

# HUMAN RIGHTS IN INDIA

*Theory and Practice*

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# INTRODUCTION

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Human Rights discourse has considerably changed last ten years with international communities and organizations taking an aggressive stance to prosecute human rights violators. Human Rights Commission has been replaced by Human Rights Council of the United Nations providing the world community an opportunity to work towards a unified status and a consensus on implementation of human rights. Fears are however expressed by scholars and human rights activists that many countries may not do enough beyond lip service or rhetorical recognition. Countries both from developed west and the underdeveloped world may not ratify the various resolutions in the garb of safeguarding their security and national and economic boundaries. It is this politics of human rights that inhibits recognition, implementation and enforcement of human rights both at the international and national level.

For the record, India was elected to the Human Rights Council of United Nations with single largest votes among the Asian countries, thereby demonstrating India's popularity and leadership commitment to protection and promotions of human rights. However, there are a large number of areas both at the national and international level that India as a state has tacitly ignored thereby undermining both its status as human rights protector as well as an exemplar to both developed and developing countries. At international level, India is yet to ratify the U. N. Convention against Torture (CAT) in spite of repeated requests by various successive Chairpersons of National Human Rights Commission of India. The arguments against ratification of CAT as well as acceptance of various U.N. special procedures

is that India has an independent judiciary and consequently does not require U.N. intervention. This argument however undermines both the international human rights law and India's own role as instrument of enhancement of human rights in developing countries. It is precisely because of this that Asian Human Rights Commission has criticized India opting out of UN Treaty Bodies such as Human Rights Committee, CEDAW Committee, CEST Committee and CERD Committee.

One may grant the fact that fundamental rights of citizens are indeed protected by legislature, executive and judiciary of our nation state, but the National Human Rights Commission time and again pointed out how its exclusive mandate of protecting and promoting human rights has been undermined by various legislative fiats, executive actions and judicial pronouncements. This is because, both NHRC and State Human Rights Commission have little or no powers of enforcement. Further the most serious recommendations of these bodies have found no place in the legal system of our country. These recommendations have either remained as wishes and aspirations of people or have been lost in the bureaucratic files of political forces. Two examples of such machinations by bureaucracy are enough to emphasize the helplessness of both the legislature, executive and judiciary on the one hand and the Human Rights Commissions on the other. After great deal of discussions, committee formations, inquiries etc., it was recommended that Special Armed Forces Act be repelled and alternative arrangement be made to control the insurgency in the state of Manipur. Bureaucracy has overruled this recommendation on various grounds both imagined and wilfully against the main institutions governing the union of India. Again, in order to bring about reforms at the primary school level and make the education meaningful, an expert committee comprising highest possible academicians was formed. The Committee after consulting various constituents of education and public recommended that the syllabi for primary education be framed on the basis of local needs and environment. The

recommendations of such an elite committee were vetted by a bureaucratic committee and the report rejected/diluted on the ground that it is not a uniform national syllabus and that the same would hamper national integration.

The recent pool by Reuters AlertNet may not be an eye opener to Indian intelligentsia and human rights activists when the report places India as sixth most dangerous country for children above only Darfur in Sudan, Northern Uganda, DR Congo and Somalia. Children in India are more at risk than even in war torn Afghanistan, Palestinian territories, Myanmar and Chechnya. Proud as we are of our great democracy, emerging economic powerhouse, independent judiciary still count as sixth worst for physical and mental violence, displacement, sexual abuse and trafficking, child marriage and child labour, hunger and malnutrition, gender discrimination and female foeticide and infanticide, etc. Governmental agencies dealing with each of the problems and human rights violation may dispute the report, but grass root level workers and activists do not doubt the same. Children in short do not have human rights in India.

