The Human Rights Movement in India – a Critical Overview

The 19 months of National Emergency imposed by Indira Gandhi between 1975 and 1977 represent a watershed in the postcolonial history of democratic India. During that period, the civil rights movement developed a wider organizational base and consequently grew more visible. Now, some ten years later, there is an urgent need to understand the historical evolution of the emergence of human rights groups as well as to honestly assess the limitation of their efforts and to identify the new challenges before them.

The Emergency dramatically exposed not only the inadequacies of the post-Independence developmental strategies adopted by successive governments, but also the continuing impoverishment and marginalisation of millions of people–a process which is increasingly recognized as inherent in the very model of development. Forty years of "democracy" of popularly elected governments have brought little benefit to the bottom 40 percent of India's population. Distributive justice, popular participation, wars on poverty–all these still remain, by and large, pious intentions.

Today, India faces a number of chronic crises–social, cultural and ecological–and these have grave implications for the poor whose very survival is threatened and who must engage in ever more militant struggles to assert their democratic rights. Simultaneously, the independent democratic forces represented by human rights groups are becoming more fragmented and losing confidence in their ability to comprehend and respond to the multiplicity of "explosive" situations and to act collectively and decisively to confront these. Many of them seem unable to stand up to the combined forces of the state, the traditional vested interests of a feudal kind and the modern market under the impact of corporate world capitalism. They are equally unable to stand up to the new combination of a technocratic elite committed to the ideology of a 'strong state' and the spectre of 'nation in danger' as a result of the rise of mass movements, regional upsurges and assertion of diverse minorities. It is a situation of an elite crying wolf at the very rise of mass movements. Against all this there is a pervasive sense of exhaustion and cynicism that has weakened the possibility of building a broad based movement. Effective, confident intervention is becoming more rare. This is a good time to step back a little, go beyond a mere recounting of the violations and the successful cases of highlighting them, and take a longer view.

A Short History

The first human rights group in the country – the Civil Liberties Union – was formed by Jawaharlal Nehru and some of his colleagues in the early 1930s with the specific objective of providing legal aid to nationalists accused of sedition against the colonial authorities. However, this effort was short lived. The excitement and hopes generated by the national liberation subsumed the political spirit of an independent watchdog initiative. Thus, it was not until the late 1960s that the real emergence of human rights groups took

place. This was triggered off when both the privileged social classes and the government systematically cracked down on groups fighting for the rights of traditionally oppressed peoples – landless labour, marginal and small peasants, the unorganized working class (though to an extent this is something that is only now picking up) and their mobilisers and supporters among the articulate and conscientious were formed during this period. Notable amongst these were the Association for the Protection of Democratic Rights (APDR) in West Bengal, the Andhra Pradesh Civil Liberties Committee (APCLC) and, somewhat later, the Association for Democratic Rights (AFDR) in Punjab.

While these groups highlighted the growing repression and exploitation in the countryside and played a crucial role in confronting and' exposing the violent role of the state, their reach and capacity to stir the imagination and to involve concerned liberal and progressive elements was limited. It is not necessary here to go into the means used by these groups – an obsession of late with some human rights activists – because what we are concerned with here is the fact that the state was itself violating the rule of law and the constitutional rights of marginalised groups and political activists. The impact of these organisations was limited for quite different reasons, namely their fragmented and sectarian nature, coupled with the indifference of the media and public opinion to the plight of the marginalised sections of society. There was also a failure to join issues – especially the political with socioeconomic.

It was only after Jayaprakash Narayan launched a major agitation against the growing authoritarianism of Mrs. Gandhi that a large number of prominent liberals and humanists came together with radicals in 1975 to form the first (and only) national human rights organisation, the People's Union for Civil Liberties and Democratic Rights (PUCLDR). Within a few months, a series of political developments helped consolidate the scattered concerns for the rights of the poor and oppressed on the one hand and for the issues agitating middle class dissidents on the other. The announcement of the Emergency on June 26, 1975 proved to be a supremely catalytic event. With the imprisonment and ostracism of intellectuals and political activists, the national consciousness was stirred and new meaning infused in the Indian understanding of democracy. In an effort to stifle dissent, thousands were imprisoned, some' for the entire period. The press was gagged, and a host of new legislations severely restricted both traditional and nascent challenges to the centralisation of power; namely, the rise of a vigorous literature of dissent, in some cases through the politicisation of influential journals. But, as the latter picked up, and the Emergency moved nervously into its second year, the Centre cracked down further, delivering a serious setback to the activities of human rights organizations.

