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**Economic Citizenship in India: A Socio-Legal**  
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by

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# Economic Citizenship in India: A Socio-Legal Comparison of Two Cases<sup>1</sup>

**Binda Sahni<sup>2</sup>**

*Keywords: Economic Citizenship, T.H. Marshall, Legal, NRI, Transnational*

## ABSTRACT

*The author discusses the evolving concept of Economic Citizenship and relates a socio-legal dimension to transnational migration to and from India. The paper explores economic citizenship by developing the definition first identified by T.H. Marshall and then uses two case studies to show contrasted applications of Marshall's definition. Marshall states that there are three types of rights needed for an individual's development so that s/he can exist in, participate in and contribute to society.*

- 1. Civil rights protect personal freedom. One is entitled to exercise freedom of speech, thought and faith, own property, conclude valid contracts, and have recourse to justice.*
- 2. Political rights allow participation and franchise rights in political environments.*
- 3. Social rights are the right to defend and assert all of one's rights on the same terms as other members of society and by due process of law. They relate to the "whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society."*

*The paper observes that presence alone of economic opportunity in a society does not mean that the state has discharged its responsibilities to its citizens. Economic opportunity should also be legally accessible to the individual. The legal tie between economic and social aims supports the ensuing right for members of society to earn their*

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<sup>1</sup> This research is a component of the project on Economic Citizenship led by Barbara Harriss-White, Department of International Development, Queen Elizabeth House, Oxford University, OX1 3TB. In turn the project on economic citizenship forms part of the research programme on 'Citizenship as Conceptual Flow: Asia in Comparative Perspective' directed by Professor Subrata K. Mitra at the South Asia Institute, Heidelberg, and made possible by the German Government's Excellence Initiative at the Heidelberg University.

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*livelihoods through the right to work. A denial of these rights should let the individual have political recourse to judicial and legislative redress.*

*Case Study One analyses economic citizenship in the resettlement dispute in Arunachal Pradesh of Chakma and Hajong tribes from the Chittagong Hill Tracts. These residents are indigenous people of India and are entitled to Indian citizenship by the Citizenship Act 1995, but they lack legal recognition as citizens. The State and Central Governments formally and systematically refuse rights to these individuals - in breach of the right to life guaranteed by the Constitution of India.*

*Case Study Two analyses the economic citizenship rights for another group of individuals. It considers the role of economic citizenship as it is exercised by Non Resident Indians (NRIs), Persons of Indian Origin (PIOs) and Overseas Citizens of India (OCIs) while they live and work outside India. Some persons are granted Indian citizenship by birth, while others are not.*

*The paper concludes on two perspectives. Today's reality is that India grants economic citizenship without full political and social rights to some categories of Indians abroad and formally and informally denies economic citizenship to political citizens living on Indian territory.*

## INTRODUCTION

Economic citizenship is a concept in formation. It has normative implications for how individuals and their communities need the valid legal protection of the economic and social and political interests required for economic growth and social interdependence.

This paper will explore economic citizenship using the definition developed by T.H. Marshall.<sup>3</sup> It will use two Indian case studies to demonstrate contrasted applications of Marshall's definition.

The first example analyses economic citizenship as it relates to the resettlement in Arunachal Pradesh of Chakma and Hajong tribes from the Chittagong Hill Tracts. The Chakmas and Hajongs are indigenous people of India and entitled to Indian citizenship by the Citizenship Act 1995. There are at least 65,000 Chakmas and Hajongs in Arunachal Pradesh. Nonetheless, they cannot work there or vote under local law because of state policies. The State and Central Governments formally and systematically deny rights to these individuals - in breach of the right to life guaranteed by the Constitution of India. The receipt of citizenship also would raise Chakmas and Hajongs from their refugee status to being beneficiaries of Article 19(1)(d) of the Constitution, whereby citizens can move and work freely in India.<sup>4</sup> This would allow them active economic citizenship rights.

The second example considers the role of economic citizenship as it is exercised by Non Resident Indians (NRIs), Persons of Indian Origin (PIOs) and Overseas Citizens of India (OCIs) while they live and work outside India.

A PIO is a citizen of a country not Bangladesh, Pakistan or Sri Lanka if he or she:

- at any time held an Indian passport; or

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<sup>3</sup> T. H. Marshall, *Citizenship and Social Class and other Essays* (Cambridge: Cambridge University Press, 1950). Extract in J. Allen, P. Brahm, and P. Lewis (eds), *Political and Economic Forms of Modernity*, Cambridge Polity Press, 1992, pp. 218-219.

<sup>4</sup> Hans Muller of Nuremburg v. Superintendent, Presidency Jail Calcutta and Others (1955) 1 SCR 1284. Louis De Raedt v. Union of India 1991 (3) SCC 554. State of Arunachal Pradesh v. Khudiram Chakma (1994) Supp. 1 SCC 615.

- a parent or grand parent or great grand parent was born in and was permanently resident in India; or
- is a spouse of a citizen of India or a PIO.

An OCI is a citizen of a country not Bangladesh, Pakistan or Sri Lanka if he or she:

- was eligible to become a citizen of India on January 26, 1950, or
- was a citizen of India on or at any time after January 26, 1950, or
- belonged to a territory that became part of India after August 15, 1947

and, the children and grand children are eligible for registration as OCIs.

NRIs already possess Indian citizenship. PIOs are eligible for certain rights in India if their countries of citizenship allow. This does not mean that PIOs become dual citizens. Since 2002 and 2005 respectively they can, instead, apply for a PIO card or Overseas Citizenship of India document that extinguish the bureaucratic need for travel visas for India and that also grant rights to buy and sell equity and certain immovable property. The PIO card and Overseas Citizenship document do not give political rights. The main differences between them are the length of the stay period in India which they permit.

The PIO card is accompanied by a fifteen year renewable visa which requires the holder to register with the local police authority for a visit longer than 180 days. A holder can also apply for citizenship after residing in India for at least seven years. The OCI provides lifetime entry without registration requirements. An OCI holder for five years who has resided in India for one year can apply for Indian Citizenship, which confers the status of economic independence.

## **DEFINING ECONOMIC CITIZENSHIP**

T.H. Marshall provides a starting point for a definition of economic citizenship. Marshall's analysis is from the perspective of a sociologist and identifies "citizenship" within a framework of an individual's rights. There are three types of rights necessary for an individual's development so that s/he can exist in, participate in and contribute to society.

1. Civil rights protect personal freedom. One is entitled to exercise freedom of speech, thought and faith, own property, conclude valid contracts, and have recourse to justice.
2. Political rights allow participation and franchise rights in political environments.
3. Social rights are the right to defend and assert all of one's rights on the same terms as other members of society and by due process of law. They relate to the "whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society."<sup>5</sup>

The mere presence of economic opportunity in a society does not mean that the state has discharged its responsibilities to its citizens. Economic opportunity should also be legally accessible to the individual. The legal tie between economic and

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<sup>5</sup> T. H. Marshall, *Citizenship and Social Class and other Essays* (Cambridge: Cambridge University Press, 1950). Extract in J. Allen, P. Brahm, and P. Lewis (eds), *Political and Economic Forms of Modernity*, Cambridge Polity Press, 1992, pp. 218-219.

social objectives supports the ensuing right for members of society to earn their livelihoods through their rights to work. The denial of these rights should lead to the individual being able to have political recourse to judicial and legislative redress.

