

# CHILD RIGHTS, DEVELOPMENT AND WATER SECURITY IN INDIA

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Child rights and water security are paramount issues facing India in the twenty first century. The topic invariably leads to an examination of a sub-culture of victimized children, reaching into the millions, whose health and development are severely limited by inadequate and unsafe sources of water.

Children are highly dependent persons within the society. In societies challenged by poverty and other factors, these undermine the quality of life for children and there are increased risks that jeopardize their livelihood and safety. The academic George Kent has noted a hierarchy of protection that surrounds every child. In ideal conditions the child is protected and cared for by the family and where the family fails the community may take over with needed services. Failure at that level may lead to local government services. If these are inadequate or absent, the state government may exercise the necessary protective role, if there is inadequacy at that level, the national government may have a role in protecting the child, and if the national government fails in its obligations to protect children, then the international NGOs and ultimately international governmental organizations may be involved in providing care and protection.<sup>1</sup>

Modern cosmopolitanism focuses on three distinct themes. The first is that individual human beings are the ultimate units of moral and political concern. The second premise, whose modern theoretical articulation is known as universalism, is that all human beings possess equal moral status. The third premise is that persons are subjects of concern for everyone, that is, human status has global scope.<sup>2</sup> The issue of global scope, which Hayden refers to is reflected in an analysis on the place of the child in the international political system by George Kent. He argues that between birth and adulthood, children start out in high dependency and low competence and then normally grow to the opposite, low dependency and high competence.<sup>3</sup>

The question of who is responsible for the child in the event of family or community breakdown is an important point that Kent addresses and one which touches upon a core issue of cosmopolitanism. Kent notes that as children mature, the first priority is to help them become responsible for themselves. So long as they are not mature, however, children ought to get their nurturance from

their parents; failing that, they ought to get it from their local communities; failing that they ought to get it from their local governments; failing that, it should come from their national governments; failing that they ought to get it from the international community.”<sup>4</sup>

Immanuel Kant was the first political philosopher to posit that human rights are the basis for international law. According to Kantian scholar Fernando Teson, “despite the recent prominence of the international law of human rights, the dominant discourse in international law fails to recognize the important normative status of the individual. Traditional international legal theory focuses upon the rights and duties of states and rejects the contention that the rights of states are derivative of the rights and interests of the individuals who reside within them.”<sup>5</sup>

The Indian legal system evolved under British Colonial rule. The India Evidence Act, for instance, was adopted in 1872, and the Child Marriage Restraint Act, in 1926. In 1947, India gained its independence and a new Constitution came into effect on 26<sup>th</sup> January 1950.

The Indian Constitution has numerous provisions to protect the rights of the child. Some of these provisions include:

- The right to equality, Art. 14
- The right to freedom including freedom of speech, Art. 19(1) (a)
- The right to be free from exploitation and trafficking, Art. 23
- Religious, cultural and education rights, Art. 29.

Legal safeguards for children and their right to full and healthy development are implicitly recognized under the Indian Constitution as noted in the following articles:

- Article 15 prohibits discrimination on the basis of religion, race, caste, sex or place of birth.
- Subsection 3 of Article 15 empowers the state to create laws for the special protection of women and children.
- Article 39(9)(e) makes it incumbent upon the government to protect children from abuse and to protect them from situations that exploit their dignity and development.

- Article 39(f) recommends the protection of children from exploitation and moral and material abandonment.

India is a developing country with a population hovering over the one billion mark. Approximately 400 million people in India are living below the poverty line and about one-third of them are on the threshold of starvation deaths.<sup>6</sup>

The recent starvation deaths of farmers' families in Andhra Pradesh State, the constant cycle of starvation in the States of Orissa, Bihar and Rajasthan and the sale of children to feed families in some parts of India clearly demonstrate the struggle for basic survival that millions of Indians must endure.<sup>7</sup>

The Hindu caste system in India, dating from before the time of Buddha who is recorded as having condemned its' injustice, represents a rigid social structure of hierarchal power and social standing within the society. The caste group that the person is born into remains in effect for life. The roots of condemnation against the caste system, from international and domestic human rights groups, rests with the rigid marginalization and abject discrimination against millions of Indians who find themselves, through birth, in the bottom strata of Indian society.