Even after the defeat of Mrs. Gandhi at the polls in 1977, these civil rights activists maintained a relatively low profile for almost two years. This was primarily due to a widely shared perception among lawyers and academics that the new government would be more amenable to dialogue and corrective action. This belief was, in part, supported by the lifting of the repressive measures of the Emergency period and the establishment of a number of independent investigative commissions (including in cases of repression of the Naxalites). To be sure, some significant advances marked this period – the rise of

both investigative journalism and public interest litigation, in addition to some important socioeconomic gains by the more radical groups working among the landless and the tribals. The latter were significant because while the Janata government was politically more liberal than the Congress Party, its social base was more conservative and prejudicial to the lower classes.

It was in October 1980, after the fall of the Janata government and the return of Mrs. Gandhi to power, that a major National Convention took place in Delhi which led to the split of the PUCLDR into two organizations – a Delhi based PUDR and a national PUCL.

Today, there are wide range of organizations specifically concerned with issues of civil liberties and democratic rights. While a couple of new initiatives have crystallised and some efforts towards a more federal all India organisation made, most of the organisations are those which were formed between 1968-1970 and 1975. It is important to mention here that there are in India thousands of groups and movements struggling for distributive justice. There are also advocacy and support groups. At one level, these can all be classified as human rights groups. What we are concerned with here are those groups that have a sole purpose of highlighting and defending human rights. There have been five major activities taken up by these organisations: 1) fact-finding missions and investigations, 2) public interest litigation, 3) citizen awareness programmes (including the publication of perspective statements on specific issues), 4) campaigns, and 5) the production of supportive literature for independent movements and organisations. In periods of major crises they have also thrown their weight with independent action groups and mass movements in providing relief and rehabilitation and carrying out lobbying on behalf of the oppressed and the victimised. This collaboration was clearly evident following the carnage of the Sikhs in November 1984 and the Bhopal disaster a month tater. One significant achievement of such groups have been the substantial body of literature they have produced which highlights the complex causes of social, political, economic and cultural oppression. Some publications, like *Who are the Guilty,* which came out a fortnight after the massacre of the Sikhs, have gone into several editions with tens of thousands of copies sold.

These groups have successfully raised three kinds of issues: 1) direct or indirect violations by the state (police lawlessness, including torture and murders of opponents through fake "encounters," repressive legislation, political manipulation and terror by mafia groups, etc.), 2) denial in practice of legally stipulated rights as well as the inability of government institutions to perform their functions, and 3) structural constraints which restrict realisation of rights, e.g., violence in the family, landlord's private armies, the continuing colonization of tribals, etc.

There have been significant achievements in mitigating some of the complex sources of oppression. Bonded laborers have been freed and rehabilitated, major judgments by the more sensitive individuals in the judiciary have opened up new avenues for the realization of justice, and corrupt public officials and policemen have been prosecuted. But above all, these groups have kept the democratic movement alive among a section of the urban middle class, as well as helped protect and, to an extent, expand the spaces for

independent political action. They have thus made a definite contribution in widening, even if marginally, the base of democratic consciousness in the country.

As the impact of these groups has earned them greater legitimacy, it has also brought on regular attacks from vested interests, both within government and outside. As a result, some human rights activists have been tortured and killed, publications have been banned and their authors charged with sedition and imprisoned. The ruling parties have launched a vilification campaign against some groups (particularly PUCL, PUDR and APCLC) and attempted to paint them as anti-national or extremist.

Through all this, each organisation has retained a distinct identity. And although organisational and methodological differences distinguish then, there has been close collaboration amongst most of them. Several weaknesses, however, remain. Principal among these is the problem of voluntarism resulting in a lack of sustained effort by a committed and recognised cadre of activists. This has prevented a consistent response to violations, as well as the growth of each organisation through broad-basing of education and action and sustained collaboration among them. All this dues take place, but usually precipitated by some crisis or dramatic event. Also all these groups do not accept any governmental or foreign funds and operate under severe financial constraints.