Marshall's ideas find shared grounds in international human rights law. The Preamble to the International Covenant on Economic, Social and Cultural Rights recognises that:

‘... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions can be created whereby everyone can enjoy his economic, social and cultural rights, as well as civil and political rights.’<sup>6</sup>

Article 6 of the Covenant declares: ‘The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.’<sup>7</sup>

“Citizenship” as understood above thus encompasses political, civil and social rights and duties. For the enjoyment of the ‘rights’ (rewards) of Citizenship, a necessary pre-requisite is the existence of a liberal democratic State, which can implement its mandatory legal duty under its Constitution to take necessary action against the political, civil or social marginalisation of its citizens. So, State accountability is not only political (which is subject to electoral expediency) but also legal. These concepts are enshrined in the Constitution of India, 1949<sup>8</sup> and reinforced by Human Rights Law. In the Indian context the socio-economic benefits of citizenship are of more immediate importance than political and civil, given that the latter are formally available. To benefit from the socio-economic opportunities, people have to be deliberately empowered. The realisation of these positives is necessary for the fulfillment of the promise of citizenship as stated in the Constitution. The Preamble describes the Republic of India as Sovereign, Socialist, Secular and Democratic. The Republic’s mission is to secure for **all** its citizens: *Social, Economic, and Political Justice; Liberty of thought, expression, belief, faith and worship; and Equality of status and opportunity*. Fraternity among all citizens is also to be promoted by assuring the dignity of the individual and the unity and integrity of the Nation.<sup>9</sup>

The centrality of a liberal democratic State resides in the fact that, of necessity, it is accompanied by a market economy. Market forces show no compassion for the intellectually, ethnically, caste and gender subordinated members of society, unless special institutions and legal structures are created and maintained to prevent the capture of the fruits of socio-economic citizenship by a smaller sub-set of better endowed citizens. Apart from guaranteed property rights, institutions are needed to regulate and mobilize capital and labour, to ensure

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<sup>6</sup> International Covenant on Economic, Social and Cultural Rights, adopted 16 Dec. 1966, GA Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNTS 3, *entered into force* 3 Jan. 1976 (hereinafter cited as ICESCR).

<sup>7</sup> ICESCR, Article 6.

<sup>8</sup> All references are to the Constitution of India, 1950 as amended up to The Constitution (Ninety-Fourth Amendment) Act, 2006.

<sup>9</sup> Preamble of the Constitution of India, 1950.

opportunities for the accumulation and reinvestment of profit and the optimal use of technology. The creation and upkeep of these institutions is possible only by the legislative and administrative activity of the State.

In India, exclusion from socio-economic citizenship is a fact of life for a vast segment of the population.<sup>10</sup> State programmes and institutions created to right this wrong have frequently been subverted and politically and or socially misappropriated due to bureaucratic in-action or deliberate manipulation at various levels within the state.<sup>11</sup> The question to be asked, therefore, is:

*Is the Indian State in breach of its obligations, the Indian Constitution and Human Rights Law and judicially liable at both domestic and international levels?*

1. due to delinquency in not undertaking necessary legislative and administrative action to discharge its duties under the law,
2. due to harmful legislative and bureaucratic activity promoting marginalization and exclusion, and
3. due to remedial in-action when legislative and administrative activity at lower levels of government promotes exclusion and marginalization.

The case of the Chakmas and Hajongs will be used to explore these questions.

Pure 'Economic Citizenship' rights—divorced from the 'political' and 'social' limbs of the trio of citizenship rights—apply only to Persons of Indian Origin (PIOs) and Overseas Citizens of India (OCIs). They constitute an additional benefit for these individuals while they enjoy full citizenship rights in another country. The question to be asked, therefore, is:

*Does the Indian Government treat all PIOs in the diaspora states equally and thereby extract their full economic capabilities?*

## **OBLIGATIONS UNDER INTERNATIONAL LAW**

The Universal Declaration of Human Rights (UDHR) serves as a non-binding international bill of rights of persuasive value. India was a member of the 1947 U.N. Commission of Human Rights which drafted the UDHR. It was among the first 48 nations to sign the final document in 1948. Its representative, Dr. Hansa Mehta, is credited with ensuring that the spirit of the UDHR would clearly apply to all human beings. She contributed to the phrasing of paragraph 5 of the Preamble by including the gender "women,"<sup>12</sup> and of Article 1 which read initially that "All men are brothers" to "All men are created equal" and ultimately that "All human

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<sup>10</sup> Barbara Harriss-White, *India Working: Essays on Society and Economy*, Cambridge University Press, Cambridge: 2003

<sup>11</sup> Barbara Harriss-White, *Rural Commercial Capital: Agricultural Markets in West Bengal*, Oxford University Press, New Delhi: 2008.

<sup>12</sup> UDHR, Preamble, para. 5: "Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom;"

beings are born free and equal in dignity and rights.”<sup>13</sup> The significance of these provisions in terms of a State implementing economic citizenship is upheld by Article 23(1) which declares that “Everyone has the right to work.”<sup>14</sup>

The economic, social and cultural rights that form the essence of the UDHR have become international law under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). India ratified the Covenants in 1979 but has not complied with its duties. The mechanisms in the Covenants for promoting economic citizenship are to be found in the Appendix [emphases added].

Most of these provisions set out in the Appendix have counterparts in the Indian Constitution, specifically Article 6 of the ICCPR. Article 21 of the Constitution guarantees the right to life: “(n)o person shall be deprived of his life or personal liberty except according to procedure established by law”. The Supreme Court of India has read into Article 21. The incorporation of social, economic, and political rights for citizens and non-citizens<sup>15</sup> are subject to the stipulations of Article 41 which encourages the Right to Work and Article 19(1)(g) which declares that all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.<sup>16</sup>

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<sup>13</sup> UDHR, Article 1: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Elizabeth Evatt, “Jessie Street & Human Rights, 6 June 2008 <http://evatt.org.au/news/477.html> Hillary Rodham Clinton, “On The Universal Declaration of Human Rights,” *Excerpts from the remarks of U.S. First Lady Hillary Rodham Clinton at a December 10, 1997, special ceremony at the United Nations marking the beginning of the 50th anniversary year of the Universal Declaration of Human Rights*, 3(3)USIA Electronic Journal, October 1998. Catharine A. MacKinnon, “Sex equality under the Constitution of India: Problems, prospects, and ‘personal laws’,” *International Journal of Constitutional Law* 2006 4(2):181-202.

<sup>14</sup> UDHR, Article 23(1): “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”

<sup>15</sup> National Human Rights Commission v. State of Arunachal Pradesh (1996) 1 SCC 742. Louis De Raedt v. Union of India 1991 (3) SCC 554.

<sup>16</sup> Article 41 of the Constitution: “... the State shall within the limits of its economic capacity and development, make effective provision for securing 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.” Article 19(1)(g) of the Constitution: “All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.”

Article 19(6): “Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to-

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or  
(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.’

