



The Human Rights and the Role of Civil Society

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Abstract: Civil society has come to occupy a predominant role in ensuring corruption-free governance. One of the important objectives of human rights-based approaches to corruption-free administration is to empower civil society to ensure that transparency and accountability become the norm for governance. India is such a vast country that corruption-free governance cannot be established purely by relying upon the various investigative agencies and institutions. Civil society, including the media, has to be involved in a significant manner to ensure that corruption-free governance does not remain a policy goal or an institutional aspiration. Civil society is best suited to perform this role as it can devour itself to ensuring that the decisions of the government are made in a transparent and socially accountable manner. Further, civil society in India is part of the vibrant democratic set-up and is able to be involved in both rural and urban India at the grassroots levels. Human Rights awareness is gradually reaching far and wide. The role of civil society has been instrumental in making human rights activism more vocal in different geographical locations where violation of human rights takes place. And they seek the redressal of the grievance of victims. In Indian perspective, Non-Governmental Organizations (NGOs) are playing important role in responding the mass voice of weak, meek, poor, suppressed, downtrodden and exploited people and emerged as a powerful protective shield of assistance in the field of legal battle to the needy persons.

Key words: corruption-free governance, Civil society, Human Rights

*"The millions of men, women, youth and children
Around the world will be born, live and die and
Never know they are owners of Human Rights". Ivanka Corti*

Introduction

The human rights can best be maintained in a civilised society and not in a state of nature. It is, therefore, essential that the laws are framed to maintain them. The function of the law is to see that the rights of others are not infringed by an individual asserting one's human right arbitrarily. No right is ever conceived without its corresponding duty. It is here the people stumble, mostly. When the human rights fall into jeopardy or when the people suffer under the systematic persecutions from the head of the State the revolution takes

place. The Concept of Human Rights gained universal concurrence since the mid-20th Century after the World War-II. The devastating impact of this war compiled people and scholars to think again and again about 'Humaneness'. It is this concern that prompted the United Nations Organizations (UNO) to adopt the Universal Declaration on Human Rights.(UDHR) in 1948. In order to protect human being from in human cruelty and protect human dignity and worth. UDHR impact laid the foundation for the development and practice of Human Rights. These rights are



fundamental prerequisites for the development of human personality and dignity. Every human being irrespective of any kind of discrimination is entitled to it. Since development of personality and dignity is dependent on these rights, these are also called basic rights. Viewed from this angle demand of human rights in every spear of life is closely connected with the basic issues of survival. The concept of human rights is based in the idea that human beings are born free. Its basic characteristics are 1) they are universal that is they belong to humanity irrespective of race, religion, gender, age etc., 2) they are inconvertible, that is they are absolute and innate 3) they are subjective because, they are the property of individual subjects.

Since the establishment of UNO several instruments such as universal declaration of human rights, (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) etc., have been adopted to ensure different rights. The signatory states have adopted the same in their countries.

Human Rights have a projection of universality but as a matter of ground reality they are not the same for all people and societies. For some, especially the well-advanced west, they are predominantly matters of civil and political liberty while for others, the developing and under-developed Asian, Africa and Latin America, predominantly they are also matters of survival. Human Rights are therefore about being citizen of the earth, being part of an earth family. Human Rights in my view are exercised to their fullness through participating in earth democracy-the

democracy of all life. And as earthlings, our human duties to protect the earth and all her beings are the ground from which Human Rights emerge. Human rights as the 'Rights relating to life, liberty, equality, and dignity of individuals guaranteed by the constitution or embodied in international covenants and enforceable by the courts in India'

Significance of Human Rights

Human rights are fundamental to the stability and development of countries all around the world. Great emphasis has been placed on international conventions and their implementation in order to ensure adherence to a universal standard of acceptability. With the advent of globalization and the introduction of new technology, these principles gain importance not only in protecting human beings from the ill-effects of change but also in ensuring that all are allowed a share of the benefits. The impact of several changes in the world today on human rights has been both negative and positive. In particular, the risks posed by advancements in science and technology may severely hinder the implementation of human rights if not handled carefully. In the field of biotechnology and medicine especially there is strong need for human rights to be absorbed into ethical codes and for all professionals to ensure that basic human dignity is protected under all circumstances. For instance, with the possibility of transplanting organs from both the living and dead, a number of issues arise such as consent to donation, the definition of death to prevent premature harvesting, an equal chance at transplantation etc. Genetic engineering



also brings with it the dangers of gene mutation and all the problems associated with cloning. In order to deal with these issues, the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application and Medicine puts the welfare of the human being above society or science.

