

SOCIETAL VIOLATIONS OF HUMAN RIGHTS – SOME THOUGHTS

*Dr. Narendra Jadhav**

Introduction

We are living in an era of dramatic transition in the world environment that is being transformed by complex financial systems and revolutionary information technologies into a vast global marketplace. Globalization is creating new patterns of interaction among people and governments, promising unprecedented opportunities for material progress in larger freedom, but also threatening to compound many existing challenges before the international community – especially, deepening the economic marginalization of those most vulnerable. In this emerging scenario, human rights, which were embedded formally at the United Nations as a global priority around half-century ago – by means of the December 1948 Universal Declaration of Human Rights - have gained prominence as a universally recognized set of norms and standards that increasingly inform all aspects of our relations as individuals and as collective members of groups, within communities and among nations. There is now near-universal recognition that respect for human rights - the rights of political choice and association, of opinion and expression, and of culture; the freedom from fear and from all forms of discrimination and prejudice; freedom from want and the right to employment and well-being and, collectively, to development - is essential to the sustainable achievement of the three globally agreed imperative of peace, development and democracy.

I. Evolution of Human Rights – A Brief Background

Human rights are those fundamental entitlements that are considered to be necessary for developing each personality to the fullest. The essence of ‘human rights’ can be captured in two words *i.e.*, the struggle for dignity and

* Dr. Narendra Jadhav is Principal Adviser and Chief Economist, Reserve Bank of India, Mumbai. Views expressed here are in his personal capacity and do not necessarily reflect those of the institution he belongs.

fundamental freedoms, which allow the full development of human potential. It call for civil and political rights accompanied by economic, social and cultural rights. Any arbitrary and selective actions that interfere with the full exercise of these fundamental entitlements may be deemed to be violations of human rights.

The value of life is central to human rights. All human beings are born free. The fundamental freedoms include the right to liberty, freedom from slavery, as well as freedom from arbitrary arrest, torture, cruel inhuman or degrading treatment, freedom of thought and speech. Next to life itself, freedom and liberty are the most precious human values asserting the worth of human existence. The fundamental principle of equality is closely linked to principles of justice. Regardless of birth, gender, age, disability, race, colour, language, religious or political beliefs, property, sexual orientation, status or social class, every person has a right to equal treatment and protection under the law.

The modern movement of human rights, said to be born in the aftermath of the holocaust in Europe, involves the early efforts, necessarily incomplete and partial, to define the societal preconditions for human well-being. Not surprisingly, promotion of human rights became one of the four principal purposes of the United Nations (UN), founded in 1945. Subsequently, the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, provided a list of those societal conditions considered essential for well being, peace and health.

The Universal Declaration of Human Rights and subsequent treaties and documents describe what governments and societies should not do to people, (*e.g.* torture or imprison arbitrarily or under inhuman conditions), and what governments and societies should guarantee for all people in the society (*e.g.*, shelter, food, medical care, and basic education). Even when human rights and dignity are respected, there will still be social distinctions, but all people will be ensured of a basic minimum standard in which their individual potential can be freely and fully developed.

When the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights (1948). The Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories." The Declaration is thus, a common standard of achievement for all peoples and all nations. Every individual and every organ of society, is expected to strive by teaching to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.

II. Human Rights Violations in the Indian Context

India - the world's largest democracy, does not seem to enjoy a blemishless record in the case of human rights violation. Like most other countries, in India also there is widespread violation of human rights though the nature of violations is varied. Extensive societal violence and discrimination against women; forced prostitution; child prostitution and female infanticide; trafficking in women and children; discrimination against persons with disabilities; serious discrimination and violence against the Scheduled Castes and Tribes; widespread inter-caste and communal violence; religiously motivated violence against minorities and widespread exploitation of indentured, bonded and child labor are some instances of human rights violations in India. A taxonomy of human rights violation in India is presented below :

Atrocities on Dalit Communities

The Constitution of India and the Civil Rights Act of 1955, outlaws the practice of untouchability, which discriminates against people defined as Scheduled Castes. Regrettably, however, such discrimination has remained an important aspect of life. Despite longstanding efforts by the Government to

eliminate the discriminatory aspects of caste, the practice has remained, and widespread discrimination based on the caste system does seem to occur throughout the country; although the form of discrimination is generally subtle in the recent years, as opposed to a blatant one in the past. Inter-caste violence has claimed hundreds of lives; it has been especially pronounced in Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Tamil Nadu, and Andhra Pradesh. Regrettably, discrimination against Dalits cover the entire spectrum of social, economic, and political activities, from withholding of rights to killings.