There are four main groupings within the overall caste system. In the order of social standing these include the Brahmins (priests and teachers), the Kshatriyas (rulers and soldiers), the Vaisyas (merchants and traders) and the Shudras (laborers and artisans). A fifth category, which falls outside the traditional caste system, is known as the untouchables or Dalits who are considered unclean and impure. They perform the lowest forms of menial works in Indian society. Within the upper echelons of caste, there may be some crossover in traditional societal functions and roles. For example, Prime Minister Nehru, the first post-independence prime minister in India, was a member of the Brahmin caste.

According to a report on caste violence in India, "within the four principal castes, there are thousands of sub-castes, also called jatis, endogamous groups that are further divided along occupational, sectarian, regional and linguistic lines. Collectively all of them are sometimes referred to as 'caste Hindus' or those falling within the caste system. The Dalits are described as *varna-sankar*: they are outside the system, so inferior to other castes that they are deemed

polluting and therefore 'untouchable'.<sup>8</sup> Untouchables are also referred to as Dalits and Scheduled Castes. It is instructive to note the racial bias that is inherent in the caste system. Much like the discrimination faced by Blacks in Brazil and the United States solely due to their color, the Dalits are also the victims of entrenched discrimination due to color. The term 'varna' denoted color in early Indo-Aryan culture and was used as a marker to distinguish certain groups from others.

The Indian Constitution Act of 1949 specifically addresses the oppression against the Untouchables. According to Article 17 of the Act: "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law".<sup>9</sup>

The number of Untouchables in India is estimated to be 160 million. A report on poverty in India by the Asian Development Bank notes that India has the highest concentration of poverty of any nation. "More than 360 million people, about 36 percent of the population, live below the official poverty line, seventy-five per cent are living in rural areas. It is estimated that women and children account for 73 percent of those living below the poverty line."<sup>10</sup>

A brief examination of discriminatory practices against Dalits includes the following: Scheduled castes did not have access to temples and other places of public worship to a large extent in Uttar Pradesh (UP), Tamil Nadu, Kerala, Rajasthan and Karnataka; A sizable section of Scheduled Castes in Tamil Nadu, UP, Rajasthan and Kerala did not have access to drinking water resources; Scheduled castes were discriminated against in the use of public cremation / burial grounds, public passages, etc. in Tamil Nadu, UP, and Maharashtra; Barber services were not available to a section of Scheduled Castes in Tamil Nadu, UP, Rajasthan, Maharashtra, Karnataka and Kerala;<sup>11</sup> Moreover, there is a high incidence of murder, violence, theft and false imprisonment committed against Dalits. A 2006 report on Dalit conditions in rural India reported that 48.4 percent of Dalit villages were denied access to water sources and in 33 percent of villages, health care workers refused to visit Dalit dwellings."<sup>12</sup>

Data from the Census (1981) reveal that only 32.21 percent of Dalit children (aged 5-14 years) actually attend schools. School participation data from (1987-88) shows that the proportion of 'out of school' Dalit children is far greater than those in the 'Other' (non-Scheduled Caste/Scheduled Tribe) population in

both urban and rural areas. What is also striking is the abysmal participation of rural girls in schools. Barely 3.1 per cent of Dalit girl children aged 5-14 years living in rural areas participated in schooling in 1987-88.<sup>13</sup>

The National Commissioner for Scheduled Castes and Scheduled Tribes in April 1990 conducted a comprehensive study of atrocities such as murder, injury, rape, arson and crimes involving substantial loss of property against Dalits in five states, Bihar, Rajasthan, Madhya Pradesh and Tamil Nadu, during the 1983-1987 period. There was an apparent link between atrocities, both of caste prejudice and untouchability, and political and economic issues regarding land, wages, indebtedness, bondage, etc.<sup>14</sup>

Despite the criminalization of Dalit discrimination and abuse in the 1949 Indian Constitution and the introduction of the Atrocities Act in 1989, designed to curtail and punish abuses against Dalits, conditions for Dalits in recent years have shown marginal improvement at best. Particularly in rural India, centuries of exploitive relationships based upon caste have proved most difficult to overcome.

