

alone real justice would be done to the litigant public.

The Adage says that the life of a human

being is 100 years and the life of litigation is one thousand years and it should be changed only quickening the disposal of execution proceedings.

HUMAN RIGHTS IN INDIA

By

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The Constitution of India is based on the principles that guided India's struggle against a colonial regime that consistently violated the civil, political, social, economic and cultural rights of the people of India. The freedom struggle itself was informed by the many movements for social reform, against oppressive social practices like sati (the practice of the wife following her dead husband onto the funeral pyre), child marriage, untouchability *etc.* Thus by the mid-1920s, the Indian National Congress had already adopted most of the civil and political rights in its agenda. The movement led by Dr. B.R. Ambedkar (one of the founding fathers of the Constitution) against discrimination against the Dalits (the erstwhile outcasts or so-called untouchables who formed the lowest strata of the caste hierarchy and who currently number more than 170 million or 16.5% of the total population of India) also had an impact on the Indian Constitution.

The Constitution of India is one of the most rights-based Constitutions in the world. Drafted around the same time as the Universal Declaration of Human Rights (1948), the Indian Constitution captures the essence of human rights, in its Preamble, and the sections on Fundamental Rights and the Directive Principles of State Policy.

In spite of the fact that most of the human rights found clear expression in the Constitution of India, the independent Indian State carried forward many colonial tendencies and power structures, including those embedded in the elite Indian Civil Service. Though the Indian State under Jawaharlal Nehru took many pro-active steps and followed a welfare state model, the police and bureaucracy remained largely colonial in their approach and sought to exert control and power over citizens. The casteist, feudal and communal characteristics of the Indian polity, coupled with a colonial bureaucracy, weighed against and dampened the spirit of freedom, rights and affirmative action enshrined in the Constitution.

In the first 15 years of the Indian Republic, such inherent contradictions within the Indian polity were glossed over by the euphoria of 'nation-building', an agenda generally endorsed by political parties, the middle class and elite civil society. However, when the contradictions within the Indian polity and State came into the open in the late '60s the oppressive character of the State began to be challenged by student movements and ultra-left formations like the Naxalite Movement. When the Indian State began to suppress such expressions of political dissent and mini-rebellions, the violation of

human rights by the State began to command attention.

Over a period of 30 years, the articulation and assertion of human rights within civil society has grown into a much richer, more diverse and relatively more powerful discourse at multiple levels. A brief historical sketch of the different trajectories of human rights discourse will help us locate human rights in the historical context.

There are four specific trajectories of human rights discourse in the Indian context—Civil and Political Rights, Rights of the Marginalised (such as women, dalits and adivasis), Economic, Social and Cultural Rights, and the Right to Transparent and Accountable Governance. Though each of these trajectories is interconnected, they were promoted by different sets of actors (often with varying ideological affiliations) at different points in time.

There has always been tension and lack of mutual appreciation between those who promoted civil liberties and the left-oriented groups who worked towards the structural transformation of socio-economic conditions and consequently of the State. As the concept of human rights was perceived as a western idea to gloss over inequalities and as a means of legitimizing the capitalist and imperialist projects of the west (particularly the US) the left-oriented groups were clearly sceptical about human rights, particularly as expressed by the civil liberties groups. Though in some quarters such scepticism still exists, there has been a greater recognition of the need to promote and protect human rights, in spite of the misuse of the human rights discourse by the new imperialist force.

Civil and Political rights

The growing disenchantment with the Indian State that was expressed in various movement and political formations in the

late '60s and early '70s was not tolerated by *Indira Gandhi's* regime. It is in this context that the movement for civil liberties led by liberal middle class intellectuals and activists became relevant. Organisations like the People's Union for Civil Liberties (PUCL) played a significant role in initiating and promoting a new discourse on civil liberties.