The United Nations Human Rights Division is now emphasizing the right to development, which includes the right to accessible drinking water, shelter, food, etc. On these criteria alone, Indian Dalits who are denied of development opportunities, denied of access to drinking water, shelter and health care can possibly claim universal application of Human Rights to their life and seek protection.

Communal Hatred and Related Abuses

Large-scale episodes of communal violence seem to have remained unpunished. This injustice continues to foster communal resentments throughout India. There has still been no accountability for more than two thousand lives lost in the western state of Gujarat during communal violence in 2002. In *Discouraging Dissent* – a report released in August 2004, Human Rights Watch has documented the continued discrimination, intimidation of witnesses, faulty investigation, and apparent interference from the State machinery in efforts to prosecute those responsible for the violence.

The Indian Supreme Court has already ordered two Gujarat cases to be retried in another state. The criminal justice system in Gujarat, the Supreme Court concluded, had been “abused, misused and mutilated by subterfuge.” Human rights activists and lawyers have petitioned for fresh investigations and trials in a number of cases where it was felt that the local courts, prosecutors and police were hostile to the minority complainants. Despite these positive developments, reportedly, the human rights activists in Gujarat continue to be

harassed on the basis of what police claim are their “anti-national activities.” Witnesses, however, remain vulnerable to threats.

The year 2004 marked the twentieth anniversary of Operation Blue Star, a focal point in the conflict between Sikh nationalists and state security apparatus in Punjab in the 1980s; and the anti-Sikh riots in New Delhi, which resulted in more than three thousand Sikh deaths. In July, the National Human Rights Commission called for claims in cases of summary execution in Punjab. The assignment of individual criminal responsibility for those and other crimes committed during the period, however, remains elusive.

Extra judicial killings

The practice of extra judicial killings, popularly known as "encounters" came into vogue in some Indian States from around 1968 as a method of containing the anti-national movement. The concerned State Governments often portray such movement as a law and order problem and do not wish to acknowledge the fact that the movement, to some extent at least, could essentially be an expression of the people's aspirations to a life of dignity and self-respect. Security forces were sometimes responsible for extra-judicial killings, including staged encounter killings, and custodial deaths. Government officials reportedly, used special antiterrorism legislation to justify the excessive use of force while combating active insurgencies in some States. Security force officials who committed human rights abuses generally enjoyed *de facto* legal impunity, although there were numerous reports of investigations into individual abuse cases as well as punishment to some perpetrators. Other violations included: torture and rape by police and other government agents; poor prison conditions; lengthy pre-trial detention without charge; prolonged detention while undergoing trial; occasional limits on press freedom and freedom of movement; harassment and arrest of human rights monitors.

Abuses by separatist forces

Separatist guerrillas in some States committed numerous serious abuses, including killing armed forces personnel, police, government officials, and civilians. They also engaged in torture, rape, and other forms of violence, including beheadings, kidnapping, and extortion.

Torture during interrogations

The law prohibits torture, and states that confessions extracted by force generally are inadmissible in court; however, authorities have often used torture during interrogations and extorted money as summary punishment. Because many alleged torture victims died in custody, and others were afraid to speak out, there were few firsthand accounts, although marks of torture often have been found on the bodies of deceased detainees.

Unlawful detention

The Constitution provides for an independent Judiciary, and the Governments have generally respected this provision in practice; however, serious problems have remained. The Judiciary has been backlogged and understaffed in most parts of the country, and in some cases members of the Judiciary have long been subject to threats and intimidation by guerillas and security forces. The court system has remained severely overloaded, resulting in the detention of thousands of persons awaiting trial for periods longer than they would receive if they had been convicted. Prisoners have sometimes been held for months or even years before obtaining a trial date.

Interference in Personal Affairs

The Constitution prohibits arbitrary interference with privacy, family, home, or correspondence. Governments have generally respected these prohibitions. In practice, however, at times, the authorities infringed upon them. Police must obtain warrants to conduct searches and seizures, except in cases where such actions would cause undue delay. Police must justify such

warrantless searches in writing to the nearest Magistrate with jurisdiction over the offense. But one does come across cases of violations, wherein some authorities searched, interrogated, and arrested business and management professionals, often without search warrants.