## OBLIGATIONS UNDER THE LAWS OF INDIA

Article 21 protects the right to livelihood. The right to life can be impaired if the State or even a private employer withholds employment or a livelihood against the principles of natural justice.<sup>17</sup>

“The right to life includes the right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.”<sup>18</sup>

This practical reasoning on the part of the Supreme Court is a continuation of the broad interpretation of Article 21, a process that began in 1964. In *Kharak Singh v. State of Uttar Pradesh*<sup>19</sup> the Court moved away from its first ruling after the Constitution came into effect, where it had found that “according to procedure established by law” was a procedure that could be established only by statute. The *Kharak Singh* judgment suggests that the public interest in protecting individual personal liberty should mean that courts have flexibility to consider other factors.<sup>20</sup> It is perhaps in response to the restrictions placed by the Emergency Period 1975-1977 that the U.S. standard of “substantive due process” was officially inducted into Indian law in the *Maneka Gandhi* case where the Government was cautioned against confiscating a citizen’s passport arbitrarily.<sup>21</sup> The “procedure established by law” under Article 21 should be fair and just. This is because the right to live, in this case leave the country freely, is not confined to a mere physical existence but means the right to live with ‘human dignity.’ The denial of one’s constitutional rights to work or to trade or to practise a profession or of citizenship rights under the Citizenship Act 1955 undermines Article 21.

## CRITERIA FOR BECOMING AN INDIAN CITIZEN

The Constitution and the Citizenship Act 1955 govern eligibility for citizenship in India. The main distinction between the two sources of authority depends on the date when an applicant rightfully qualifies for citizenship, the date the Constitution came into being on January 26, 1950 or afterwards. Undivided India was a British colony until August 15, 1947.<sup>22</sup> As a prelude to Independence it was partitioned into West and East Pakistan (now Pakistan and Bangladesh) and the Republic of

<sup>17</sup> *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180. *Delhi Transport Corporation v. D.T.C Mazdoor Congress*, 1991 Supp (1) SCC 600. *D.K. Yadav v. J.M.A. Industries Ltd.* 1993 SCR (3) 930. *Kapila Hingorani v State of Bihar* (2003) 6 SCC 1.

<sup>18</sup> *Delhi Transport Corporation v. D.T.C Mazdoor Congress*, 1991 Supp (1) SCC 600 at para. 223.

<sup>19</sup> *Kharak Singh v. State of Uttar Pradesh* (1964) 1 SCR 332.

<sup>20</sup> See also the dissent of Khanna, J. in the habeas corpus case *ADM Jabalpur v. Shiv Kant Shukla* (1976) 2 SCC 521.

<sup>21</sup> *Maneka Gandhi v. Union of India* (1978) 2 SCR 621.

<sup>22</sup> “Freedom,” *Time*, May 27, 1946 at <http://www.time.com/time/magazine/article/0,9171,776845-1,00.html>.

India. The populations of the partitioned territories were presented with changing resident and nationality status.

Articles 5 to 9 of the Constitution list the citizenship criteria at the time the Constitution came into effect. Viable applicants were (1) 'Persons' who were domiciled in India; (2) 'Persons' who had migrated from Pakistan; (3) 'Persons' who had migrated to Pakistan but returned to India under a permit for resettlement or permanent return; and (4) 'Persons' of Indian origin residing outside the country.

By contrast, the Citizenship Act recognises five groups of applicants. An individual can attain citizenship by (1) birth; (2) descent; (3) registration; (4) naturalization; (5) incorporation of territory and (6) application as an Overseas Indian under The Citizenship Amendment Act of 2003 and The Citizenship (Amendment) Ordinance 2005.

Citizenship by birth applies to persons born in India between January 26, 1950 and June 20, 1987. A 1986 amendment to curb illegal immigration and refugee flows now requires that people born after 1987 must have a parent who is an Indian citizen. For children born on or after December 3, 2004 the parent who is not an Indian citizen should not be: an illegal immigrant; or a foreign diplomat or envoy; or an enemy alien born in a place then under enemy occupation.

Citizenship by descent applies to a person not born in India. A person is eligible if a parent is an Indian citizen not by descent. Section 6-A(2) and Section 5(1)(a) apply to the issue of Chakma citizenship rights in Arunachal. Section 6-A(2) refers to persons of Indian origin in Bangladesh eligible for citizenship under the Assam Accord. One who has re-entered India through Assam before January 1, 1966 and has been "ordinarily resident" in Assam since then is deemed to be a citizen as of January 1, 1966. Section 5(1)(a) refers to persons of Indian origin who are ordinarily resident in India and have been resident for five years immediately before making an application for registration.

Citizenship by registration applies to persons of Indian origin who have resided in India for at least five years before making an application; persons of Indian origin who are ordinarily resident in another country; and minor children born on or after December 2, 2004 to a parent who is an Indian citizen.<sup>23</sup>

A foreigner can become a citizen by naturalisation if he or she:

- a. is not a subject or citizen of a country where Indian citizens cannot become naturalized citizens
- b. renounces the citizenship of the other country
- c. resided in India for 7 years or has been in government service for 4 years
- d. is of good character
- e. has an adequate knowledge of a language recognised by the constitution.
- f. intends to reside in India or serve the government after Naturalisation.<sup>24</sup>

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<sup>23</sup> The Citizenship Act, 1955, s. 5.

<sup>24</sup> Ibid., s. 6(1) and The Third Schedule, Qualifications for Naturalisation.

Citizen by Incorporation of Territory is determined by the Union of India. The Union decides who to grant citizenship to in a territory acquired by India.<sup>25</sup>

The Citizenship Amendment Act of 2003 includes overseas Indians as potential applicants. Overseas Citizenship of India can be held with any citizenship other than from Pakistan or Bangladesh and if the applicant's home State allows dual citizenship. An OCI can be a foreign national who has never been a citizen of Pakistan or Bangladesh and who:

- (1) was eligible to become or was a citizen of India on or after January 26, 1950  
or
- (2) belonged to a territory that became part of India after August 15, 1947 or
- (3) is the child or grandchild of a person described in (1) or (2).

Employment opportunities for OCI holders in India are restricted to the private sector for security reasons.

### **CASE STUDY ONE: ECONOMIC CITIZENSHIP RIGHTS FOR CHAKMAS AND HAJONGS IN ARUNCHAL PRADESH**

The Chittagong Hill Tracts (CHT) is an area of 5093 square miles that was awarded to Pakistan in 1947. The then population of the CHT had settled the area since at least the sixteenth century. It was 98.5% non-Muslim, consisting of thirteen Tibeto-Burman tribes among which contained the Buddhist Chakmas and Hindu Hajongs. The Chakma Kingdom of Chittagong was founded around in the 1550s. It was placed under British Administration in 1860 and separated into the two districts of Chittagong and the Chittagong Hill Tracts. Chittagong became part of the Bengal Province and was rapidly settled by Bengali people. In the CHT, the Hill tribes benefited from British Administration as they were considered 'British tributaries' and not subjects and retained authority in their internal affairs.<sup>26</sup> Subsequently they received protection under the Chittagong Hill Tracts Manual Regulation of 1900 (the "CHT Manual").

The 1900 Regulation sought to preserve the autonomy and distinctiveness of the indigenous peoples by reserving the CHT as an Excluded area. It exempted non tribals from living there permanently or from buying or transferring tribal land. In 1935, the Government of India Act ratified and recognized the validity of the CHT Regulation. The failure of Pakistan and later Bangladesh to heed the Declaration has contributed to the Hajong's poor economic conditions and human development in the CHT as well as to their current citizenship crisis in India. The CHT Manual continues to have legal status but lacks its original force. The 1962 Constitution of Pakistan amended the administrative grade of the CHT from a 'totally excluded area' to a 'tribal area'. When it was passed to East Bengal (now Bangladesh) in 1971 the CHT was formally deemed a 'tribal-inhabited area' under the Indo-Bangladesh Accord 1997.

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<sup>25</sup> Ibid., s. 7.

