

HUMAN RIGHTS AND BASIC NEEDS:  
THEORY AND PRACTICE IN INDIA<sup>1</sup>  
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The opening remarks by the Acting Rector, Wolf Lepenies and Mahendra P. Singh provided for a congenial and academic atmosphere for the start of the conference.

The first speaker, Helmuth Schulze-Fielitz, spoke on “The Politics of Human Rights from a German Perspective”. Starting with the general perceptions and ambiguities prevalent within the human rights debate and universally recognised restrictions on the principles of human rights and universal entitlements, he differentiated between various kinds of human rights and asserted that these differences played an important role in Germany. He argued that these differences could possibly weaken the whole idea of human rights. Further, he differentiated between various discourses in the human rights debate, which, in his view, complemented rather than contradicted each other. Finally, he discussed the legitimacy and politics of human rights within various discourses such as legal, philosophical and political. He concluded that different forms of human rights were not to be played off against each other, though social and economic human rights were to be implemented by policy-makers through the distribution of available resources. Emphasising the importance of social and economic human rights, he noted that the unenforceability of these rights in Germany was an impediment to their realisation.

Starting with the ambiguities within the human rights discourse, Helmut Goerlich identified the difference between human rights and basic needs. He proceeded to explain the problems in the implementation of human rights and basic needs, the disadvantages in using human rights as a starting point in justifying basic needs and the political development

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<sup>1</sup> Sponsored by the Wissenschaftskolleg and organised by Fellow Mahendra P. Singh in association with Michael von Hauff, University of Kaiserslautern, and Helmut Goerlich, University of Leipzig. The sessions were held on February 20 and 21, 2003. This report is the edited version of the proceedings prepared by Charu Sharma, one of the participants, who also acted as the rapporteur for the conference. Her contribution is gratefully acknowledged.

of rights and their social and philosophical dimensions. In his view, the implication of starting with human rights was an absolutist state and failure within the state and the state machinery and conflicts of human rights could not be brought within the legal framework. Examining closely the history of human rights development through the American and the French revolutions and the international context, he found a conflict between liberty and equality and the subjects of entitlement to such rights. He acknowledged the existence of basic needs and the enormity of the work required to be done before such needs could be recognised as enforceable rights. He asked whether only individuals were entitled to basic needs or if social groups could also claim them. If social groups could also claim them, then, in his view, mediation problems will be posed which would endanger the concept of the human rights of an individual. He concluded that, though taking human rights as a starting point to cover basic needs is a useful paradigm and is justified, it doesn't make things any way easier. Recognizing the link between the first and second generations of rights, he emphasized that the former ensure the autonomy of the individual as a condition precedent to the culture of basic needs. Finally, he concluded that implementation and enforcement of second-generation rights cannot be assigned to the courts, because they will be overburdened, which will lead to imbalance in the legal system and its ultimate failure.

In his paper on human rights and basic needs in the common law tradition, Ralf Brinktrine began with the proposition that the common law system represented by the UK established no human rights in the strict sense. Only basic needs existed, which were the concern of social welfare legislation. He was not sure whether the Human Rights Act of 1998 had changed the definition and perception of human rights in the UK. Posing the question whether the Act is just a new name for the old tradition or if it has taken note of the social-welfare nature of the human rights charter, he pointed out the difference between the two and suggested that rights are understood to mean a legally acknowledged precept that can be taken to the court for enforcement. Well-known freedoms, such as freedom of assembly and speech in the UK, he thought, were only liberties and not rights in the strict sense. These liberties were protected indirectly in the "no-right" Hofeldian sense. Even though he cited a number of pieces of welfare legislation enacted in the UK in the twentieth century, he doubted whether such welfare could be claimed as a matter of right. In his opinion, policy and political thinking was moving towards the traditional view that if one was not able to work or was poor it was one's own failure, rather than the state's responsibility. Private and charitable organisations, rather than the state, assumed this responsibility to some extent. Moreover, whatever rights and entitlements existed, they were

accompanied by complicated procedural requirements putting them beyond the reach of ordinary persons.