Additionally, the wide range and frequency of violations has kept them so occupied (often through deliberate attempts at keeping them pinned down in false legal charges and economic vendetta) that most of the activity, so far, has been primarily defensive. While there has been a very weak "early warning system," mere also is a lack of under standing of international human rights instrumentalities, of the role and importance of new organisational initiatives that need to be undertaken which would strengthen both each individual organization and their aggregative impact, and of solidarity with relevant developments elsewhere in the world. The latter point has tremendous significance in the years to come as horizontal linkages both within countries and globally arc essential if we are to simultaneously counter the international underpinnings of authoritarian structures and actively assist in positive movements for social and political change- global, regional, national and local.

Some New Issues

Significant new issues have become part, of the agenda of human rights groups - issues that will be crucial in the coming decades. The conflict over natural resources, the issue of gender equality and the increasing incidence of caste, communal and ethnic conflicts among communities ate three such examples. To understand these crucial new challenges, it is necessary to look at them in some detail.

A. Natural resource conflicts

Current policies governing natural resource use, which encourage chemical input-based agriculture, commercial forestry, mining and industry, are creating serious problems of livelihood, lifestyles and life, not only for those directly affected, but for all people, including future generations. The gas leak in Bhopal, the hundreds of thou sands forcibly uprooted by large development projects, encroaching desertification caused by rampant

deforestation, the mechanization of traditional occupations like fishing and weaving all these demonstrate the increasingly precarious situation of the rural poor. The crucial difference in the understanding of these issues in India in comparison to the West is that while for the latter, the problem is either of pollution of renewable resources (air, water, etc.) or of the nonavailability of nonrenewable resources at low economic prices, for people here, it is the destruction of renewable resources–forests, soil and water—on which a large proportion of them have so far survived and on which our cultures are based.

The dominant view of development is premised on the intrinsic superiority of industrialisation and urbanisation over the more indigenous modes of organizing livelihoods and production, supported by an assumption that nature is an inanimate entity, to be appropriated, controlled, and acted upon by humans via technology. It is further assumed that it is through the application of superior technology that man generates the surplus necessary for moving from the realm of scarcity to the realm of freedom.

The ecological movements in India reject that characterisation of nature and the techno-managerial and sociopolitical options posited therefrom. Through practice, they are confronting this vision of "managing" society and are demonstrating that nature is animate/ living, a provider of resources and surplus, and that lifestyles and live livelihoods can be sustainably protected only if the regenerative capacities of renewable resources are respected. Indeed, the *Chipko* ("hug the trees") movement in the lower Himalayan zone argues for the superiority of natural forests over manmade mixed specie forests.

What is also being highlighted is the problem of the commons, the increasing privatisation of which has not only threatened the maintenance and survival of these resource bases but the entire livelihoods of millions of people dependent on them. Equitable and inalienable rights to the commons, as also to resources like land, forests and water are seen as essential to survival without which most talk of human rights lack authenticity.

B. Community Identity and Social Conflicts
A wide range of conflicts, some new, most having deeper historical roots in both the sociocultural and the political, have threatened the rights of very large numbers of people. The scale and intensity is staggering. Witness the inter-religious and inter-ethnic conflicts (Hindu-Sikh, Hindu-Moslem, Hindu-Christian), sub-nationalist assertions for greater autonomy like those made by the Gorkha National Liberation Front *(for* a separate state *of* Gorkhas) or the Jharkand Movement *(for* a new tribal state in central India), all of which are today sharper than ever before.

The communalisation and ethnicisation of the polity now not only threaten the rights of entire communities and of millions of people but the very fabric of Indian society. While loaded against minorities, the atmosphere of intimidation and widespread social violence has simultaneously led to greater insecurity among the so-called majority. These developments are marked by an ever-widening cycle of mutual tensions and violence.

This is not to argue that such conflicts were not present earlier. However, until recently, the history of the region was relatively peaceful where different communities coexisted with little tension (not with standing the historically precarious position of the Adivasis (tribals), Dalits (untouchables) and women). Admittedly, there have always been conflicts and violence, but what cannot be denied is the sheer empirical reality and multiplicity of diverse living traditions which point to the previous importance of an assimilative, but non homogenising sensibility. It is with the coming of the modern nation state that things changed dramatically.