A corollary of the above is right to elementary education. There is no need to emphasize the fact that our society has no desire to see that every child is educated and there seems to be no collective responsibility for children. No wonder the Right to Education Bill that received approval from educationists, human rights activists *et al* has been stymied on the ground of unaffordable costs. In spite of claim of great economic growth and availability of resources and substantial allocation of funds for elitist higher education and reservations, Government of India has no resources to ensure compulsory elementary education to our children. On the other hand, Government of India in an effort to ban employment of children as domestic workers, street vendors, hotels, etc. has brought about legislation that came into force from 10 October 2006. Where these children are after the legislation came into force is anybody's guess. The fact remains that even in the sixth year

of 21<sup>st</sup> century, our legislature is not willing to bring about a law of 'right to education' in a country that has the reputation of running the Sillicon Valley of United States of America, symbol of wealth and prosperity world-wide.

One of the most important forms of human rights violation in Indian context is indeed, corruption. At one level corruption is constitutive of all other forms of violation, and at another level single most dominant form of human rights violation. National Human Rights Commission had organized a seminar on "Effects of Corruption on Good Governance and Human Rights" in May 2006. Presentations after presentations highlighted the seriousness of human rights violation resulting from corruption at all levels—civil, political, economic, social and cultural level of Indian ethos. If the protection of human rights, i.e. rights relating to life, liberty, equality and dignity of the individual" as defined in Section 2(d) of Protection of Human Rights Act, 1993 is to be guaranteed, then elimination of corruption at all levels has to be ensured. There is, however, one way of looking at corruption from the point of view of good governance. It is in this sense that corruption problem takes the centre stage in Indian polity. NHRC, Central Vigilance Commission, Central Bureau of Investigation, Enforcement Directorate and such other organizations and agencies can and must be truly empowered to take *suo moto* cognizance of cases relating to corruption when it involves violation of human rights. However, there is another viewpoint that human rights activists and scholars have to take into account while dealing with corruption. It is often said that creating a social consciousness among the citizens is the first step towards development of corruption-free governance. But such a development presupposes that contemporary Indian society has an inherent recognition of what constitutes inherent moral goodness at individual level. Until and unless individual citizens begin to value moral integrity and internalize the individual moral goodness as against convenience, dubious individuals will continue to be elected as the representatives and corruption

shall continue to be the single most common violation of human rights.

Contemporary human rights discourse in India has oscillated between the theoretical and practical. The struggle worldwide has amply demonstrated that there is need of both normative recognition of human rights and the actual enforcement. It is in this context that a Seminar on *Human Rights: Policy Issues for India* was organized as human rights discourse becomes increasingly inclusive, not merely about international norms, but policies and practices of countries while implementing constitutional obligations and commitments to human rights.

The present volume represents what transpired during the three days of deliberations and deals with only those issues and debates that were listed. Consequently, there is no claim that this volume is comprehensive compendium of human rights issues in India. However, the extraordinary scholarship of the participants of the Seminar and their interdisciplinary interests has provided us with issues that at one level are conceptual, and at another level specific and applicatory. Consequently, theoretical foundations of human rights became centre of attraction in almost all discussions. Jurists, political scientists, sociologists, historians and philosophers have all been involved not only in the inquiry into the presuppositions of human rights discourse and that what gives legitimacy to it, but also questioned the very foundations that are recognized as sacrosanct to human rights activists. Papers 1 to 9 of the present volume, therefore, reflect these theoretical concerns. Papers 10 to 20 represents the reflection of academics and activists on specific human rights issues confronting academia and common people. The positive part of deliberations is indeed reflected in the fact that scholars have contributed both to the contemporary political, legal and administrative aspects of human rights violation and the inherent need to overcome the possibilities of such violation. The negative aspect of the present volume is that there were many issues that did not feature in the discussions during the three days. Human rights issues relating to gender, child labour,

caste, physically and mentally challenged, etc. have not featured in the debates. Many of the invited scholars could not contribute their papers due to their own busy schedules and other commitments.

