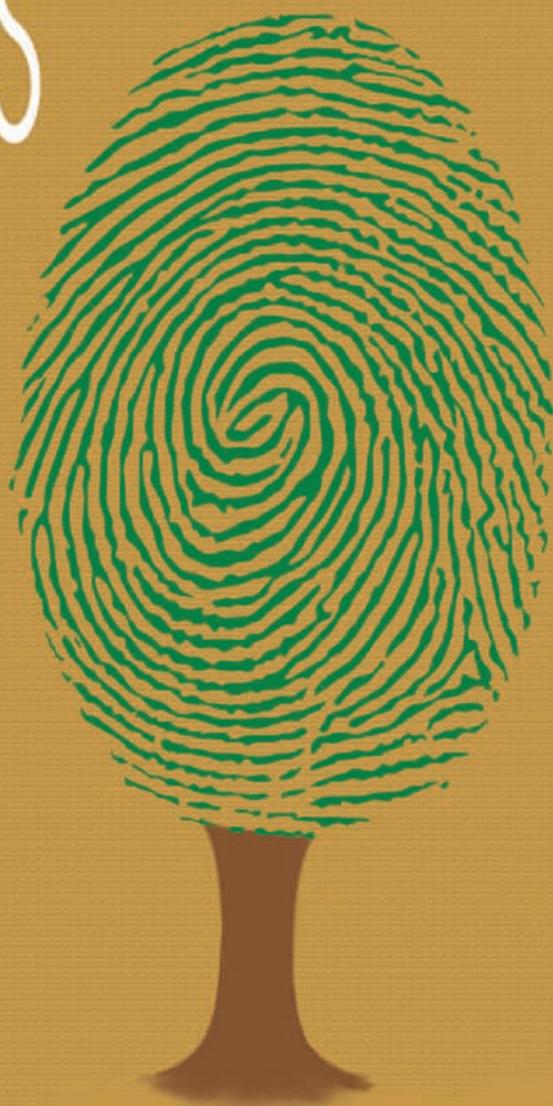


SUSTAINABILITY OF
RIGHTS
AFTER
GLOBALISATION



Edited by

Sabyasachi Basu
Ray Chaudhury

Ishita Dey



Sustainability of Rights after Globalisation

Thank you for choosing a SAGE product! If you have any comment, observation or feedback, I would like to personally hear from you. Please write to me at contactceo@sagepub.in

—Vivek Mehra, Managing Director and CEO,
SAGE Publications India Pvt Ltd, New Delhi

Bulk Sales

SAGE India offers special discounts for purchase of books in bulk. We also make available special imprints and excerpts from our books on demand.

For orders and enquiries, write to us at

Marketing Department

SAGE Publications India Pvt Ltd

B1/I-1, Mohan Cooperative Industrial Area

Mathura Road, Post Bag 7

New Delhi 110044, India

E-mail us at marketing@sagepub.in

Get to know more about SAGE, be invited to SAGE events, get on our mailing list. Write today to marketing@sagepub.in

This book is also available as an e-book.



Sustainability of Rights after Globalisation

Edited by

Sabyasachi Basu Ray Chaudhury
Ishita Dey



www.sagepublications.com
Los Angeles • London • New Delhi • Singapore • Washington DC

Copyright © Mahanirban Calcutta Research Group, 2011

All rights reserved. No part of this book may be reproduced or utilised in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage or retrieval system, without permission in writing from the publisher.

First published in 2011 by



SAGE Publications India Pvt Ltd
B1/I-1 Mohan Cooperative Industrial Area
Mathura Road, New Delhi 110 044, India
www.sagepub.in

SAGE Publications Inc
2455 Teller Road
Thousand Oaks, California 91320, USA

SAGE Publications Ltd
1 Oliver's Yard, 55 City Road
London EC1Y 1SP, United Kingdom

SAGE Publications Asia-Pacific Pte Ltd
33 Pekin Street
#02-01 Far East Square
Singapore 048763

Published by Vivek Mehra for SAGE Publications India Pvt Ltd, Typeset in 10/12 Palatino Linotype by Tantla Composition Pvt Ltd, Chandigarh and printed at Chaman Enterprises, New Delhi.

