

## TACKLING HUMAN RIGHTS ISSUES AROUND THE WORLD

### FOREWORD

**A**ny discussion on the subject of human rights must be predicated on the acknowledgement that human rights are dynamic and not static. Some human rights are basic, fundamental and inalienable such as the freedom of speech, the right to non-discrimination, the right to equality, the right to life and liberty and so on. These are clearly enunciated in several international instruments beginning with the Universal Declaration of Human Rights. Similar basic rights have been recognized in the African Charter on Human and People's Rights, the American Convention on Human Rights, the ASEAN Human Rights Declaration and many others. The essence and spirit of these fundamental rights is the same, though the vocabulary might change. But it is clear that these instruments accept that, we as a people, are born with these rights and they are not handed down to us by declarations and conventions.

Some human rights fall in a grey area –are they basic and fundamental human rights or are they acquired human rights? Included within this sphere are privacy rights, the right to communication, the right to data protection and a few others. Some of these rights have been recognized over the years, not having been given importance earlier, others have suddenly become significant due to technological changes that were perhaps not visualized decades ago. For example, the right to access internet and social media was not imagined in the 1950s or soon thereafter. If access to internet is cut-off or limited, it would certainly violate a right to communication. But suppose, the download speed is deliberately slowed down, would it violate the right to communication? Similarly, shutting off access to social media or limiting it would violate the right

to communication as also the right to freedom of speech. Today, it is possible to transmit the health status of an individual through the internet in the event of a medical urgency. This might appear as a violation of the right to privacy, but can that violation be overlooked on the ground of urgency or the more important fundamental right to life? Such examples can be multiplied to include different aspects of life –physical life or juristic life as in the case of corporates. There is a need to identify these grey area rights and work on them.

Passage of time has also invited us to consider a few specialized dimensions of human rights. For example, issues of gender justice have gained tremendous traction all over the world. Women are not always treated equally as one would expect. Their wages are lower despite doing the same work as men in several parts of the world. The care and upbringing of children, cooking meals gathering firewood and water is almost exclusively their responsibility in many households, with little contribution from the male members of a family. The inequality faced by the female gender is beset with problems that should not have really existed. And so, the human rights of women as a class have come to be recognized and protected by instruments such as the Convention on the Elimination of All Forms of Discrimination against Women and Declaration on the Elimination of Violence against Women.

Children –girls and boys– have little or no voice in decision or policy making in society. Resultantly, their rights have taken a comparatively back seat. While acting in the best interests of the child is a dogma that is generally accepted, the reality is that children are neglected in many respects. Child labour, child sexual abuse and trafficking are matters of serious global concern, and because children are in a vulnerable position, their exploitation is much easier than other sections of society, including women. Global opinion has acknowledged that children too have rights resulting in the Convention on the Rights of the Child and later the Protection of Children and Co-operation in Respect of Intercountry Adoption or the Hague Convention.

Similarly, there are large sections of society that are neglected and their rights ignored in what is referred to as economic or infrastructure development. I am referring particularly to indigenous and tribal people who have been inhabiting vast areas before modern civilization encroached on their land and resources. These people have their cultural and social norms that they have

been following while cohabiting with nature for centuries. Modern civilization has displaced millions of them with the use of arms and heavy machinery to feed a resource hungry industrialized society. A few years ago, an international mining company sought to displace a tribal population in India from an area that housed their gods! Fortunately, better sense prevailed and the mining company withdrew. Similar situations, though perhaps not as direct as in India, have arisen in other parts of the world also only with a view to exploit the natural resources. In a gross violation of basic human rights, many of these activities have taken place without the participation of the indigenous or tribal population, as if their opinion is irrelevant. To an extent, the United Nations Declaration on the Rights of Indigenous Peoples seeks to remedy the injustices over the centuries and only time will test the efficacy of the Declaration. One of the significant developments that has taken place in recognition of the rights of the indigenous and tribal peoples is that some countries have now reacted by claiming damages for the violation of the human rights of their people, including damages for environmental pollution, from international conglomerates through international arbitrations. This is a developing human rights jurisprudence and is a check, at least to some extent on the adverse impact on indigenous and tribal populations.

Other sections of society whose human rights have drawn attention are persons with disabilities. Their human rights have been recognized through the Convention on the Rights of Persons with Disabilities, including rather significantly, their right to dignity. Similarly, progress has been made towards arriving at a Convention on the Rights of Older Persons. The General Assembly of the United Nations passed Resolution 47/135 on 18<sup>th</sup> December, 1992 being a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. These are all welcome developments and assert a commitment of the international community to human rights that will eventually make for better living and a better life for all of us.

Some of these international human rights instruments have in-built oversight mechanisms or have led to the creation of mechanisms that strive to ensure effective implementation of the articles and clauses of the conventions or declarations. Their operational reality is a different story altogether, mainly because these bodies essentially recommend steps that ought to be taken, but

they cannot enforce compliance. It is then left to the State Parties to devise internal structures that promise implementation. The effectiveness of human rights commissions across the world depends largely upon the will of the government of the day. To introduce objectivity in the enforcement of human rights, some geographically proximate nations having somewhat similar concerns and understanding of one another's requirements, social, cultural and economic have established commissions that enable them to strategize collectively in a spirit of cooperation. The ASEAN Commission on Human Rights and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, the African Commission on Human and Peoples' Rights are some of these effective bodies discussed in this Dossier. The impact of the Declaration on the Rights of Indigenous Peoples is also a subject of enlightened discussion here.