According to Venkatesan, an Indian scholar, "It is very clear from field results that the atrocities committed on Dalits presents a pattern, which is reflective of continuing influence of the customary rules and norms on the behaviour of the Hindu toward the Dalit. The extent and the magnitude of various crimes committed against Dalits certainly reflect the incivility and violent character of the caste system."<sup>15</sup>

## **Poverty, Health and Water Security**

The Indian National Water Policy was enacted in 2002. In the same year, India pledged to meet the United Nations Millennium Development Goal to cut by 50 percent by 2015, from 1990 levels, the proportion of people without sustainable access to safe drinking water and basic sanitation.

"The National Water Policy (NWP) in its preamble noted that the management of water has to be attained while keeping in view the socio-economic aspects and needs of each state, but this is undermined by the accompanying statement that the national perspective should guide efforts. Significantly, the NWP does give priority for drinking water to the needs of human beings and animals. Unfortunately, the policy itself does not make this prioritization clear."<sup>16</sup>

The NWP has declared water to be a national asset and it has paved way for the private sector to take over management of water in India through BOOT agreements. Under these agreements, private sector participation in building, owning, operating and transferring of water resources is being sought.<sup>17</sup> The provisions of the new National Water Policy have raised doubts and deep concerns about the implications on the rights of people to safe, adequate and affordable water.<sup>18</sup> This policy decision has come at a time when a large proportion of the population lacks access to safe water and adequate sanitation facilities:

- 17 per cent of the population does not have access to safe drinking water.
- About 38 percent of urban population in India, who are below the poverty line,
- have no access to water.
- 69 percent of the people do not have access to sanitary services.
- 80 per cent of children in India suffer from water-borne diseases; over 700,000 of these children die each year.
- 44 million people suffer from problems related to water quality – due to presence of fluoride, iron, nitrate, arsenic, heavy metal and salinity.
- In 1985, 750 villages had no source of water; by 1996, 65,000 villages had become waterless.<sup>19</sup>

“Bacterial contamination of water continues to be a widespread problem across the country and is a major cause of illness and deaths, with 37.7 million affected by waterborne diseases annually. The major pathogenic organisms responsible for waterborne diseases in India are bacteria (E Coli, Shigella, V cholera), viruses (Hepatitis A, Polio Virus, Rota Virus) and parasites (Ehistolytica, Giardia, Hook worm).”<sup>20</sup> Poor water quality spreads disease, causes death and hampers socio-economic progress. Around five million people die due to waterborne diseases. In addition, these diseases affect education and result in loss of work days, estimated at 180 million person days annually. The annual economic loss is estimated at Rs.112 crores.<sup>21</sup>

There are other poverty related factors behind inequalities in child mortality, including poor nutrition and access to affordable healthcare. But increased exposure to the risk of waterborne infections is a major causal link. Children who are malnourished are more likely to suffer from diarrhoea and

sickness episodes last longer. Diarrhoea is a symptom of infection caused by a range of bacterial, viral and parasitic organisms which can be spread by contaminated water. It is commonly observed where there is a shortage of clean water for drinking, cooking and basic hygiene. Water contaminated with human faeces is another source of the disease. Moreover, animal faeces that contaminate water supplies used for human use can also cause diarrhoea. "Repeated incidences of diarrhoea result in weight loss, stunted growth and vitamin deficiency, with greater chances of dropping out from school, leading to reduced earning power and poverty."<sup>22</sup>

The United Nations has reported that over one billion persons in the world live on less than \$1.0 dollar per day. For these citizens, life is about daily survival. Basic necessities like food, shelter, clothing and clean water are the sole focus of daily life. Even these basic necessities are frequently unmet for the most impoverished in the world. In India, caste and poverty are interrelated. It is evident that the abject poverty confronting millions of children in India, particularly the Dalits, tribal groups and other impoverished low caste children, are significant barriers to water security and health.