However, many of the mainstream left parties, influenced by the socialist pretensions of Mrs. Gandhi's regime, viewed the middle class movements for civil liberties as the agenda of the bourgeoisie and mistrusted the liberal voices of human rights groups as part of the American agenda. As many liberal institutions that promoted civil and political rights received funding from international agencies, the pro-establishment conservative groups as well as the leftist groups began to mistrust any organization that received foreign funds.

The insecurity of Mrs. Gandhi's regime resulted in the suppression of all dissent and the ultimate suspension of most Civil and Political Rights during the Emergency (1975-77). Almost all political opponents and activists were imprisoned and democratic rights suspended. The forced eviction of slum dwellers in Delhi and forced mass sterilizations created a sense of fear and insecurity among the people. It was during the Emergency, when every civil and political right was violated by the State, that the need to promote and fight for human rights was accepted across political classes. The civil liberties movement highlighted and challenged arbitrary detention, custodial violence and police atrocities.

In the last 20 years, the movement for civil and political rights has become much more coherent and widespread. It has grown beyond a set of urban middle class liberal intellectuals to a wide and diverse socio-political base. With the increase of insurgencies in the 1980s and the consequent State

suppression of separatist movements in different parts of the country, various kinds of human rights organizations - some genuine and some fronts for underground groups began to appeal. The massacre of the Sikh community following the assassination of Mrs. Gandhi in 1984 raised serious questions about the role of the State in protecting the fundamental rights of citizens.

The rise of right-wing Hindu 'nationalist' forces, the biased stand of the State machinery, and the consequent communal violence all over the country in the last 15 years have given rise to a different set of actors who stress on the civil and political rights of the minorities. The complicity of the State in abetting and supporting the planned violence against the Muslim community in Gujarat in 2002, where more than 1,500 people were killed and hundreds of homes and shops destroyed and looted, brought out of the contradictions inherent in the Indian polity and State. But the rise of fanatical and rightwing forces and their anti-human rights postures have, in a way, helped to bring together human rights activists across the political spectrum, including leftist groups and minority rights groups.

Public Interest Litigations and the judicial activism of the Supreme Court initiated by Justices *V.R. Krishna Iyer* and *P.N. Bhagwati* has played a major role in expanding the scope of human rights and giving it a much-needed legitimacy through some very important verdicts (on prisoners' rights, rights of landless labourers, release of bonded labourers, *etc.*). Justice *Krishna Iyer*, the Law Minister of the first elected communist Government in Kerala in 1956, was instrumental in building a new discourse that brought together the left-oriented groups and the civil liberties groups as part of the larger human rights community in India. Most of his judgments reiterated the obligation of the State to protect right and equally the participation of people in

securing their rights and giving them meaning. The establishment of the National Commission of Human Rights under the Human Rights Act of 1993 provided a new impetus to civil and political rights in India.

While civil and political rights focused largely on the rights of the individual, in the mid-'70s a new human rights discourse, based on group rights, collective rights and people's rights, began to be articulated within the framework of social and political empowerment.

The emergence of the women's movement in the 1970's gave a new dimension to the rights discourse in India. In 1974, the Committee on the Status of Women in India submitted a report that highlighted the marginalisation of women in every sphere of life. The emergence of a number of women's groups such as Self Employed Women's Association (SEWA), *Manushi*, Joint Women's Forum *etc.* raised a new consciousness and public debate on the issue of women's status, domestic violence, dowry, rape, custodial violence, trafficking and the invisible labour of women in the household. The women's movement not only critiqued the Indian patriarchy, casteism and feudalism, it also promoted a new awareness of women's rights.

Though it began as a largely urban movement, over a period of 30 years, the women's movement has emerged as one of the most articulate and widespread movements, in India, with new campaigns for women's political participation and rights. It is partly because of the pressure from the women's movement that the 73rd and 74th Constitutional Amendments to introduce local self-government provided 33% reservation for women in local self-government institutions. The women's movement has played a key role in ensuring the participation of women in the electoral process and governance.