The modern nation state permits only two legitimate categories - the state and the citizen. All other modes of social cohesion and organising are thus converted into transitional modes which have either to be abolished (through a process of the market or the state) or to be cynically manipulated to ensure easy governance. The developments in Punjab or the increasingly vocal identity assertions bring into sharp question this assumption. What these developments are also reflecting is that common ritual, personal law and religion are powerful symbols that cannot be wished away by processes of modern nation statemaking.

The exploding violence is bringing into question the assumption that the forces of modernisation would wipe out these archaic primordial sensibilities. The butchering of over 3,000 Sikhs in Delhi following the assassination of Mrs. Gandhi or the over three decades of brutal army rule in the Northeast, cannot be wished away as necessary through progressive evils. On the other hand, superficially responding to them is also not enough. This argument might imply that what is being suggested is to reinvoke the traditional. However, what is being argued is not that the primordial, the traditional must be frozen (for all evolution is a dynamic process), but that the secular, homogenising principles of the modern state need to be confronted if social violence is to be reduced. Autonomous and distinct cohesions, processes that allow communities to come into their own with mini mal external manipulation and aggression must be sought.

Human rights groups and others concerned about these issues are raising these debates and demanding the creative use of social spaces and institutions towards a more harmonious state-civil society interaction. The greatest challenge; however, is to marry the respect for multiple identities with the urge for justice, particularly because while traditional sensibilities and structures may have ensured a greater degree of peace, they did not necessarily ensure justice.

C. Gender conflicts
Women in India, traditionally and in the postcolonial period, have suffered multiple oppressions. They are denied, in most instances, equal access to food, health and education, in addition to carrying the double burden of household and wage work. Moreover, when they are engaged in the latter, they invariable earn lower wages and become the first targets of economic retrenchment.

Alongside oppression and invisibility in the public sphere, women face an atmosphere of debilitating violence bride burning, rape and unrelenting physical and psychological battering both within and outside the family. With the rise rather than abatement of these challenges to women's equality, the movement is questioning contemporary development processes, particularly the patriarchy encoded in modem development. Moreover, as the family members most critically affected by growing shortages of fuel, fodder and water, women are spearheading the current ecological movements. They are also in the forefront of efforts to contain communal disputes, for it is they who have felt the severity of codified and rigid male dominated religions.

Obviously, the responses to the continuing abrogation of women's rights arc still at a very nascent stage. The strategies to overcome the structural biases are still groping for a more coherent focus. Does, for instance, a focus on the capitalist and patriarchal oppression imply a stratification amongst the oppressed? Or, the staggering implications of balancing out the deeply internalised oppression (among both women and men) clearly perceived? An example could be the struggle against the domination of fundamentalists among Muslims. Does this struggle also imply a 'Criticism of religion itself? How then will traditional institutions be transformed?

Additionally, the state-sponsored drive to control fertility impinges directly on women's rights and status. Most contraceptive technologies are targeted at female users, and efforts to develop less intrusive methods are minimal. Furthermore, in the Indian context, this concern over fertility has combined with cultural biases for male children, resulting in a proliferation of amniocentesis clinics and an alarming rate of abortions of female fetuses.

Women are not only struggling in the formal sector for higher wages and better conditions of work, but the arena of action has shifted to the informal sector where the majority are employed, without any semblance of security. Nonetheless, they are demanding greater access to productive inputs and greater control over the marketing of their outputs. These efforts are attempting to not only improve' income and working conditions, but also to redefine the meaning and value we impute to work in specific sociocultural contexts.

Fundamentally, these struggles, though as yet weak, are attempting to push at new interconnections between women and ecology, with culture and religion, with work and with democracy and politics.

Some Problems and the New Challenges

What has been discussed above are the three central areas, which are key tom understanding both the evolving concerns and the emerging challenges that human rights groups face today. Each of these clusters represents cutting edges of conflict that can neither be well appreciated within the conventional categories and frames of analysis, nor are amenable to conventional modes of organising and intervening. These conflicts and struggles for survival and justice need urgently to be seen within a wider framework of human rights. What is also needed is a clearer understanding of the processes within which these rights can be realized.