As already mentioned, several human rights –not necessarily basic or fundamental– get recognized or draw attention as society develops. Access to justice has been recognized as one such right in all jurisdictions and this has several facets and nuances. The right to a hearing and the right to be represented are all facets of justice delivery. Another such right that has come to be recognized is the right of the consumer of goods and services. All of us are consumers at some level, whether it is food or utilities or facilities. We pay for what we get and expect adherence to certain minimum standards by the supplier of goods or services. What if there is a deficiency in the quality of services or goods? Every grievance cannot be dealt with by the formal or conventional justice delivery system of courts and yet the rights of consumers must be enforced. From the adoption of the United Nations Guidelines for Consumer Protection in 1985 till the revised version in 2015 several changes have taken place, including online resolution of disputes. It is the recognition of such rights and mechanisms of grievance redressal that confirms my belief that human rights are dynamic and constantly evolving.

The right to life and liberty is basic and fundamental. But even this right can be taken away through various methods and measures. The easiest method is by filing trumped up charges resulting in imprisonment of the alleged offender. The poor and underprivileged who are the usual victims, cannot stand up to the might of the police when it takes the law in its hands. But far worse are

laws dealing with extreme situations –do extreme situations always require an extreme response? True, insurgents and terrorists must be firmly dealt with, but is it not possible to comply with minimum human rights standards while dealing with them? This is a question that arises from time to time and the debate will continue eternally. Many countries have shown that in conducting a trial, it is possible to adhere to basic standards of justice and fair play. Security measures for the court and prosecution need to be provided and the alleged offender can be provided with a lawyer of his or her choice. The problem arises when public opinion turns against mercy to the alleged offender and desires instant justice to be meted out. This results in stringent and often draconian laws that shift away from the rule of law and basic human rights standards.

Acceptance of draconian laws has the potential of emboldening a powerful State, including a democratically elected government, to use such stringent laws to stifle dissent and impose extreme punishments for dissent. In such situations, any meaningful discussion or debate ends even before it begins. A democratically elected government claims that its actions have the backing of the people, while an autocracy needs no such excuse. The rule of law collapses and human rights, including the right to liberty gets gradually extinguished. Only mass movements can turn the clock back, but that is possible only after the people suffer years of untold misery. A second consequence of accepting draconian laws is the emboldening of the State to go a step further and endanger life itself. Several examples of this are available for discussion.

Enforced disappearances are common enough to have prompted the International Convention for the Protection of All Persons from Enforced Disappearance. Article 1 of this Convention states: No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance. The gravity of enforced disappearance has been accepted in international law as a crime against humanity. And yet, there are frequent instances of such unexplained disappearances. In the case of anti-terrorism laws, there is at least some modicum of access to justice, but in a case of enforced disappearance there is no recourse to justice, with the family and friends not having any idea of where the victim could be. In the common law world, courts can come to the rescue of such unfortunate victims through the remedy of a

writ of *habeas corpus* but that is infrequent given the dependence of the court on information provided by the State and the power that the State exercises in making enforced disappearances possible.

Equally terrible are extra-judicial executions. Reports given by the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Human Rights Council make for sorry reading and clearly indicate the impunity with which some States carry out extra-judicial killings, which are nothing short of State sponsored murder. The victims are usually those who either commit a heinous crime and a conviction is difficult to establish or persons who are believed to be hardened criminals without any possibility of reformation and rehabilitation. On occasion, when called upon to do so by the human rights commission or a similar authority, the justification given by the State is one of self-defence, that is to say that the victim needed to be shot (or killed) because a grave danger was posed to the life of the law enforcement authorities at that moment. This excuse is really a fig leaf or an attempt to cover up a cold-blooded murder. Human rights activists have been concerned by such extra-judicial executions and fake encounters but little has been achieved by way of stopping such killings.

In the preservation and protection of human rights and liberties, civil society and established NGOs play a very crucial and vital role which should not be overlooked. NGOs engaged in operational activities are, in a sense, field workers and in touch with ground realities through grassroots workers. Effectively, they are like intelligence agencies when it comes to issues of social justice. They provide the necessary facts and evidence that may, sometimes, not be available even to seasoned bureaucrats and law makers. The information available with and provided by NGOs can enable the government to take an informed decision on framing a policy and implement policy decisions that impact large sections of society. Advocacy NGOs can and do spread the message of human rights and bring about awareness of rights, particularly among those who are socially, economically and educationally disadvantaged. They play an extremely important role in the actual implementation of policies and their role too cannot be underestimated or played down. Concerns of human rights are not a citizen and State issue, but a larger and complex amalgam of interests of different sections of society and if implementation methodologies do not involve

all sections of society (many of whom are represented by NGOs) some human and other rights will rest as matters of academic debate.

As I write this, the world is reeling under the impact of Covid-19 caused by a corona virus. To check the spread of the disease and minimise its adverse consequences, including death, some governments have assumed extraordinary powers so that health measures can be implemented. While the implementation of health measures is absolutely necessary, in several instances, it has been at the cost of human rights. For example, the limits of free speech have been narrowed down so that news and information, which can sometimes cause panic, is not disseminated. The right of assembly has also been curtailed so that social distancing is practised and person-to-person contact is eliminated to avoid the spread of the virus. Indeed, in some countries a lockdown, which is in the nature of a mild curfew has been imposed, again in the interest of the health of the people. How long the impact of Covid-19 will be felt and the impact of presently justifiable restrictions imposed as precautionary measures are a matter of debate and discussion. What impact they will have on some other rights is again a matter of debate and discussion. Do we need Nature's fury to remind us that though we are born with some basic and fundamental rights, we need to channelize our efforts, through these rights, for the benefit of humanity, with compassion and social justice being key ingredients?

MADAN B. LOKUR  
Retired Judge  
Supreme Court of India

15th April, 2020