Cutting across regions in India, there are identifiable categories of women and children who are particularly vulnerable to human rights violations and underdevelopment. These groups include "women in marginal and small farming households, women in environmentally fragile areas, women artisans, fish workers, women from ethnic minorities, disabled women, women in the urban informal sector, girl children and women subject to domestic violence. Girl children in all areas require added attention in all spheres compared to other regions."<sup>23</sup> Of the 150 million women living on the margins of or below the poverty line, as many as 90 percent are found in the informal sector. Sixty million children under six years of age belong to the group where mothers have to work for their survival.<sup>24</sup>

### **Theoretical vs. Applied Rights for Children**

There are 160 million Dalits, formerly known as untouchables, in India. The historic and systemic exploitation of these persons, affecting all aspects of their lives, is well documented by various organizations including the United Nations, The Asian Human Rights Commission and the Indian National Human Rights Commission. The level of suffering that they have endured, and continue to

endure is tragic. Yet a further tragedy relates to the acceptance by mainstream society of their servitude to the dominant classes.

The social dimension in India is hampered by centuries of caste based discrimination, which imposes economic, religious and social hardships upon the weakest members of the society. In many villages, for example, Dalits are forbidden from setting foot in Hindu temples that are reserved for caste worshippers. As Ambedkar noted, the untouchables fall outside the spheres of Hindu social, economic and religious life. They exist to serve the needs of the dominant castes.

In India, the Hindu majority in the population exerts influence by virtue of their sheer numbers over the judiciary, police, government and bureaucracy. The law enforcement regime in India does not operate in isolation from culture and community but rather reflects very clearly the dominant values that shape and guide society. Many of these issues were addressed in a July 2006 Joint Statement by the Asian Human Rights Commission and the People's Vigilance Committee for Human Rights, which condemned the Government of India over a variety of legal and human rights abuses against the most vulnerable members of its society.

“What excuses can any government in India, state or central, pose for letting its people starve to death? How can any government justify decades of delay in adjudicating cases in courts of law? Which government can allow its law enforcement agencies, particularly the police, to operate almost exclusively as agents of persecution? What justification can a government give for letting its bureaucracy be corrupt from top to bottom? Which state can justify the practice of extreme forms of discrimination based on birth and gender?”<sup>25</sup>

An *Applied Human Rights Regime* refers to rights, which are generally observed and applied. In sum, they are rights that can be exercised. A *Theoretical Human Rights Regime* refers to the same set of rights which exist in law but which have little application in daily life for specific groups in the society. It is this latter regime, which dominates, for the most part, the experience of Dalits.

A clear example is the Atrocities Act of 1989. This noble document, which serves as a clarion call for action to combat the deplorable state of abuse within the society against Dalits and Tribal persons, referred to as Scheduled Castes. The Act was designed to offer a protective umbrella for the Scheduled Castes.



The intention of the Act was twofold. First, to provide a constitutional framework for protective action to safeguard the rights of the Scheduled Castes, and second, to educate the masses through the rule of law on the higher ideals of Indian society *vis a vis* minority rights. The following analysis will focus upon the experience of the Dalits *vis a vis* human rights protection. Despite the promulgation of the Act, the experience of the past twenty-two years demonstrates that the Dalits continue to suffer extreme degradation and deprivation. They continue to live under the oppressive weight of a Theoretical Human Rights Regime where rights for the marginalized and impoverished are given little credence.