In the post-Emergency period a number of political and social activists and public-spirited professionals opted out of party/electoral politics and focused on the micro-level process of social mobilization amongst marginalized communities. These social action groups working at the micro level began to highlight the historic and structural marginalisation of the Dalits (the so-called outcasts), Adivasis (more than 80 million tribal people who form around 8.3% of the Indian population) and landless labourers. The empowerment of the marginalized has been the key mission of such social action groups. However, when it came to the demand for entitlement for these communities, most of these groups began to use the rights language, particularly because of the constitutional guarantees. As many of these groups were sceptical of mainstream human rights discourse, they have used the term 'People's Rights' to emphasise the collective characteristics of right and to focus on the political aspect of their rights.

Thus from the mid-'80s there has been a constant effort to define and re-articulate Dalit rights, the rights of Adivasis, people's rights over natural resources, *etc.* This became more pronounced following the large-scale displacement caused by large dams, development projects, forestry projects, mining companies, *etc.* Most of the displaced people were Adivasis and Dalits. The Narmada Bachao Andolan (Save Narmada Movement), the Fishworkers Struggle and the Dalit Human Rights campaigns brought the issue of people's rights and right of the marginalised communities into the mainstream political discourse of India. This trajectory of human rights discourse combined an integrated vision of human rights based on social justice, affirmative action, people's participation and economic justice. The adverse effects of neo-liberal globalisation helped to develop a pan-Indian discourse on people's rights and also helped to connect with similar movements in the global south.

Economic, Social and Cultural Rights

The explicit focus on Economic, Social and Cultural (ESC) Rights is relatively new compared to civil and political rights and groups rights. The emergence of ESC rights in the mainstream development agenda is in consonance with the emergence of more institutionalized and funded initiatives for poverty eradication and social development. In the initial years, many such initiatives and institutions (commonly termed non-Government organizations or NGOs) began with a welfarist approach, trying to supplement or substitute the welfare State.

However, over a period of the time there has been a widespread realization of the limitations of micro-level development intervention and poverty eradication programmes that do not question the politics and policy frameworks that perpetuate deprivation. Most of the welfare/development NGOs, with foreign funding support, became either subcontractors of the dominant development models or well-meaning do-gooders who addressed the symptoms of poverty and not the socio-political conditions and structural inequalities that perpetuate poverty. It is in this context that the need to bridge the micro-level action and macro-level political and policy arenas became relevant. As a result, a number of grassroots action groups and mass movements working with women, Dalits, Adivasis and the landless poor began to draw from the fundamental rights and directive principles of the Indian Constitution to pressurize and persuade the State to meet its obligation to fulfil ESC rights.

An activist judiciary has also served to expand the scope of fundamental rights to incorporate economic and social rights as well. Progressive and creative judicial intervention expanded the scope of Article 21 of the Indian Constitution which guarantees the Right to Life. Justice *Krishna Jyer* and other activist judgments drew

extensively from human rights law, to conclude that the right to life means the right to live with dignity, and that the right to live with dignity includes the right to livelihood, right to education and right to health.

These progressive judicial pronouncements were in many ways a response to the social action groups and movements that sought judicial intervention to persuade and pressurize the Government to protect and fulfil the rights of the most marginalized, thus the emergence of ESC rights is the result of advocacy efforts by grassroots action groups and NGOs in India.

The series of World Summits, starting with the Vienna Summit on Human Rights in 1993, helped to bring ESC rights onto the agenda of many international development organizations. This in turn also resulted in many of the specialised groups taking up campaigns to promote specific rights, this includes the campaign for the fundamental right to education, there have been similar campaigns for the rights of self employed women and unorganized workers, the right to universal health care and a number of other campaigns focussing on economic and social rights.

The emergence of the environmental and consumer movements in the 1980s paved the way for a series of new legislations and policy interventions to protect the rights of consumers and people. The resurgence of the Adivasi (tribal) movement and the increased marginalisation of the minority communities by the right-wing Hindu Nationalist Government has brought cultural rights into public debate and policy discourse.