Mahendra P. Singh examined the position of human rights in the Indian tradition with a view to their better understanding and implementation, universally and in India specifically. He spoke of the relevance of tradition in human rights discourse. Examining the Indian tradition from ancient times, he concluded that it consisted of a composite culture marked by the spirit of accommodation and tolerance and an absence of any dogma. Admitting that the ancient Indian literature does not have an exact synonym for the modern concept of rights, he traced the notion of rights in the concept of *dharma*, whose core: “something that sustains the universe”, was capable of subsuming all the existing notions of human rights and much more to provide a sound foundation for them. Clarifying that emphasis on duties rather than rights was common to all ancient traditions and was not unique to India, he emphasized that the modern concept of human rights evolved in the West after the US and French revolutions and became prominent only in the post-World War II period. However, he established that the seeds of the modern concept of rights did indeed exist in the Indian tradition. He also argued that, being subject to *dharma*, the rulers or state in India never became despots or absolute. For this reason, no need for any declaration of rights arose. The presumption was that people had rights and the state had to justify its power to deprive people of those rights. Taking issue with some Western thinkers that the concept of human rights was the product of the Judeo-Christian tradition because of the unique position of the individual in that tradition, he established that the individual was a creation and manifestation of God in more absolute terms in the Indian tradition than in the Judeo-Christian tradition inasmuch as, in the Indian tradition, both man and woman were simultaneously created by God by dividing his body into two halves, with these two persons producing the rest of the world through the process of procreation without any stigma of sin or an act induced by the devil. Moreover, the Indian tradition well recognizes that the individual is nothing but a manifestation of God: “tat-tvam-asi” (I am thee), brahmasmi (I am God), “sarvam-khalvidam-Brahma” (God is all-pervasive). Reliance on religion was, however, not necessary for human rights. The Indian tradition is based upon rationality and reason. He concluded that the Indian tradition does not claim superiority over any other tradition. Nor does it lay down any universal standards for others. This is because of its eternal spirit of liberty, which is cautious about claiming to be right. The endeavour to universalise human rights must be one based on a *Weltanschauung* that takes into account the traditions and demands of all the people around the world.

Amitabh Kundu examined the regional pattern of access to basic amenities in urban India within the context of globalisation and the new system of governance. Making a few generalisations about the initial planned economy and the recent shift to a free economy and the availability of basic amenities to the poor in India, he examined the problems of shelter and deficiencies in the basic amenities in the towns and cities in the country and of deprivation of basic amenities across the states. Comparing the data across states, he concluded that, barring a few exceptions, there was a positive relationship between the level of economic development and access to amenities. He found significant disparities in the availability of basic amenities across the states because of differences in the level of development. To remedy the situation, he suggested devolution of powers and responsibilities onto the municipal bodies and a proper monitoring of the system.

Speaking on reorienting human rights to basic human needs, Professor Bhuvan B. Pande examined the debate on human rights and basic needs with a focus on the right to food in India. Arguing that human rights were social constructs, one could always add to or subtract from their scope. Among various techniques protecting cherished human claims, he stated, human rights were the most accepted. This technique could very well be applied for the realisation of basic needs. In his view, the existing human rights formulation accorded only superficial recognition to basic needs claims, while it was possible to push such claims to the centre of human rights debate. Emphasising the need for a paradigm shift in public policies and relief codes, he observed that the right to food had acquired a distinct status in some recent research and studies in the field of international law and jurisprudence. But the identification of human needs was much more problematic and controversial, because not only were such needs strongly influenced by ideological considerations, they were also closely associated with subjective preferences and abilities. He pointed out several controversies based on various considerations including prioritisation of needs. Examining the trend in legal developments, he found that although basic needs were given due recognition at some time in the past, currently they were being ignored. The courts are viewing the pavement and hutment dwellers as encroachers and as a symbol of illegality and are justifying their forcible displacement. He expressed dissatisfaction and scepticism at the growing insensitivity of the government and the policy-makers in overlooking the economic and social rights especially of the poorer sections in India and concluded that the situation was dismal and required concerted action from the social, legal and political philosophers and activists to stem this dangerous shift in the approach of the courts and the government.

