheer failure in redistribution policies, relating to food security, poverty is perpetuated at the most crucial level affecting especially women and children.

4. The basic issues involved in guaranteeing food security are:
 - i. At all times and especially in the post-WTO context, we need an autonomous food security system at the national and regional level based on a break through in areas of dry land agriculture, considering that it is in those areas that most of India's poor live.
 - ii. Food security is the function of synergising production, employment and wages and pricing with implications for land reforms and common property resources.

- iii. Moisture conservation and associated discipline are crucial to food security.
 - iv. The relevance of the PDS for food security is absolute but its success depends on its playing an integrative role as infrastructure for household level food security, wage employment and nutrition programmes.
5. Poverty is not the mere absence of food. It is the absence of a combination of needs such as food, work, shelter, health, education, information and credit for consumption and productive purposes. Having said this, it is important to emphasize that hunger is the first threshold of poverty and unless that threshold is crossed, a human being will not cross those other thresholds like health.
6. No political leader at the national level has shown the vision required to acknowledge the self evident truth that hunger is the first threshold of poverty and that if the poor are not helped to cross that threshold there is no way poverty would be eradicated. While an otherwise progressive Kerala was a chronically food deficit state but was rich in exportable commercial crops and therefore a deliberate policy was pursued to maintain a statutory rationing system there, Tamil Nadu and Andhra Pradesh have established a Public Distribution System (PDS) that aims specifically at reaching food grains to the poor including in the rural areas, though eventually targeting the poor has not been sharply done. It is remarkable that the food security efforts in the south of India had little impact over the governments of the northern States all these four decades. A significant dimension of the southern Public Distribution System efforts is that these three southern states eliminated the urban bias of the P.D.S and also showed that they - especially Tamil Nadu and Andhra Pradesh - recognised the relevance of an affordable price in the economic scheme of things to the poor, particularly where their food security was concerned. They created in Kerala a legal entitlement for food grains for all through a statutory rationing system, while in Tamil Nadu and Andhra Pradesh such entitlement was informal, though very real and credible, as far as the poor were concerned. Degrees of efficiency have varied in implementation in the three states in relative terms, and efficiency especially in targeting has fallen short by absolute standards that purists will prescribe in Tamil Nadu and Andhra Pradesh, but what can not be gain said is that millions of poor

households who would otherwise have never accessed even a part of their cereal needs, have actually credibly done so continuously for years together in these states. In doing so, these states inspired to some extent similar action in Gujarat and Karnataka. West Bengal, for historical reasons, has always had statutory rationing in metropolitan Calcutta but then it is exclusively an urban effort.

7. The answer, therefore, lies in a consensus being arrived at in India as to what food security should mean, the starting point being not how to cut down subsidies but whether or not every citizen of this country has a right to the basic requirements of food security, not as a dole but as a fundamental right.
8. Even as poverty is not just food but food is its most essential element, food security is not just the public distribution system. Food security is more than the public distribution system in the sense that the poor should be able to access what is made available in the public distribution system and the balance of their requirements, food and non-food, from the open market. For this, the poor require **purchasing power**. This purchasing power has to be created by appropriate strategies for and creation of **employment** on the one hand and appropriate **pricing** in the public distribution system on the other. The strategies of employment would include provision of assets to the asset less including redistribution of assets through such strategies as land reforms. Land reforms should include not only implementation of the land ceiling laws but also other action like creating tenure security for the tenants and share croppers. The concept should also include the management of forest lands and waste lands in a manner that generate employment for the rural poor, including even the educated unemployed by retraining them. The **appropriate pricing in the public distribution system should be determined by the existing levels of employment and the existing levels of wages based on the number of days for which employment is available. There should be a clear co-relation between what the rural labour earns by way of wages and what it has to buy from the public distribution system and the market to access its minimum requirements to live above poverty.** This is not the final objective of the concept of food security but only the first step. This is the only kind of approach that will ensure dignity for the

Indian poor. It requires to be emphasized in this context that no poor man or poor woman in this country expects the Government to give him or her doles. What they ask for is full employment with just wages and because the Indian state has failed to provide this through policies that are relevant to the poor, the need to emphasise the pricing in the public distribution system arises. A point completely missed by the rulers.

9. The Public Distribution System should serve only the identified poor and should strictly exclude non-poor. This principle stems from the right of the poor to maximise their access to State resources in a context of scarce resources. In other words, **the PDS should sharply target the poor**. It is imperative to state here at this stage that the recent recommendation made by the Food Grains Policy Committee that we should return to the universal public distribution system displays deplorable insensitivity to the cause of the marginalised, especially women and children. The price of food grains in the PDS should be determined on the basis of the employment levels and wage levels obtaining in a given area. **The size of the family should be the unit to determine the food requirements of the family. Such requirement should be guaranteed to a poor household as its non-negotiable entitlement.** The quantity of entitlement and the price fixed should be kept frozen for the period during which the family remains below the poverty line, the elimination of such poverty itself being the acid test of the responsibility of the growth and development strategies to be drawn up and implemented by the State. The poor household should have the right to draw its entitlement during the month through **as many installments as it deems feasible**. This is essential to ensure that the fair price shop dealer in the PDS does not assume powers that are not his. **A PDS of this kind with the fair price shop at the centre should be a permanent arrangement.** In times of drought and other natural calamities when the purchasing power goes down, the entitlement for the household in the fair price shop should go up so that the household is kept above hunger.

10. An Employment Guarantee Scheme (EGS) is a necessary strategy for food security along side a PDS of the kind detailed above. The basic component of an employment

guarantee scheme should be that if a minimum number of, say, 20 unemployed persons in a village demand employment, it should have to be provided in the block at the minimum wages fixed by the State Government applicable to that area. This EGS should ensure that a part of the wages (but not the entire wage) are paid in food grains of fair average quality at the same price as fixed for the PDS grains. In other words, the poor households participating in a self targeting EGS would receive a very substantial part of their household food grains requirements at prices affordable by them. This is why we need to have the PDS with a permanent fair price shop at its centre as a basic, strategic requirement for all our rural employment programmes. And not the works contractor as a conduit!

11. Amongst the most vulnerable sections of our population are our women and children, particularly those living below the poverty line. One of their most basic requirements is nutrition, especially for pregnant women, nursing mothers and children in the 0-6 years age group. Often, in our programmes like ICDS the nutrition component is moved from long distances. Such nutrition component lacks local flavour and does not involve the local community. This approach is thus conceptually and other wise seriously flawed. This can be set right by the needs of the nutrition programmes being met through the PDS outlets namely the fair price shops. A permanently existing fair price shop is a guarantee against nutrition interruption, a common failing in our nutrition-cum-health programmes.
12. It can thus be seen that the public distribution system becomes an infrastructure for delivering the requirement of the needs of the household in the context of its basic food needs entitlement up to a point and the nutrition and real wage component of the employment programmes and the nutritional component of the nutrition-cum-health programmes, all of which are aimed at strengthening anti poverty efforts. **In short, a PDS becomes an essential infrastructure and an essential subordinate strategy** in efforts at eradication of poverty. Without food security of this kind as a first step poverty cannot be addressed.

13. Given all the facts discussed above and especially the fact that just 30 percent of all the cultivable lands in the country alone have assured irrigation facilities and considering that most of the poverty population in the country lives in the other 70 percent of the area, the real and sustained answer to the problem of food security will come only if we decentralize our agricultural strategies. By decentralization is meant that such efforts which brought us results in the 1960's, **with appropriate modifications**, will have to be applied to the un-irrigated areas of the country which completely depend upon rain fall for agricultural production. Therefore, the key to food security of the large majority of the poverty population in the country lies in a break through in dry land agriculture. This would mean research into and development of drought resistant seeds of such high yielding varieties especially in cereals that are suitable to dry land cultivation and adoption of appropriate farming techniques. Such research would be the key to enhancing production and productivity in these areas. This would at once enhance availability of food grains in these areas and also generate better levels of employment both of which would add to the purchasing power of the poor. Also, other kinds of cultivation of what are called dynamic commodities like flowers, herbs etc that could be done in dry lands which are highly value-adding should form part of the strategy from the point of view of the higher incomes needs of the poor.

14. The most important strategy in the quest for food security would be how to make dry land agriculture productive in India. The critical issue in this would be the emergence of drought-resistant seeds. Enough has been said about the entire question of shrinking area of coarse cereals but what has with equal emphasis and clarity to be said is the fact that in yield terms there is much to be optimistic about in coarse grain cultivation. The central area therefore is research and development in the area of drought resistant seeds for coarse cereals. Rice is the most expensive grain in the world. We can not import it for love or money in any substantial way. In terms of consumption, wheat can no doubt be interchanged with coarse cereals but still coarse cereals will have an advantage for the poor over wheat in terms of price, physical proximity and nutritive value particularly relevant for pregnant and nursing women

and children. This search for drought-resistant seeds should be accompanied by research into storage issues as well, for shelf life is a huge constraint to coarse cereals. Finally, the question of taste which has implications for the cultural rights of the poor. Some of the hybrid coarse cereals have no consumer preference and research has to take note of that most important consideration also. So research in coarse cereals in all these areas is an important key to food security.

15. This takes us to the question of the all important **moisture conservation**. Watershed programmes must get the highest priority with the management of water resources being under the control of the small and marginal farmers in the village. Watershed management has two constraints however – (1) it does need concentrated precipitation and (2) it has a long gestation, especially in the context of cereal-based food security. Also, productivity growth achieved through intensive agriculture puts great pressure on watershed efforts as seen in drought prone areas. The distortion in water use in Maharashtra by cooperative sugar factories encouraging sugar cane cultivation demonstrates this point in another context. Therefore, discipline is key and the control and management should remain with the marginalised and preferably with women as women have other associated priority needs like drinking water and sanitation requirements.

16. At another level we need to most urgently bend our political and technological energies to the task of harnessing our major rivers through immediate solution of the inter-State river problems. We are facing a huge problem in terms of the food security needs of the poor and also the drinking water and sanitation needs of the country both of which call for massive harnessing of water resources. Drinking water and sanitation have fundamental implications for women's health needs and nutrition security as also of their children. Watershed potential is considerable but it has long gestation implications and other inherent constraints. This is not to gainsay the need for protection of the rights of the poor to rehabilitation in case of harnessing of river waters. We, therefore, need in this context an integrated, environment-friendly water strategy to fight poverty and broad-base our food and nutrition security. This would help surface irrigation, recharge of ground water if imaginatively deployed and make

a great difference to the incomes of the poor. Obviously, in this strategy the whole question of environment and right to comprehensive rehabilitation should be the determining factors.

17. Taking this idea further in the SAARC context, we need also to show internationally acceptable political skills to harness the Ganga-Brahmaputra-Meghna basin to harness its irrigation and energy potential through negotiations with Nepal, Bangladesh and Bhutan. That potential is limitless as pointed out by B.G. Verghese and Ramaswamy Iyer. Both energy and water have decisive implications for women's issues and the needs of children. We thus need a strategy that combines the watershed principle, quick harnessing of our own rivers and in the global context water resources in our neighborhood. The international political environment and the developments in our eastern neighbourhood keep changing periodically and therefore immediate efforts for a South Asian Food security system with food security of the Indian and Bangladeshi poor as the main objective should be initiated.
18. For some time to come minor irrigation by definition should mean creation and use of ground water (rather than surface water potential creation like tanks, especially in well-endowed areas) so that water can be targeted for the land less and the marginal farmers.
19. When we talk of dry land agriculture in the context of the poor we have to address the need for scientific research that is pro-poor because dry land agriculture research is an orphan in India. It is a marginalized area. I have summarised below the observations contained in an extremely valuable paper presented in a recent seminar titled **“Agricultural Research and Food Security”** by P V Srinivasan and Shikha Jha of the Indira Gandhi Institute of Development on the status and need for pro-poor agriculture research in the context of food security and dry land cultivation:

Large unirrigated areas covering about two thirds of total cropped area still experience virtual stagnation combined with rapidly growing population.

They do not show much evidence of raising employment and rural incomes. Thus, regional disparities continue to persist. Adoption of new technology is in general constrained by institutional factors and lack of adequate infrastructure facilities. Effective extension services and suitability of the seed to a particular agro-climatic region determine the success of adoption of new technology. R&D efforts need to be focused specifically at the disadvantaged areas to effectively help the poor. Only a small percentage of the high yielding varieties and hybrids of various crops, released during the 8th Plan period (1992-96) have been **for rain fed uplands. Out of 32 varieties of wheat, 6 were for rain fed areas. This itself shows how poor our research is in regard to rain fed areas.**

Because of the uneven spread of technology across the country in the aftermath of the first spurt of the green revolution and especially because this spread was restricted to the irrigated and assured irrigated areas, such being the requirement of the seed-fertilizer technology that powered the green revolution, the results had implications for regional distribution of income.

In the post WTO scenario the agricultural sector is acquiring greater export orientation which can have adverse implications for the food security of the nation. The future strategies and priorities for agricultural research should therefore be oriented heavily in favour of providing food security for the poor. **Fiscal adjustments at the macro economic level imply inadequate allocation of public funds for agricultural research, especially that aimed at the needs of the small land owners in poorly endowed areas. High incidence of poverty and household food insecurity despite overall near food sufficiency and regional imbalances in productivity growth and income have to be the main concern of agricultural research.** The National Agricultural Technology Project (NATP) which is looking at agro-ecosystem research should be mandated to pursue this strategy aggressively, consistent with its objectives of improving the research capabilities of scientists towards developing technologies to resolve problems of

agricultural productivity and food security and meeting the challenges of natural resource management.

Liberalization of imports of technology and other inputs, relaxation of restrictions on foreign investment, effective implementation of IPRs have led to increasing presence of private sector in agricultural R&D activities. Agricultural research in India never addressed poverty as a major determinant while considering funding, till the end of 1980s. Research in agriculture was pursued purely based on efficiency criterion, maximizing overall returns from research leaving distributional considerations to other policy instruments. This must change and research efforts should target crops like bajra and sorghum in order to benefit rain fed regions where poverty is concentrated, addressing the issues of equity, human resource development and ecology. In order to examine changes in the research agenda in recent years in response to the challenges posed by the globalisation process, the Indira Gandhi Institute conducted a pilot survey of select representative National Agricultural Research Institutes (NARIS) in India. Questionnaires for the survey were sent and completed by Government Officials and researchers in coordination with ICAR. The findings are that in cases where research funding is from a foreign agency such as an MNC or a donor, the research agenda is also set by these agencies. In both funding and execution of research, very little role seems to be played by NGOs, or the Ministry of Agriculture. Also, not much of the research in recent years appears to be in response to globalization trends. **All these show that there is an urgent need and a large scope for improving the impact of agricultural research on agricultural and rural development and in particular on the food security of the poor.**

Innovations in the field of bio-technology, geographic information system, remote sensing etc. can improve the living conditions of the poor. There is need to set clearly pro-poor research priorities and identify the needy groups

such as landless workers small farmers, large poor farming households etc. Production, employment and incomes in the agricultural sector can be substantially increased through firm support for agricultural R&D, spread of new technologies and dissemination of modern inputs to less developed and rain fed regions.

Low use of improved germ plasm is among most important factors contributing to low yields. Private seed companies which play a leading role in production, distribution and development of improved germ plasm focus on commercial hybrids for major production zone leaving out materials suitable for small scale, semi-substance farmers. Hence the need for public sector breeding programmes to develop seed variety specifically meant for environments with low production potential. In general, modern technology tends to be capital intensive and biased towards large scale farming. Technologies, therefore, need to be developed to overcome these shortcomings. New research has to begin to develop seeds that are less dependent on input use and drought - resistant.