T. R. Subramanya's paper on *Historical Background: Early Development of Human Rights* is a journey through history wherein he makes a case for, *inter alia*, protection of minority rights as recognition of equality before law of all human beings in equal dignity and equal protection of law. Failure on the part of a State to discharge its obligations under International Laws should be regarded as 'International Delinquency' argues T. R. Subramanya. Bhagat Oinam in his paper on *Human Rights as legal rights! But what lies beneath?* in a classic return to morals, provided us with clarification of what constitutes legal and what is its basis, the moral. He argues that explaining human rights through legal procedure as is the case with the UN mandates and international legal codes is inadequate description of what is 'human rights'. Consequently, to capture the ontological basis of human rights one must go beyond the avowed 'universality' proclaimed by UN and locate the same in the discourse on ontology and the moral, argues Bhagat Oinam. Dharmendra Kumar in his paper on *Human Rights Discourse in India: A Critique* provides a critique of concept of 'human right' which he points out is based on atomist ontology, and suggests alternative conception that is based upon relationships that are dialectically conceived.

S. P. Gautam in his paper on *Human Values and Human Right: Some Key Issues* discusses the ethical foundations of human rights. He provides the justification and moral legitimacy to the discourse of human rights as well as why human rights is human. V. T. Sebastian in *Human Rights and Human Dignity: A Christian Perspective* argues that an understanding of human dignity and human rights is implicit to our understanding of a world view. The issue of human rights has never been an issue for Indian masses as in their world view such an issue as deprivation etc., does not exist. He further points out that even



Christians who (have as part of their faith content - equality and justice) practice caste system may be because of the World View they were born in and live in. Tapas Roychoudhury's paper on *Myth and Reality: The Dilemma of Individualism in the Ontology of Collectivity*, provides a critique of the very concept of human rights and analyses the theoretical dimension of the issue and its operation in the present Indian State. He contested the source from which the policy has drawn its legitimation, by pointing out that the entire argument is confused obliteration of the ontology of social responsibility, and claims that it is simplified into a myth which appears only in the obscurity of the text of Constitution. Jal Murzban in his essay on *Human Rites: The Death and the Birth of the Subject* studies the discourse of human rights as the return of the primeval sacrifice with the death of humanity as its main principle. With the collapse of neo-liberalism into the neo-conservative projects of anti-secularism, anti-modernity and anti-humanism; the discourse of human rights appears in distorted form in this New Age of organized barbarism. Jal Murzban avers that human rights have been transfigured into human rites, and the return of the sacrifice is understood as the death of humanity. V. K. Sibal in his paper on *Human Rights: Policy Issues for India*, provides conceptual clarification and "vivid pictures" of how insensitive we are to human rights violations whether against women, Dalits, tribals, children, handicapped, disabled, etc. He argues that economic growth is the most powerful means for improving the human rights situation along with educational growth. The need to devise and reorient effective strategies designed to improve human rights situation in India is emphasized.

Adi H. Doctor in his paper on *Human Rights: Certain Policy Implications with Reference to India* argues that human rights are sacrosanct as they are desirable values or ends in themselves and not derived from any other higher value or end like the Common Good or Public Interest. Such rights logically speaking, if not historically, Doctor claims, are prior to the state/

government; and, the state or government is established primarily to recognize, protect and promote these pre-existing natural rights.

Krishna Deva Rao's paper on *Re-thinking on Custodial Justice* points out that no violation of human rights has been the subject matter of so many Conventions and Declarations as torture, which can be visualized in two images: the suffering open body exposed to the pain caused by torture and the intimacy of act of torture as the 'suffering open body' remains invisible except to those who are victims and relatives. 'Torture' and more specifically 'custodial torture' is the most common of human rights violation even in civilized societies. Krishna Rao demands that custodial jurisprudence needs to be developed as part of a wider process of social change to humanize and democratize the custodial institutions that consider themselves beyond the public scrutiny. Mariam Pinheiro's paper on *Water as Human Rights* is not only conceptual clarification, but a formulation of what should be a legislation that protects the right for water. Right for water can very well be read as a component of right to life, and as such it is necessary that it be treated as a 'stand alone' right, argues Mariam Pinheiro.