Rolf Kunnemann spoke on “Implementing the Right to Food in India: From Legislative Framework to Framework Legislation”. He asked for a national legislative framework for the right to food. Appreciating the role of the Supreme Court of India in recognising the right to food implicit in the right to life guaranteed in Article 21 of the Constitution and giving the background to the process of recognition of the right to food in the international arena, he described the concept of framework law and the process leading to such legislation in India. He discussed steps towards an action plan to initiate the process of national framework law. Finally he made suggestions for the success of this action plan and recommended that States needed to adopt the international legal instruments of the human right to food in their national law as part of a framework legislation that could prove useful in the realisation of the right to food. In his opinion, discussion of the right to food within the international community was a process rather than an administrative campaign, and he traced various international conventions in this connection. He observed that the draft voluntary guidelines on the human right to food had no legal effect in strict sense, but that they constituted a commitment to work towards the recognition and enforceability of the right to food including freedom from hunger and malnutrition. Within the Indian context, he asked the government to take a proactive position on the framework legislation and he likewise asked the Supreme Court to adopt international standards and interpretation on the right to food. Concluding his suggestions on the formulation of a legislative framework, he called for the creation of a structure with accountability, transparency, popular participation, decentralisation and independence of judges and non-discrimination.

Wolfgang-Peter Zingel spoke on “Food Security in India: For Whom, How and Why?” Focusing on the practical side of the food security in India, he agreed with the basic premise of the Nobel laureate economist Amartya Sen that food security in India was less a question of harvests and quantities than of entitlement and deprivation and a short-sighted policy. On the question of implementation of the human right to food in India, he asked about the kind of food to be secured, the process to be adopted for securing the food, the dividing line between food security and insecurity, the price involved and who pays that price. He offered answers to these questions using specific examples and by suggesting changes in the policy at the planning, structural and economic levels. He also argued for learning from the practical experiences within and outside of India. The Indian situation, he said, required consideration of certain unique features of the Indian population in regard to its nutrition levels, dietary requirements and calorie intake and the fact that large strata of the Hindu and Buddhist and the entire Jain population were vegetarian. He noted

that although food seemed to be available in India in sufficient quantities, it was scantily and irregularly available in certain areas and for certain groups of people. He found that the weaker sections and the poor generally had less food security and girls from low-caste families in backward areas were among the worst fed. India's food pricing policy was also defective, he noted, which has led to a lot of strife and failed as an effective strategy of attaining food security. Equally defective was the Public Distribution Scheme, which was being followed in spite of its failure, its expense, and its inefficiency. He asked for temporal and regional adjustments, increased production, balance in the pricing policy and state intervention in the food market. In conclusion, he asked for close examination of the food distribution policy, the public distribution scheme and the kind of food an ordinary citizen requires and for providing a planned management free from political manoeuvrings.

In his paper on "Enforcing Human Rights Through Public Interest Litigation in India", Parmanand Singh gave a critique of the Public Interest Litigation (PIL) in India as a means of realising human rights and emphasized that, though litigation was not the only tool for the realisation of human rights, PIL was a movement towards a struggle for such realisation. The movement, in his view, was a unique product of the political and social history of India. The movement, he noted, started as an initiative of the judiciary in the aftermath of the 1975–76 Emergency, which resulted in gross violations of civil liberties and state repression. PIL emerged as a harbinger of new freedom. The movement also found support from investigative journalism, social activism of individuals and NGOs, media reporting and pro-activist judges. Agreeing that PIL was used as an effective tool in many instances, led to law reform and social movements and initiated national debate on human rights issues, he noted that, nonetheless, a number of times the court decisions in PIL were not filtered down to provide relief to the affected people. He thought that the future of human rights depended not only on PIL or other litigation, but also on the political and economic situation in the country. He noted the current change in the role of the state from social welfare to minimalist and felt that, in this scenario, the device of PIL would only be rhetoric devoid of any social meaning.

Charu Sharma in her paper entitled "The Evolution and Scope of the Human Right to a Healthy Environment in India" dealt with a different aspect of human rights violation – environmental protection through rights mechanisms and the recognition of the human right to a healthy environment in India. Tracing the roots of this development from ancient Indian history up to the Supreme Court of India's efforts to interpret the right to life and the directive principles of state policy in the Constitution, India's international obliga-

tions *vis-à-vis* environmental protection for recognition and creation of the right to a healthy environment, she submitted that, through judicial innovation and activism, the human right to a healthy environment had been accorded the status of a right as part of civil, political and social rights. She contended that, although environmental protection took a back seat while competing rights like the right to food and shelter were still evolving into a meaningful reality, the judiciary followed a balanced approach in determining the right to a healthy environment. She emphasized the need to move towards a higher level of consciousness of making environmental protection a part of human existence, thus internalising the value of environmental protection for the environment *per se*, away from anthropocentric interest. The consensus, in her view, was that the achievement of objective human rights is linked with the achievement of environmental rights, too. One could not deal with them separately and could not always hold the environment subordinate to recognised inviolable rights. She agreed that, although not all rights might be enforceable and certain rights may have reasonable restrictions imposed upon them to balance the rights of others, it could be stated that the recognition of the human right to a healthy environment had found a place on the spectrum of fundamental rights in India.