20. It is obvious from what these experts say that till research succeeds on the lines above, a subsidized PDS indispensable for the poor and we have to reform the existing PDS on the lines discussed earlier for meaningful food security to the marginalised.

21. In this entire effort of decentralized agriculture and autonomous food security and a well organized PDS, enlightened NGOs and Panchayati Raj electives, particularly those large number of women political electives in the Panchayati Raj system and women SHGs can be important allies to the delivery system and long term strategies. That the Central and State Governments are highly ambiguous in their policy attitudes both to the decentralized Governance agencies and the NGOs is a fact. But, if we can mobilize them and bring pressure to bear on the Central and State Governments for policy initiatives of the kind mentioned, food security for those who need it could be a reality in about 10 years. Meanwhile, the PDS will remain an essential institution in

the context of food security till disparities and inequalities between the various sections of our people and regions are bridged and all sections of the people would have enough capacity to compete in the market. Any attempts at dismantling structures that are associated with the PDS in the mean time would be extremely dangerous in the short and medium term. This is why the recent statement of the Finance Minister while presenting his budget 2001-2002 relating to “decentralized” management of food economy is completely ill-conceived. His “decentralization” starts and ends with his preoccupation with fiscal deficits and subsidies and not with the hunger of our people. The Finance Ministers of India have been speaking about dealing with “surpluses”. The truth, however, is that India is not surplus in foodgrains. We are barely self-sufficient in a normal year. And in a drought year our production can go down to an extent that we can have serious shortages. In a barely self sufficient situation and in drought, the obvious victims are the vulnerable and the marginalised sections of our society.

22. We have people living in hunger without access to 2 square meals in our country. The kind of distress that can visit vulnerable sections of the population in times of distress like droughts and other natural calamities, particularly women and children and among women the pregnant and nursing mothers is obvious. 36 percent of Indian women show a high level of nutrition deficiency. 47 percent of children under 3 are severely underweight. Child malnutrition came down only by 6 percent between 1992-93 and 1998-99. There are other categories like the widowed, the orphaned, disabled, the old and the infirm. Any concept of food security should, therefore, take note of these segments of the people, who are the poorest among the poor. Social assistance programmes such as old age pensions, maternity assistance and a range of insurance programmes linked to inflation for such category of people including with in built components of merit goods are a vital element of the concept of food security. Food grains can play a vital role in all this with a well-run PDS as the delivery infrastructure. This Public Distribution System is therefore crucial to the poor.

23. Therefore, we have to endeavour to put in place policies that embrace these parameters together so that in the next 10 years food security becomes a reality at the

household level to the poor, and at their door step. Not in a delivery sense but in a self-sufficiency sense. If it can not be achieved through a production-based self-sufficiency approach, then a delivery-oriented targeted, public distribution system (PDS) has to remain in place to cover areas and populations that do not have this autonomous food security.

24. It needs to be stated emphatically that the Government at all times can afford financially a decent, targeted PDS if only it would put down political and administrative corruption.

25. The Policy Design evolved in 1991 and 1993 was aimed at synergising the PDS, the EAS, and the ICDS, with the PDS as the delivery infrastructure for food grains to all these three programmes. Though that was the policy design that we worked on between 1991 and 1993, administrative failures ensured its non-implementation. That design should be implemented now in the context of the Targeted Public Distribution System, for, these three major programmes all have the same households to address though in the different contexts of food security, employment, health, gender, children and nutrition security, in all of which food grains play the central role.

26. India's social charter on Food Security should work for these imperatives.

(B) Nutrition Security

1. Nutrition security goes well beyond food security. If food security is availability and economic and physical access of food to all people at the household and individual levels, nutrition security in the words of India's most eminent nutritionist Dr. C. Gopalan "will demand the intake of a wide range of foods, which taken together in judicious combination (in a well balanced diet) can provide the essential nutrients that we need. Ensuring good nutrition is not just equivalent to avoidance of hunger. While the latter can be achieved during the intake of a single, staple cereal, the former will demand besides cereals, an adequate supply of other foods such as pulses, vegetables and fruits and milk. While understandably we may be immediately concerned with efforts to stave off hunger among the poor, our long term goal must be the achievement of an optimal state of nutrition for our people, which will help them find full expression to their genetic potential. Nutrition Security is much more than Food Security; the former will involve our having to broaden and diversify our food base". In a paper to the 83rd session of the Indian Science Congress held in 1995, Dr. Gopalan pointed out: "...recent scientific advances in the fields of immunology and cell biology show that the role of nutrition as a major determinant of Health is much wider and more pervasive than that was earlier believed. Thus, it is now known that good nutrition is essential not just for the achievement of optimal physical growth and development, but also for ensuring mental well being; ability to withstand the inevitable process of ageing with minimal disability and functional impairment; the ability to resist infections and degenerative diseases and the ability to withstand the toxic effects of pollutants. Thus, practically, every major dimension of "Health" is dependant on the achievement and maintenance of good nutritional status. Good nutritional status implies far more than freedom from hunger and starvation - i.e., the achievement of dietary adequacy with respect to calories". And Dr.Gopalan warns, "we will be dangerously lowering our sights if we settle for this limited concept of food security." What Dr. Gopalan calls for is access for households to "a range of foods which help to fully meet not just their calorie requirement but the requirements

for macro and micro nutrients as well. In short, the achievement of nutrition security will call for adequate access not just to food grains but also to pulses, legumes, vegetables, fruits and milk”.

2. Perhaps the most fundamental issue for a woman is the kind of child that she bears and begets. This is a human and moral issue. In India the nutritional status of an average poor, rural woman is so substandard that her pregnancy is always a high risk one. The corollary to that situation is that the baby she carries is also at risk. The magnitude of this risk can be understood only if we visualise vividly that a malnourished woman can and does give birth to babies of low birth weight (below 2500 gms) that have birth defects – seen often immediately at birth and even more often as the infant, if it survives, grows into a child. Between 20 and 30 percent of all Indian babies are born low birth weight. A low birth weight baby resulting from inadequate consumption of calories by the mother as well as essential micro nutrients like iron and iodine is an inevitable candidate for birth defects, especially mental retardation of various degrees. There can be no greater tragedy for a woman who is landed with a mentally retarded baby. Mental retardation often results in physical inadequacies for the baby manifested by birth defects and delayed mile-stones subsequently. There are two reasons why this happens:

- (i) malnutrition during pregnancy including especially the lack of adequate intake of iron and folic acid resulting in anaemia and deficiency in iodine. Even normally 52 percent of all women in India are anaemic and this worsens during pregnancy. Only 20 percent of them receive iron and folic acid tablets or syrup for 3 or more months.
- (ii) absence of the minimum medical check ups during the progress of pregnancy. Only 20 percent of them receive 3 or more check-ups and other services.

3. On both these accounts, an average rural poor woman is condemned thanks to the situation of acute food and nutrition insecurity and the near total failure of the Primary Health Care system. This desperate situation for the Indian woman in the rural areas can be redressed only by setting right both these distortions. Hence food and nutrition security is the most urgent need for the well being of 70 per cent of our

population and a solution to this problem of national proportions can brook no delay. Therefore, adequate calories to a pregnant woman per day at an extra allowance of 300 calories during pregnancy and 700 calories during lactation to nourish herself and her baby and the right to iron, folic acid and iodine should be an inalienable right and entitlement. The State should guarantee this to her. Since it is more difficult to ensure, in a technical sense, that a poor rural woman accesses iron, folic acid and iodine than ever her calories, a massive programme of targeted distribution of iron and folic acid tablets and iodised salt should be part of an action plan for nutrition security. Thus the right to be ensured and guaranteed to the women is not just food security alone but also nutrition security. This right to her should not end with her pregnancy. It should continue during the period she nurses her child by breast.

4. A woman and her children would gain autonomous right to nutrition security only if certain resources are under their own control. Most vitamins, micro nutrients and minerals required for women in general and pregnant and nursing women in particular can be accessed through common sources of food like green leafy vegetables, other vegetables, eggs and milk. Vitamin A requirements are greater during pregnancy and lactation. So also calcium both for the pregnant woman and the child in the womb and the nursing mother as there is an enormous drain of calcium during pregnancy and lactation. A small homestead plot where a kitchen garden can be raised will answer adequately all these needs. Green leafy vegetables will answer the needs of Vitamin 'A', Vitamin 'C', Iron, folic acid, calcium and riboflavin, all of which are vital to pregnant and nursing mothers and therefore to their babies. Other vegetables and a fruit like Amla provide minerals and vitamins and vitamin C which is important for absorption of essential nutrients like iron and for calcification of bones and teeth. Egg is a complete food and so is milk in many respects. Therefore, any policy on Shelter should plan for an open area of small private plots of 2 to 3 cents for the raising of these vegetables and rearing of sources of eggs and milk. This kind of a policy advances nutrition security of the poor, the girl child and the adolescent girl in view of the autonomy afforded over resources to the women folk.
5. Obviously, nutrition information and education are vital in enhancing nutrition

security. This is certainly the responsibility of the State where the poor are concerned as also the provision of the required plant material. However, the significance of the health workers in the context of nutrition education would lie in the important fact that women at risk, especially while pregnant, can not be left to their own devices in regard to nutrition. For example, iron which is so vital for fighting anaemia in the pregnant women with serious consequences for the outcome of the pregnancy may be rendered unavailable to the body in foods in which it may be present, owing to non-assimilable combinations. In such a contingency fall in haemoglobin levels is certain with serious consequences. Therefore, iron supplementation through medication with iron salts may be more effective than consumption of mere foods rich in iron. Same is true of Vitamin A when medicinal concentrates with liver oils would answer the need. The point therefore is that nutrition education and services should combine for the good of the women and children rather than hang separately. This is what convergence should be understood to mean in the nutrition context of vulnerable women.

6. Such an approach should be mandated by the Social Charter.
7. Also should be mandated at least 3 check-ups for a pregnant woman along with relevant services by trained nurses, backed up by referral services to qualified obstetricians, wherever needed.
8. Till the comprehensive kind of food security envisaged in the foregoing paragraphs is achieved, the delivery-based PDS has to be in place, not only as a conduit to deliver at least half the food grains needs at affordable prices to the targeted households in a sustained fashion on demand whenever required by the poor but for other related programmes also. Whatever the inadequacies in the present PDS we have enough experience acquired in Andhra Pradesh, Tamil Nadu, Kerala and West Bengal on the basis of which we can eliminate those inadequacies. We have also the experience at the Central level of the RPDS where we took the PDS to 1700 of the most backward blocks of the country in the early 1990's linking it with the Employment Assurance Scheme (EAS) in 1993. We have the subsequent experience of the Targeted Public

Distribution System. We can learn from the mistakes in these programmes. Based on our experiences in the PDS, EAS and the ICDS we can build a credible system of food and nutrition security in the short term and by adopting the other strategies discussed in this paper a permanent system of food and nutrition security in the long run. In view of this and in the light of our commitments to our poor in our Constitution and the support we have received from our Supreme Court in regard to the various dimensions of food and nutrition security we can boldly propose the inclusion of food and nutrition security as enforceable rights to be guaranteed to the people of India. India's social charter should include this.

(C) Intersectoral Policies

1. The entire question of Food and Nutrition Security at the individual, household, state and national levels is really a function of the cross-sectoral influences that various policies of the government bring to bear upon the population as a whole in general and most particularly on the poor. But these policies of the government, unfortunately, have tended to contradict one another and also tended to carry in the case of each one of them, internal contradictions, ignoring the basic interests of the poor. Policies made by the government in one sector can defeat the stated objectives of policies made in other sectors. Neither the macro-economic policies nor the social sector policies by themselves separately, nor the influence of one on the other, are exceptions to this. The contradictions between agricultural policies and PDS pricing have ensured the total failure of the PDS and jeopardised the food security of the poor, in recent years. Therefore, an examination of some of the major policies in the social development sectors currently adopted by government or proposed to be framed by government, so as to harmonise them with one another including through elimination of internal contradictions within them and to suggest new initiatives should help in moving towards a holistic policy that would ensure food and nutrition security for all and which would also reinforce the other policies which have the same goal. The major National Policies that would need to be looked at would be those relating to Agriculture, Health, Nutrition, Child, Employment, Public Distribution System, Women and Education not to mention Export and Import policies.
2. This is not the place to analyse all policies but a look at just one of them would highlight the seriousness of disharmony within a sectoral policy, not to speak of inter-sectoral incongruence. In the 1995 draft Agriculture policy, the emphasis on rainfed farming, unemployment and malnutrition in rural areas, location specific technologies for rainfed and drought prone areas, development of rainfed horticulture, enhancing the efficient use of marginal lands, and increasing the involvement of the NGOs were all in the right direction of helping the poor to overcome poverty, of which food and nutrition insecurity is the first dimension. However, there were certain other things in

the policy which could cause concern since the Policy also spoke in isolation about Government's responsibility for ensuring remunerative agriculture prices and that to achieve this objective Government should continuously review the price structure and trade mechanisms. We have already seen some of the burdensome consequences of this during the reform years, culminating in a 60 million cereals stock. Also of concern could be the reference in the Policy to diminishing size of land holdings (and fragmentation) leading to restricted management operations and lower income levels. There is no merit in this point. For it has been demonstrated all over the world including the East Asian countries and Japan during their reforms period, that land reforms and small holdings led to higher productivity which in turn protected the poor and helped the reforms process itself. Arguments of this kind introduced in the draft Agriculture Policy could later on be held against the need for land reforms, signs of which have clearly emerged both in the northern and southern states, though the Policy did say that land reforms would be pursued not only in the context of the poor but even in the context of production and productivity. Further, an agriculture policy, especially where encouragement of private investment is key to enhance employment and wage levels, can not succeed without security of tenure for the tiller. Therefore, land reforms in their varied forms are the key to food and nutrition security. In India there are still many States where there is scope for implementation of the ceiling imposed on land holdings by law and distributing the surplus land so accruing to the landless poor so as to endow them with a productive asset. Equally important, Government should identify tenants where ever there are, and ensure that their tenancy is registered in verifiable documents so that the cultivating tenant is not at the mercy of the absentee land lord who owns the land but does not cultivate it himself. Security of tenure is key to higher investment in agriculture including in terms of better land care and productive labour. The results achieved in West Bengal in this direction in the mid 1970s are worthy of emulation elsewhere in India. Security to the poor lies in both the physical possession of the land and title to it. Only with a combination of the two can land security be guaranteed to the poor. An agriculture or land policy should, therefore, provide for accurate maintenance of land records through modern practices. Given the literacy levels of the poor in rural India,

compugraphy-based technology should be employed in a big way so that every tenant or small and marginal farmer would have the physical and visual knowledge of the land to which he has title and possession, along with such documentation as is legally relevant, including pass books. Success of land reforms is also a matter of technology, for small holdings can be viable only through high technology that guarantees high production and, therefore, high returns. The virtual stagnation in dry land farming and in the evolution of drought resistant seeds has to be urgently overcome if the essential obstacle to food security has to be removed. However, all this should happen as a package.