Dr. Bhim Rao Ambedkar, during the drafting of the Indian Constitution, was asked in 1947 to prepare a memorandum on the Safeguards of the Scheduled Castes to be submitted to the Constituent Assembly on behalf of the Federation. According to an analysis of Dr. Ambedkar's writings, "The Dalits are a minority because their social, economic and educational condition is worse than that of the citizens and other minorities in India. He demonstrated that the Dalits are economically dependant upon the caste Hindus. This economic dependence has other consequences besides the condition of poverty and degradation which proceeds from it. The Hindu code of life bestows many privileges on the upper castes while it heaps upon the untouchables with indignities. These have led the untouchables to perpetual slavery."<sup>26</sup>

The existence of a parallel human rights system in India gains credence when one considers the large gap between law and action for marginalized groups. In a review of legal enforcement in India, G.S Bajpai asserts: "The Indian political system has supported a rule of law but remained unconcerned towards law enforcement. It is therefore not surprising to find millions denied subsistence wages despite a Minimum Wages Act, on the statute. Children still work in carpet weaving or glass factories and serve as domestic help despite laws against child labour. Hundreds of thousands suffer in bondage, including children, despite the Bonded Labour (Abolition) Act, 1976."<sup>27</sup>

### **Public Interest Litigation and Water Security for Children**

As a signatory to the 1989 United Nations Convention on the Rights of the Child, India is obligated under international law to uphold the respective articles of the Convention.

The Indian Constitution guarantees equal rights to all citizens regardless of their race, religion and gender. This directive principle of state policy imposes a duty upon the government of India to ensure that all citizens enjoy a minimum standard of living. Yet a majority of Indians endure poverty and lack primary needs such as housing, a basic diet, adequate medical care, clean water and education.

Article 39(f) of the Constitution of India, one of the Directive Principles of State policy, requires the State to direct its policy, inter alia, toward securing that childhood and youth are protected against exploitation, and against moral and material abandonment.

In recent years, there has been greater judicial activism in promoting human rights. Such activism has been enhanced by provisions in Indian law whereby individuals or groups, such as NGOs, can file Public Interest Litigation (PIL) before the courts. Public Interest Litigation may also include litigation introduced by the court itself to address a situation that is deemed injurious to the public interest. PIL is not defined by any statute or act. A case may be brought before the court by a third party, a party not even directly affected by the action, such as an NGO, concerned about a specific danger to the public interest. Individuals concerned could for example, instigate Public Interest Litigation that industrial actions are causing severe pollution thus endangering the health of the public in a specific locale.

The key factor in assessing the validity of a PIL action is the court determination that the public interest is being harmed by the alleged actions. Many areas are conceivably covered under PIL such as:

- Acts of pollution
- Violation of human rights
- Government corruption or malfeasance
- Environmental damage
- Religious persecution
- Child labour violations
- Municipal services that are unsafely maintained

In the area of human rights, the Courts have generally shown a willingness to embrace Public Interest Litigation, thus extending much needed protection to

traditionally oppressed groups and persons in Indian society. These realities are accepted generally by the judiciary and leading proponents of human rights in India who struggle daily against a mammoth and entrenched system of inequity, that is difficult to surmount and rooted in the cultural, economic, religious and political life of the nation.

In 1982, in a landmark decision that has had positive repercussions on the human rights landscape of the country, the Supreme Court accepted the notion that additional steps were necessary in order for the marginalized and poverty stricken to exercise their full legal rights under the constitution. In this historic case, *Peoples Union for Democratic Rights (PUDR) vs. Union of India*, the Court affirmed that a third party could petition the court and request its intervention in a matter where another party's fundamental rights were being violated. In this case, PUDR cited constitutional guarantees under Article 23 of the Constitution, prohibiting forced labour and trafficking in persons. They submitted that workers contracted to build the huge sports complex for the Asian Games Village in New Delhi were being exploited. They alleged that children under the age of 14 were employed in the construction project and that sections of the Employment of Children Act, 1938 were being violated. It was further held by PUDR that the workers were being reduced to beggar status and working under exploitive conditions without minimum wage guarantees, which constituted a violation of their fundamental rights.