Library of Congress Cataloging-in-Publication Data

Sustainability of rights after globalisation/edited by Sabyasachi Basu Ray Chaudhury, Ishita Dey.

p. cm.

Includes bibliographical references and index.

1. Natural resources, Communal—India—Management. 2. Commons—India—Case studies. 3. India—Politics and government. 4. Globalisation—Social aspects. 5. Globalisation—Political aspects. I. Basu Ray Chaudhury, Sabyasachi. II. Dey, Ishita, 1982—

HD1289.I5S87

330—dc23

2011

2011019405

ISBN: 978-81-321-0640-1 (HB)

The SAGE Team: Elina Majumdar, Sonalika Rellan, Mathew P.J. and Deepti Saxena

Note: This volume is an outcome of a research programme supported by the Indian Council of Social Science Research (ICSSR). The support of the ICSSR is kindly acknowledged. The views expressed here are of the authors and editors.

CONTENTS

<i>List of Tables and Figures</i>	vii
<i>Acknowledgements</i>	ix
<i>Introduction by Ishita Dey</i>	xi

Section I: Environmental Justice and Rights

1. How Equal Is Common? Common Property Resources and Local Institutions <i>Suha Priyadarshini Chakravorty</i>	3
2. Forest Rights Act and Polemics of Correcting Historical Injustices <i>Madhuresh Kumar</i>	31

Section II: Law and Information in a Globalising World

3. Globalisation and Justice: Fait Accompli or Choice <i>Ashok Agrwaal</i>	59
4. Right to Information as a Means of Mass Persuasion <i>Sabyasachi Basu Ray Chaudhury</i>	90
5. Globalisation and Right to Information <i>Sibaji Pratim Basu</i>	114

Section III: Globalisation and Labouring Lives

6. Labour Out-flow and Labour Rights <i>Swati Ghosh</i>	145
7. Negotiating Rights: The Case of a Special Economic Zone <i>Ishita Dey</i>	177
8. Globalisation, Rights and Economics: Jean Drèze in Conversation with Ranabir Samaddar	206

Postscript

Rights after Globalisation	213
<i>Ranabir Samaddar</i>	
<i>Bibliography</i>	238
<i>About the Editors and Contributors</i>	250
<i>Index</i>	252

LIST OF TABLES AND FIGURES

Tables

2.1	A Conservative Estimate of the Number of Total Persons Displaced and Tribals Displaced by Developmental Schemes 1951–1990 in India (in lakhs)	44
4.1	RTI Petitions Received during 2006–2007	102
5.1	RTI Performance of West Bengal vis-à-vis Other States	135
5.2	Country Rankings According to Their Transparency	138
6.1	Distribution of Respondents by Type and Location of Informal Industries in the Districts of Howrah and Hooghly	154
7.1	Employment Status in Falta SEZ	194

Figures

1.1	Linkages and Zones of Political Manoeuvre	7
4.1	Overall Profile of Appellants during 2006–2007	102

ACKNOWLEDGEMENTS

This publication is an outcome of the research programme on 'Globalisation and Sustainability of Rights' conducted by the Calcutta Research Group. The present body of work is a result of a one-and-a-half year long research and dialogue on various concerns of globalisation and its interface with rights. This work builds and expands on our previous work on rights and globalisation, where the main objective was to engage with the notions of 'justice', 'rights', 'welfare', 'vulnerabilities' and 'marginalisation' in the contemporary globalising time, thereby linking international norms to the issue of dignity and justice in our lives. The present volume, through a combination of microhistories, legal analyses and policy critiques, examines the ways in which the process of negotiating rights has undergone a change in recent times.