3. The draft Agriculture Policy, 1995 acknowledges that uneven development in both research and production across regions and crops during the last four decades, is causing regional imbalance. It refers to both food security and nutrition security as objectives of the draft policy and speaks about the diversification of agriculture and promotion of horticulture, fisheries, dairy, livestock, poultry, bee-keeping etc to answer malnutrition in rural areas. However, the policy does not spell out any specific strategies for the specific improvement in the conditions of the poor. This is an essential requirement of an Agriculture Policy for, whether for employment or food security or nutrition security or reduction in inequalities or equal or minimum wages, a large majority of the Indian poor depend on agriculture. While the policy refers, for example, to horticulture which includes vegetables and many kinds of inexpensive fruits which have great nutritional value, fisheries, dairy and poultry, it does not spell out how the costs in production would be brought down so as to make the objectives of Agriculture Policy relevant to the poor. While it speaks about stepping up “public investment to accelerate development of supportive infrastructure for agriculture” and priority sectors like research and processing, it is silent on research for enhancing the nutritive value of foods. While it emphasises the fact that focus of infrastructure investment will be on value added “exportable surpluses” it does not refer to the infrastructure that is required to preserve vegetables and fruits for domestic consumption, which would at the same time provide reasonable prices both for the farmers and the consumers. While it talks about insulating farmers from

financial distress caused by failure of rains and national disasters, it does not speak about the need for equitable farm wages. In fact, it short changes agricultural labour by needlessly referring to our “reasonable labour costs”, while speaking about the edge that it provides for agriculture exports, particularly of fruits, vegetables, poultry and livestock products. In the draft Agriculture policy there is absence of the priority that is required for domestic needs, especially in the context of large sections of population living below the poverty line. But, however, by far the most damaging objective of this Policy is the promotion of the already existing inequalities in the rural sector, when it declares that while the objective of the Policy will be to “bestow similar benefits on agriculture as existing in industry,care would be taken to ensure that agriculturists are not subjected to the regulatory and tax- collecting machinery of Government”. This objective is calculated to promote the interests of the rural rich and deepen the already existing inequalities. This can only add further to the resources crunch faced by the government in the context of the fight it claims it is putting up against budget deficits. A reading of the draft Agriculture Policy, 1995, - half way through the reform period - in this context and the declared intentions of all the Governments from 1991 to 2002 to cut down subsidies would demonstrate where the sympathies of the government lie. Policies of this kind do not promote the food and nutrition security of the poor in any way. This is only an illustration.

4. We need analyses of this kind of all other policies in the social sector as well as the so called macro economic policies including those relating to Exports, Imports, Industry, Taxation and fiscal deficits, - so as to evolve a harmonious policy that serves the interests of all, in particular the poor, and not only of particular classes as has been happening in the recent past.
5. This must be one of the mandates of the Social Charter.
6. So, we have to locate our efforts at evolving a policy in a broader concept of Nutrition Security that will subsume Food Security. But, neither of these two needs can or should stand alone by themselves. Since they are fundamental to the eradication of poverty, they have to be aligned to certain other policies as well. In

other words, they have to be in harmony with certain other policies that are immediately relevant to the needs of the poor, so that they reinforce one another. In addition, the needs of the poor themselves have to be looked upon as Rights or Entitlements for poverty eradication efforts to be meaningful as that is the only way we can keep the poor at the centre of development.

7. Since the concerns of the poor are not only confined to food and nutrition security, absolutely important as they are, we have to look at other immediate dimensions of poverty which pertain to Work, which gives them dignity and income as also Shelter, Health, Education and Information for food security to become real. At this juncture, it is worth recalling that these Rights including the Right to Food were reiterated and promised to the poor in the Declaration of the World Summit for Social Development (WSSD) at Copenhagen in 1995, mainly at the instance of India, with gender equity and equality at the centre. However, again, at the domestic level India has failed to make any of these rights real.
8. We must also be worried about the interpretations that various Indian experts have been giving to the WTO provisions and their impact on the rights of the primary breeders, research and development in the seed sector, patenting of products and implications for the farmers, domestic support to farmers, market access, food security and the Public Distributions System. These interpretations have varied from extreme optimism to ambiguous caution. The issue ultimately is how prepared are we to face up to all the possible fall-outs of these provisions and are we putting our heads and shoulders together as a nation to work out strategies to cope with all possible adverse fall out? In any event, what should be obvious to us is that under no circumstances should we compromise our food and nutrition security and the bottom-line should be an impregnable self reliance in this area. Suggestions for a dependence on an export-import based food and nutrition security system as advocated by some of our elite should be rejected out of hand as we know how vulnerable we can be to discriminatory, international pressures as recently dramatised by the economic sanctions imposed against us. A lot of research and analysis is called for to work out all possible scenarios and the measures required to cope with them. China has done a

lot of work on this by way of educating her people at various levels. There is no evidence of that in India. Indian political leadership has not demonstrated any specific capacity in this regard in the past that can justify optimism. NGOs, therefore, have a very significant responsibility in this area in devising strategies to safeguard the national interests and specifically the interests of the Indian poor. *An NGO-research institutions coalition which leads the efforts to a cost-effective strategy of autonomous food and nutrition security at the village, household and individual level is an urgent need of the hour.* A string of micro-level experiments also needs to be launched based on the concept of Entitlement so that on a broad front ideas can be tested out on the ground to make this a reality before the country and its poor are over taken by the coming events. The Social Charter should mandate such a coalition.

IV. HEALTH AND SANITATION.

1. The main inequality of women stems from the fact that Nature has mandated the woman to bear children. Having escaped this responsibility, most men fail to understand what it means to be responsible spouses and respect the reproductive and other physical rights of women. The real empowerment hence for a woman would come only when she is enabled to have freedom from the consequences of her relationship with man, be it pregnancy or be it infection. In today's context **the right not to be infected is an urgent necessity for most women**, especially the poor women who have no control over their bodies even in marriage. Easy access to protective family planning materials from the point of view of averting unwanted pregnancies and dangerous infections should therefore be one of the rights the Social Charter should mandate for women, with the State ensuring their availability freely and discreetly consistent with women's privacy and dignity.
2. Elitist trappings of the practitioners of the medical profession and other issues relating to their personal needs have rendered the presence of medical personnel and therefore medical care services scarce in rural India. Nearly 80 percent of the budget in the

PHCs going for staff salaries, there is little available by way of medicines and drugs. This has impacted on the women whose health issues are more profound than those of men, extremely adversely. Any impact on women is reflected heavily on children. One way of coping with this crisis is to train more para medical care givers, that is, nurses. Institutions and nursing colleges should at least be tripled so as to turn out more nursing personnel. There is an acute shortage of nursing professionals in the country with the Doctor: Nurses ratio being dismal. In the year 1995 there were just as many nurses as there were doctors according to the Government of India's own Economic Survey. The Independent Commission on Health in India put the numbers of doctors of all descriptions as thrice the number of nurses in the country!

We have a cultural prejudice against the nursing profession in India. Female nurses are looked down upon as a professional class. This is actually an extension of the sexist prejudice of men which considers the nursing profession as one practised by an inferior class of women. The profession is therefore shunned by women in India, excepting in Kerala where missionary Christian traditions of compassion and women's liberation resulting from high literacy standards has viewed the profession with the respect due to it. It is, therefore, urgently necessary that an educational awareness campaign is launched among all classes of our people on the importance of the nursing profession and encouraging more men and women to take to the profession. Higher stipends and salaries for the nurses should be introduced as an incentive. The very large number of matriculates and graduates remaining unemployed today should be retrained in nursing to meet the felt needs of health and medical care and of unemployment. The starting point should be with the rural educated unemployed so that there are better chances of their returning to the country side to take up service.

Emphasis will shift from curative medicine to preventive public health if the focus shifts from dependence on doctors to community-health trained paramedical professionals. This whole package should be mandated in the Social Charter in the Programme of Action.

3. We need to have a new commitment to sanitation. The commitment to sanitation obtaining at present is very perfunctory. In dealing with sanitation again we come face to face to with a cultural problem peculiar to us. We see comfortable and big houses built in rural areas by the well-to-do with excellent provision for a kitchen but never for a toilet. Till very recently, Districts endowed with plentiful canal irrigation facilities never had proper drainage works resulting in large scale inundation especially during cyclones leading to crop losses and human diseases. Since crop losses led to easily perceived economic losses, the farmers and the State stirred into action and drainage canals have been improved considerably including through imposition of a drainage cess. Since, however, chronic presence of infection and the slow and if constant morbidity it inflicts are not simple enough to be visible, the problem of sanitation has not attracted the attention it deserves. In any event, we have a culture of defecation in the open and vast masses of the people truly believe that it is actually a healthy practice – healthier than to have a toilet as part of the home. The associated damage of some 700 million people who have no toilets unloading infection on to the environment with its implications for infection including through pollution of sub-soil water, has not convincingly been impressed upon the general population. Given the fact that it is infection promoted by public defecation which is at the bottom of some of the most common nutritional disorders like diarrhea, **sanitation must be looked upon as the right to several basic needs like nutrition security, health, work, education and shelter because absence of sanitation promotes diseases and morbidity which have an impact on all of these rights.** However, given the lack of understanding it is not surprising that infections and associated illnesses like diarrhoea, dysentery, jaundice, hepatitis and other gastrointestinal are endemic to many areas of the country. **Sanitation is an extremely good illustration of how basic needs and basic rights are a cross sectoral development issue. The same is true of drinking water. Therefore, it should be understood that the right to sanitation and drinking water are subsumed while articulating the right to health.** However, health and sanitation are not a priority to the State in India. The village taken as a unit, in terms of the number of families and the simple structures required at the house hold level for disposal of excreta, does not afford

enough financial incentive for Government expenditure where corruption is a prerequisite for contractors. This is one of the causes for the very low priority that toilets get in terms of resource allocation and utilisation. A comparison with allocations for rural water supply will substantiate this point. In fact, while MNP and RWS were started in the 5th Plan, Rural Sanitation Programme had to wait till 1985 for recognition. To-day we would need some 110 million toilets for our rural population in terms of back log and we are proceeding at a pace of less than ½ million per year! But for the strong Indian sun, India would have been long dead because of the sheer load of infection long ago. That India is slowly dying of infection is also a fact as all the consequent results of infection are reflected in our IMR, MMR, IMUF and other data.

4. There is no solution to this except through a massive campaign of education aimed at every household in rural India in particular to explain to them that they and their children are morbid, dying and diseased because they do not have toilets and are not keeping their household environs hygienic. If a Total Literacy Campaign is good for education, so will one be for sanitation. In fact they should happen together as a part of the social action we require to bring home to our people a few select areas of information for them to adopt and practice. Unless every single family is reached, sanitation will not be a reality at any time in the future. Once again we need to turn to the new power available to us in the form of the 1 million women electives of the Panchayat and the more genuine among the women's SHGs to make a dent on the problem.

The problem of sanitation has three dimensions:

- (i) **Financial Resources:** Government has to give sanitation perhaps the highest priority in allocation of resources. With the donors talking of sustainable development and environment receiving high priority if not in all of the West but at least in most countries, international sources should be tapped for this purpose. In any case, rural sanitation at the household level requires fairly low cost and simple structures that can be quite hygienic.

- (ii) **Water Resources:** Both from the point of view of the importance of drinking water and water required for household sanitation purposes, moisture conservation becomes a high priority. Therefore, utmost discipline will have to inform the allocation of water generated through watershed and other moisture conservation programmes. Obviously, water for household sanitation needs should get the first priority as also the household's drinking water needs. Thus, in regard to the management of water strategies inter se priorities of drinking water, sanitation, water for cattle and water for dry land crops would have to be determined by the village community but with enlightened interventions from the NGOs so that the stronger among the landed class even in dry land areas do not preempt the other essential health needs.

Resolution of inter-state water disputes, as discussed elsewhere, has a close relevance to sanitation and drinking water needs of the unserved areas of the country.

- (iii) **Family and Community Resources:** In matters of sanitation, the people and the individual households are the most relevant and immediate resource. It is for the household to provide for itself – if it is too poor there should be a subsidy – a toilet and keep it hygienic, and to the extent the wastes have a bearing on the general public, that becomes the Panchayat's responsibility through enforcement of the community's obligations in this sphere. Any subsidy to the poor households, should be in the form of sanitary materials, delivered at the door step and assistance rendered in installation.

Sanitation and drinking water impinge on Women's constitutional right to privacy.

Thus sanitation and safe drinking water in appropriate quantities should be mandated as enforceable rights in the Social Charter.

5. The right to health is also linked to the right to work considering that public services in the area of health like the primary health centres and sub-centres have failed to

deliver the mandated services to the rural population in general and women in particular. Health is by far the most important issue for women. For them it is a biological hazard by virtue of their gender. The major challenge to women comes from their having to be child bearers unlike men. The entire human life cycle starts with the pregnancy of the women, the risks involved during the period of gestation both to the mother and the foetus, the hazards of child birth both to the mother and the child, the hazards of postpartum infections for both mother and child, and the risks every infant and child faces till about the age of six. In the case of the girl child these risks continue even after the age of six including in terms of her physical security. As the girl child reaches adolescence serious problems associated with menarche start. These involve the need for additional nutritional supplements particularly iron and folic acid. Data shows that in India most girls get married as adolescents and thus once again starts the ritual of pregnancy with all the attendant risks. In short, the rural poor women are eternally at risk whether as children or adolescents or married women. During all this they have to labour manually in order to keep hunger at bay not only to earn wages but also as gatherers of water, fuel and fodder. The failure of the state run public health system drives the rural poor women into the arms of the private practitioners of health including quacks. Both are very expensive, financially and other wise. This is what makes sustained incomes to the poor rural women so fundamental for their existence. Else, they become indebted. It is the indebtedness that is induced by the health needs of women, along with other essential consumption needs like foodgrains and the absence of a proper institutionalized credit system designed for the consumption needs of the poor that leads to bonded labour and child labour. Thus, full employment through rural employment programmes at state-guaranteed minimum wages and enforcement of minimum wages in private rural employment are vital for the rural poor women. Since any basic right to a woman – or for that matter even for a man – in the context of a civilized vision for the future cannot be based on wage slavery but should be built around opportunities for self employment that could guarantee an autonomous life for the poor, productive credit for such productive self employment becomes a sine qua non. Thus credit becomes a basic right for the rural poor in general and for women in particular. Thus the right to

work and credit should be enforceable rights including in the context of health and form part of the Social Charter.

V. EDUCATION

1. We have to acknowledge that it is not want of policies or strategies that have been responsible for the Right to Education or EFA not materializing in our country. Since 1968 when the National Policy on Education was adopted, through 1976 when we amended our Constitution to make education a concurrent subject to “facilitate evolution of national policies”, through 1986 when another National Policy on Education was evolved to give an operational meaning to the concept of concurrency and bring in a “meaningful partnership between the Centre and States” placing a larger responsibility on the Union Government we have had a plethora of policies and strategies that were fundamentally sound in identifying what needed to be done. Relevant areas like emphasis on female literacy, reaching out to the remote areas, emphasis on the marginalized sections of society, concentration on the BIMARU States, efforts at retention at school, making the school environment attractive, eliminating the unsatisfactory condition of buildings, toilets especially for girls, sufficiency of instructional materials, child-centered and activity-based process of learning and a large programme of NFE were all identified. The Revised Policy Formulations (RPF) of 1992 enlarged the scope of Operation Black Board and called for recruiting at least 50 per cent of teachers from among women. This was followed by a recommendation for a mission mode approach specifically to achieve UEE by the year 2000 through preparation of district-specific and population-specific plans within the strategy frame of micro planning and introduction of MLL in schools. External aided projects like DPEP have come in to help implement these strategies. Yet, **UEE has remained a far bridge essentially because of the absence of commitment of adequate resources.**

Brief Programme of Action

2. Strategies like Operation Blackboard which strengthen class rooms provide drinking water and toilets including for girls separately, provision of additional teachers to improve teacher to students ratio and essential teaching learning equipment should continue and be implemented.