At a primary level, a shared notion of rights reflects the mediation interplay between the quest for freedom and the constraints of responsibility as demanded by the norms of the collectivity village, caste, religion, state or humanity that the individual is part of. In India, given the nature of the political regime which defines the cur rent limits within which citizens attempt to exercise their rights, this gets defined as the struggle for enlarging the spaces defining the shared norms of behaviour between the state and the citizen.

The term human rights is not in common parlance in India where rights have been defined as either civil liberties (CL) or democratic rights (DR) CL are rights which are guaranteed by the constitution justiciable in courts via law. DR are derived from the Directive principles of State Policy which provides indications of the direction in which the expansion of Fundamental Rights out to take place. There is of course, an obvious continuum between CL and CR. Most of the rights outlined in the three clusters above fall within the latter category which encompasses and gives direction to a much wider and more comprehensive understanding of individual and collective rights.

The struggle for rights is essentially a quest for justice and can only attain a dynamic equilibrium through shared norms. But within this rather broad notion of rights, we have to take stock of both violations and resistance.

India has a record of flagrant violation of rights at every level. From a situation of lawlessness created by the state through undemocratic legislation (though not always illegal), to arbitrary acts of both policy and intervention, successive governments have attempted to maintain policies that deny to a majority of citizens the rights to a civilized human existence. Illegal detentions, torture killings by encounter, arbitrarily declaring organizations illegal and persons unlawful — these are situations which find regular mention in Amnesty International Reports. Apart from issues of successful tactics and strategies, these violations raise critical questions about the process through which the consent for the abrogation/ limitation of rights is created.

To understand these, it is important to focus on only on the regime and its actions, but on the nature of state institutions- legal, political, ideological, etc.-that provide the contradictory impulse of both restricting and enlarging the spacer for playing out the struggle for the assertion of the human spirit.

As mentioned at the outset, the struggle for CL and DR has been reduced to simple freedoms reflected often through the struggle for bread, shelter and work. This may be through acts of direct violation of individual and collective ideas and sensibilities; through shifts of official policy and domination by powerful economic groups; through strategies like militarisation which effect both resource use and create an autonomous reason of state (war hysteria); or through incorporation into the global production system viz. via World Bank and IMF conditionalities.

The focus on acts of resistance to the violations has fallen almost exclusively to the specialist organizations that investigate, expose and sometimes extend the debate on rights. In India civil and democratic rights groups have over the years acquired a legitimacy partly due to the emergence of groups fighting for democracy outside the party spectrum.

If one focuses on groups like these, then the questions which need to be explored relate to the relative inefficacy of these groups in maintaining and extending their aura of legitimacy, i.e., in attracting more people to their aura of legitimacy, i.e. attracting more people to their fold, linking up with other political groupings and movements, etc. The extension of the moral weight of these organizations and the issues they raise is, however, directly affected by an atmosphere of generalized conflict and violence. For instance, CL groups become less effective in a situation like that of Punjab currently, because of their inability to convey a non-partisan image. Similar questions arise in the context of struggles by nationalities and sub- nationalities demanding the right to self-determination. In all such situations, it is only the senselessness of the brutality and the unwillingness of ordinary people to acquiesce to the plans of rulers that may save the situation.

Another dimension of the struggle over rights going well beyond the usual domain of law, relates to how the structure of entitlements (to natural resources) gets altered as a result of developmental interventions. What are the rights of displaced people and communities, a phenomenon now assuming alarming proportion? It is only to fair compensation? How does one resolve the conflict between rights of the displaced to their relationship to an environment with the state's legitimate claims to use natural resources.

Essentially the point here is that the notions of rights and the instrumentalities to struggle for them (people's organizations, media, courts, linkages etc.) while operating at a current minimum, needs to be continuously expanded. The greater the extent of self organization by the people (whether on modern political lines, or on community lines), and the greater the conceptual distance between the regime and the state, the greater is the degree of play possible in the struggle for enlarging rights.

In India, as in other countries of South Asia, the difficult questions arise when a conflict emerges between legitimate categories of social cohesion. The examples relating to the rights of Muslims women, or women within a family, or reformers within the Bohra community (a large strict Muslim sect), raise questions that cannot be easily sorted out within the domain of the state-citizen discourse.