<sup>26</sup> This was under the British policy of non interference. See Z. A. AHMAD, *Excluded Areas Under The New Constitution*, Congress Political and Economic Studies No. 4 (1937), Published by K. M. Ashraf on behalf of the Political and Economic Information Department of the All Indian Congress Committee, Allahabad.

The annexation of the CHT to Pakistan in 1947—it seemed—was contrary to tribal expectations. The Bengal Boundary Commission with which the final approval of the British delegate, Sir Cyril Radcliffe, would assign territories in northeast India lacked jurisdiction over the CHT under the Indian Independence Act, 1947,<sup>27</sup> and the representative of the Chakma people had been assured by Indian officials that the CHT would remain within India due to the Chakmas' preference on religious and ethnic grounds.<sup>28</sup> However, the Commission disregarded these considerations despite the clear wording of the First Schedule of the Indian Independence Act, which identified the districts of Chittagong, Naokhali and Tippera in the Chittagong Division among the Bengal districts provisionally included in the new province of East Bengal. The Tract area was not mentioned. The Viceroy of Undivided India and future Governor General of the Republic of India, Lord Mounbatten of Burma, received the Report of the of the Boundary Commission on August 12, 1947 but revealed the outcome on August 16th two days after the Independence of Pakistan and one day after the Independence of India. The new Indian leaders attempted to renegotiate the CHT annexation with the Prime Minister of Pakistan but did not meet with success.<sup>29</sup> The first Chakma and Hajong migration to India occurred within days by those seeking political and cultural affinity. This stream continued until 1948 only to be followed by a mass economic displacement of the remaining tribal people from 1957-1962 caused by the construction in the CHT of the Kaptai Dam for hydro-electric power and irrigation.<sup>30</sup> In 1964 the Indian Government resettled the

<sup>27</sup> Mukur K. Khisha, *All That Glisters*, Vikas Publishing House (New Delhi, 1999).

<sup>28</sup> Mr. Sneha Kumar Chakma's Memorandum to CHADIGANG CONFERENCE - Amsterdam Oct 10 - 11 1986.

<sup>29</sup> Minutes of a meeting held at Government House, New Delhi, 16 August 1947, to receive the awards of the Boundary Commissions which demarcated the boundaries between India and Pakistan in Bengal and the Punjab [Doc. IOR: L/P&J/10/117] at paras. 2, 4, 8, and 10. <http://www.bl.uk/collections/independencepartn9.html>

See also *Boundary disputes between India and Pakistan relating to the interpretation of the report of the Bengal Boundary Commission*, Volume XXI, Reports of International Arbitral Awards, 26 January 1950, pp. 1-50.

<sup>30</sup> U.N. General Assembly, *Fifty-fifth session Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of intolerance and of discrimination based on religion or belief*, Situation in Bangladesh: C. Religious situation of the ethnic communities of the Chittagong Hill Tracts, A/55/280/Add.2 (9 August 2000) at paras. 68-73. Para. 69: After Pakistan gained independence in 1947, the region lost that special status, particularly as a result of a constitutional amendment introduced in 1963. The Government authorized and encouraged the settling of non-indigenous populations in the Chittagong Hill Tracts, as well as the transfer of land ownership and other resources to non-indigenous populations. The Government also decided to exploit the hydroelectric potential of the Chittagong Hill Tracts, with the construction of the Kaptai Dam between 1957 and 1963. As a result of this project, a substantial portion of the region's agricultural land (most of which belonged to the Chakma) disappeared, and around 100,000 indigenous people were displaced. Non-governmental sources said that because project rehabilitation measures were inadequate, some 40,000 indigenous people migrated to India at that time. This policy was pursued after Bangladesh gained independence, despite the demands made in 1972 by indigenous people for the restoration of the Chittagong Hill Tracts' special status. From that point onward, land-related conflicts between the indigenous people and the newly arrived Bengalis (virtually all of whom were Muslim, unlike the indigenous population, which was largely non-Muslim) represented a source of conflict with the Government. The military solution chosen by the Government led to violence, especially after 1980, between the armed forces, associated with the new Bengali population, and the indigenous people, especially the organization Chattagram Jana Samhati Samiti (PCJSS) and its armed division, Shanti Bahini.

The various attempts made by the Bangladeshi Government to resolve the conflict ultimately led to the

refugees from government camps in Assam to the North East Frontier Agency (to become the state of Arunachal Pradesh in 1987) and also in other states. At no time were Chakma and Hajong migrants granted Indian citizenship despite the Constitutional provision to accommodate individuals originating from former Undivided India, and despite the Indo-Bangladeshi Treaty of Friendship, Cooperation and Peace of 1972 (effective until March 19, 1997) allowing India to consider citizenship for Chakmas and Hajongs who had entered India before March 25, 1971.

The denial of all forms of citizenship to the CHT tribals has been ongoing and systematic. At its root is the conflicting political authority of the Central Government and the State of Arunachal Pradesh. The Central Government and Indian judiciary have been explicitly receptive in theory whereas Arunachal has failed to exercise active due diligence in practice. Initially India had attempted to integrate the returning refugees. It gave migration certificates in 1964 to the estimated 35,000 Chakmas and 1,000 Hajongs from Bangladesh. The first group relocated to Arunachal Pradesh received five acres of land per family. The 56 families built a social community by developing their land, paying state tax, and forming villages.<sup>31</sup> By 1981 there were 24,083 Chakmas and 1,433 Hajongs in Arunachal Pradesh.<sup>32</sup> By 1991 the total population in the state was 864,558 of which the tribal population was 550,351 or 63.65%. Counting towards the tribal figures were 30,062 Chakmas and 2,134 Hajongs.<sup>33</sup> The 2001 census enumerated around 65,000 Chakmas.

Socio-economic and political discrimination against the Chakmas and Hajongs began when the state of Arunachal Pradesh came into being. Before 1980 the Government had treated all tribes in the region equally with formal terms. Chakmas and Hajongs had access to affirmative action benefits<sup>34</sup> along with other rights even without having specific 'tribal status' as accorded under Article 342 of the Constitution<sup>35</sup> and as granted to Chakmas in Mizoram, Tripura, West Bengal, Assam and Meghalaya. The state government, however, has implemented measures to prevent employment including terminating trade licenses, declining educational and health opportunities including closing schools and hospitals, and blocking the use of ration cards. At a minimum these acts infringe rights to work, education, food, health, development and livelihood. The official state policy

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Peace Accord of 2 December 1997.

<sup>31</sup> South Asia Human Rights Documentation Centre, *The Stateless Hajongs and Chakmas of the Indian State of Arunachal: A Study of Systematic Repression* (October 1997).

<sup>32</sup> Census of India, 1991, Series I Paper-1 of 1993, Union Primary Census Abstract for Scheduled Castes and Scheduled Tribes, p. 13.

<sup>33</sup> *Ibid.*

<sup>34</sup> Rajya Sabha Committee On Petition, One Hundred and Fifth Report, "On the petition signed by Smt. Snehadini Talukdar of Mizoram and Shri Subimal Chakma of Delhi on the Petition pertaining to problems being faced by the Chakma Tribal population in Mizoram and Arunachal Pradesh" (Presented on the 14th August 1997) Rajya Sabha Secretariat, New Delhi, August 1997 <http://www.aitpn.org/StatelessIPs/Rajyasabha.pdf>.