- a) Lighting in schools must be a priority including by use of solar lamps because the existing infrastructure should be used to double or treble the coverage.
 - b) Teacher student ratios should be judged in the light of dropout percentages to assess such ratios honestly.
 - c) Discussion-based instruction in schools, making it participative, with emphasis on gender, rather than education by rote should govern teaching.
 - d) Attendance of girls, minorities and the socially under privileged sections must be the touch stone by which progress in UEE should be judged rather than by over all figures.
 - e) Vocational education, especially designed for girls should find place immediately after the primary level.
2. The new opportunity that we have after the 1992 evaluation of Educational policies is the emergence of the nearly 1 million elected women in the Panchayats. Along side this is the growing movement of women's self help groups. If these two sources of energy could be fused with the basic approaches adopted in the Mahila Samakhya Movement and the experience of the National Literacy Mission, EFA could be a reality in the foreseeable future. We should ensure that certain parallel structures like the Village Education Committees work in harmony with the women's groups and not as parallel structures of unelected power as is happening in some States.
 3. A cooked, nutritive meal to be served at school for children and eaten by them there itself is necessary for obvious reasons, including for social integration of all castes and classes.
 4. Teacher recruitment should not be looked upon as an employment creation programme as done now, till we are able to enforce attendance in rural schools. Till that culture is ushered in, which will take a long time, the excellent principle adopted in the Shiksha Karmi programme in Rajasthan of using local youth with a minimum educational qualification and training them intensively as teachers in quality institutions to be set up, should be followed. The success in Rajasthan is due to the authors of the concept themselves guiding the programme. Hence replication will

have to be carefully and tightly planned so that the failure that we have met with to some extent in the adoption of a similar principle we formulated for the Anganwadi workers in the ICDS is not repeated.

5. Recognizing that political will is going to be hard to generate since there are neither immediate nor long term returns to the political class from people becoming empowered, NGO efforts must be strengthened in the UEE goals. Clear, geographic areas can be assigned to the NGOs with the maximum possible autonomy.

6. By far the most important question is of resources required for creating the environment needed to make education useful, attractive and productive in terms of physical structures, teachers, learning materials, training and associated research for constant evaluation of quality and direction. Several studies have been made to estimate the expenditure required for Education for All, including by the National Institute of Educational Planning and Administration. The international standard for expenditure on education is 6 per cent of the GNP. The Kothari Commission called for this level of expenditure way back in 1968. The Prime Minister of India in the early 1990's, an eminent educationist, committed himself to a 6 percent expenditure level for education and his party's manifesto also affirmed the promise in 1991. The truth, however, is that this has never exceeded 3.4 percent of our GNP till today. At today's prices what we need to spend is Rs.1, 24, 800 crores at 6 percent of the GNP. The actual expenditure was less than 2.98 percent in 2000-2001. When the reforms started, promises were made that public resources saved because of private investments would become available for the social sectors, especially for education. This has not happened though the private sector has been the beneficiary of many fiscal and other concessions and infrastructure facilities. The Union Government and the States should now be pressured to call upon their private sector "partners" in industry and commerce to share the commitment in financial terms to the goal of Education for All so that this level can be achieved in the next 8 to 10 years. The Union Government has now the constitutional obligation to mobilise the resources required to implement the 93rd Amendment and should therefore start a dialogue with

the richer constituents of the civil society to mobilise the resources required. Along side should go efforts to reach the appropriate proportion of this 6 per cent to Elementary and Vocational education, so relevant especially for women and their livelihood issues.

The Social Charter should mandate the above.

VI. SHELTER

1. The Supreme Court of India has declared the right to shelter as a fundamental right under Article 21. We have get this enforced.
2. The concept of shelter in the context of the rural poor should embrace the reality that a house is also a working place. In addition to being climate and hazards proof, there should be adequate open space to provide for the self employment needs of the poor household. There are also health, sanitation and nutrition dimensions to shelter. Shelter should provide for a toilet from a privacy point of view. In fact the Supreme Court of India has declared the right to shelter a fundamental right based on a person's right to privacy. A toilet is a sanitation need. There should be space for a kitchen garden which would take care of the nutritional needs of the family, especially the micro nutrients like iron, Vitamin-C and Vitamin-A and a few trees of income generation value. Space for cattle for the same reasons would have to be provided for. All this could be achieved with in an area of about 250 square yards which should be mandated as a right. While planning for shelter, its crucial relevance to the educational needs of the children has to be borne in mind. The right to shelter should always include the right to ventilation and electricity, in the latter case at least in areas that are covered by electrification.
3. These needs must be incorporated in the programme of action for realizing the right to shelter fully and adequately.

VII. C R E D I T

1. The main problem about poverty as manifested in its various dimensions is basically the iniquitous structure of the Indian society, socially and in terms of gross distortions of asset endowment. Since this is a structural problem, this problem should have been addressed in fundamental terms such as land reforms, progressive urban land and rural farm taxation, restraint in emoluments in public services and organized sectors so as to keep inequalities down. None of these things was done. Characteristically, lip service was paid to all these requirements but no honest measures were taken. A plethora of legislation was passed and never implemented, legislation becoming an opportunity for corruption all round. With the root causes of poverty not addressed and resources not mobilized adequately by fair taxation, anti-poverty programmes aimed at self-employment have been poorly provided for in terms of their credit needs. Credit is crucial at all times for a venture but in the Indian anti-poverty context it assumes huge significance for in the absence of reforms like those relating to agrarian relations which would have endowed the poor with productive assets, planners and programme initiators expect credit to substitute for the asset of the assetless poverty household. The concept of credit making an existing asset productive is a practicable one but if, in the absence of any kind of asset at all, the credit provided itself should create an increasingly income-generating asset, with or without a small subsidy thrown in, then the kind and quality and volume of credit that is required to assist a desperately poor rural household to create an asset, maintain it without erosion and generate increasing incomes out of it would have to be radically different from what it is in schemes under our self-employment programmes. Without going into other imperatives like marketing etc., and staying with the issue of credit, it needs to be emphasized that the poor need two types of credit – one, a consumption credit and another a ‘production’ credit, the former for supporting the poverty household’s needs of food and health during the period the household works the asset created out of the ‘production’ credit, to generate income. If this ‘consumption’ credit is not provided as part of the anti-poverty strategy in self-employment

programmes those self-employment programmes are bound to fail. Because, a hungry household can not be expected to successfully work a loan based asset so as to generate additional incomes that alone can help it climb above the poverty line. A household, beset with hunger and poor health incurring regular private expenditure on health, - an imperative in the absence of public health and medical services thanks to non-functioning of the primary health infrastructure, - can not protect the integrity of the value of the asset which alone can generate additional in income. In other words, if the asset itself gets eroded in order to meet the inevitable consumption needs of hunger and health, it can not generate additional income. In fact, this is among the most important reasons why India's IRDP has failed to the extent it has. Today, in India, the RBI does have a policy on consumption credit but that is hardly implemented. Also, the RBI's scales for consumption credit are too low to be meaningful. We need to incorporate the Right to Credit – both consumption and production as a part of the poor people's Right to Development.

2. Therefore, the Right to adequate credit for the poor at all times and in particular in the context of the Indian state having failed to effect any meaningful land reforms or investments in labour intensive industrial activity should form an essential element of the Social Charter for India.

VIII. CERTAIN OTHER ISSUES

1. India was partitioned at the very birth because of a belief that two of its most important religions could not have lived together. This left a lot of wounds unhealed but the political leaders never did any thing to heal those wounds and dispel the resultant suspicions between two major communities – Moslems and Hindus. We realized at least 20 years ago that politicians were and are the least suited to find a solution to this problem for they are only interested in the votes of either one or the other community as these long years of our democratic history have shown. Once this realization came, leaders of the civil society should have taken over this responsibility of bringing about social integration. What we needed and need is action by the society itself with the leaders, that is, leading personalities - not politicians- of the two communities taking the initiative to explain to the people that there is no difference between person and person, that we are one, that we are all Indians and that we all have to live as brothers and equal citizens of India. This we as a people, as a society have not done with the result that our country is divided in a significant way based on suspicions and misunderstandings. To my mind this Hindu-Moslem divide is a major problem.
2. Another basic weakness of our society is our caste system. Differences based on caste, like those based on religion, are a superstition for no one is responsible for one's own birth. Yet, we have perpetrated caste in the manner in which we have practised our politics in this country. No party has fought elections on issues like whether they would do more for education or health but instead have depended on fielding candidates belonging to the majority caste in a given constituency. Affirmative action in favour of sections of society that were denied their due for centuries is certainly justified for representation in the Legislature, Parliament and PR bodies and services. However, giving tickets on caste basis for elections and favouring people of one's own caste in decision making is a low and barbarous attitude and neither the politicians nor the society in general have done any thing to

combat this. So our society stands divided. No one believes that justice is rendered to them or will ever be rendered to them on merit.

3. Corruption is the third element built into this situation. With out money nothing gets done. Bribes are the basis of political financing of candidates in elections, barring very few exceptions. Those who have bribed the victorious candidates in Elections have to recover the money given to them and this is done by demanding favourable Government decisions. Thus, decisions hardly get taken on merit in Government.
4. Decisions then are the result of a combination of caste interests and money interests. This has alienated our people in general and our youth in particular.
5. Thus because of religion, caste and corruption large sections of our society are alienated and angry and feel helpless. In my opinion this lack of unity is what is coming in the way of each one of us doing our best as individuals for our country and thus our production and productivity have suffered.
6. The elite in our society essentially constitutes the ruling class, made up of political electives, business men, company and banks executives and Government servants. These are all in one way or the other beneficiaries of this system and therefore they have no interest in promoting the actions required to find solutions to people's problems.
7. We may include the social action required to address these issues also as part of our Charter for with out social integration we can not have successful social mobilization and organize the people effectively.

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II. Paper presented at the
INTERNATIONAL SEMINAR ON
GLOBALIZATION: OPPORTUNITIES AND CHALLENGES
(12-14th February 2005)

FOOD AND NUTRITION SECURITY

BY

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When we speak of Food and Nutrition Security we are talking about those sections of the population who are poor i.e. those who are unequally placed in asset endowment, wherever they may be living geographically. Normally a majority of these would be rural labour of all kinds and the very poor in the urban areas. Usually, and rightly, we look at it at the household level, and in particular, in the context of the child and in gender terms. So, when we talk of Food and Nutrition Security, we talk of the people and their hunger including the hunger for micronutrients. It is about the individual's and the household's quantitative need to satisfy hunger and the qualitative need to lead morbidity-free life, healthily and productively.

2. The point that immediately comes to mind in the context of the subject of our Seminar, which is about Globalization: Opportunities and Challenges is:

Has the challenge to India's household level food and nutrition security arisen only in the globalization context and the WTO context or was it something that had long preceded them?

The answer to this question is that ever since we became a free nation not less than at least 300 million people – may be fewer in 1947 given our population then – at any given time have been food and nutrition insecure. Their numbers have, if anything, gone up never mind what our Planning Commission says. Indian Food and Nutrition insecurity has been chronic. **Chronic because Indian political leadership over these years, especially after 1976, when we broke loose from the need to import food regularly, have shown a singular indifference to the food and nutrition insecurity of the Indian poor, even when we had the wherewithal to deal with them.**

3. Now I come to the current context of fluctuation in food grains production seen in recent years. The current context certainly raises the specter of India, as a nation, as against the problem of only about 35 to 40 percent of its population, becoming a food insecure nation, what to say of nutrition insecurity which is a so much more refined than food security as a concept? For this specter, globalization of trade or liberalization of trade or trade reforms as it is called is without doubt partly responsible. In that sense, it is great crisis and therefore, a challenge. The crisis or challenge is greater because the crisis is deeper. That, however, is no consolation to the Indian poor because their original misery, suffered over decades without any respite, will now deepen ever more. Only this time their national leadership will have on *international alibi* to show for their own comeuppance. **Therefore, the challenge now shifts to the informed citizens of India to go to the aid of the hungry masses by way of pinning down the political leadership of India to the needs of the hungry millions, in the emerging new context. This new context thrust upon the Nation is also a moment of truth and therefore an opportunity for the political leadership to do two things: (i) to guide India properly through the WTO negotiations so that the country does not get sucked into irretrievable dependency for food and medicines and (ii) to realize at least now how sadly it neglected certain vital segments of the Indian economy like agriculture, especially in the recent decades and along with it the food and nutrition and health**

security needs of the people (especially those living in the currently food deficit areas) and therefore rectify them through appropriate policies and programmes and implement them honestly.

4. Challenge and Opportunity are the two sides of the same coin. Ironically, however, the Indian State's failure over long periods, but especially in the last decade and a half, has converted the opportunity itself into a challenge, for thanks to its neglect of many vital aspects of Agriculture, at the National and State levels, farmers in States like Andhra Pradesh have been committing suicide for about 7 years now and their own hunger levels and of the rural labour dependent on them have risen alarmingly, with actually some of them dying of starvation.

5. It is against this background I wish to look at the W.T.O. opportunities and challenges in the context of the Agreement On Agriculture and what it means for the food and nutrition security of the poor. Before going any further at all it would be necessary for me to state at the very outset that **the WTO itself is a challenge given the dominance of the stated and unstated agenda of the industrialized, developed, rich western nations to price open our markets for their agricultural products marketed cheap in unfair competition because of a billion dollars a day subsidy they provide their producers while at the same time waging a battle against our domestic support regimes, both of which threaten our food and nutrition security at the national and household levels. Nevertheless, even in this grim scenario there are opportunities provided India's negotiators get the country's priorities right and advocate and defend them honestly.**

6. It would be nothing original if I say that Food and Nutrition Insecurity can occur even in the areas abundantly endowed with water and assured irrigation. This has been proved many times over in the past in India. All I shall try to do today is to highlight a major area, a very major area of food and nutrition insecurity that affects people living in areas that account for 70 percent of the cultivable area in India which have no assured irrigation with little food to eat and even less employment. I shall look at the strategies we need in the context of these areas and then at the WTO regime and see what the

latter does to the former. While what I would say would be relevant to farmers all over India, wherever they are, if we are talking of Food and Nutrition Security in the Globalization context, then our immediate area of attention has to be to where the most vulnerable live and what WTO may mean to them.