In all this there is a need to move from an empirical discussions on the violation of civil and democratic rights and the relative efficacy of different strategies to deal with them, to the more difficult terrain of recognizing the legitimacy of other categories of cohesion, we need to work out their areas of relative autonomy from the state. In a context where the state does enjoy a legitimate existence, and is seen as an arbiter of final appeal say by the oppressed within a community), then recourse is possible only to norms of shared social sensibility.

It is being increasingly realized that CL and DR as an exercisable domain within civil society, need to be rooted in the life and existence of those groups and communities whose rights to life are being most violated. It should be emphasized that the referent is to a group and not an individual. For that reason, a philosophical reliance on Anglo-Saxon law as the indicator of shared sensibility is somewhat misplaced, because this legal framework does not even recognize the existence of communities. Thus it is necessary to initiate a process of shared visions which may provide the foundations for institutional formats and organisational imperatives to realize them.

The struggle for human rights while primarily focused around the resistance to structural injustice, must simultaneously address itself to enlarging social spaces of shared sensibility, which rights—as a tension between the quest for freedom and the necessity of responsibility—can help to unfold.

Locating the struggle for human rights in consolidating and expanding the arenas of community control and shared social sensibility, while fine as a guiding principle, still does not provide clues towards how to act in the increasingly complex and grim situation that we are all part of. At one level, the struggle for survival and human rights has necessarily to be directed against both the regime and the state, since they are the principal instrumentalities through which systematic violations occur. But does this imply opting out of the state structures and processes completely? Can the human rights movements in India, weak as it is, afford to drive itself into a purist corner?

The desire not to engage oneself politically is often only an abrogation of responsibility, of not wanting to dirty one's hands. Theoretically, it implies falling prey to a dualistic neatness, as if segments of society can be clearly segregated, with the state structures painted evil and the society pure. In failing to recognize that all politics operates in the arena of compromises and deals and addresses itself to what is potentially realizable, revolutionary purism ends up painting state structures and processes in fortress-like terms that are amenable only to assault and smashing. It assumes that the state is completely illegitimate, and since this perception is not shared by a majority of the citizenry, the human rights struggle finds itself increasingly isolated.

Human rights activists are beginning to perceive the serious limitations in confining themselves to liberal constitutional activity, e.g., issuing reports and press statements, appealing to the Courts, etc. Four decades of such efforts have yielded few results. Still, it is not desirable to affiliate with a political party—bourgeois or radical, as party politics enjoys limited credibility. The dilemmas about defining a political role that avoids those two extremes comes through most sharply in situations of extreme ethnic tension and violence. Should the conflicts between two segments of society—castes, classes or communities—be the legitimate concern of human rights groups? Can the movement afford to remain a silent spectator to the social processes that it is a part of?

Another question that has been raised repeatedly is how the movement should react to the violence, initiated by or retaliatory, of oppressed groups? For instance, in the context of armed revolutionaries in different parts of India, even where their aspirations and

struggles are totally legitimate, and the violence is essentially a reaction to the systematic denial by the state of the minimal conditions for violence is essentially a reaction to the systematic denial by the state of the minimal conditions for civilized existence, can the human rights movement afford to either remain silent or to take only an anti-state stance? The dilemma becomes starker when the sociopolitical movements, whether of economically oppressed classes, or of oppressed minorities and nationalities, seem to be losing their clan. And it is not just the movements that seem on a declining curve, but the bourgeois states themselves. The fear about an anarchic breakdown, definitely among the middle classes, but often enough in wider sections of the society, does not leave space for either silence or partnership.

Even if one argues that the original sin was committed by the state, what about the rights of the uninvolved innocents who too get hurt in such situations? What about eh dissenters within the militant social movements? What when different organisation fighting for the same cause fight amongst themselves? Do they have rights? Are these to be sacrificed as the necessary costs of just struggles?

Similarly, situations of inter-community tension and clashes pose difficult problems. Should human rights organizations intervene (and if so, how?) only when the clashes have become violent and the state steps in for law and order purposes? In which case, the movement can issue its usual denunciation of the state. Or should it evolve for itself a non-partisan political role? Is not intervening to avert violence more important than ex post facto laying of blame?

It is self evident that being political and non partisan is hardly an easy task, particularly when conflicts and violence in civil society are at a fever pitch and the poor have often no option but to struggle violently. It was much easier for liberal theorists in the early years of this century to argue for the non-negotiable human right to due process even of those wanting to overthrow and transform the existing states by violence. Such events were in any case rarer. Not so now.