<sup>35</sup> Article 342: Scheduled Tribes- (1) The President may with respect to any State [or Union territory], and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

withdrawing amenities is justified by security concerns in the northeast due to the incursion of disruptive foreign interests and illegal migration. In addition there is a widespread belief in a Chakma propensity to antisocial and criminal behaviour.<sup>36</sup> However, this treatment has developed into institutionalised discrimination by not distinguishing in application between the original Chakma and Hajong migrants from Bangladesh on the one hand and India-born successors on the other hand. It is reinforced even more by judicial decisions as in the Supreme Court ruling *State of Arunachal Pradesh v. Khudiram Chakma*.<sup>37</sup> This case hinged on the citizenship qualification under Section 6-A(2) of the Indian Citizenship Act. The Court held that the 57 families that had re-entered India in 1964 were not citizens under Section 6-A(2) since they had not been ordinarily resident in Assam but in Arunachal. The Court's judgment did not use the fact that the Chakmas and Hajongs were relocated from government camps in Assam to the North East Frontier Agency, which was constitutionally a territory of Assam until 1972 when it was recognized as a Union Territory from which it became the State of Arunachal Pradesh in 1987. This slim reasoning was financially disadvantageous to the families since in 1954 they had arranged to buy private lands for settlement instead of occupying the land allotted by the Government of India. The State Government fruitfully contested the transactions on the grounds that only citizens could purchase Arunachal land and the Foreigners Order of 1948 defines non-citizens as 'foreigners'. The Supreme Court's consent denied nationality or permanent residence status for the respondents.

A more liberal and humane departure<sup>38</sup> from *Khudiram* is the 1996 landmark judgment of *National Human Rights Commission v. State of Arunachal Pradesh*.<sup>39</sup> The Supreme Court emphasised afforded protection under the umbrella of Article 21 and expressly phrased the State's duty to protect the life and liberty of all human beings in India. It delegated responsibility to Arunachal Pradesh to protect its Chakma and Hajong populations from organized political groups that use physical threats and other intimidation as expulsion tactics.<sup>40</sup> Arunachal's liability also arose from India's international law obligations. India has signed the ICCPR, ICESR, the International Convention on the Elimination of all Forms of Racial Discrimination, 1966, and the Convention for the Elimination of all Forms of Discrimination Against Women, 1979.<sup>41</sup> The Supreme Court declared:

“The traditional view of the Indian judiciary on the application of general Norms of international law as well as India's treaty obligations on the Fundamental Rights chapter of the Indian Constitution was that treaties do not create rights in municipal law unless they are specifically incorporated. However, India's jurisprudence on treaties *has evolved to now require* the general norms of international law be respected and incorporated into the Fundamental Rights chapter of the Indian Constitution *even if not ratified* by India, where the principles or norms are such that they are deserving of universal application, especially in relation to human rights-enhancing

<sup>36</sup> Government of Arunachal Pradesh, “White paper on Chakma and Hajong Refugee Issue” (Itanagar, 12 March 1996).

<sup>37</sup> *State of Arunachal Pradesh v. Khudiram Chakma* 1994 Supp (1) SCC 615.

<sup>38</sup> Sanjay Parikh, “Refugees In The International And National Framework” [2001] 16 ISIL Year Book of International Humanitarian and Refugee Law.

<sup>39</sup> *National Human Rights Commission v. State of Arunachal Pradesh* (1996) 1 SCC 742. See note 13 above.

<sup>40</sup> *Ibid.*, para. 20.

<sup>41</sup> *Ibid.*, paras. 28-30.

provisions of international conventions *even where they have not been specifically incorporated into Indian law by legislation.*

It is now generally well settled that treaty obligations which are rights-enhancing are to be read as part of the life, liberty and due process provision.<sup>42</sup>

To compensate for the non proactive view of *Khudiram* the Court instructed Arunachal Pradesh not to evict the Chakmas from their homes nor deny domestic life and comfort except in accordance with law. Moreover, it ordered the state to process the citizenship applications made under Section 5(1)(a) of the Citizenship Act by Chakmas who migrated between 1964 and 1969, but this judgment has not been implemented. The inciting of forced evictions continues, while the state prolongs the economic blockade and also the denial of free and compulsory educational facilities for children up to fourteen years of age.<sup>43</sup> Even those who should be citizens by birth under Section 3(1)(a) of the Citizenship Act lack franchise despite the efforts of the Electoral Commission of India<sup>44</sup> and despite a Delhi High Court Order to direct Arunachal electoral officials to include people born from 26 January 1950 to 1 July 1987 on the voting rolls.<sup>45</sup>

Apart from these treaty obligations, the Executive, Constitutional, and Judicial intent has been that Chakmas and Hajongs be full fledged Indian citizens. However the Government of India has been delinquent in letting successive state Governments thwart this intent.

The result of these collective violations is economic marginalization and exclusion. Deliberate bars to the entitlement of a livelihood block the process of realizing the rights to social and economic justice as a fundamental right.<sup>46</sup> Forced evictions and displacements have lead to resettlement in substitute government shelters which severely constrain access to limited economic opportunities.

The camps are so cramped that villagers who were initially able to save their livestock were later forced to abandon them. For instance, one girl said, “*We let our cattle loose because we did not have a place in the camp to keep them.*”<sup>47</sup>

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<sup>42</sup> Ibid., paras. 30-32. Emphasis added.

<sup>43</sup> The right to knowledge for children through education is a right to life. Article 45 of the Constitution: Provision for free and compulsory education for children- “The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

See *Bandua Mukti Morcha v. Union of India*, AIR 1984 SC 802 and *Unni Krishnan v. State of Andhra Pradesh and Ors.* 1993 SCC (1) 645.

<sup>44</sup> Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh, “A Submission to the Chairman of National Human Rights Commission of India, Justice J. S. Verma on Non-implementation and violation of the Supreme Court Judgment of 9 January 1996 in the case of *NHRC v. State of Arunachal Pradesh & Anr* (720/1995) and the present plight of the Chakmas and Hajongs of Arunachal Pradesh” (16th December 2002).

<sup>45</sup> PUCL and CCRCAP v. Election Commission of India, Judgment of Delhi High Court (28 September 2000) in Civil Writ Petition No. 886 of 2000. See also Asian Centre for Human Rights, *South Asia Human Rights Index 2008*, (New Delhi, 2008) p. 120.

<sup>46</sup> *Samatha v. State of Andhra Pradesh* AIR 1997 SC 3297 at para. 79 (citing *C.E.S.C. Ltd. & Ors. v. S.C. Bose & Ors.* [1992] (1) SCC 441 at 462-463 at para 30).

<sup>47</sup> Human Rights Watch, “Being Neutral is Our Biggest Crime” Government, Vigilante, and Naxalite Abuses in India’s Chhattisgarh,” July 2008, ISBN: 1-56432-356-0, p. 73.

By depriving adults to livelihoods and children of educational rights or a physically secure school environment,<sup>48</sup> both the Central and state Governments harm the social, economic, and political interests of existing and future generations. Discrimination in access to education, even when some sort of facility is provided,<sup>49</sup> is segregation if it is on unequal terms. A comparison can be made with a student whom a school seats in a separate classroom for religious reasons as its condition for enrollment and to whom it arbitrarily gives less course material to learn.<sup>50</sup> The student is being isolated from fair participation rather than being accommodated. School age Chakmas and Hajongs are similarly segregated by the state policies that are structured along ethnic, cultural, societal and other lines to exclude them.