7. After the liberalization process started in India, we have experienced any number of situations where the poor have gone hungrier than before and been thrown out of employment and their livelihood. What the flooding of the Chinese silk did to our own sericulture industry and threw poor women out of employment in their thousand is just one example. Free trade or trade liberalization has been held up by its protagonists as the most desirable form of ushering in growth though no unambiguous correlation has been established between free trade, growth, poverty reduction and food security, even according to the FAO. I often meet India's own over-enthusiastic free traders who ask rhetorically: "why produce food when we can import?" though elementary common sense will tell us that any dependence on international trade-based food security contradicts all the three basic pillars of food security as defined by the FAO: availability, stability and access. Availability depends upon, among other things, the political willingness of the seller, India's purchasing capabilities over a sustained period of time, stability of prices quoted by the seller and above all "access" which the seller can determine depending upon his unipolar political preferences. Has not a nation of above 1 billion people with all its carrots of a supposedly huge market dangling before the rich world's multi-national corporate houses, who selectively influence economic and political policies of certain super powers, been sanctioned in very recent years? Even individual Indian scientists have been sanctioned. So, what stability of access are we expecting in a world of liberalized trade? Even if you have the import capacity, where is international reliability in a world of politico-economic sanctions? There is much store set by free trade advocates in the "rules and disciplines" of the AOA and the Uruguay Round. Unfortunately, experience has shown that what matters are not "rules" but who enforces those "rules" from the way the United States and the European Union have been using these very "disciplines" to distort international trade. While these two great Economic powerhouses of the industrialized world have their own mutual problems, we

know how they struck a deal on the Blue Box mechanism to limit production in their countries. Thanks to the Blue Box, these developed countries of the world need not reduce the Agriculture Marketing Support they give to their farmers to limit production. As you know, in the United States, farmers are paid not to produce where as these very powers tell you and me how we cannot give subsidized power to our small and marginal farmers. Now, if that is not distortion of trade, what then is it? **The signals are clear. We need to fight for our agricultural, food and nutrition autonomy. Even internal papers of the FAO acknowledge that international “trade liberalization can alter not only trade flows between countries but also the incomes of producers of goods and services as well as the purchasing power of consumers.”** When these are adversely affected, food and nutrition security of hundreds of millions of the poor like marginal farmers, small farmers and rural labour is lost, including in terms of price instability. So, the point to remember is that trade liberalization is not some sort of manna from heaven, which is nothing but pure good. It is not. Also, let us look at the consumption patterns in India. We produce about 210 million tonnes of food grains. Pending any enlightened diversification of our eating and nutrition habits, a short fall in our need of rice is very difficult to make up because in terms of world production of rice, it is simply not available to the extent we need, for love or money. Even money, on which is based trade, cannot buy rice at will in the world market. This is one basic scenario. The other is: what happens when, say, both China and India enter the world market for food grains at the same time – not necessarily for rice, even for wheat whose surpluses are a lot more certain? What happens to prices and their stability? Which trade can ensure supplies based on predictability, either in terms of quantities or in terms of price? The question “why grow food when we can import” could mean application of a freeze to efforts at enhancing food production in deficient nations or in deficient areas within a nation like India so that the cash-rich, industrialized, developed countries can and will export food to the food-insecure countries based on a billion dollars a day subsidies to their farmers, till it suits their convenience. The three-way consequences of such dependence are obvious (i) World food prices will be depressed affecting exports of nations that do not have the cash to subsidize their own exports to remain competitive in international market making non-sense of rule based trade; (ii) Depressed prices make

national food production in the developing world unremunerative threatening food security over all and especially of the poor and (iii) once food producers in developing nations have no market incentive to grow food because of depressed prices, depleted production in the developing world exposes them to dependence on the developed world even more, who thereafter enjoy the freedom of hiking up the prices of their production to further endanger the developing world's food security. Egypt is an outstanding example of having its agriculture ruined because of this ill-informed dependence. India should guard against this possibility. Subversion of agriculture would lead inevitably to subversion of employment avenues for the large masses of our people. The fallacy in the import-based food security argument can be further seen from the implicit condemnation of the resources and resourcefulness of the small and marginal farmers engaged in dry land agriculture in the developing countries of the world like India. There are any number of examples, most notably in the work being done in dry land agriculture in our own State in the Pastapur area of Zaheerabad in Medak District by the Deccan Development Society under Dr. P. V. Satheesh, which demonstrates the traditional wisdom and resourcefulness and therefore the self-reliance of our small and marginal farmers. These farmers have demonstrated their capacity to emancipate themselves from hunger through the cultivation of traditional coarse cereals, using environment-friendly organic fertilizers and pesticides, mixed cropping strategies as against mono-cropping, establishment of gene banks to store and supply seed and use of traditional storage technologies that safeguard the shelf life of these seeds, which run into some 20 varieties, preserving our rich bio-diversity. In this area hunger has been banished and there have been no farmers' suicides. There is little doubt that neither hunger nor poverty will be eliminated in 70 percent of this nation's geography if the problems of agriculture in these dry land, drought prone and desert prone areas and the resource-poor tribal areas of India are not tackled using strategies like the ones used in Pastapur. However, when taken up on a large scale, which we have to, the effort would call for large investments including subsidies in aggregate terms, not to mention the need for production credit and remunerative Minimum Support Prices (MSP). Is it going to be any body's case that we will not support these farmers and help them realize their own potential and achieve their own food security, their own enhanced levels of employment and wages and thus

reduction of their poverty, by agreeing to a trade-based food security? And won't these Pastapur strategies enhance the nutrition security of the people in these vast tracts of our country not only because of new food production, employment and wages but more significantly also because of the nutritive values of these dry land specific crops such as jowar, ragi, bajra and numerous other small millets? Are we to give up this kind of security in the name of an uncertain and unproven food security predicated on international trade-led growth? The answers are obvious.

8. In the context of Food and Nutrition security of the kind I have alluded to above the following are the essential policy needs in India:

- (i) An Agriculture policy that recognizes the need for **Decentralized Agriculture**, which aims at raising levels of productivity across agro-climatic zones right down to the village level which would mean:
 - a. **Support to Dry Land Agriculture**, including mixed cropping.
 - b. An inputs policy that incorporates Moisture Conservation, Discipline in Ground Water management and closely regulated use of chemical inputs and enhanced use of bio-fertilization and integrated pest control methodologies.
 - c. **Public-funded Research** in evolving drought resistant seeds.
 - d. Price incentives through remunerative MSPs for coarse cereals also known as nutritious cereals.
 - e. Purchase mechanisms for local procurement through local institutions.
 - f. A **credit policy** that unambiguously supports these efforts.

All this should be aimed at producing marketable surpluses of nutritious 'coarse' cereals.

Surplus in this context primarily, and **to begin with**, to mean for food consumption needs (as against industrial raw material needs) with recognition of the primacy of palatability and taste preferences as also storage technologies to enhance shelf life, including, in particular, in the locale of production.

- (ii) Decentralized Agricultural strategies should thus lead to **easy, local availability of food needs both in terms of price and physical access**. In regard to price

- State intervention should be on both the MSP front for the farmer and the affordability front for the poor through **sensitive price interventions**.
- (iii) Access to the poor must be the result of **a combined strategy of affordable prices through public distribution and creation of enhanced purchasing power** for the working poor through guaranteed employment - **an Employment Guarantee Scheme (EGS) that incorporates the principle of a living wage as provided for in Article 43 of the Constitution**.
 - (iv) **The twin concept of the Right to Work and the Right to Food to a poor household regardless of its purchasing power is the basis for Food and Nutrition security**. The latter principle would embrace classes of people that cannot and should not work and these are infants, children in the age group of 0-6, children at school, adolescent girls, pregnant women, nursing mothers, the old and the infirm and the disabled of all categories. The programme design for a household should integrate these classes of people with the class that is capable of work so that together the household as a unit accesses its full food requirements, with due allowance for menarche, pregnancy etc. These must come from a variety of nutrition programmes and social defence and family benefit measures. **The validity of the successful implementation of this entire concept should be constantly evaluated by the State through concurrent monitoring of levels of hunger at the household level, with the village as the unit**.
 - (v) **The National Policies on Agricultural, Health, Nutrition, the Public Distribution System, Labour and Women and Child Development should all be viewed as an integrated whole** so that the quantitative and qualitative food and nutrient needs of different sections of our people are rationally met. **Nutrition Education** should be deemed as a life skill and built into livelihood concerns of the people so that policies reflect support for the positive needs of the people and discourage undesirable and negative practices. **The Right not to be infected (in a variety of ways) is as much part of the Right to Health and therefore to Life**

as anything we may conceive under Article 21 of the Constitution. Infection and Nutrition insecurity go hand in hand.

- (vi) **The above imperatives would, if brought to bear upon the process of macro policy decision making in the country,** will start to act as correctives to the kind of **negative policies promoted in the past 15 years in all relevant areas** such as Agriculture, the Public Distribution System, Rural Employment, Living Wages, Social Welfare and defence, outlays on Health and Education etc.,

The **key factors** in this strategy are:

1. **Decentralization.**
2. **Autonomy.**
3. **A policy mix that helps the poor access their needs, which are really their fundamental rights, from the general economy on the one hand and the alternate mechanisms that substitute the market for them on the other.** At one level an example of this is to make a people-implemented Public Distribution System (P D S) play an integrative, infrastructure role in the delivery of the food grains entitlement in the PDS, nutritional and real wage components of the employment programmes and the nutrition component in the ICDS and MDM programmes so that it acts as a delivery mechanism for Food and Nutrition Security, till enlightened integration of macro policies can make a delivery-based Food and Nutrition Security system redundant as we strive for a decentralized, autonomous system of food security.

In all this we have to look at Food and Nutrition Security at the National as well as household level and also ensure interpersonal equity within the household, with particular reference to the needs and rights of children and women.

Our goal should therefore be autonomous food and nutrition security based on self-sufficiency. This is not some dogma or food fundamentalism. There is

nothing fanatic or romantic about it. It is just that **we have to be unconditionally free of hunger as a nation and as a people.** It is at once the right of a sovereign nation and the sovereign duty of a nation State to itself and its people, especially its poor. This does **not** mean that we will never import food, that we will never trade in food, or that we will not develop the capacity to import what we want. **It only means that in the name of liberalizing trade, we will not become a dependant nation for food** on others but will retain the choice to diversify our agriculture to value add and export to the developed world.

9. **The issue also is: what kind of social action needs to be generated to compel the powers that be to act as if Food and Nutrition Security of the nation and the poor mattered to them at all?**

10. Having stated this bottom line, I acknowledge that we would need additional expenditures and additional financial outlays for all these strategies to be put in place. **This leads us to the question: do we have enough leeway in the WTO framework negotiations to ensure autonomy and freedom in regard to our agriculture and food and nutrition security for our country and for our poor on the lines I have advocated above? The answer is in the positive, as I shall presently show.**

11. The most significant aspect of the Marrakesh Agreement that established the WTO is its preamble which clearly mentions and recognizes the importance of the conduct of the WTO negotiations with a view to raising the standards of living, ensuring full employment and allowing for the optimal use of the world's resources in accordance with the objectives of sustainable development consistent with the respective needs of countries and concerns at different levels of economic development. Again, in the preamble to the Agreement on Agriculture (AOA) it has been clearly laid down that the commitments made under trade reforms programmes should be equitable, having regard to non-trade concerns, including Food Security and the need to protect the environment, having regard to non-trade concerns and with due regard to the agreement that Special and Differential Treatment (SDT) for developing countries is an integral element of the

negotiations, taking into account the possible negative effects of the implementation of the reforms programmes on the least developed and net food-importing developing countries. The reference to SDT is reiterated in clause 1 of Article 15 of the AOA. Admittedly, India is not a least developed country (LDC). However, India is a country of continental proportions. There are vast dry land areas in India that are “least developed and in the domestic context “net food importing” in the sense that 70 percent of the cultivable land in India is rain fed and with out any kind of assured irrigation facilities. And, thanks to the Green Revolution strategies of the 1960s, just two and half States of the northwest of India alone produce any worthwhile surpluses and consequently “export” food to the rest of the country through state purchases made by the Food Corporation of India. In the vast, poorly endowed areas of the country the human development indices (HDI) are so low that they can be compared with the conditions obtaining in sub-Saharan Africa and other LDCs of the world. Therefore, the principles incorporated in the AOA are eminently applicable to the Indian context. Clause 2 of Article 6 of the AOA refers to Government measures of assistance, direct or indirect, to encourage Agriculture and Rural Development as being an integral part of the development programmes of the developing countries and that, therefore, investment subsidies available to Agriculture in developing countries and agricultural input subsidies available to low income or resource-poor producers in developing countries shall be exempt from domestic support reduction commitments expected under the WTO regime. This provision thus totally exempts India from reducing any of the subsidies it currently provides to its farmers such as indirect input subsidies for power, fertilizers and irrigation and direct, product-specific domestic support like Minimum Support Prices (MSP). In any event the level of minimum support prices the Government offers to farmers in India is generally, if not always, below market prices (otherwise, nobody would part with their grains in favour of the Government agencies). Our Aggregate Marketing Support (AMS) is well below the *de minimis* percentage.

12. Annex 2 to the AOA deals with the basis for exemption from the reduction commitments in regard to domestic support. Exemptions can be claimed for Government Service Programmes that benefit agriculture and the rural communities such as research

relating to particular products and research in connection with environmental programmes; general and product-specific pest and disease control measures; training services including specialist training facilities; extension and advisory services and the transfer of information and results of research to producers and consumers; expenditures on marketing and promotion services, including market information, advice and promotion relating to particular products and infrastructure services including electricity reticulation, roads and other means of transport, market facilities, water supply facilities, dams and drainage schemes; holding of stocks of products which form an integral part of a food security programme identified in national legislation, which may include Government aid to private storage of products; and domestic food aid to sections of the population in need where eligibility is subject to clearly-defined criteria related to nutritional objectives enabling eligible recipients to buy food at subsidized prices. Footnotes to Annex 2 clarify that expenditures in regard to Government stock holding programmes for food security purposes conducted in accordance with officially published objective criteria or guidelines and provision of foodstuffs at subsidized purposes with the objective of meeting the food requirements of urban and rural poor in developing countries on a regular basis would be in conformity with the WTO exemptions. The same goes for expenditures on Governmental crop insurance participation and environmental programmes that include production methods. There is also specific reference to exemption for payments under regional assistance programmes to clearly designated contiguous geographical areas with definable economic and administrative identity, considered as disadvantageous on the basis of objective criteria – a provision directly relevant to the agriculture and food security strategies of the entire vast dry land tracts of India.

13. Para 13 of the Doha Ministerial Declaration of November 2001 in its reference to Agriculture and to Article 20 of the AOA, which is a commitment to further comprehensive negotiations agrees that Special and Differential Treatment (SDT) for developing countries shall be an integral part of all elements of the negotiations so that concessions can be negotiated “to enable developing countries to effectively take account of their development needs, including **food security and rural development**.... non-

trade concerns will be taken into account in the negotiation as provided for in the Agreement on Agriculture”. This was further clarified in Clause 44 to make provisions for Special and Differential Treatment “stronger, more precise, effective and operational”.

14. Thus, while the AOA of 1994 may be the basic structure, Article 20 of the AOA recognizes the on-going nature of the process of the negotiations, because of the long-term objectives of trade corrections. **Therefore, the point that the enlightened public opinion in India should force the Government of India to recognize and acknowledge publicly is that further negotiations are provided for in the WTO structure, that we now have the principles of the Doha Declaration to defend the interests of India and further the interest of the requirements of the marginalized sections of the Indian society in the forthcoming December 2005 negotiations and therefore it is up to the Government of India and its negotiators to learn about what the poor people’s needs are and their rights are and realize the tremendous leeway that is available in the WTO regime to protect those rights by honestly presenting them and fighting for them in the forthcoming negotiations in Hong Kong.**

15. The kind of strategies that I have enumerated in para 8 being the requirement for food and nutrition security for the Indian people, raise wide ranging issues such as financial outlays relating to surface irrigation and watershed programmes; dry land agriculture based on seed sovereignty, public-funded research related to this and other connected aspects like the shelf life of seeds and coarse/nutritious dry land cereals in terms of storage and palatability; remunerative minimum support prices for coarse cereals and private storage subsidies at the community level; subsidies for drilling for ground water in dry land areas and associated capital expenditure for equipment like casing and pipes, sprinklers, subsidies for power for lift irrigation; easy institutional credit availability, including interest subsidies; input subsidies for seeds, bio-fertilizers, bio-pesticides and other chemical inputs; provision of marketing yards with facilities for the farmers including advance payments against storage of grains; crop insurance programmes with subsidy for the premium payable; consumer subsidies for the targeted poor in the Public Distribution System, ICDS and the Mid Day Meal (MDM) scheme to

make food and nutrition security affordable; subsidies to state agencies involved in food procurement and distribution for staff costs, storage costs, transport costs and marketing costs in the context of procurement especially of nutritious coarse cereals; a universal employment guarantee scheme with guaranteed living wages for the participating poor. **All these are consumption stimulating and trade enhancing and not trade-distorting and all these are, therefore, permissible under the WTO regime as shown by me earlier. Only the case for these strategies and the methods for protecting these should be clearly thought out and presented by the Government of India's negotiators at the WTO negotiations for them to be internationally accepted as part of the goals of rule-based trade. It is, therefore, entirely the responsibility of the Government of India to formulate pro-poor strategies for agriculture and agricultural productivity and design and defend distribution programmes that safeguard and promote the food and nutrition security of the poorer sections of the Indian people, including through appropriate programmes that enhance the purchasing capacity of the poor. Often we hear official excuses that the country cannot have such pro-poor programmes because they would fall foul of the WTO regime. This is not so at all. To argue that such enlightened programmes for the poor are hit by the WTO is actually a red herring designed to deny domestically the Indian poor their rights. Enlightened public opinion in India should, therefore, make the marginalized people aware of these facts relating to the WTO and the right kind of policies needed in the Agriculture and Food sectors so that food and nutrition security become a reality for the Indian people and remain so for all time to come.**