Kumar Sanjay Singh in his meticulously researched paper on *Politics of Internal Security Acts 1947-2001*, points out that there is no correlation between 'threats to violence' claimed by the Central Government while enacting various draconian laws and the actual ground realities. His paper contains table of dates of the large number of legislations brought about to deal with internal security threats and actual security problems in various parts of the country. He claims that there must be reasons other than 'threat to internal security' for bringing about such legislations. R. Siva Prasad in a strongly argued paper on *Whose Rights are They Anyway?: Some Reflections on Issues of Rights of Tribal Communities in Schedule V Areas* points out that it is a serious matter when State tramples on the rights of the people as against one individual tramples on the right of another

individual. It is a very serious violation of human rights when Central Government and State Governments deny tribal communities the right to control, access and utilize their resources and their livelihoods – by joining hands with industrialists, mafias and land grabbers points Siva Prasad. Ishwar Singh in his paper on *Forests, the State and Adivasi Rights*, after reflecting on the present status of *adivasi* (the tribal communities) explains how forms of exploitation have changed from the pre-colonial, colonial and post colonial times. *Adivasis* continue to be exploited by one and all even after 60 years of independence, because of State policies and inadequate laws framed in the name of ‘development’ and detrimental to the rights of *adivasis*.

N. Sanajaoba in his paper “*Human Rights Policy in Armed Conflict Areas*” dwells on human rights violations in armed conflict areas particularly, North-East India, where half a century of militarization of all political institutions and civil society has led to untold human rights violations. The repressive laws such as Armed Forces Special Powers Act 1958 and other measures have been found to be counter productive and hence, Sanajaoba argues that Government of India has binding political obligations to human rights conventions and consequently should have a policy that is holistic and compatible with the objective realities. Sudhir Jacob George in *N.E. India: Issues of Human Rights and the State Policy* highlights out how North-East does suffer from political unrest and insurgency alone, but also suffers from environmental degradation, neglect and marginalization of its population, illegal influx of people across the borders and bad governance. Sudhir George proposes policy alternatives to uphold equity, justice and Human Rights in the North-East in order to avoid further alienation of local population and particularly students who are discriminated by the security forces which only lead to vicious circle of violence, insurgency and demands for separate state.

Suman Varma in a paper on *Terrorism and Violation of Human Rights in Jammu and Kashmir* analysed the causes of

rise of insurgency and terrorism in Kashmir and the subsequent violations of human rights both by militants and security forces. Suman Verma makes a case for dealing with terrorism but without violating the human and democratic rights of citizens, as real answer to terrorism is not a military encounters but winning people's hearts and minds. Jales A. K. Tareen in *Human Rights Policy Issues in Kashmir Context* highlights the fact that media and various organizations have never focused on the positive and developmental issues in the valley and instead focused on emotive issues that tend to label the Kashmiris as fundamentalists, *jehadis* and those who want to join Pakistan at all costs. Jales Tareen pleads for demilitarization of educational institutions by removing the security forces stationed in almost all colleges and University for the last 15 years. Rajesh Deb's paper on "*The Indigenous and the Alien: Marginal Citizens and Rights Discourse in Northeast India*" provides 'the other view' of problematics of the North-East India where human rights are violated not only by state machineries but by specific individual communities that marginalize anyone who does not fit within their narrow definitions of class, tribe or ethnic community. He critically analyses reasoning of some ethnonational groups who (besides the state) violate civil and political liberties of groups they consider 'others/aliens/outsideers' be they from neighbouring regions or states or Indian citizens. And finally, Prasanjit Biswas in *The Anti-Conversion Bills and Freedom of Religion: Crisis of Faith or Legitimacy of Religious Orthodoxy?* analyses Article 25 (1) of Indian Constitution that guarantees 'freedom of conscience' and 'right to profess, practice and propagate religion' and various 'freedom of religion' bills passed by various state legislatures. Prasanjit Biswas points out that anti-conversion bills undermine the autonomy of choice of the convert and do not in any way strengthen the religion to which one belongs. The bills brought about in the name of 'freedom of religion', he avers, are determined by political calculation of majoritarian constitution of identities.

We do not profess to have answered or even addressed definitively all or most of the problems. We have rather provided a forum in which some of the leading scholars in the field can present their current thinking so that readers in the field can respond and find basis for making their own contribution. Views provided by the scholars are not monolithic as some of the authors may claim. We, however, hope that their views will help us to confront and solve the moral, social and political problems posed with critical care.