Christian Wagner spoke of “Political Barriers in the Realisation of Human Rights in India”. He diagnoses some barriers to the realisation of basic needs and human rights in India despite the presence of democratic governance, participation and empowerment as important ingredients of development. He called for an end to the political barriers that have severely affected India’s development and he focused on the general debate on the relationship between the state and development, highlighting the special features of South Asia. Examining the state of the realisation of human rights and basic needs in India compared with other countries, he concluded that Indian democracy had failed to establish a reliable institutional framework and that this had a virulently negative impact on securing basic needs and human rights. In his view, the tax sector, corruption, infrastructure deficits and the identity of the state could be identified as the most important obstacles at the central level. Arguing for the removal of these impediments, he stressed that, although selfish political interests would continue to shape the democratic process, one could not overlook the fact that only the democratic process can tame the impure motivations that all politics breeds.

Michael von Hauff’s paper entitled “Human Rights, Informalisation of Employment and Social Security System in India: an Assessment”, was presented by Mahendra P. Singh because of Michael von Hauff’s sudden indisposition. It dealt with the theoretical and

empirical relationship between the human right to social security and the goal of economic development in India. Picking up the ratio of persons in dependent employment as an indicator for assessing social security and examining the relevant data and studies, it established a correlation between per capita income and the percentage of expenditure on social welfare: the higher the per capita income, the higher will be the share of social expenditure. Because India was in a dual transformation process (from a more centrally planned economy to a more free-market economy and from an economically underdeveloped to a developed country), the need for social security and reliable and universally available benefits was very significant. With these assumptions, the paper traced the relationship between social security and economic development, described the changing pattern of employment and informalization of the labour market in India and analysed the structure of the Indian social security system. Emphasising the need to examine the inadequacies and provision for meaningful social security in future and citing the examples of existing legislation in India providing for social security, the paper concluded that, in India so far, the social security system did not cover a reasonable section of the population and failed to make a positive contribution to economic development.

The conference concluded with a vote of thanks to all the participants and sponsoring institutions and their officials and staff. The participants also agreed to have the papers published in one volume, which is likely to be released soon.

#### Contributors with Titles of Their Papers

Ralf Brinktrine, Associate Professor of Law, University of Leipzig

*Human Rights and Basic Needs in the Common Law Tradition*

Helmut Goerlich, Professor of Law, University of Leipzig

*Ambiguities in the Understanding of Human Rights and Basic Needs*

Michael von Hauff, Professor of Economics, University of Kaiserslautern

*Human Rights, Informalization of Employment and Social Security System in India: an Assessment*

Amitabh Kundu, Professor of Economics, The Jawaharlal Nehru University, New Delhi

*Access to Basic Amenities in Urban India: an Analysis of Regional Pattern in the Context of Globalization and the New System of Governance*

- Rolf Kunnemann, Secretary-General, FIAN International, Heidelberg  
*Implementing the Right to Food in India: from Legislative Framework to Framework Legislation*
- Bhuvan Ballabh Pande, Professor of Law, University of Delhi  
*Reorienting Human Rights to Basic Needs*
- Michael Schied, Researcher in Asian Politics, Humboldt University, Berlin  
*Human Rights and India's Developmental Experience*
- Helmuth Schulze-Fielitz, Professor of Law, University of Wuerzburg  
*The Politics of Human Rights from a German Perspective*
- Charu Sharma, Assistant Professor of Law, City University, Hong Kong  
*The Evolution and Scope of the Human Right to a Healthy Environment in India*
- Mahendra Pal Singh, Professor of Law, University of Delhi and Fellow,  
 Wissenschaftskolleg zu Berlin  
*Tracing Human Rights to the Indian Tradition: Its Relevance to the Understanding and Application of the International Bill of Rights*
- Parmanand Singh, Professor of Law, University of Delhi  
*Enforcing Human Rights Through Public Interest Litigation in India*
- Christian Wagner, Research Fellow at the German Institute for International and Security  
 Affairs, Berlin  
*Political Barriers in the Realisation of Human Rights in India*
- Wofgang-Peter Zingel, Professor of Economics, South Asia Institute, University  
 of Heidelberg  
*Food Security in India: For Whom, How and Why?*