16. What are the facts that affect the interests of the farmers and the poor in the WTO context? To day in WTO, we have a basic Agreement on Agriculture. Of the three pillars or blocks of this Agreement on Agriculture, export competition is one. As for export subsidies, since we are not a cash-rich country, there is not much we can do, at least at the present time. Since we had given no worthwhile subsidies at the relevant base period (1986) there is nothing for us to reduce either, in any case. We have no role in this, more or less, at least at the present time. The second block refers to Domestic

Support, which includes non-product specific support or input subsidies like those for credit, fertilizers, agriculture marketing, water, power, etc., and product specific support for crops in the form of Minimum Support Prices (MSP). The combination of both represents the Total Aggregate Marketing Support (AMS). We should defend these to whatever the extent necessary to protect our agriculture and our farmers. If we look at the available leeway in the AOA there is no objection whatever to this. This is practically an internal matter for the country and at the present levels of subsidies we are giving we are well within the WTO stipulated limits. That we need internal reforms in this is a fact e.g. ensuring that fertilizers subsidies go to the farmers and not to the manufacturing middlemen. **The Government of India should provide all the support the farmer needs in all these areas domestically and negotiate hard at the WTO, giving up nothing and making no concessions in the negotiations.** Under Domestic Support will also come areas like Extension, Research, stockholding for food security, domestic food aid, Insurance, Environmental protection programmes etc. and these are all Green Box measures i.e. measures which are not trade distorting or only minimally distorting. On this score, there is no obligation on the part of India to reduce support to the farmers since base total measurement of support is below *de minimis* (10 percent). In fact, public funded research and strengthening of extension services are the crying need of the hour to stem the onslaught of the dysfunctional effects generated by unregulated, unethical marketing practiced by the inputs trade in India, cheerfully egged on by the liberalizing leaders and Governments of certain States in India which have led to the large scale suicides of farmers. Moisture conservation expenditures will greatly serve environmental protection and dry land agriculture. **Our Government should fight for these and there can be no serious threat to these measures from the Governments of the developed world in the ongoing negotiations. In fact, the threats to these measures are coming internally from some of our own leaders who have no understanding of these issues. That is why I say that we need domestic social action to defend the interests of the farmers' vis-à-vis those of the vested interests. The globalizing economists and their friends in the Government who are allied to them need to be countered through organized, social action because it is they who are at the service of the multinational, global capital interests that are dictating priorities in research and scuttling**

extension efforts by preempting public agencies through misleading promotional activities in regard to inputs using fiscal incentives through the informal credit system. It bears repetition that as far as Aggregate Marketing Support (AMS), that is, Domestic Support is concerned, India has no obligations to reduce it, as our Marketing Support to Agriculture at the relevant, base period was *de minimis*.

17. In the Food and Nutrition context for which protection of our Agriculture is most relevant, the third pillar, namely, Market Access, in other words Tariffs, is the most important lever for India. We have a comfortable position in regard to this and we need to leverage this to the maximum extent possible to our advantage. Tariffs give India the most significant protection. And that is exactly the reason why the industrialized, developed world is bringing to bear upon us all their sophistry for reduction. India needs to stand firm and not give in to the unreasonable demands of the West in this regard. In fact, of all the developing countries of the world we have the highest bounded tariffs, up to 300 percent in the case of edible oils, for example. I know that on ground we are imposing only 60 percent on edible oil but the point is we have the slack to play with. And edible oils are very important for our nutrition security. As we expand our consciousness about what an ideal public distribution system should be and plan how to make Nutrition security as the most essential aspect of the Public Distribution System's goals, dry land agriculture where higher incomes would also be predicated on high value food crops like oil seeds will take centre stage, in addition to the coarse nutritious cereals. So tariffs are important for us. I should also flag the point that time was when in 1948 we had bounded to a 0% tariff for rice, wheat and dairy products. That was needed then. However, subsequently in 1999-2000 we negotiated this up to around 80 percent. We should stick by these limits and ensure that we balance the interests of our producers as well as our consumers. The only antidote from the Indian side to heavy subsidies in the developed world is tariffs. Higher the subsidies in the West, higher should be the tariffs that we should impose against commodities that would jeopardize our food sovereignty and food security.

18. A basic point I want to make is that given all the constraints we are called to face in a globalizing world, the central issue for Indian Agriculture and the food and nutrition security of the Indian people is that we have to re-appraise our approach to Agriculture on the lines I have outlined earlier. To be competitive abroad and to stimulate consumption by our own people and our poor, our Agriculture needs to become cost effective. Our Agriculture is so high cost that even if the European Union reduces its tariffs to 0 %, countries of the developing world themselves like Brazil and Argentina would out bid us in those markets. Therefore, enhanced domestic market support to our farmers by way of increased infrastructure investments, for which there is no objection, is the answer. In other words, we should recognize the important lesson that the 3 pillars of the AOA and WTO negotiations are inter-twined and inter-dependant. Not that the Indian Government's negotiators do not know this but they should be made to know that the ordinary citizen also knows this and knowing this, the ordinary Indian citizen should hold the Indian Government accountable in terms of how the Government are calibrating the negotiations on these three pillars, leveraging our strengths and not compromising on our Agriculture and Food and Nutrition Security needs. If the ordinary citizens do not organize themselves to do this, surely the Government is going to be indifferent to these needs. Considering that neither the average farmer nor the poor have a lobby with the Commerce Ministry and, what is worse, the emerging powerful, non-Agriculture interests may persuade the Commerce Ministry to trade off at the negotiating table these vital interests in return for concession in non-agricultural areas that benefit only certain elite and already advantaged interests of the country, there is absolute need for social action based on organization of the small and marginal farmers and dry land farmers and the poor every where in the context of Agriculture and Food and Nutrition Security.

19. I am optimistic that a seminar like the one we are having here can organize this mobilization. The reasons for optimism also stem from the fact that the Doha Mandate, approved by the Ministers after nine long months of negotiations, has emphasized India's major concern relating to Food and Livelihood securities. Also, we have in the WTO Agreement a call for taking note of non-trade concerns, as already noted. Rural environment protection is one such non-trade concern and obviously it can be no body's

case in the West that Agriculture is not friendly to the Environment vis-à-vis industries and especially the kind of ecology friendly dry land agriculture advocated by me here. **Only, we do not know if the Indian State believes in such an Agriculture policy. Hence my submission regarding the Social Action we need to ensure that the voice of India in the negotiating chambers in Hong Kong articulates the essential needs and interests of the common people of India, its marginalized farmers and the poor.**

The position as it now stands is that we have in the July 2004 Framework for Agriculture opportunities for further negotiations through which we can defend and enhance our commitment to poverty reduction strategies, Food and Nutrition Security and livelihood concerns. Though India has itself been demanding that Product Specific Support be capped, AMS is cumulatively negative for all our Agriculture production. Therefore, there will be no need for us to be worried if we decide to enhance our MSPs for coarse cereals etc., and even maintain and enhance our MSPs for rice and wheat. That way there should be no danger to our food security. However, the danger will come from Market Access and demand for lowering of our tariffs to agricultural products from the developed countries. That is where tariffs are a matter of life and death for us and we should defend them at all costs. Why should we be frightened or fight shy of standing up to the illogic of a \$360 billion subsidy – a billion a day – and refuse to bring down our tariffs on agricultural products? **It all boils down to their subsidies versus our tariffs.**

Further, in regard to Market Access, there are commodities that are called “sensitive products”, the meaning of which is to be defined in the future through negotiations. The United States believes Sugar to be a sensitive product and will agree only to the absolute minimum reduction of tariff in the case of sugar. Now, here is our opportunity. Let us identify what, from our point of view of Food and Nutrition security, are sensitive products and refuse to bring down our tariffs. Also, under what is called the principle of “Special Products” for developing countries India can nominate these products e.g., cereals and edible oils based on our rural development and food security needs and agree to only minimal reduction in tariffs. The framework for agricultural negotiations has clearly given the flexibility for developing countries to designate appropriate number of special Products based on the criteria of Food Security, Livelihood Security and Rural Development. **Let us bring into the negotiations all the dimensions of these concerns.**

Also, there is the Special Safeguard Mechanism that can be set in motion whenever there is a “surge in imports” that affects our agriculture adversely, provided we can prove injury to our Agriculture. **Our farmers are poorly organized no doubt for this entire contingency, but appropriate organization and social action led by intellectuals can remedy this.** Meanwhile, India can show during negotiations how unlimited volumes of import can endanger and injure our agriculture and our future food security. Hand in hand, we should keep the pressure on to make the developed countries stick to their commitment to reduce their subsidies, direct and indirect.

20. To conclude, the opportunity is available to us to protect our Food and Nutrition Security, though as we meet here today it is certainly not guaranteed. **The entire WTO regime has clearly recognized Food and Nutrition security and Livelihood Security as fundamental to the ongoing negotiations but it is entirely up to those in power in India to define comprehensively and in detail what these should mean to the people of India and make the country’s negotiators use it during the further negotiations provided for in the existing AOA. The mandate clearly exists now for the Government of India to negotiate an autonomous Food and Nutrition Security for our people. The ball is squarely in the Government of India’s court.** I commend my submissions made in this paper to you in furthering that mandate, both as a challenge and an opportunity.

The essence of the challenge is this: trade is a game that involves competition and moves and counter moves. There is inequality between nations and the more powerful ones obviously are looking for domination over the rest in the name of a rule-based world. What is at stake is the very right to life of the poorer citizens of the developing world. The primary responsibility for defending and promoting this right of the poor rests with the Governments of these countries. India’s political leadership, therefore, has a huge responsibility in the context of the WTO regime to safeguard and promote the Food and Nutrition Security of the nation and its more disadvantaged citizens. This it can do if it honestly makes the right choices and shows a willingness to confront the industrialized rich countries of the world in regard to the interests of its people using every avenue

available in the framework. Conviction born of the inalienable rights of the poor and a willingness to display courage to fight for them even if it involves confrontation with the rich and the powerful of the world is the need of the hour. The opportunity to show principled courage is always one that should be welcomed.

III. RECOMMENDATIONS TO THE NHRC CORE GROUP ON RIGHT TO FOOD

Meeting on the 13th January 2006

By

K R VENUGOPAL IAS (Retd.)

Former Secretary to the Prime Minister and
Special Rapporteur, NHRC, Hyderabad

A Programme of Action for making the Right to Food a reality in the country would call for reforms in regard to the issues of Agriculture Production, Rural Wage Employment Programmes, Public Distribution System, the ICDS, the working of the Public Health, Education and the Institutional Credit Systems and Political Accountability.

The following are a few recommendations on these issues:

1. Dry land Agriculture

We need an Agriculture policy that recognizes the need for **Decentralized Agriculture**, which aims at raising levels of productivity across agro-climatic zones, which would mean:

- a. **Support to dry land Agriculture**, including mixed cropping taking advantage of our biodiversity.
- b. An inputs policy that incorporates Moisture Conservation, Discipline in Ground Water management and closely regulated use of chemical inputs and enhanced use of bio-fertilization and integrated pest control methodologies.
- c. **Public-funded Research** in evolving drought resistant seeds.
- d. Price incentives through remunerative MSPs for nutritious cereals, otherwise called coarse cereals.
- e. Purchase mechanisms for local procurement through local institutions.
- f. A **credit policy** that unambiguously supports these efforts.

All this should be aimed at producing marketable surpluses of nutritious 'coarse' cereals. Surplus in this context primarily, and **to begin with**, should mean surpluses for food consumption needs (as against industrial raw material needs as coarse cereals lend themselves readily for industrial purposes) **through recognition of the primacy of palatability and taste preferences as also storage technologies to enhance shelf life, including, in particular, at the locale of production itself.**

2. Living Wage in Employment Programmes

Obviously the first relevant measure for access to affordable food would involve a **long term strategy like a credible Employment Guarantee Scheme**, the centre of which should be a **living wage** postulated in Article 43 of the Constitution and which has been explained by the Honourable Supreme Court of India to be the political aim in India and as a concept which is higher than a fair wage, which itself should be better than the minimum wage (RB Employees' Association v Reserve Bank AIR 1966 SC 305); if this concept is not operationalized in programmes like those under the Employment Guarantee Act, the State violates its duty as a model and enlightened employer which it should be as laid down by the Honourable Supreme Court of India while interpreting Article 39 in this context (Surinder Singh v Engineer-in-Chief, CPWD AIR 1986 SC); and flexibility in favour of the poor in the application of the criteria for starting works at decentralized levels of authority such as, e.g., a unit of not more than 10 villages in rural areas and even fewer in far-flung scheduled areas, where our tribes live. However, **short-term strategies like opening of nutrition centres at the shortest possible notice should be part of the policy in ushering in the Right to Food, so we can respond to a sudden crisis swiftly and avert mortality.**

In any kind of employment programme cereals and other elements of every day nutritive value, whose price is affordably fixed, should form part of the wages for wages to be real. However, the food component in the daily wage should never ever be more than what corresponds to the daily intake needs. In other words, **practices like a scandalous proportion of food grains constituting half and often even more**

than half of the daily wages with negligible cash component as stipulated currently in the Government's Food for Work Programmes, should be outlawed as being a violation of the Right to Food.

3. The Public Distribution System

There are high levels of hunger prevalent in most parts of India that do not have assured irrigation facilities. Starvation deaths have been occurring as well in the country. The poor need a properly functioning and affordable Public Distribution System to cope with this situation. To ensure this, **the price of food grains in a well-run PDS should be determined on the basis of the employment levels and wage levels obtaining at the relevant time. The size of the family should be the unit to determine the food requirements of the family, ensuring interpersonal equity within the household as regards scales. Such requirement should be guaranteed to a poor household as its non-negotiable entitlement.** The quantity of entitlement and the price fixed should be kept frozen for the period during which the family remains below the poverty line, the elimination of such poverty itself being the acid test of the responsibility of the development and anti-poverty strategies drawn up and implemented by the State. The food grains entitlement for a month should invariably reach the fair price shop by the fifth day of that month at the latest. The poor household should have the right to draw its entitlement during the month through **as many installments as it deems feasible.** This is essential to ensure that the fair price shop dealer in the PDS does not assume powers that are not his. **A PDS of this kind with the fair price shop at the centre should be a permanent arrangement.** In times of drought and other natural calamities when the purchasing power goes down, the entitlement for the household in the fair price shop should go up and the prices should be revised down so that the household is kept above hunger. **PDS should thus be looked upon as an alternate market for the poor, but it can function as market relevant to the poor only when insulated from factors of violent fluctuations of supplies and price.**

The relevance of the PDS for food security will depend essentially on its playing an integrative role of delivery of essential commodities for household level food security, wage employment and nutrition programmes including the ICDS and MDM. The Government of India should refurbish the existing Public Distribution System on these lines.