The State's actions are illegal. They defeat the concept of economic citizenship. However, states are answerable to the courts which continue to centre their analysis on the state's responsibilities and accountabilities as precedent has defined. The Delhi High Court emphasized this fact in *Manjit Singh Sawhney v. Union of India*.

“Article 21 is the Nation's commitment to bring every individual or group of persons within its protective fold. This Nation belongs to members of all the communities. They are equal members of the Indian society. Equality before law and equal protection of laws is ensured to them by Article 14 of the Constitution. None is to be favoured or discredited. The conduct of any person or group of persons has to be controlled by the State for the lofty purpose enshrined in Article 21 of the Constitution. It is the duty of the State to create a climate where the cleavage between members of the society belonging to different faiths, caste and creed are eradicated. The State must act in time so that the precious lives of the people are not destroyed or threatened. Otherwise, Article 21 will remain a paper guarantee. Time is long overdue for adopting measures that have more than a hortatory effect in enforcing Article 21 of the Constitution. The State cannot adopt a do nothing attitude.”<sup>51</sup> The court echoed *National Human Rights Commission v. State of Arunachal Pradesh* reminding the latter that Article 21 cannot be violated or interfered with by private individuals.<sup>52</sup>

The Government of India has been in breach of International Treaty Law under the UDHR, ICESCR, ICCPR, and the Indo Bangladesh Treaty of Friendship, Cooperation and Peace (1972). It also has not discharged its constitutional obligations towards Chakmas and Hajongs. As a result, it has probably incurred liability under Indian law both for the breach of International Treaty Law and for delinquency in its constitutional obligations. Its liability for violations of International Law also need to be tested in the international fora.

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<sup>48</sup> Human Rights Watch, “Dangerous Duty: Children and the Chhatisgarh Conflict,” September 2008, 1-56432-374-9, p. 7.

<sup>49</sup> Ibid.

<sup>50</sup> R (Watkins-Singh) v Aberdare Girls' High School [2008] EWHC 1865 (Admin) at para. 128.

<sup>51</sup> *Manjit Singh Sawhney v. Union of India Writ Petition (Civil) No.2338/2001 H.C.* at para. 10

<sup>52</sup> Ibid., para. 9. The Supreme Court pronounced that Intolerance is utterly incompatible with democratic values in *Maqbool Fida Husain v. Raj Kumar Pandey CRL. Revision Petition No.114/2007, Judgment of 5 August 2008* at para. 14.

## CASE STUDY TWO: ECONOMIC CITIZENSHIP RIGHTS FOR NON RESIDENT INDIANS AND PERSONS OF INDIAN ORIGIN

The Indian diaspora has at least 25 million members consisting of Indian expatriates and citizens of other countries. In economic terms, these 25 million earn outside the country the equivalent of two-thirds of India's GDP while its remittances represent 3.08%.<sup>53</sup> PIOs, and PIO card holders and OCIs do not need Indian citizenship as a pre-requisite to be considered economic citizens. The status granted by a PIO card or Overseas Citizenship enables the holder to work or to trade or invest in India. Because the documents deny holders political rights, citizenship is confined to market exchange.

In making certain benefits accessible to NRIs and PIOs and OCIs, the focus of the Government of India has become more concrete over the last decade. It wishes the world's second biggest diaspora to contribute economic, social or technological inputs<sup>54</sup> to India's economic development. NRIs and PIOs have always given monetary support to the Indian economy. Indeed, this is their main expressed reason for exiting India. Emigrants by and large are economic migrants remitting money to relatives or to social philanthropic organisations.

Flows of transnational migration date from the early nineteenth century triggered by unemployment due to the destruction of village livelihoods and cottage industries. 'Incentives' included indentured migration to other colonial territories. By the early twentieth century the British were running oil companies in the Middle East and sought most of their clerical and technical staff from India. By 1939 in the Bahrain Petroleum Company, Indians made up 94.3% of the total clerical and technical employees and 91.1% of the total artisans, and by 1947 they remained 85.6% of total clerical, foreman and technical staff.<sup>55</sup> In 1950 there were at least 8,000 Indian oil employees stationed in the Gulf.<sup>56</sup> After Indian Independence, both skilled and unskilled workers left India for the Arabian Gulf, other Asian countries, and the West. While individuals also left India for political reasons in the last century as refugees from British rule and later from the Republic of India, their economic and cultural ties have often been sustained.

Today the leading magnets of employment for emigrants are the United Arab Emirates, Saudi Arabia, United States, Bangladesh, Nepal, United Kingdom, Sri

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<sup>53</sup>Vinod K. Goel, Carl Dahlman, and Mark A. Dutz, "Chapter 3: "Diffusing and Absorbing Knowledge"" in *Unleashing India's Innovation, Toward Sustainable and Inclusive Growth*, Mark A. Dutz, Editor, The World Bank, Washington D.C. (2007) ISBN: 978-0-8213-7197-8, p. 91 (citing Kuznetsov, Y. 2006. "Radical Transformation, Step-by-Step: Inside-Out Reform of India's Innovation System." Background paper commissioned by South Asia Finance and Private Sector Development, World Bank, Washington, DC.).

<sup>54</sup> Ministry of External Affairs, Foreign Secretary's Office, "Order of the Government of India to Appoint A High Level Committee on the Indian Diaspora" (18 August 2000) at <http://indiandiaspora.nic.in/contents.htm>. Non-Resident Indians Policy Document at <http://www.oifc.in/pdf/Overseas%20Indians%20Policy.pdf>

<sup>55</sup> S.K. Sasikumar, "International Labour Migration From Independent India," NLI Research Studies Seminar 022/2001, V.V. Giri National Labour Institute, Noida (2001) (citing I.J. Seccombe and R.I. Lawless (1986), "Foreign Worker Dependence in the Gulf and the International Oil Companies: 1910-50," *International Migration Review*, Vol. XX, No. 3 and Myron Weiner, (1982), "International Migration and Development: Indians in the Persian Gulf," *Population and Development Review*, Vol. 8(1), March, pp. 1-36).

<sup>56</sup> Ibid.

Lanka, Canada, Kuwait, and Oman.<sup>57</sup> It should be understood that NRIs and PIOs do not automatically receive citizenship in their transplanted countries; nor are future generations guaranteed citizenship rights there by birth. Where an immigrant may be eligible, he or she will have to satisfy a time period of legal residence requirements before applying for naturalisation. NRIs, in contrast, are not immigrants. They retain Indian citizenship and can be considered an uncertain variant of economic citizens in countries outside India. They have variably truncated economic rights and security of residence. The NRI breadwinner in a host state may either be accompanied by their immediate family in their country of residence, or live separately and support the family which remains in India. NRIs working outside India are regarded legally as temporary guest workers. Their families are guest residents, including their offspring born in places like Singapore or the Middle East. Such children are PIOs but not Indian citizens until their registration procedures are completed.