This participatory and collective research could not have been carried out without the support and advice of Itty Abraham, Ashok Agrwaal, T.C.A. Anant, Pradeep Bhargava, Sharit Bhowmik, Bhupinder Brar, Partha Chatterjee, Sanjay Chaturvedi, Samir Kumar Das, Kalpana Kannabiran, Soumen Nag, Dipankar Sinha and Virginius Xaxa. Their valuable suggestions helped the authors and editors of this volume to chisel their ideas in finer ways and to enrich the essays. Therefore, we remain grateful to all of them. We would like to thank Jean Drèze, whose views on globalisation and rights, in light of the essays, have enriched the volume. This work could not have taken this form without the constant support, encouragement and criticism of Ranabir Samaddar. It was in his company that every issue was discussed, debated and clarified. We especially thank him. We also thank our colleagues, Paula Banerjee, Anasua Basu Ray Chaudhury, Supurna Banerjee, Sutirtha Bedajna, Suha Priyadarshini Chakravorty, Geetisha Dasgupta and Sucharita Sengupta for helping us in various ways in preparing this volume. We would like to thank Samaresh Guchhait for

designing the web segment of the research programme. We also thank our administrative and accounts department, particularly Ratan Chakraborty, Manjari Chatterji, Ashok Kumar Giri and Raj Kumar Mahato for their co-operation and assistance.

This work has been possible due to the support of the Indian Council of Social Science Research (ICSSR). We would like to thank the then chairperson, Javeed Alam, and other members of ICSSR. We would also like to put on record our thanks to the ICSSR office, in particular G. S. Saun, for constant advice and support that facilitated the research programme. We thank the members of the mid-term appraisal team: R.S. Deshpande, Vasanthi Raman, and Chairman of the Appraisal Team, Apurba Kumar Baruah, in particular, whose suggestions and recommendations helped us in improving the papers. We are thankful to them. We also thank all the contributors of this volume.

Sabyasachi Basu Ray Chaudhury
Ishita Dey

INTRODUCTION

ISHITA DEY

The present volume examines the interface between globalisation and rights, and provides a new way to understand the constitution of 'rights' through various microhistories drawn from the field of environmental rights, law, information and labour studies in India. While the present body of work draws upon the existing studies on 'globalisation', particularly its political impact, the main aim of this volume, however, is to examine the way in which the question of rights has been reconfigured in a post-colonial democracy, such as India, in face of the particular dynamics of power emanating from a nexus of political and economic institutions caught in the web of globalisation, with some of them deeply implicated in the latter.

Studies of globalisation have indicated the interdependence of market forces, the state and neo-liberal economic policies, with their adverse effect on people's livelihoods. Erosion of rights and continuous marginalisation of sections of population—be it the indigenous groups or other sections—are also the standard themes in these studies. The gap that exists in these works is in the form of a lack of appreciation of the relation and interface between these two different ideas, which have been customarily treated as two separate entities. This body of work brings together the concerns and issues from studies on 'globalisation' and those on 'human rights' in order to examine how the rights language has been re-negotiated in the past 20 years.

Limits of Globalisation: Scenario of Edges

Mobility of capital, resources, subjects, images and ideologies has been the key to understand the social and economic processes of globalisation that have produced interconnectedness between different spaces and time. According to J.X. Inda and R. Rosaldo (2002) globalisation 'is a world of motion where capital traverses frontiers almost effortlessly drawing more and more places into its dense networks of financial interconnections'. They also argue that there are limits to mobility and the very processes that produce movement and linkages also promote immobility, marginality and exclusion. One of the concerns that emanates from this is that the market forces are destroying community and social solidarity. Alan Scott in his introduction to the book *The Limits of Globalisation: Cases and Arguments* begins with two interesting extracts from two different articles that appeared in *Guardian* on 4 January 1994. In the first extract, noted political theorist John Gray points to 'the rhetoric of globalisation' which reduces the scope of the political life to management of market institutions. In the second extract, Hutton draws from Karl Polyani to call for 'social democratic planning as a means of holding the destructive force of the market in check before it is met by some much more desperate political action' (Scott 1997: 2). Scott argues that these articles call for a renewal of politics that can at least resist the subordination of the political and social to the economic forces.

The context of globalisation can be read from various vantage points and the issues that have been addressed under the ambit of globalisation in the recent anthologies are a testimony to that. The idea of 'free' market and its control and impact on our socio-economic cultural life has been documented. Each microhistory tells a different story and the present volume of essays goes a step further to show what does rights mean in the present Indian scenario. Do we read the scenario of edges, produced by contradiction of economic interest and people's rights, as post 1990 syndrome with the opening of markets and encouragement of free trade?