Another critical dilemma before the human rights movements is intrinsic to its self-determination. The UN Charter of Human Rights is in its philosophical premises universalist and individual-centered. However, South Asian societies like India rarely recognize the individual except as part of a community ordering. And these community orderings are fluid and often at variance with each other. Should not then the human rights movement base itself on social cohesions, working out the areas of autonomy both of community orderings from the state and dissenting individuals within the community? Such a move would have serious implications for working out not only the legitimate space for community access and control over natural resources, but may also help redefine the notion of the western nation-state that our constitutional fathers adopted. If the human rights movement has to address itself to the problems of survival, then it needs to creatively explore the possibility of state, market and community interactions. Without this, the movement, as an expression of the assertions of the oppressed, it likely to bind itself into a cognitive jam—continuing on its current heroic but ineffectual path to obsolescence.

All these issues become even more critical as we realize that the traditional problems of justice and rights for the oppressed are going to be either subsumed under or overwhelmed by problems of ethnicity, regional identity and cultural (including religious) assertions and demands of specific communities. The failure of the state to meet minimum norms of dignity and decency (so called basic needs), has produced a situation where the highly plural society is tearing apart and ethnic identities are becoming purveyors of basic strivings for dignity, autonomy and freedom. It is just not possible to handle the issues of community identity and rights of the people inherent in this setting, within the conventional framework of civil liberties and human rights. Add to this the fact that the response of the state to those new aspirations is to engage in repression aimed against minority communities which are deemed to oppose both natural unity and the national interest. Add also the fact that the new techno-managerial elites in charge of the new state apparatus are increasingly incapable of handling the crucial political tasks of mediating and coalition building within plural spaces and are instead found to be committed to technocratic solutions to political problems arising still from civil spaces, but spaces that speak increasingly cultural dialects. And add finally the fact that radical groups of both human rights and revolutionary stripes that used to engage themselves around socioeconomic issues are finding it both compelling and expedient to join forces with those struggling for nationality, regional and ethnic rights. This reflects part of the full panorama of the emerging reality that calls for a considerably new way of looking at the agenda of human rights. It remains to be seen whether the human rights movement in India (or elsewhere) can shape itself for the tasks ahead.

Human rights commissions in India

C. Raj Kumar

Human rights commissions are most effective when their tasks are adequately supported by other mechanisms that ensure a government's accountability.

It is nearly 15 years since the National Human Rights Commission (NHRC) was established in India through the adoption of the Protection of Human Rights Act, 1993, by Parliament. Over the years, more than 15 State Human Rights Commissions (SHRCs) have come up. The effort to improve the promotion and protection of human rights in India pre-dates the establishment of the NHRC. Now is a good time to examine not only the functioning and effectiveness of the NHRC and the SHRCs but also to identify the central challenges relating to human rights in the future and work towards tackling them. The nature of human rights is such that it immediately creates unparalleled social expectations and invites powerful civil society scrutiny from national and international actors. It is important that Human Rights Commissions (HRCs) succeed in their efforts to promote and protect human rights. The legitimacy and credibility of these commissions rest on their ability to address the problems relating to human rights in a society.

Accountability

HRCs are relatively new and innovative institutions born out of the initiatives of the United Nations to ensure domestic protection of human rights. The fact that international human rights laws have moved toward national constitutionalisation of human rights has strongly shaped the development of HRCs in numerous jurisdictions. HRCs perform a variety of functions.

The include investigating alleged violations, conducting public inquiries, exercising advisory jurisdiction, ensuring the implementation of human rights in prisons and other custodial institutions, providing advice and assistance to governments, creating awareness, promoting interaction, exchange, and better coordination among other national human rights institutions in the region and worldwide, promoting interaction and exchange with non-governmental organisations, and publishing annual reports.

While there is a high degree of consensus on what ought to be the functions of HRCs, their actual performance and indeed their institutional effectiveness vary significantly from country to country.

Some commissions have acquired national legitimacy and international reputation for their work in protecting and promoting human rights. Some others, in the manner of their creation and in the exercise of regular functions, reveal the state apparatus' arm in legitimising numerous actions that are not in harmony with human rights.