4. Reforms in the ICDS

As for nutrition security, which is a fundamental ingredient of the Right to Food, **it is not enough to talk of the universalisation of the ICDS as we have been doing since 1985 but in truth fix a timeframe of say, 5 years, with another extra 2 years for actual operationlisation of the last of the ICDS projects, so in about 7 years from now we will have covered the entire country.** Also, **what the ICDS needs is not the limitedly conceived Anganwadis but it needs crèches that provide services for 8 to 9 hours, six days in a week, so that it really can make available services to the crucial 0-3 years cohort, a cohort that hardly benefits today in the ICDS in any worthwhile manner and as a real help to the rural working woman labourer. And, the food must really be locally and culturally relevant which means that the ready to eat foods must be out-lawed in the programme altogether.**

5. Public Health, Education and Institutional Credit Systems and Private Expenditures

Steeply rising private expenditure on Education and Health and the near absence of an institutional credit system have resulted in acute rural indebtedness affecting the food security of the poor. The State has to take the lead role to ensure that these three systems in the public sphere are revamped and made to deliver, so the Right to Food is not endangered by dysfunctionalites in these three vital areas.

6. Monitoring of Hunger

Hunger is the first manifestation of the absence of the Right to Food. To eradicate hunger, **monitoring of hunger and the hunger status of individual households village-wise in hunger prone areas computerizing data pertaining to the**

households in hunger should be done as a benchmark and the starting point. This will help watch closely and easily the developing hunger situation anywhere so we can intervene with relevant measures at very short notice.

7. Responsibility and Accountability

Since **in a democracy** the political executive is, and should be, supreme in terms of formulation of policies and their implementation as well, through strict, corruption – free direction and control of the bureaucracy, **the eventual responsibility and accountability for situations like deaths by starvation should rest with the heads of Government at the Central and State levels so the battle for the poor people’s Right to Food is not fought through proxies (like blaming systemic failures, bureaucratic failures and so on).**

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A critique of the National Rural Employment Guarantee Act, 2005

The following paper was written by me for the book "Capturing Imagination of Stakeholders – National Rural Employment Guarantee Act" by K .S. Gopal, Director of the Centre for Environment Concerns (CEC), a non-Government organisation based in Hyderabad. My paper forms Chapter 7 of the book. Copies of this book, which details the findings of the Social Audit that the CEC is conducting in some districts of Andhra Pradesh, are available at the CEC, 3-4-142/6, Barkatpura, Hyderabad, India.

7. Equity*

* This Chapter is authored by K. R. Venugopal, Former Secretary to the Prime Minister

7.1. Implementation problems inherent in the Act

By far the "best" answer to emerge so far to the problem of rural unemployment in the context of rural poverty has been the National Rural Employment Guarantee Act, 2005 (NREGA or the Act hereafter) that promises to guarantee at least 100 days of unskilled manual wage employment in every financial year to every rural household in select districts of the country with a daily wage rate of not less than sixty rupees. Andhra Pradesh offers Rs.80 as the daily wage rate. Does this Act represent a real answer to the problem of unemployment and therefore to rural poverty and can this "best" be bettered in any way is the question we have to ask and answer even as the Rural Employment Guarantee Schemes (REGS) drawn up by the State Governments, according to the Operational Guidelines issued by the Government of India under this Act, complete a year's implementation. The answer to this would lie in finding out if the issues of implementation in the NREGA, 2005 that we encounter are actually intrinsic to the provisions of the Act itself and if so what remedies can be proposed.

7.1.1. Constitutional Rights – the touchstones

Obviously the subject or the focus of all the goals that the NREGA sets out to achieve is the rural, manual labourer who lives in poverty. Therefore, the acid test that would decide

whether the NREGA is, or has been, fully relevant to the rights and needs of the rural poor will lie in examining whether the Act has been conceived and designed appropriately enough to deliver to the rural poor their fundamental needs and rights as guaranteed in the Constitution through guaranteed work in the manner promised to them. The passing of this test by the NREGA would depend on the following criteria being fulfilled as if the wage-seeking labouring poor indeed mattered:

- 1) adequacy of the number of days of employment it provides for the household.
- 2) adequacy of wages per day.
- 3) rational cash: kind ratios in wages.
- 4) timeliness of payment of wages.
- 5) mode of delivery of the wages.
- 6) payment of unemployment allowance.
- 7) the gender concerns it shows, particularly in regard to the work-site facilities that have fundamental gender implications for the rights of the female labour in the context of their infants and children.
- 8) appropriateness of the work provided for the differently-abled and
- 9) how Government understands all these issues as a responsible employer under this Act.

If all these criteria are fulfilled keeping the needs and rights of the participating labour in view, together that would constitute the fulfillment of the right to life with dignity, to work, livelihood, health, shelter, privacy and labour welfare enshrined in Article 21 of the Constitution; the concomitant rights mentioned in Articles 41, 42 and 43 of the Constitution that help understand and interpret the fundamental right guaranteed in Article 21 to work, humane conditions of work and wages; and Article 243 which is the expansion of the right given in Article 40 which commands that “the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-governance”. It is important to mention here that it is settled law (AIR 1976 SC in Mumbai Khamgar Sabha case) that in interpreting the provisions of Part III of the Constitution the social philosophy of Part IV will have preference. Even more importantly, in the United Labour case (AIR 1997 SC), it has been held that the Directive Principles of State Policy in Part IV are forerunners of the UNO convention on the Right to Development, are inalienable, fundamental human rights and are justiciable by themselves. Against this background, what is the likelihood of the above mentioned criteria being fulfilled under the NREGA as it presently is?

7.2. Rural Distress and Gender

7.2.1. Employment Adequacy basic to Guarantee

Debate on this Act all over the country has highlighted the fact that the Act guarantees only 100 days of employment for the entire household. In rural India the Labour and Work Force Participation Rates reflect greater participation of women than men. Also, the over all Labour Force and Work Force participation of both men and women are on the decline emphasizing the dwindling availability for the rural poor of manual labour. The continuing existence of a large incidence of poverty in rural India; rural employment growth slowing down in the late 1990s; deceleration in the growth rate of the work force in rural India in the period 1993–1999 and how in the same period employment stagnated or declined in several States like Andhra Pradesh,

Karnataka, Maharashtra, Tamil Nadu and Himachal Pradesh are well-documented facts. The Current Daily Status data on unemployment indicates that in the 1990s in rural areas unemployment levels were very high in Kerala, West Bengal and Tamil Nadu. These were even higher for women in Kerala, West Bengal and Assam. While this rural distress was general, the distress was greater among rural women than men. For example, the Economic Survey for 2004-05 of the Government of Andhra Pradesh acknowledges, based on NSSO data that the rural Labour Force participation rates in the State declined in 1999 - 2000, compared to 1993 - 94. This is not an encouraging scenario, admits the Survey. Still, participation rates for women remained high indicating dependence on wage labour. Whereas for all India the rural female Labour Force participation rate was 220 in 1999 -2000, for Andhra Pradesh it was as high as 387. The same goes for the Work Force participation rates which were for rural Andhra Pradesh women 355 in 1999 – 2000 against 204 for all India. Thus, rural distress is high, both men and women participate in work but women's participation as also their distress level is higher. Against this background the NREGA 2005 restricts the work opportunity to just one person in the household. This deprivation of full employment for the household in this programme, therefore, acts as a discrimination more cruelly against the needs and rights of women. The NREGA 2005 also represents regression in regard to workers' rights and welfare compared to the past. For the sake of a proper perspective, let us look at the Employment Assurance Scheme (EAS) that Prime Minister Narasimha Rao framed for the country in 1993 for 1752 most backward blocks in 257 districts. It assured employment for two adults in the household for 100 days each. Admittedly, the word guarantee was not used nor was that concept even conceded in the EAS. However, the EAS spelt out what an employment programme should be like for the poor. Yet, 12 years after that scheme which was a harbinger, the poor get a scheme in 2005 that actually reduces their entitlement by half! There is another significant and fundamental difference between the NREGA and the EAS, which impacts adversely on the poor. The EAS laid down that whenever at least 20 adult persons demand work during the lean season they should be provided employment by opening new works. It also provided that the Block Development Officer may, in his discretion, open new works even if only 10 such persons demanded wage employment. While this was the concept in 1993 in the EAS, the NREGA of 2005 stipulates that a new work shall be commenced only if at least 50 labourers become available for such work and if such labourers can not be absorbed in the ongoing works. This again is regressive compared to the provisions of the EAS formulated 12 years earlier. Thus, the criterion relating to adequacy of the number of days of employment an employment guarantee programme of this kind should provide for the household stands unfulfilled. Therefore, it is essential to change the provisions in the NREGA in regard to two basic issues, namely, from guaranteeing just 100 days of employment to the entire household to guaranteeing 100 days of employment to every adult in a household and to provide for commencement of works whenever at least 20 adult persons demand work, including a provision for discretion for the Intermediate Panchayat to open new works even if only 10 such persons demanded wage employment. This would restore to the rural poor the rights which had been recognized in the EAS of 1993.

7.3. Government, the Model Employer

7.3.1 A Living Wage

In the NREGA Government has assumed the role of an employer. In the specific context of the REGS, three issues are relevant – the quantum or adequacy of wages; the period within which the wages are paid; and the cash: kind ratio in the daily wages. In regard to all these, as an employer, the Government has a fundamental responsibility to the labouring poor including in regard to the conditions in which they work. In regard to the adequacy of wages payable and the conditions of employment, the Constitution of India is clear. The Government is talking of the NREGA as an important step towards the realization of the right to work. For the workers, for that right to be meaningful, the wages must be as defined in the Constitution. Article 43 clearly lays down that it shall be the endeavour of the State to secure, including through suitable legislation, to all workers agricultural, industrial or otherwise, a living wage. The Supreme Court has clarified (*R.B. Employees Association v Reserve Bank - AIR 1966*) that a living wage means that every earner should be able to provide for the family not only the essentials of food, clothing and shelter but also a fair measure of frugal comfort and an ability to provide for old age or evil days. The Supreme Court in its rulings has distinguished between a minimum wage, a fair wage and a living wage in that order and has said that the political aim in India is a “living wage”. The minimum wage concept is incorporated in the Minimum Wages Act, 1948. The Constitution of India came into force in 1950 and the Constitution speaks of a living wage and not a mere minimum wage. It is, therefore, deplorable that the Act is still stuck on the so-called minimum wages instead of providing for them the constitutional living wage. Put simply, the minimum wage itself, after the Constitution came into being, should be a living wage based on the principles laid down by the Supreme Court. If this is not done, the Right to Work to which the NREGA Guidelines refer is rendered meaningless. Right to Work can not exist with out adequate wages. A living wage alone can guarantee the Right to Work. The NREGA is thus very adverse to the poor rural worker in regard to wages as it still talks of a minimum wage instead of a living wage and prescribes as a standard a low wage rate of Rs. 60.

7.3.2. Pay Daily wages Daily

The Supreme Court has also laid down (*Surinder Singh AIR 1986 SC*) that the Central and State Governments are expected to function like model and enlightened employers even in the employment of persons on daily-wage basis. For the labouring poor in an employment guarantee programme a question as crucial as the adequacy of the wages is also how punctually the participating labourer will get her wage for her toil. Section 3 (3) of NREGA says that “the disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after the date on which such work was done”. This is highly ambiguous. In Schedule II to the Act, which lays down the conditions for minimum entitlement of labourers, condition 32 reads that “the State Government may prescribe that a portion of the wages in cash may be paid to the labourers on a daily basis during the period of employment.” Which of these three alternatives will constitute an “entitlement”? Only payment of wages on a daily basis will, which is what even a village landlord does. However, the NREGA has left this basic issue to the State Governments by giving three choices and obviously the latter will choose what is administratively most convenient to them, which is a fortnightly payment. This is what many States have done. A fortnightly payment of wages is not going to protect any poor woman from

hunger. It will only drive her to the usurious village money lender for her consumption loans. That can not be the objective of a National Rural Employment Guarantee Act which wants to change the geography of poverty. The right course of action is to ensure that daily wages are paid daily.

7.3.3. Cash: Kind ratio in Wages

Condition 31 in the same schedule states that wages may be paid either wholly in cash, or in cash and kind, provided that at least one-fourth of the wages shall be paid in cash only. Payment of 75% of the wages in kind actually takes away the promised wage guarantee from the poor worker. In any kind of employment programme cereals and other ingredients of every day nutritive value, whose price is affordably fixed, should form part of the wages for such wages to be real and guarantee food security. So, there is nothing wrong in the payment of wages in cash and kind. In this context it would be worth recalling that in the corresponding provision in the EAS of 1993 receipt of wages in food grains was made optional depending on the price in the open market, the objective being that the workers would be enabled to obtain food grains at prices not higher than those that may be notified by the Government of India from time to time. Nevertheless, the food component in the daily wage should never be more than what corresponds to the daily intake needs of a household. In other words, what has been called “entitlement” in condition 31 in Schedule II encouraging 75 percent of wages as food grains is really a disentitlement because this disproportionate quantity of food grains in the total wages of a poor worker preempts her accessing her non-cereal and non-food needs which can be bought only with the cash component of the wages. A concept of this kind is a violation of the Right to Food and therefore of Life of the participating rural labourer. Such a provision as this irrationally disproportionate use of food grains was actually responsible for the several irregularities witnessed in the erstwhile National Food for Works Programme (NFFWP) in the country, especially in Andhra Pradesh in the early 2000s.

Thus, in the matter of payment of wages the Act disenfranchises the poor comprehensively in regard to the adequacy of wages, the period within which the wages are to be paid and the cash: kind ratio in the wages. Since this cancels the very concept of guarantee, the Government of India should start immediate redress of this distortion in regard to all these aspects on the lines suggested here including making the payment of wages in food grains optional depending on the prices in the open market, the objective being that the workers would be enabled to obtain food grains at prices not higher than those that may be notified by the Government of India from time to time. The Planning Commission of India should simultaneously initiate pro-active steps in this context to construct with out delay a living wage for the poor in India, consistent with the Supreme Court’s guidelines referred to here.

7.4. Role of Panchayats in Decentralized Self-governance

7.4.1. Payment of Wages – Gram Panchayats, Post offices and Banks

Section 13 of the NREGA states that the Panchayats at all the three levels shall be the principal authorities for planning and implementation of the Schemes under the NREGA and the

Act goes on to assign responsibilities to the Gram Panchayat in Sections 16 and 17 of the Act. The Operational Guidelines issued by the Government of India have also reiterated that at least 50 per cent of the works in terms of costs will be allotted to the Gram Panchayat for execution, that this is the statutory minimum, and that the Programme Officer or the District Programme Coordinator may allot more works if deemed feasible. As mentioned earlier the central point in the Act as far as the poor are concerned is the quantum of wages they will get for their toil and whether they will get those wages in time, that is, on the same day. Daily receipt of daily wages should be the touchstone to evaluate whether or not the NREGA has meaning for the poor. This can be best ensured by this responsibility to disburse the wages being unambiguously entrusted to a local institution, viz., the Gram Panchayat, with out any qualifications. While the central government's Operational Guidelines say that payment of wages is the responsibility of the implementing agencies, major part of who are the Gram Panchayats, it is significant that the Gram Panchayat is not exclusively empowered under the Act to disburse the wages to the participating poor at the village level. The Guideline on this is that provision may be made to facilitate payments through the post office and other financial institutions. It is not clear at all why the post offices or banks should be used in the REGS when the Act itself does not mention post offices at all. It is not clear either why the post offices should be used to disburse wages to the participating labourers, when we have a Gram Panchayat, which is a locally available institution. Importantly, it should be pointed out that it is not as if every village, leave alone every habitation in the country has a post office. In an advanced State like Andhra Pradesh we had 13,681 branch post offices in 2004, same number as in the year 1996, against a total number of 28,123 inhabited villages and 21, 176 gram panchayats. The number of habitations will be very many more. There are areas where the participating labour will have to go several kilometers away from their place of residence or the worksites to the Mandal headquarters where alone a branch post office is located to receive their wages.