However the efficacy of the mechanisms in place today has been questioned in the light of blatant human rights violations and disregard for basic human dignity in nearly all countries in one or more forms. In many cases, those who are to blame cannot be brought to book because of political considerations, power equations etc. When such violations are allowed to go unchecked, they often increase in frequency and intensity usually because perpetrators feel that they enjoy immunity from punishment. - - Faisal Fasih

Protection of Human Rights Indian Constitutional Perspective

The Founding Fathers of the Indian Constitution had a vision of the Indian society, which they wanted to realize through the Constitution. That vision was primarily reflected in the Preamble, the chapters on Fundamental Rights and Directive Principles of State Policy is the product of human rights movement in the country. It is the duty of the State to guarantee what is said in the Constitution. But the shocking evidence that the State is itself the culprit, according to Mr. J.S. Verma, the former chairman of the NHRC. According to J.S. Verma, it is often the State which is violator of Human Rights in maximum cases in the country. But the maximum responsibility to protect

and safeguard the rights of its citizens also lies with the State.

Article 14 of the Indian Constitution proclaims the general right of all persons to equality before the law, while Article 15 prohibits the State from discriminating against all citizen on grounds of religion, race, caste, sex or place of birth, and prohibits any restriction on any citizen's access to any public place, including wells and tanks. Equality of opportunity for all citizens in matters of public employment is guaranteed under Article 16. Article 17 abolishes untouchability and makes its practice an offence punishable under law. Both Articles 15 and 16 enable the State to make special provisions for the advancement of socially and educationally backward classes, for such castes and tribes as recognized in the Constitution (known as the Scheduled Castes and Scheduled Tribes) require very special treatment for their advancement. Article 18 abolishes all non-military or non-academic titles. The right to freedom guaranteed to all citizens under Article 19 encompasses the right to freedom of speech and expression, the right to assemble peaceably without arms, the right to form associations or unions, the right to move freely throughout the territory of India, the right of residence, and the right to practice any profession, or to carry on any occupation, trade or business. The protection of a person in respect of conviction of offences under Article 20 includes protection against ex post facto criminal laws, the principle of autre fois convict and the right against self-incrimination. Article 21, the core of all fundamental rights provisions in the Indian Constitution, ordains: "No person shall be deprived of his life or personal



liberty except according to procedure established by law." Article 21A was added to the Constitution by the Eighty Sixth Constitutional Amendment Act 2002. Article 21A proclaims "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." The rights of a person, arrested and detained by the State authorities, are provided in Article 22. These include the, right to be informed of the grounds of arrest, the right to legal advice and the right to be produced before a magistrate within 24 hours of arrest (except where one is arrested under a preventive detention law). The right against exploitation includes prohibition of trafficking in human beings and forced labour (Article 23), and prohibition of employment of children below 14 years of age "to work in any factory or mine or in any other hazardous employment." Subject to public order and morality, all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion (Article 25). Every religious denomination or section also has the right to establish and maintain religious institutions and manage their religious affairs (Article 26). No one may be compelled to pay any religious taxes (Article 27). The wholly State-funded educational institutions are barred from imparting religious instructions (Article 28). The rights of any section of citizens or a minority to promote its distinct language, script or culture, to have access to State-funded educational institutions (Article 29), and to establish and maintain educational institutions of its choice (Article 30) are also guaranteed. The right to Constitutional remedies is essentially the right to move the Supreme Court of India for

enforcement of the above rights (Article 32). The Supreme Court is vested with wide Constitutional powers in this regard. They include the power to issue directions, orders or writs for the enforcement of the fundamental rights (Article 32(2)). State (i.e. provincial) High Courts too have identical powers (Article 226). As laws inconsistent with or in derogation of the rights conferred by part III of the Constitution are void (Article 13), the Courts have the power to adjudge the Constitutional validity of all laws. Furthermore, by virtue of Article 141, the law declared by the Supreme Court shall be binding on all courts in the country.