In the postscript, Ranabir Samaddar illustrates that the Indian scenario is marked by scenario of edges in three dominant areas: the 'pure' economic scenario, the political economy scenario and the present 'economy' of politics. What we see here is that the

market forces have been responsible for certain social political changes and there is a need to read the connections, ruptures in these interconnections to understand the limits of globalisation. Drawing from G. Balachandran and Sanjay Subrahmanyam (2005), we should read the process of globalisation in the context of the ‘conjecture, and the institutions—both internal and external—that underpin the market today’. There is a need to look into the interface of globalisation and people’s movements to look into the reframing of rights as a consequence of ‘limits of mobility’.

Globalisation is understood as ambivalent dynamics (bringing both possibilities and challenges in the socio-economic realm) and it encompasses global processes that increase interconnectedness between peoples and countries, and intensify global trade in products between them. In this context the neo-liberal model of globalisation promoting the right of free trade and capital has a basic clash with the tenets of universal human rights. Thus, there is a constant tension between the ‘social’ yearning for democratic values and ‘economic’ competition for unhindered profit, trade and movement of capital. Studies on globalisation have addressed this tension, whereas a gap clearly exists in the available literature revealing another aspect of globalisation, namely that in itself it is a rights conflict between the different interests of various actors in direct confrontation. These actors are (a) the nation states, (b) the international institutions (UN, WTO, World Bank, IMF, etc.), (c) the MNCs, and (d) the affected population groups in various countries, in this case, India. Nation states have to assert their right to retain their sovereignty. International institutions clamour for the right to global governance. Multinational corporations claim the right of free trade and commerce. Affected population groups demand that basic human rights be achieved and sustained.

It is against this backdrop and context that we need to understand the way popular struggles feature in the contentious framework of rights and rights-bearing actors. The rights question has assumed significance in such a perspective; and it differs significantly from the traditional Western concept dominated human rights scenario. In the post-colonial context the rights discourse is a part of the claim making dynamics in a democracy; it expands democratic tolerance, stresses the preservation of popular gains in face of globalisation and emphasises socio-economic rights in the same measure as civil and political rights.

In this 'glocal' (global plus local) paradigm local institutions are portrayed in the 'state' policies and 'protective' legislations as self-sufficient, for instance, 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter referred as FRA)', passed on December 18, 2006 and notified into force on December 31, 2007. Legislations like Forest Rights Act (FRA) are cited as recognition of people's rights and people's movements. The interface between the people's struggle and state in the age of globalisation has been a two-way process. The concern here is that even after such historic legislations (such as the FRA) for most of the movements the agency to access to 'rights' is determined or influenced by a lot of external factors promoted by globalisation. For instance, in case of forest rights, the debate is now between conservation of natural resources, management of resources and forest management, where the discourses are influenced by powerful external elements. The studies here indicate strengthening of local institutions and governance of rights by local population groups still seem a farfetched dream.

In other words, globalisation has produced various paradigms (governmental, political, neo-liberal, popular-democratic, 'ethnic', etc.) of rights articulation and rights entitlement. The rights based movements have moved at times from local to global and the various world social forums or social networks of movements across the world provide an alternative space of dialogue and future action to these movements. The main agenda of these movements is twofold: first to strengthen local institutions and second to bring in state accountability through judicial activism. On the other hand, we have also witnessed over the past few years as in India an overflow of 'policy' approach to mitigate the demands of the social movements and find a middle path to negotiate the demands from below. For instance, both the Forest Rights Act and the Right to Information Act reflect the post-colonial nation state's attempt to negotiate the rights of the people in the framework of governance and governmentality. Thus, while this is true that the rights agenda has put its stamp on governmental policies and actions, the same governance of the post-colonial nation state has been driven by the 'global' economic agenda, and has been prey to structural adjustment programmes, and programmes like those of development of infrastructure and dams at the cost of removal of government

support mechanism in terms of subsidies, loans, assistance prices and other such policies, which had strengthened the agriculture sector in past. In this post-globalisation milieu, land is seen not as something required for meeting the food needs of population, but as real estate—meant for development of Special Economic Zones (SEZs), creating high-class infrastructure, multi-storied housing projects, export-based units—while depriving thousands of the only available source of income or sustenance. In such cases, the state has used the legislative avenue to curtail people's rights, promote special measures to create SEZs; where the labour laws of the land can be put to rest.