We cannot have an arrangement in a programme that claims to stop migration for work, by which people go long distances spending money once every fortnight to receive their wages. While post offices or banks may afford safety to the nervous bureaucrats in the Government in terms of accounting for the money meant as wages, it is doubtful if the branch post offices or bank branches are even today really poor people's institutions and readily accessible to the poor in a user-friendly sense in physical or administrative terms. State Governments and the people have very little control over the branch post office, just as in the case of the banks. Since the Act repeatedly says that the Gram Panchayat is the principal authority for implementation of the REGS the Gram Panchayats should be made responsible to disburse the wages exclusively at the work spot, preferably daily. This would be the logical culmination and final proof of successful implementation of a wage guarantee programme. With out doubt we have plenty of problems with the Panchayats given the feudal attitudes and discrimination in some places but we have to make a beginning some day of trusting our Gram Panchayats as part of our fight for genuine poor people's participation, empowerment and self-governance at the grass roots level. If the powers that be do not want to go the whole hog even at this late hour, we can start at least with those Panchayats that have as their Presidents dalits, Scheduled tribes, backward classes and women and other panchayats who want to make an honest job of it. Though the post office idea is part of the Central Guidelines, State Governments can consider whether they can make a start with the Gram Panchayats on their own in this regard in the interest of upholding the spirit of the Constitution 73rd amendment. This will also act as a corrective to the line of control of key agencies in this programme which prima facie appears top heavy including at the field level. State Governments can have a non-intrusive, supportive, training-oriented watch on the wage disbursements made by the Gram Panchayats by a NGO-Government set up as part of the Social

Audit capacity building and checks and balances needed in the Scheme. The advantage here will also be that wages would be received every day by the labouring poor, which is the most essential of all fundamental rights in the context of an employment guarantee. In the worst case scenario the poor labouring class should at least have a choice – the Gram Panchayat or the branch Post Office (only where branch post offices are located within a radius of 1 kilometer of the habitation), both helped by the supportive watch of the joint NGO-Government set up, for receiving their wages.

The choice regarding the branch post offices must be made by the workers after they evaluate their experience with their own locally elected representatives in the first instance and not preempted by the central Government's preferences for mobilizing savings. In the problem relating to payment of wages the bottom line is the recognition by Government that it is incorrect on its part to expect the rural working class, especially women to wait for a fortnight or even a week to get their wages. If one takes a look, for example, at the well-written guidelines framed in the Andhra Pradesh Government's Operational Manual pertaining to payments by the post offices one will find that they involve some 30 steps. It is likely those steps are all legitimate to safeguard public funds. If, instead, the wages disbursement responsibility were entrusted to the Gram Panchayats and even if they involved 30 similar steps and even a few more, we would have achieved a huge milestone in the honest empowerment of our panchayats in financial terms and trained them in the management of development works. We should not miss this opportunity of promoting decentralization and village self-governance.

Empowering Gram Panchayats is also empowering the poor in terms of their realizing their own power in the context of deepening democracy, the power of their vote and the benefits of reservation in electoral politics including for women electives at the grass roots level. It is high time, therefore, the Government of India entrusted financial powers to Gram Panchayats in the REGS. The NREGA should be amended to provide direct responsibility to the Gram Panchayats in regard to the physical disbursement of wages to the participating labour at the village level. That will be the first step taken in genuine village self-governance and fighting graft in the programme. That step should be taken at once because the feedback received about the post office arrangement in certain States is particularly disturbing as seen also in Mr. Gopal's findings described elsewhere in this book. In some areas the working poor themselves have had to open accounts in post offices by paying Rs. 50 in each case of an adult and obtain their wages from the branch post master in the presence of two witnesses putting up with all the bureaucratic hurdles placed in their way. Gross delays have also been experienced in the receipt of wages. Continuance of this post office arrangement will be a blow delivered both at the concept of decentralized governance and at the wage earning poor.

7.4.2. Issue of Work Orders

Another measure the Government of India needs to take in genuinely empowering Gram panchayats is to strictly scrutinize the guidelines issued by the State Governments to see if they are consistent with the spirit of its own instructions. The Guideline of the Government of India in the matter of sanctioning of works in regard to those to be implemented by the Gram Panchayats is that, after the administrative sanction and technical sanction had all been obtained in advance by December of the year preceding the proposed implementation, "the Gram Panchayats are the

appropriate authorities empowered to ‘start’ works by issuing work orders and to allocate employment among persons who have applied for work”. However, one State Government has laid down in its guidelines that the “Gram Panchayats are the appropriate authorities empowered to ‘start’ works “after receiving work commencement orders from the programme officer.” This is in complete contradiction of the powers sought to be conferred on the Gram Panchayats in the Central Guidelines and demotes the Gram Panchayat to a virtual nullity. Once the administrative sanction and technical sanction had all been obtained in advance, there should be no further need for any bureaucrat to again issue work orders, sidelining the Gram Panchayat. That power of issuing work orders should be with the Gram Panchayat as the implementing agency. This helps also in reducing delays and speedy execution of works through elimination of one bureaucratic tier. The Centre should safeguard the interests of the Gram Panchayats through strict scrutiny of the REGS guidelines the States issue so that other parallel structures created by the NREGA or State Governments do not eat into the powers of the Gram Panchayats.

7.5. Unemployment Allowance

7.5.1. Pay full compensation

A disturbing feature of the Act in the context of the claim made to guaranteed employment is the one in Section 7 of the Act relating to payment of unemployment allowance. It is full of reservations and what is more the quantum of payment is so unreasonably restricted that it is a travesty of the concept of guarantee. It is obvious that if a person is not provided with employment despite the existence of a law providing a guarantee, the person denied employment by the failure of the state can not be faulted or penalized but should actually be more than fully compensated by the state. Instead the Act provides in Section 7 (2) for an unemployment allowance at a rate that shall not be less than “one-fourth of the wage rate for the first thirty days during the financial year and not less than one-half of the wage rate for the remaining period of the financial year.” If the wage rate per day, guaranteed in the previous section 6, “shall not be at a rate less than sixty rupees per day”, it is not clear why the poor labourer should be denied this guaranteed wage rate if the Government fails to keep its promise made to her in law and instead pay her only Rs. 15 for the first 30 days of unemployment and Rs. 30 for the rest of the period of her unemployment. It is not the poor woman’s fault that the Government broke its contractual obligation and promise of guaranteed employment to her that she has to be penalized. This is violation both of the promised guarantee and even the rule of law. This also violates the right to life of the participating poor. In fact, if a Government fails to fulfill its promise of a certain wage rate, it should pay a rate higher than what it had promised by way of a wage rate to the deprived person including a penalty amount, and not the other way round. Such a provision would also act as a deterrent to non-fulfillment of the promised guarantee of employment by the government and compel the political establishment to properly over see the functioning of its bureaucratic machinery so as to ensure that the promised guaranteed employment is indeed generated and provided to the poor. Far from this, the Act does not even intend to punish delays in payment of unemployment allowance or pay a penalty for the delays. This is clear from Section 8 of NREGA where all that the poor are promised is a mere assurance that the State government shall take all measures to make the payment to the concerned household “as expeditiously as possible”. Also

objectionable in this context is the rider in Section 7(2) that the Act stipulates in regard to the payment of unemployment allowance by making a reference to this payment being subject to the “economic capacity” of the State Government. Surely, the Government could not have enacted the NREGA with out assessing its own economic capacity! This kind of reservations detracts from the philosophy governing the guarantee concept in this Act. This position emphasizes again the obligation of the Government to provide a living wage in the work programme under the NREGA, a wage well higher than the so-called minimum wage and pay appropriate unemployment allowance to those denied their right to work. The Government should amend the Act to provide for full unemployment allowance based on a living wage with appropriate penalty and fix a time frame of no more than a fortnight for making payment for every week of employment denied.

7.6. Women and Work Sites

7.6.1. Crèche – a Gender and Child Right

An important strategy for defending and expanding the rights of the poor, especially of women, is to fine-tune schemes in a manner that they pull together and incorporate the various rights that are due to the various participants in such schemes. NREGA could have been an excellent example of this in regard to gender and child rights but has sadly failed to be one because of the manner in which it has been drafted. In the NREGA 2005 the Government’s claim relates to right to life with dignity of the working people and changing the geography of poverty. Poverty is multi-dimensional. For the poor, fundamental rights are actually their basic needs. As explained earlier, in rural areas women’s participation in employment is very high. Poor rural women work till late in to their pregnancy and from days immediately after delivery. The former require rest while at work and the latter need to breastfeed their infants – both these in privacy. These are verily the inalienable rights of these women and their infants and these entitlements of theirs are part of their right to work and right to life with dignity. These are rights that come under Article 21 of the Constitution in Part III and under Articles 42 and 43 in Part IV. In the context of the labouring women these rights can be protected through the provision of a crèche at the worksite or, depending on circumstances, in the village of residence of the participating labour including by modifying the terms of reference of the mandate of the existing ICDS anganwadis. These rights were indeed sought to be protected by the EAS of 1993, which stipulated that the facilities that should be provided at each work site should include, in addition to drinking water and first aid, “crèches for the small children of workers”. Whereas the 1993 EAS stipulated a crèche, 12 years later the NREGA of 1995 does not even mention the crèche. It wants, merely, in addition to the drinking water and first aid needs, provision of a “shade for children”. A shade can presumably be even that of a tree or a tarpaulin and that is not just what the labouring woman at work or her infant children are entitled to.

The need for a crèche in this context is vital as its absence is a serious violation of the Constitutional commitment made in Article 42 which stipulates that the State shall make provision for securing just and humane conditions of work and for maternity relief. A crèche can definitely be designed to provide in the REGS women and child care related facilities including nutrition and micro-nutrition even if the government may not fully provide maternity benefits to the women EGS workers, though according to the case law benefits under the Maternity Benefits Act 1961 can not be denied to the women employees engaged on muster roll on the ground that

they are not regular employees [Municipal Corporation of Delhi v Female Workers (Muster Roll) – AIR 2000 SC].

A crèche that provides services during the day for 8 to 9 hours, six days in a week, when the female working mothers are away at their work, to the children especially in the crucial 0–3 years cohort; a cohort that hardly benefits today in the centrally sponsored ICDS programme in any worthwhile manner, is what we need in the NREGA and the Rural Employment Guarantee Schemes of various States as a real help and an entitlement to the rural working women labourers. The rights of the women labourers to rest in privacy while at work especially during pregnancy, and to breastfeed their infants, and the right of the infant to her mother's breast, as also the safety and security of the children when their mothers are at work are fundamental ingredients to the right to work and the right to life of a woman. These will be violated if all that a law can provide is a mere "shade" and not a properly designed crèche. Since this has crucial relevance to the concept of guaranteed employment to women, the Government of India should redress this serious omission by promoting the setting up of crèches at the work spots. While it can be argued that providing crèches at different work spots is logistically difficult, a beginning should be made in the long-delayed start for converting the ICDS anganwadis into crèches all over India, beginning from the NREGA Districts, - a reform that is a crying need to make the ICDS programme relevant to the rights both of the rural working class mother and her child. It will be a great boost to women in realizing the benefits of the NREGA. Even if the Government of India fails to show the will to set this omission right, at least certain State Governments, who often lay claims to being "progressive", can show the initiative required. There is no reason why a State REGS should not provide services that are more progressive than what is indicated in the NREGA. Workers groups should demand this.

While on this, mention needs to be made of a reference to crèches in the Operational Guidelines issued by the Government of India on the worksites, though the Act itself does not mention crèches. The relevant Operational Guideline states: "Worksite facilities are to be ensured by the Implementing Agency. Medical aid, drinking water, shade, and crèche if there are more than five children below the age of six years will have to be provided (NREGA, Schedule II, Sections 27 and 28)." The actual position, however, is that the NREGA does not mention the crèche at all in conditions 27 and 28 of Schedule II. When the law itself does not speak of what should be done to safeguard the interests of women and children, and in fact states that something inferior to the crèche may be provided in the form of a "shade", the State Governments would prefer to follow the provisions of an Act rather than the guidelines on implementation. Even the effect of this reference to the crèche is cancelled as the next Guideline states: "If more than five children below the age of six years are present at the worksite, a person (preferably a woman) should be engaged under REGS to look after them. Suitable provisions should be made for this in the cost estimates". This is not the same thing as the provision of a crèche. It must also be pointed out that the current economic fact is that today India, more than at any time before, can afford the outlays to expand the ICDS anganwadis into crèches to serve the interests of the rural working women participating in the benefits under the NREGA and their infants and children. A Crèche is a fundamental institutional need for employment security and therefore for employment guarantee for the rural female labour. People's Constitutional rights belong in the realm of the law and not in the operational guidelines. The crèche should, therefore, be made an entitlement in the NREGA and the provision for it should be shifted from a casual reference in the Operational Guidelines to the Act itself.

7.7. The Differently Abled

7.7.1. Self Employment, the Answer

The National Human Rights Commission of India had written to the Government when the NREGA was being drafted seeking inclusion of the disabled in the NREGA. This was done by way of a provision in the Guidelines issued by the Government of India. One of the State Governments in its Operational Manual refers to disabled women being engaged to take care of children below 6. This is a great risk to the children considering that the physically disabled women in reality can not be in a position to physically keep pace with the children of that age group. This problem would remain with those who would be lame or would not have the full use of their hands etc., The hearing-disabled may not have the same problems but in their case children who are playing behind their backs or not within their sight and may get into trouble, can not draw their attention for help. Thus, the concept of the disabled looking after the children in the 0-6 cohort or any cohort is not a safe one and is indeed a risky one and needs to be dropped. The same goes for old men or women who may have disabling conditions such as acute arthritis, impaired vision and hearing etc., as those conditions restrict mobility and quick, reflex responses that are so essential for child care. There is need for the Government of India and the states to consult the representatives of the differently-abled to understand their problems and to spell out details of the work that can be entrusted to the differently-abled so that they can discharge safely items of work like dispensing drinking water, accounts keeping, disbursing of wages, muster roll maintenance, working at computers etc., keeping their literacy levels as also their physical limitations in view. All this apart, the most relevant and substantial step that the Government of India needs to take in regard to the differently abled is to promote a Self Employment Guarantee Scheme (SEGS) for them within the NREGA with adequate margin money and bank credit to be administered at the Intermediate Panchayat level. A variant of this, to begin with, could be to ensure the right of all the disabled to shelter under Articles 19 and 21 of the Constitution by sanctioning them houses that can be built under their own supervision with guaranteed wages to them for their work. The NREGA, 2005 needs to be amended to include a guarantee for the differently-abled on these and similar lines.

7.8. The Future

7.8.1. Role of Activists

An important promise of the present Government in the 2007-2008 Budget is that this Act currently under implementation in 200 Districts of the country will be extended to 330 districts in the year 2007-2008, though the financial outlays commensurate with this have not been made in the budget. This is part of the Government's earlier commitment to extend the NREGA to the entire country within five years. It is, however, clear that a view of the NREGA, 2005 from a rights perspective highlights the fact that the problems in implementation that are faced at present and would be faced in the future are intrinsic to the provisions of the Act itself and that, therefore, all those provisions in the Act that are unfriendly to the poor need to be removed or changed on the lines suggested here to defend and expand the rights of the poor and provide the poor with an employment guarantee that truly promotes a genuine right to work for them. The problems in implementation brought out so clearly and in such detail in the foregoing chapters by Dr. K.S. Gopal including especially those seen at the time of the implementation of

the CEC's pilot in Anantapur district of Andhra Pradesh in 2006 validate the points made here in this chapter. An urgent task, therefore, awaits the activists to ensure that these rights denials are not perpetuated in the Act as it gets extended to the rest of India in the years to come. In this struggle to ensure the most basic rights of the poor it would be essential for the activists to be prepared to take recourse to the mechanism of the Public Interest Litigation (PIL) available to them on the basis of the provisions of the Constitution and the evolving case law as laid down by the Supreme Court of India.