The Role of Judiciary in implementing the Human Rights

The Judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to Constitutional remedies. Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is violative of any of the fundamental right, is void. In *ADM Jabalpur v. Shukla*, Justice Beg observed "the object of making certain general aspects of rights fundamental is to guarantee them against illegal invasion of these rights by executive, legislative, or judicial organ of the State." Earlier, Chief Justice Subba Rao in *Golak Nath v. State of Punjab*, had



rightly observed, "Fundamental rights are the modern name for what have been traditionally known as natural rights," The Supreme Court of India recognises these fundamental rights as 'Natural Rights' or 'Human Rights'. While referring to the fundamental rights contained in Part III of the Constitution, Sikri the then Chief Justice of the Supreme Court, in *Keshavananda Bharati v. State of Kerala*," observed, "I am unable to hold these provisions to show that rights are not natural or inalienable rights. As a matter of fact India was a party to the Universal Declaration of Human Rights and that Declaration describes some fundamental rights as inalienable." The Chief Justice Patanjali Shastri in *State of West Bengal v. Subodh Gopal Bose*, referred to fundamental rights as those great and basic rights, which are recognised and guaranteed as the natural rights inherent in the status of a citizen of a free country.

The concept of civil society

The concept of civil society in its pre-modern classical republican understanding is usually connected to the Age of Enlightenment in the 18th century. However, it has much older history in the realm of political thought. Generally, civil society has been referred to as a political association governing social conflict through the imposition of rules that restrain citizens from harming one another. In the classical period, the concept was used as synonym for the good society, and seen as indistinguishable from the state. For instance, Socrates taught that conflicts within society should be resolved through public argument using 'dialectic', a form of rational dialogue to uncover

truth. According to Socrates, public argument through 'dialectic' was imperative to ensure 'civility' in the polis and 'good life' of the people. For Plato, the ideal state was a just society in which people dedicate themselves to the common good, practice civic virtues of wisdom, courage, moderation and justice, and perform the occupational role to which they were best suited. It was the duty of the 'Philosopher king' to look after people in civility. Aristotle thought the polis was an 'association' that enables citizens to share in the virtuous task of ruling and being ruled. His *koinonia politike* as political community.

The concept of societal *civilis* is Roman and was introduced by Cicero. The political discourse in the classical period, places importance on the idea of a 'good society' in ensuring peace and order among the people. The philosophers in the classical period did not make any distinction between the state and society. Rather they held that the state represented the civil form of society and 'civility' represented the requirement of good citizenship. Moreover, they held that human beings are inherently rational so that they can collectively shape the nature of the society. Modern and comprehensive interpretation of civil society gathers the concepts and sectors of the rule of law, organised forms of social and family life, social movements and civic activists, charities, voluntary associations, third sector and identity groups. At the end of the day, civil society is an arena of social actors which have an open dialogue as part of social relations, in which they manage the public affairs using reason and law instead of violence.



The values of civil society are those of political participation and state accountability. Thus, it provides the necessary basis for participation in formal political institutions. The institutions of civil society are associational. It advocates pluralism and is opposed to totalitarianism. When state becomes an authoritarian political institution, its authority is to be challenged by the civil society. Within the civil society, individuals enjoy enforceable rights of free expression, freedom to form associations, formulation of opinions and freedom to dissent. Civil society is a vital pre-condition for the existence of democracy. For this reason, authoritarian states attempt to stifle civil society. The existence of civil society does not mean that it always challenges the state authority. Thomas Paine argued that the power of the state must be restricted in favour of the civil society as individuals are having a natural propensity for society which exists before the formation of the states.

The middle Ages saw major changes in the topics discussed by political philosophers. Due to the unique political arrangements of feudalism, the concept of classical civil society practically disappeared from mainstream discussion. Instead conversation was dominated by problems of just war, a preoccupation that would last until the end of Renaissance.