This 'scenario of the edges' opens up crucial questions, which the present volume of research papers (on themes such as forest rights, right to information and labour rights within SEZ and of the internal migrant workers, with focus on women, dalits, indigenous population and the vast informal sector) seeks to address. Collectively they address the following issues and concerns: What is the legal shape of rights? How does democracy reconcile competing claims? How can rights be sustained in face of globalisation? What is the nature of the erosion of rights we are witnessing? What is meant by 'sustainability'? And, finally, what is the nature of justice emerging from this complex situation?

Reframing Rights and Popular Struggles

This publication is an outcome of the Indian Council of Social Science Research (ICSSR) supported research programme 'Globalisation and Sustainability of Rights'. The research papers from three different areas of popular struggles in India in the areas of (a) environmental justice, (b) law and right to information and (c) labour rights—all in the context of globalisation—demonstrate the above mentioned scenario. They do this through the studies of people's negotiations with the 'liberal' rights discourse, and look into the important question of how the notion and the conception of 'rights' have undergone a change. The research papers not only address how the re-conceptualisation of rights has taken place in current time, but also whether this negotiation has brought about a change in the relevant institutional profiles.

Section I: Environmental Justice and Rights

One of the main concerns of the popular struggles against globalisation occupying centre stage in the recent times has been against the efforts of various forces towards privatisation and erosion of the hold of local communities over common property resources. This tension has been reflected in debates round issues of environmental justice, control over resource, resource management and people's livelihood. The proposed section will contribute to that debate. Through two studies respectively on the Forest Rights Act and the 'commons' in the Jadugoda, where uranium mining has had an impact on the indigenous people there, this section will reflect on the question of sustainability of rights.

Suha Priyadarshini Chakravorty in her essay on 'How Equal Is Common? Common Property Resources and Local Institutions' moves beyond the much talked about nature, content and context of common 'property' to understand the notion of the 'common' and 'commons' through a study of the 'common environment', a form of 'common property', through a detailed study of Jadugoda uranium radiation crisis and associated risks that have affected and continue to affect a large segment of the tribal populace of the region. Through a detailed study of the functionality of local institutions in and around Jadugoda region, namely Tilai, Tand, Bhatin and Digri, Suha tries to examine the metamorphosis that has taken place in people's claim making processes in the present scenario by drawing a comparison with past mechanisms of access, control and functioning. She examines how the socio-cultural beliefs and practices of the adivasis with regard to 'common property' and the notion of preserving 'the common' and the role of the local institutions like Gram Panchayat and JOAR (Jharkhandi Organisation Against Radiation) in people's day-to-day lives. In her analysis of JOAR, Suha reveals how the articulation of people's rights, in this case protest against Uranium Corporation of India Limited (UCIL), has been stamped by UCIL as anti-national. The UCIL has been responsible singularly for the major displacements that have taken place in the region without having given the displaced the minimum resettlement/rehabilitation compensation for a long period of time. This study reveals how the local institutions struggle to re-negotiate 'rights' through their movements against UCIL in Jadugoda and try to bring in the larger

issues of landlessness, exploitation of common property and natural and environmental resources.

Madhuresh Kumar in his chapter on 'Forest Rights Act and Polemics of Correcting Historical Injustices' makes an attempt to study the antecedents of the Act, constitutional provisions for securing adivasi rights, hurdles in implementation of the Act, points for struggle and contention, and lastly, tries to analyse the potentials of this law to redress historical injustices. Madhuresh Kumar argues that one of the significant differences in case of FRA is that unlike other forest laws which are being governed or promulgated by the Ministry of Environment and Forests, this one is administered by Ministry of Tribal Affairs. This in itself marks a great shift and recognition of existence of tribals in forests and need for their welfare. Those advocating for this Act knew pretty well the opposition of forest departments to any such move and also from their experience of 1990, when Ministry issued six notifications for regularisation and settlement of various rights of forest dwelling communities. Since, the spirit of Forest Rights Act challenges the supremacy of the principal of eminent domain, as manifested in functioning of the forest department it also could not have been expected from the same agency to implement the legislation. However, the basic question still remains: can law deliver justice? In this case it becomes more poignant given that there are contradictions in the definition of rights as such. The Act promises to recognise rights over the resources which communities traditional claim to already have had. In their understanding forest department is an 'encroacher' on their property. This might not be true in all cases but it is most certainly true for the indigenous tribal groups.