Before 1992, the Indian economy claimed a current account surplus and foreign exchange reserves that were built specifically from remittances earned by Indians abroad. However, NRIs are susceptible to the financial and political insecurities of residing abroad unless they are tangibly assured of legitimate legal protection by the host state and their Government. One response has been to transfer funds to India in the event of economic risk, as during the 1991 Gulf War - which also demonstrated the lack of confidence that NRIs can have at times in the Indian economy itself. In 1990-1991 remittances formed 0.7 % of India's GDP.<sup>58</sup> While many individuals in the Gulf States moved funds rapidly to India during the build-up to the War in August 1990, others both there and around the world withdrew about \$2 billion from NRI bank accounts.<sup>59</sup> The outward cash flow adversely affected the Indian economy afflicted by a balance of payments deficit aggravated by the repatriation of almost 160,000 Gulf Indians.<sup>60</sup> Since the first Gulf War remittances have been stable. In 2000 remittance flows were \$12.89 billion,<sup>61</sup> and in 2003-2004 based on Reserve Bank of India figures the amounts were \$20 billion<sup>62</sup> and \$ 24.1 billion in 2005-2006<sup>63</sup> and \$27 billion in 2007.<sup>64</sup> Minus the net outflow, about 13% (\$3.25 billion) of the 2006 funds were invested in equity and real estate, 20% placed in bank deposits (\$5 billion), and 54% (\$13.5 billion) forwarded for family expenses and charitable purposes. The World Bank ranks India as the world's highest recipient of remittances since 2002.

<sup>57</sup> Migration and Remittances Factbook 2008, (World Bank, March 2008).

<sup>58</sup> Muzaffar Chisti, "The Rise In Remittances To India: A Closer Look," Migration Policy Institute, February 2007.

<sup>59</sup> Reserve Bank of India Annual Report, 2005 /06. Sunanda K. Datta-Ray, "Idea behind non-resident jamboree expecting too much from the diaspora," *The Tribune*, January 20, 2003.

<sup>60</sup> Ravi Srivastava and S.K. Sasikumar, "An Overview of Migration in India, Its Impacts and Key Issues," Migration Development Pro-Poor Policy Choices In Asia, 2003 (citing S.K. Sasikumar, "Trends, Pattern and Characteristics of Indian Labour Migration to the Middle East During the Twentieth Century," (1995a) *Indian Journal of Labour Economics*, 38(2).

<sup>61</sup> Dilip Ratha, Sanket Mohapatra, K. M. Vijayalakshmi, Zhimei Xu, "Remittance Trends 2007," Migration and. Development Brief 3, November 2007 (World Bank).

<sup>62</sup> Reserve Bank of India Annual Report, 2005 /06.

<sup>63</sup> Ministry of Finance, Government of India (2007), Economic Survey 2006-2007, New Delhi.

<sup>64</sup> Dilip Ratha, Sanket Mohapatra, K. M. Vijayalakshmi, and Zhimei Xu, "Remittance Trends 2007,"

Migration and. Development Brief 3, November 2007 (World Bank).

However, there is a need to acknowledge that the full potential of remittances derivable from the Arabian Gulf and other parts of the world is unfulfilled due to the incomplete local citizenship of the immigrants. The migrant Indian labour force endures violations of local labour standards that render it insecure and lower the returns to work. The Ministry of Overseas Indian Affairs (MOIA) is aware that social and legal structures abroad may condone work conditions where illegal migrants are hired on adverse terms, or where even for legal migrants salaries may be delayed or relinquished, employment may be terminated arbitrarily, unilateral changes may be made in employment contracts, employment and living conditions may be unfair or substandard, and previous conditions by the employer are not honoured e.g. financing the air return to India when employment ends.<sup>65</sup> In the Arab States manual and domestic workers (and even some more knowledge-based employees) are particularly vulnerable. A study of emigrant workers in the United Arab Emirates records that one main reason why workers are forced to return to India is because their monthly salaries are late or permanently delayed.<sup>66</sup> So, in addition to the income loss of uncompensated workers which otherwise would be transformed into remittances, the Indian Government is disadvantaged since its diplomatic resources become depleted due to duties under the 1983 Emigration Act.<sup>67</sup>

The Ministry of Overseas Affairs reports in 2007:

“Such workers, besides suffering untold personal misery, also stretch the resources of our Missions. In such instances, the Protector General of Emigrants (PGE) gets the concerned Recruiting Agents (RA) to repatriate the worker at his expense. If he fails to do this, his Bank Guarantee is forfeited and the amount utilized to pay for the repatriation expenses. Complaints against foreign employers are taken up with the Indian Missions and if need be the employer is blacklisted.”<sup>68</sup>

Laws have been enacted to protect overseas labour against exploitative deployment practices. The Emigration Act attempts to regulate employment conditions by setting minimum employment standards; verifying employment contracts; regulating recruitment by licensing the agents; issuing emigration clearances for certain categories of emigrants, especially those considered less able to protect their own interests; and handling public grievances related to the violation of employment contracts and abusive recruitment practices. The Act is not always well-enforced. In practice, recruitment agencies can charge excessive placement fees which an applicant may finance by selling his or her assets or by borrowing. The conditions of recruitment render them vulnerable if the migrant lacks further funds or is still prone to debt until the job begins and he or she builds income. Where a recruitment agent takes payment but does not guarantee

<sup>65</sup> Ministry of Overseas Indian Affairs, *Issues Relating to Overseas Indians*, Fourteenth Report Lok Sabha Secretariat, New Delhi, February, 2007/Phalgun, 1928 (Saka) at para. 2.10. <http://164.100.24.208/ls/CommitteeR/External/14rep.pdf>

<sup>66</sup> K.C. Zachariah, B.A. Prakash (Centre for Development Studies), and S. Irudaya Rajan, “Gulf migration Study: Employment, Wages and Working Conditions of Kerala Emigrants in the United Arab Emirates,” Centre for Development Studies, Thiruvananthapuram (March 2002), pp. 60-61.

<sup>67</sup> Ministry of Overseas Indian Affairs, *Issues Relating to Overseas Indians*, Fourteenth Report Lok Sabha Secretariat, New Delhi, February, 2007/Phalgun, 1928 (Saka) at para. 2.10. <http://164.100.24.208/ls/CommitteeR/External/14rep.pdf>

<sup>68</sup> Ibid.

deployment because of work visa obstacles or their own dishonesty, the migrant worker or would-be migrant receives little protection as an economic citizen.

These contexts also give an insight into the psychological difficulties of achieving economic and social rights and becoming an economic citizen. At an individual level the desire to be an economic citizen is a requirement for one's survival. In social terms, in order for the individual to implement the right to life as it is understood by Marshall's definition of the social rights of an economic citizen, it is necessary to be economically independent. Marshall writes:

“Social rights are the right to defend and assert all of one's rights on the same terms as other members of society and by due process of law. They relate to the “whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society.”<sup>69</sup>

So, the financial status and security of economic migrants, and in turn the terms and conditions under which they contribute as economic citizens of India depend largely on their acceptance by the host country. Their degree of acceptance affects the integration of the Indian worker through the psychological reassurance of their social rights. To illustrate, the Indian population in Germany is economically well-placed and politically well-represented. It dates from the late 1960s when nurses from Kerala took employment. By December 2006 it numbered 41,497.<sup>70</sup> There were at least 40,000 NRIs and between 10,000 to 20,000 PIOs.<sup>71</sup> After 2000 the size of the diaspora swelled with the entry of 5,300 IT specialists under the German Government's Green Card Program. Yet the adaptation to the host environment can be difficult. Obstacles include language and culture, bureaucracy, discrimination and racism, together with problems of the second generation.<sup>72</sup> These factors, though, are not limited to Germany. Similar experiences have been reported in other parts of the world.<sup>73</sup> The global diaspora's success, then, in counteracting these obstacles to livelihoods determines the diaspora's economic worth as a whole.