In rendering judgment, the Supreme Court observed:

The rule of law does not mean that the protection of the law must be available to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also though today it exists only on paper and not in reality.<sup>128</sup>

The Supreme Court decision implied tacit recognition that civil society in India had failed to protect the rights of large segments of the society and that extra judicial intervention was warranted. Thus the practice of Public Interest Litigation was introduced by the court to enhance the protection of the public welfare on a wide range of concerns affecting human rights. In this regard, the more activist stance of the Courts *vis a vis* human rights protection for the

oppressed has been succinctly reflected in the case of *Bihar Legal Support Society vs. Chief Justice of India and others*.

In this landmark ruling, the Court stated:

“that the weaker section of Indian humanity has been deprived of justice for long, long years: they had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assess their rights and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice...The strategy of public interest litigation has been evolved by this court with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community....”<sup>29</sup>

Specific provisions of the Indian Constitution can authoritatively be applied to the issue of water rights and security. Both Supreme Court and High Court judgments have affirmed the view that water access is a right. If one considers the notion of capability deprivation, it is clear that a key aspect to the enjoyment of water rights is to have the ability and means to access water. Article 21 in the Constitution of India, entitled ‘protection of life and personal liberty’ states: ‘no person shall be deprived of his life or personal liberty except according to procedure established by law’.<sup>30</sup>

“In the course of time this concept has been expanded to include several other vital aspects of human life like ‘pollution free water and air for full enjoyment of life’, health, environment, housing etc. Public interest litigations played a significant role in this process. In view of the scope of this right, environmental, ecological, air and water pollution, etc. are regarded as amounting to violation of Article 21.”<sup>31</sup>

“As early as 1984 (in *Bandhua Mukti Morcha vs. Union of India case*), the Supreme Court developed the concept of a right to a ‘healthy environment’ as part of the ‘right to life’ under Article 21. The Court, in a recent judgment (1 December 2000), had observed that ‘in today’s emerging jurisprudence, environmental rights, which encompass a group of collective rights are described as ‘third generation’ rights.”<sup>32</sup>

Several significant judicial rulings have affirmed water rights within society. In *Subhash Kumar v State of Bihar* (1991) case, the Supreme Court of India held that the right to live 'includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life'.<sup>33</sup>

In *M.C. Mehta vs. Kamalnath* (1997) case, the Supreme Court categorically ruled that the State is not only bound to regulate water supply, but should also help realize the right to healthy water and prevent health hazards.<sup>34</sup>

Thus, in the Indian Constitution, providing every citizen with adequate clean drinking water and protecting water from getting polluted is a fundamental Directive Principle in the governance of the State as well as a penumbral right under Article 21 of the Constitution.<sup>35</sup>

Despite the introduction of Public Interest Litigation and legal guarantees under the Constitution, such as Article 23, the water rights and security of marginalized children are unevenly protected. Factors such as wide scale poverty, the deeply entrenched caste system with systemic discrimination and exploitation as its most salient features, the enduring problem of child labour and the historic existence of gender discrimination render full protection from exploitation unobtainable.

India is a nation with 300 million children under the age of 14, an estimated child labour population of 100 million, and a population of Scheduled Castes including the Dalits and Scheduled Tribes, two of the most economically disadvantaged groups in the nation, that numbers approximately 24 percent of the population of 1.1 billion.

Although the Indian government has achieved progress in combating water borne-diseases and extending water rights and security to increasing numbers of marginalized children, major challenges remain. A more ambitious application of Public Interest Litigation to protect water rights for children, the fuller observance of existing child-centred human rights legislation such as the Convention on the Rights of the Child (CRC 1989) and the diligent observance of landmark Supreme Court decisions *vis a vis* water rights are all paramount areas for sustained government focus and societal action.

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