Section II: Law and Information in a Globalising World

The post-colonial nation states have adopted various strategies to govern populations and law has been a crucial tool to manage, control, or conversely, empower the rights of the people. In this context, the ways in which law has been utilised to mediate the global economic, ecological agenda is crucial to understand the effectiveness of laws and legislations.

Ashok Agrwaal in the chapter on 'Globalisation and Justice: Fait Accompli or Choice' examines the nature of the 'rule of law' regime, which, is the lynch pin of the globalised world order. In modern times the superiority of law (and rule of law) has acquired a special edge and Ashok Agrwaal examines this through the unfolding of the rule of law regime against mining in Lanjigarh-Niyamgiri by Sterlite-Vedanta which shows how law is part of the globalised world order and yet contains the potential to identify the limits of that order. It is this tension that the struggle for rights produces and entails which is significant to the studies on globalisation and its interface with rights.

Sabyasachi Basu Chaudhury in his chapter on 'Right to Information as a Means of Mass Persuasion' argues that India has been a democracy since her de-colonisation in 1947 except during the period of Emergency (1975–77). But, the bitter experiences of Emergency started creating awareness among the citizens that the mere form of democracy is not enough and its content is sometimes more important for empowering people. In that context, the enactment of Right to Information (RTI) reflects a substantial shift in the predominant view (among citizens and elites alike) of the state's role from trusted guardian to merely that of an agent of the people that requires careful monitoring of citizens. The governments so far preferred to withhold information on many occasions to cover up malfeasance or to protect themselves from political embarrassment. In this scenario, the citizens had to have the right to access that information in order to hold the government accountable for its actions. However, access to information is a relatively new norm. It is important so that the public can be effective advocates for its causes. Many would argue that, the civil society needs to know of threats and trends and understand the origins and consequences of these factors. The new opportunities of globalisation, like Right to Information Act, he argues, can become a means of mass persuasion provided these fresh legal mechanisms are taken seriously and implemented at different levels of governance.

Sibaji Pratim Basu in his chapter on 'Globalisation and Right to Information' examines the function and reach of Right to Information Act and says that the rights discourse in India attained its 'Human Rights' phase in this decade of transition (i.e. 1990s), which also marked the end of the 'cold war' and emergence of a new world order. This decade also witnessed a global rise in

enactment of right to information/freedom of information laws. He argues that globalisation has acted as a catalyst in right to information movements. In a time of declining/undermined national sovereignty, when the welfare/protectionist policy of the 'third world' states are shrinking day by day, the common/disadvantaged citizens are taking two courses of action: (a) negotiating with the state by resorting to claim making dynamics of rights-based politics, or (b) resorting to armed movements that challenge the very sovereignty of the state. From the experience of last two decades it is now clear, the author argues, that at least in India, the state has badly failed to combat the second course of movement only through over-armed coercion or by patronising counter-insurgencies. Thus the possibilities of rights-based politics are gradually gaining ground. The RTI movement as well as the Act has indeed become a very powerful instrument in this direction.

Section III: Globalisation and Labouring Lives

Studies on global labour markets, flexibilisation of production process show how global spaces have produced newer division of labour and work categories. This shift as the two studies on internal migration and special economic zones indicate, the shrinking space for articulation of labour rights as the economies in the global world not only compete with each other but are also dependent on each other.

Swati Ghosh in her chapter on 'Labour Out-flow and Labour Rights' shows that in development policy discourse, there is a general consensus that circular or seasonal migration is a 'win-win' model of human mobility. Circular migrants maximise return and minimise cost for both sending and receiving economies. For receiving governments, circular migration is a way for importing low-skilled labour without having to incorporate them in the social fabric. For sending economies, they provide a regular source of remittance without permanent loss of skill/brain/care services. For the migrant worker, however, circular migration is a survival strategy when economic opportunities do not respond favourably at home. Her study is based on two migration streams of skilled labour that has gained momentum in the last 20 years, one in