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50th ANNIVERSARY OF INTERNATIONAL CONVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Golden Jubilee of ICESCR: An Indian Perspective (<i>Editorial</i>)	<i>Denzil Fernandes</i>	iii
ICESCR and India: At Fiftieth Anniversary	<i>Md Nazeer Hussain</i>	111
MGNREGA and Economic and Social rights of the Marginalised in Rajasthan	<i>Mrityunjay K Singh</i>	130
Protection of Cultural Rights and State Response: A study of Adivasi community in Terai and Dooars region of West Bengal	<i>Saikat Roy</i>	143
Contemporary Development Models due to LPG and Plight of Tribals: A Case Study of Odisha	<i>Notan Bhusan Kar</i> <i>Pradip Kumar Parida</i>	156
Educational Tourism: Strategy for Development and Social Change in North-East India	<i>Juhi Baruah</i> <i>Paul Pudussery</i>	170
Multi-dimensional Poverty: Concerns from Socio-economic and Caste Census 2011, an Analysis of Rural India	<i>Joseph Abraham</i>	194
Book Reviews		214

Editorial

Golden Jubilee of ICESCR: An Indian Perspective

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is an important instrument of global human rights standards that forms a part of the International Bill of Human Rights, which also includes International Covenant on Civil and Political Rights (ICCPR) and Universal Declaration of Human Rights (UDHR). The multilateral treaty was adopted along with ICCPR by the United Nations General Assembly on 16 December, 1966, and came into force 40 years ago on 3 January, 1976. India became a State party to this treaty body after ratifying ICESCR on 10 July, 1979, in spite of having reservations on some articles of the treaty. As a result, India interprets the right to self determination as applying “only to the peoples under foreign domination” and not to peoples within sovereign states. India also interprets the limitation of the rights clause and the rights of equal opportunity in the workplace within the context of its Constitution. However, ratification of the Covenant implies that India accepts the responsibility to apply each of the obligations embodied in it and ensure the compatibility of its laws with international commitments. Being a signatory of the ICESCR makes India accountable to the international community, to other States which have ratified the same covenant, to their own citizens as well as other residents in the country. Reporting guidelines of the Covenant require States to submit periodic reports every five years to the Committee on Economic, Social and Cultural Rights (CESCR), which is an 18-member expert panel monitoring the compliance of States to the provisions of the Covenant. India’s performance at the CESCR is dismal. After India submitted its initial report to the Committee in 1983, it failed to report to it for nearly over two decades. In 2006, it submitted the report of its compliance to the obligations under the Covenant for all the previous years, but it again failed to submit its report at the next scheduled time in 2011.

The record of India with regard to the fulfilment of its commitments under ICESCR is chequered. There have been several legislations that protect the economic, social and cultural rights of various sections of the multi-cultural and pluralistic society in India. The rights of indigenous

people is guaranteed by the Forest Rights Act 2006 which provides them with the right to ownership of land, possession of ancestral land, collection and sale of minor forest produce as well as the right to graze cattle. The Panchayats (Extension to Scheduled Areas) Act 1996 was enacted to ensure that indigenous people are empowered to govern their own natural resources. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 is a legislation to protect indigenous people from violence and harm. In addition, there are several legislations that provide affirmative action like reservations in educational institutions, Government jobs, as well as elected bodies. In spite of these provisions, indigenous people continue to remain socio-economically poor and vulnerable to exploitation from more powerful sections of society. Consecutive governments has shown utter disregard to their rights by allowing large dams, industries and mining in regions inhabited by indigenous people causing grave harm to their economic, social and cultural rights.

One of the characteristics of Indian society is the caste system which is practised by over 80 per cent of the population. Caste based discrimination and violence against Dalits, who are at the lowest rung of Indian society, have not abated in India in spite of several legislations on the protection of the rights of Dalits. They remain illiterate, poor, deprived of human dignity and subjected to inhuman treatment through various forms of untouchability. The marginalisation of Dalits is manifested through extreme economic deprivation, lack of access to education, lack of basic amenities or discrimination in the labour market.

India is a home to several minority communities spread out all over the country. The rights of religious and linguistic minorities is guaranteed by the Constitution. However, majoritarian politics and the rise of right-wing religious fundamentalism is threatening the pluralistic and secular fabric of the nation. Minorities are at the receiving end of various forms of violence that is posing a threat to their economic, social and cultural rights.

On the occasion of the 50th year of the adoption of ICESCR and the 40th year of its implementation, this issue of *Social Action* celebrates the importance of the Covenant in human rights jurisprudence and reaffirms its significance to ensure the enjoyment of economic, social and cultural rights of all sections of Indian society.

This issue begins with the article “ICESCR and India: At Fiftieth Anniversary”, where Nazeer Hussain analyses the socio-economic initiatives of India in the light of its obligations under ICESCR. He begins with the socio-economic rights guaranteed in the Constitution of India and analyses various judicial pronouncements reaffirming the economic, social and cultural rights of individuals and communities in India. Further, the author makes an assessment of the two periodic reports submitted by India to the CESCR in 1983 and 2006 and its evaluation by the Committee, which includes positive aspects, concerns, suggestions and recommendations. Hussain points out to the role of shadow reports presented by various NGOs in the evaluation of the report presented by India in 2006.

In the article, “MGNREGA and Economic and Social Rights of the Marginalised in Rajasthan”, Mrityunjay Singh looks at one of the most innovative flagship schemes introduced by the Government of India in the light of its commitment to fulfill the socio-economic rights of the people in rural areas. The author uses empirical data from Dungarpur and Karauli Districts of Rajasthan to show that the introduction of MGNREGA in the region has proved to be a social security net for the people and a means to protect the socio-economic rights of the most marginalised communities in India.

The article by Saikat Roy titled “Protection of Cultural Rights and State Response: A Study of Adivasi Community in Terai and Dooars Regions of West Bengal” dwell on the rights of indigenous communities living in North Bengal to celebrate their festivals and other cultural activities. The article shows how the forces of globalisation, the crisis in the tea gardens and the influx of migrants in the regions has affected the cultural rights of the indigenous communities living in the region.

In “Contemporary Development Models due to LPG and Plight of Tribals: A Case Study of Odisha” Notan Kar and Pradip Parida highlights the effect of Liberalization, Privatization and Globalization on indigenous communities living in Odisha. He points out that mining and several development projects in tribal dominated regions have caused large scale displacement of these indigenous communities and adversely affected their economic, social and cultural rights.

The golden jubilee of ICESCR is an occasion to assess the progress of States in fulfilling the economic, social and cultural rights of its people.

As an emerging global powerhouse, India should act a responsible member of the United Nations by fulfilling its reporting obligations to this international human rights mechanism and signing the optional protocol of ICESCR, which introduces communication procedure for ICESCR. It is high time that civil society in India celebrate the 50th anniversary of ICESCR by exerting its influence to ensure that the State fulfills its commitment to guarantee the economic, social and cultural rights of its people.

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