In this regard, the subject of human rights commissions has invited much academic attention in recent years, besides assessment by U.N. bodies. It has also attracted civil society scrutiny following independent assessments of the work of several commissions by numerous international NGOs.

An important point to be noted is that HRCs are not the panacea for all problems related to the subject in a society. They tend to be effective only under a given set of circumstances, but most importantly, a lot depends on the level of funding, functional independence, and institutional autonomy guaranteed to the HRC. Also, the composition of the HRC matters, to a large extent, in determining the kind of focus and activism it will promote. However, HRCs are important institutional approaches that can ensure the protection and promotion of human rights.

The effectiveness or otherwise of human rights commissions does not directly depend upon the existing human rights structure in any society. What is important is how a particular commission locates itself in a society and is able to confront the issues before it. There are various ways through which states ensure human rights accountability. Traditional approaches to human rights protection and promotion have tended to focus on constitutional judicial review, human rights provisions in the constitution or other legislation in a society, and the interpretation of these laws by the courts. Such mechanisms directly ensure the enforceability of human rights through the directions of courts.

13

However, this method is not without its weaknesses.

Since the courts in most jurisdictions are inundated by civil, criminal, constitutional, commercial, corporate, and other types of cases, direct focus on human rights issues and cases tends to be weak. This creates a situation wherein human rights cases have to be themselves couched in the jargon of administrative or some other public law for them to receive the right kind of attention from the courts. Moreover, the elaborate legal processes and the procedures involved in court cases tend to complicate human rights issues in a court environment. Human rights issues need to be directly and seriously confronted by a body exclusively mandated to perform such a task. It was this realisation that resulted in international opinion moving towards the formation of HRCs. They are most effective when their tasks are adequately supported and supplemented by other legal, judicial, and institutional mechanisms that ensure the government's accountability. They cannot work in isolation from courts due to their quasi-judicial nature and soft power.

Education

A culture of human rights ought to be promoted through education. Human rights education in India is extremely important, given the fact that society is witness to numerous violations and abuse of powers and that the ability of the people to fight these injustices is limited.

Awareness relating to rights is very important for empowering the people of India to seek policies of good governance from the government. The strategy for inculcating human rights culture among the people needs to be based on a number of factors: social, legal, political, judicial, and institutional.

Human rights education was a focal point of U.N. activities in creating the United Nations Decade for Human Rights Education (1995-2004) in December 1994.

In this process, the United Nations General Assembly defined human rights education as "a life-long process by which people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies." The international significance of this is demonstrated by the fact that the UNGA sought the support of the international community and civil society during 1995-2004 in its efforts to promote a culture of human rights worldwide through education and training. The NHRC has taken several significant steps in promoting rights education in India. Recently, it proposed to include lessons on human rights in the curriculum for schools and colleges. The aim is to make common citizens understand the subject from the school level itself.

Role of academia

Human rights education in India needs to go beyond the frontiers of academic learning or, for that matter, professional pursuit. It should aim to forge social transformation and promote a worldview based on the respect for the rights and freedoms of humanity. Thus, the need for empowering the people of India cannot be better achieved than by developing varied components of human rights education. A sustained development of human rights education in India can result in the promotion of a culture of human rights. The starting point for such a development can be to develop knowledge and capacity-building in imparting greater awareness of the Constitution of India and the working of HRCs. In the process of promoting a culture of human rights, human rights education can also ignite activism on the subject.

In recent years, in the context of formulating a legal and institutional framework for implementing the right to information, India has witnessed a unique type of civil society activism that seeks to promote transparency and accountability of the government. Human rights activism is another facet of accountability-seeking endeavours.

The impact of globalisation on the Indian economy and politics is profound. Multinational corporations and business enterprises need to assume obligations they did not recognise before. They need to recognise that corporate social responsibility demands that their working and functions are in accordance with domestic and international human rights. They have a duty to share responsibilities to promote human rights education. They should support the activities of educational institutions, NGOs, and civil society organisations with a view to promoting human rights education.

The culture of human rights that we seek to achieve in India necessitates rights education that examines the policies affecting human rights and to shape the responses of HRCs and civil society with a view to enforcing accountability in governance.

(C. Raj Kumar is Associate Professor of Law at the City University of Hong Kong and Honorary Consultant to the National Human Rights Commission in India. Email: crajkumar4@yahoo.com)