While the 1970s can be termed the decade of the emergence of the civil liberties movement, the 1980s witnessed the emergence of group rights and people's rights over resources and livelihoods. It is in the 1990s

that ESC rights came centre stage. Various factors including rights-based reorientation by international development agencies and organizations, political compulsions on the ground and the increased visibility of the rights discourse provided the right conditions for advocating ESC rights.

However, it is ESC rights that are most elusive. This is because the rhetoric of economic and social rights is not necessarily reflected in policies, programmes and budgetary allocations. As a result, the State pretends to promote economic and social rights, while systematically undermining these rights following the dictums of the IMF, World Bank and WTO. This situation leads to a growing sense of disillusionment and cynicism about the so-called rights-based approach. As a result the political content and policy feasibility of the rights-based approach is increasingly questioned, particularly because it is more often used as a development strategy than a means for political empowerment of the people and policy transformation.

Right to transparent and accountable governance

The great expectations of India's welfare State began to recede after 20 years of hope and optimism. Over a period of time, the welfare State became too fat to be functional. The saturated State failed to either deliver welfare or protect and fulfil rights. The Government apparatus and the Government itself faced a credibility crisis. Political parties as the legitimising vehicle of parliamentary democracy suffered a lack of credibility due to the criminalisation of politics. The proliferation of career politicians and increasing instances of corruption in all aspects of governance brought the issues of accountability and transparency into the development discourse. The saturation of the State, coupled with the debt crisis, forced the Government to seek financial and policy assistance from the Brettonwood institutions

to make the failed welfare State work. However, the accompanying neo-liberal policy prescriptions of these institutions in the form of structural adjustments, privatization and liberalization further alienated the poor from the Indian State. That is how two clear tendencies in governance became clear by the mid-90s.

The first set of actors, led by the World Bank, advocated 'good governance' to address resource leakage, misappropriation and mismanagement of the loans taken from the Bank and to ensure that there would be relatively less risk in credit a management and repayment. This was more for strategic reasons than any commitment to the democratic principles of public accountability and transparency. The second set of proponents of transparent governance have been grassroots action groups (like the Mazdoor Kisan Shakti Sangathan in Rajasthan) and advocacy organizations who sought Government accountability as part of the citizen's right to know and the right to participate in governance.

The Jan Sunwais (public hearings) and social audits initiated by MKSS in Rajasthan are a well-known example of a process of mobilization that combines a rights-based approach with people's participation. The

people's planning process in local self-governance in Kerala promoted by the Kerala Shashtra Sahitya Parishad (KSSP) is another example of participatory practices with a rights-based perspective. The Community Learning Movement for accountable governance, promoted by the National Centre for Advocacy Studies (NCAS), is an example of a rights-based praxis, based on the principles and practice of participation. Thus the new movements and institutions are working to advance the right to accountable governance and ensure that the people's right to participate in governance and development are the basic premises for people-centred governance and development.

In spite of the relatively greater visibility and legitimacy of the human rights discourse, the meaning and utility of rights is still a highly contested arena. Though India has ratified five of the six covenants (ICCPR, ICESCR, CEDAW, ICCRC, and CERD) and conventions that constitute the legally-binding international human rights treaties, the implementation of these rights is rather poor. Although the new policy papers and the documents of the Planning Commission of India increasingly use the right language, in terms of real programmes and implementation of the performance of the Government of India is far from satisfactory.

THE ROLE OF SOCIAL ORGANIZATIONS IN PROMOTION OF HUMAN RIGHTS OF WOMEN *VISA-VIS* PUBLIC INTEREST LITIGATION

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"Women constitutes half the world population, perform nearly two thirds of work hours, receive one tenth of the world's income and owns less than one hundredth percent of world's property".

Introduction :—Though constituting half the population of the world and often referred to better half of a man, women, infact, had the worst deal at the hands of the society till very recently. They were always