The Role of Civil Society in Promoting the Human Rights

Civil society is the "aggregate of non-governmental organizations and institutions that manifest interests and will of citizens." Civil society includes the family and the private sphere, referred to

as the "third sector" of society, distinct from government and business. From an historical perspective, the actual meaning of the concept of civil society has changed twice from its original, classical form. The first change occurred after the French Revolution, the second during the fall of communism in Europe.

International Community in Promotion of the Human Rights

The UN Declaration on Human Rights Defenders recognises the legitimacy of human rights work and the right of "everyone, individually and in association with others", to promote and to strive for the protection, promotion and realization of human rights both nationally and internationally. The UN Declaration therefore has a broad definition of human rights defender that extends to any group of individuals protecting or promoting human rights, including people working for, associated with, or in any way supporting national, regional or international human rights NGOs. Article 71 of the UN Charter provides that "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence." Since then, the human rights NGOs have played a very important role in the evolution of international system for the promotion and protection of human rights.

The category of "Human Rights Organisations" could be understood to include international organisations like the UN Office of the High Commissioner for Human Rights, the UN Human Rights Council, United Nations Educational, Scientific and Cultural Organization (UNESCO), Office of the



United Nations High Commissioner for Refugees, the Office of the European Commissioner for Human Rights, or the Inter American or African Commissions of Human Rights. It could also include the Human Rights Committees of many national parliaments, ministries and statutory bodies that deal with human rights, a wide range of ombudsperson offices, and national human rights commissions. It could equally be understood to include the human rights departments or offices of numerous international organisations whose more general mandate takes account of human rights.

The Role of Indian Civil Society in Protecting the Human Rights

People want to protect their interest through group engagements and interactions in post-independent India. Indian civil society becomes more effective with the civic virtues and also acquires the capability to organize itself independent of state authority. Individual rights and liberties have been safeguarded. A number of autonomous associations are created in transition within the state. Jayaprakash Narayan's movement, against an oppressive and corrupt state, tie to pre-independence civil rights movement. The following decade saw the emergence of broad alliances whose power lies in their ability to use different tools of advocacy. They bring together very different groups and individuals ranging from affected communities, to activists, academics, and celebrities. The biggest of these movements is the Narmada Bachao Andolan (NBA), which started to oppose the construction of a series of dams in Gujarat, Maharashtra and Madhya Pradesh in the late 80'. The movement

operated in diverse ways. It relied on mass mobilisation, it lobbied the World Bank, which was funding the project, and used the media to its advantage. Such alliances remain powerful social actors. They have emerged around a variety of issues—on the right to food, or on the rights of construction workers and homeless people, to give only a few examples. However, the mass mobilisation that characterised the NBA has disappeared.

Civil society has come to occupy a predominant role in ensuring corruption-free governance. One of the important objectives of human rights-based approaches to corruption-free administration is to empower civil society to ensure that transparency and accountability become the norm for governance. India is such a vast country that corruption-free governance cannot be established purely by relying upon the various investigative agencies and institutions. civil society in India is part of the vibrant democratic set-up and is able to be involved in both rural and urban India at the grassroots levels.

Conclusion

Human Rights awareness is gradually reaching far and wide. The role of civil society has been instrumental in making human rights activism more vocal in different geographical locations where violation of human rights takes place. And they seek the redressal of the grievance of victims. In Indian perspective, Non-Governmental Organizations (NGOs) are playing important role in responding the mass voice of weak, meek, poor, suppressed, downtrodden and exploited people and emerged as a powerful protective shield of assistance in the field of legal battle to



the needy persons. The Civil Society should shoulder the responsibility in protecting human rights as stated by Mahatma Gandhi: "All humanity is one undivided and indivisible family, and each one of us is responsible for the misdeeds of all others. I cannot detach myself from the wickedest soul." NGO's have a vital role to play in the promotion and protection of human rights

particularly in the developing countries, has the largest number of NGO's whose activities are spread in different fields for the welfare of human being including the promotion and protection of human rights. Kofi Annan, the Former UN Secretary General had described the importance of the Role of NGOs as: "The 21st Century will be an era of NGOs."

"Lost rights are never regained by appeals to the conscience of the usurpers, but by relentless struggle.... Goats are used for sacrificial offerings and not lions."

— Dr.B.R. Ambedkar,

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