The value of economic citizenship to India of NRIs and PIOs can depend on how economic status is perceived. High income individuals are acclaimed by the home country while less successful others may not be.<sup>74</sup> The diaspora is perceived as a collective body. It is as a collective body that the diaspora is seen as acting as economic citizens through their investments, through building foreign exchange reserves, purchasing 'diaspora' bonds for development finance, and real estate.<sup>75</sup> Indian migrants abroad also support the Indian economy indirectly, integrating

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<sup>69</sup> T. H. Marshall, *Citizenship and Social Class and other Essays* (Cambridge: Cambridge University Press, 1950). Extract in J. Allen, P. Brahm, and P. Lewis (eds), *Political and Economic Forms of Modernity*, Cambridge Polity Press, 1992, pp. 218-219.

<sup>70</sup> Pierre Gottschlich, “The Indian Diaspora in Germany,” CSID Occasional Paper No. 9 (2008), p. 2.

<sup>71</sup> *Ibid.*, p. 1.

<sup>72</sup> *Ibid.*, p. 2.

<sup>73</sup> Clarke, Colin, Ceri Peach, and Steven Vertovec, (eds.), *South Asians Overseas: Migration and Ethnicity* (Cambridge: Cambridge University Press, 1990). Steve Raymer, *Images of A Journey: India in Diaspora*, (Indiana University Press, 2007).

<sup>74</sup> M.C. Lall, *India's Missed Opportunity: India's Relationship with Non Resident Indians* (Hampshire, England: Ashgate, 2001).

<sup>75</sup> *Atma S. Berar v. Mukhtiar Singh* (2003) 2 SCC 3.

their retained cultural practices into the host culture. The Ministry of Overseas Indian Affairs notes the impact of the UK diaspora as follows:

*“The Indian diaspora in UK has played a major role in influencing general consumption and cuisine patterns in that country. The growing consumption of basmati rice in the UK by the diaspora is a key driver of Indian basmati rice exports. Such consumption patterns also affect consumer patterns among local communities. An example is the almost universal popularity of Indian curry in the UK.”*<sup>76</sup>

In other words, the trend in favour of rice consumption is because of a growing willingness by the general population to accommodate global food styles.<sup>77</sup> This is not a trivial social change. The Agricultural and Processed Food Products Export Development Authority (APEDA) places India as an exporter of 53% of the world’s basmati rice, while the UK is the largest buyer in the EU. As a growing supply for the consumer market, basmati could outdo demand for long grain rice, with UK sales rising by 12% per year.<sup>78</sup>

## CONCLUSION

India grants economic citizenship without full political and social rights to some categories of Indians abroad and formally and informally denies economic citizenship to political citizens living on Indian territory.

NRIs, PIOs, and OCIs have provided significant resources for the Indian economy. The Government of India has proactively focused on their physical security and the protection of their financial assets in India. The procedures established for registration as PIOs and OCIs are simple, rapid, and relatively transparent. Economically privileged Indians have been treated preferentially as they are an asset to the Indian economy. The privileges granted to them are additional perks to people who, by and large, already have financial security.

In contrast, the Chakmas and Hajongs, for whom access to livelihoods is a matter of physical survival, have not been treated with the same focused legislative and administrative protection of their rights. In the process, the country has lost the input to the Indian economy from the human capital these long-term residents and their children could have provided had they been granted the full economic, social and political rights of citizenship. Additionally, by its inactivity the Central Government has probably incurred serious liability under its own laws and under the Indian Constitution.

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<sup>76</sup> Ministry of Overseas Indian Affairs, *Issues Relating to Overseas Indians*, “Chapter 29 Economic Development (Investment, International Trade, Industrial Development and Tourism),” Fourteenth Report Lok Sabha Secretariat, New Delhi, February, 2007/Phalgun, 1928 (Saka) at para. 29.12. <http://164.100.24.208/ls/CommitteeR/External/14rep.pdf>

<sup>77</sup> Prisana Suwannaporn, and Anita Linnemann, “Rice Grain Preference Countries,” (2008) *Journal of Sensory Studies* 23 (1), p. 3.

<sup>78</sup> UK Food Standards Agency, (47/04) March 2004 Survey On Basmati Rice, p. 2.

## APPENDIX

## ICESR

<b>Article 1</b>	1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural <i>development</i> . 2. All peoples may, for their own ends, <i>freely dispose of their natural wealth and resources without prejudice</i> to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. <i>In no case may a people be deprived of its own means of subsistence.</i>
<b>Article 2</b>	1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially <i>economic</i> and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, <i>including</i> particularly the adoption of legislative measures. 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised <i>without discrimination of any kind</i> as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
<b>Article 3</b>	The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of <i>all economic, social and cultural rights set forth in the present Covenant.</i>
<b>Article 7</b>	The States Parties to the present Covenant <i>recognise the right of everyone to the enjoyment of just and favourable conditions of work</i> which ensure, in particular: a) Remuneration which provides all workers, as a minimum, with: i) Fair wages and 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; ii) <i>A decent living for themselves and their families</i> in accordance with the provisions of the present Covenant;
<b>Article 11</b>	1. The States Parties to the present Covenant recognise the right of everyone to an <i>adequate standard of living for himself and his family</i> , including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognising the <i>fundamental right of everyone</i> to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed.
<b>Article 12</b>	The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the <i>highest attainable standard of physical and mental health.</i>
<b>Article 13</b>	1. The States Parties to the present Covenant recognise the <i>right of everyone to education</i> . They agree that education shall be directed to <i>the full development of the human personality and the sense of its dignity</i> , and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to

	<p><i>participate effectively in a free society</i>, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.</p> <p>2. The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right: a) Primary education shall be compulsory and available free to all;</p>
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### ICCPR

<b>Article 1</b>	<p>1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their <i>economic, social and cultural development</i>.</p> <p>2. All peoples may, for their own ends, <i>freely dispose of their natural wealth and resources without prejudice</i> to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. <i>In no case may a people be deprived of its own means of subsistence.</i></p>
<b>Article 2</b>	<p>1. Each State Party to the present Covenant undertakes to respect and to ensure to <i>all individuals within its territory</i> and subject to its jurisdiction the rights recognized in the present Covenant, without <i>distinction of any kind</i>, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, <i>in accordance with its constitutional processes</i> and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.</p>
<b>Article 3</b>	The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of <i>all economic, social and cultural rights set forth in the present Covenant</i> .
<b>Article 5</b>	<p>1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.</p> <p>2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.</p>
<b>Article 6</b>	1. Every human being has the inherent <i>right to life</i> . This right shall be protected by law. No one shall be arbitrarily deprived of his life.
<b>Article 9</b>	1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
<b>Article 17</b>	<p>1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.</p> <p>2. Everyone has the right to the protection of the law against such interference or attacks.</p>
<b>Article</b>	The family is the natural and fundamental group unit of society and is

<b>23</b>	<i>entitled to protection by society and the State.</i>
<b>Article 24</b>	<p>1. Every child shall have, <i>without any discrimination</i> as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.</p> <p>2. Every child shall be registered immediately after birth and shall have a name.</p> <p>3. Every child has the <i>right to acquire a nationality</i>.</p>
<b>Article 25</b>	<p>Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:</p> <p>(a) <i>To take part in the conduct of public affairs, directly or through freely chosen representatives;</i></p> <p>(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;</p> <p>(c) To have access, on general terms of equality, to public service in his country.</p>
<b>Article 26</b>	<p>All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, <i>national or social</i> origin, property, birth or other status.</p>
<b>Article 27</b>	<p>In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.</p>

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