Denial of Religious Freedom

The Constitution provides for secular government and the protection of religious freedom, and the Governments have generally respected these provisions. In practice, however, it sometimes did not act effectively to counter societal attacks against religious minorities and attempts by State and local governments to limit religious freedom. This failure resulted in part from the legal constraints inherent in the country's federal structure and in part from shortcomings in the law enforcement and justice systems. There is no State religion; however, the majority of citizens are followers of Hinduism, and this, at times, seems to have adversely affected the religious freedom of others.

Discrimination on the Basis of a Person's Personal Attributes

The Constitution prohibits discrimination on the basis of a person's race, sex, religion, place of birth, or social status. The government authorities work to enforce these provisions with varying degrees of success. Despite laws designed to prevent discrimination, social and cultural practices have had a profound discriminatory impact. Discrimination against women, persons with disabilities, homosexuals, and national, racial, and ethnic minorities has been a problem. The traditional caste system, as well as differences of ethnicity, religion, and language, have deeply divided the society. According to the National Commission for Scheduled Castes and Scheduled Tribes, caste clashes were frequent in Uttar Pradesh, Bihar, and Tamil Nadu.

Domestic Abuses against Weaker Sex

Domestic violence is common and a serious problem. As a matter of fact, a large segment of Indian women have accepted domestic violence as part

of their life. This is evident from the fact that according to the National Family Health Survey released in 2002, 56 percent of the women said that domestic violence was justified. These sentiments led to underreporting and, combined with ineffective prosecution and societal attitudes, made progress against domestic violence difficult. A major issue has been the high rate of marriage of underage girls. The press frequently reports that violence against women has been increasing.

Demanding Dowry

Providing or taking dowry is illegal under the Dowry Prohibition Act of 1961. However, while dowries continued to be offered and accepted at the time of marriage, implementation of the legal provision has been a serious problem and dowry disputes. Very often, the groom's family harass a new wife whom they believed had not provided a sufficient dowry. This harassment sometimes end in the woman's death, which the family often tries to portray as a suicide or accident. Growth of Education, spread of media and efforts of women's organizations have contributed to the reduction in dowry related atrocities and dowry deaths.

Child Abuse and Immoral Trafficking

The law prohibits child abuse; however, there are societal patterns of abuse of children, and the Governments have not released comprehensive statistics regarding child abuse. The Constitution and the Immoral Trafficking Prevention Act (ITPA), supplemented by the Indian Penal Code, prohibit trafficking in human beings, and the law contains severe penalties for violations; however, trafficking in persons is a serious problem. The Constitution prohibits forced or bonded labor, including by children; however, such practices remain widespread. Female bondage, forced prostitution, and trafficking in women and children for the purpose of prostitution have been widespread problems.

India has the largest number of working children in the world, millions of whom work in the worst forms of child labor, including bonded labor. The government is required by its own laws to protect them. Instead, for reasons of apathy, caste bias, and corruption, many government officials deny that they exist at all. Both literacy and school enrollment rates overall have improved in the last decade, but according to UNESCO, approximately only half of students completed grade five. Proportionately fewer girls than boys attend school, and those that do, drop out at higher rates. Dalits also have higher illiteracy and dropout rates and do often have to face discrimination in education.

Commercial Sex and Sexual Harassment

Prostitution is illegal, but it is routinely found practiced everywhere. According to UNICEF, the country contained half of the 1 million children worldwide who entered the sex trade. The country is a significant source, transit point, and destination for trafficking of women. Sexual harassment is common, with a vast majority of cases unreported to authorities. In June 2003, a senior Professor at the Madras Institute of Development Studies published a study in which she chronicled the hazards faced by some women in the workforce. Among these were physical and verbal abuse from male supervisors, restricted use of toilets, and the inability to take lunch breaks. In June, the NCW and the Press Institute of India jointly released a report that found that a majority of women experienced gender discrimination at their workplaces. Often, attempts by women to report harassment resulted in further problems or dismissal.

Denial of Education and Medical Facilities

The Government does not provide compulsory, free, and universal primary and secondary education. According to the Government's statistics for 2003, 165 million of the 200 million children between the ages 6-14 attended school while others did not. The Constitution provides for free medical care to

all citizens; however, availability and quality have been a major problem, particularly in rural areas.

HIV/AIDS

Scores of Indians, including thousands of children, are living with human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS). Many more children are otherwise seriously affected by India's burgeoning epidemic—when they are forced to withdraw from school to care for sick parents, are forced to work to replace their parents' income or are orphaned (losing one or both parents to AIDS). All of India's States have reported AIDS cases, and in at least six States, according to the government, HIV/AIDS has spread beyond persons considered "high risk" to the general population. Among young children especially, transmission by birth is the most common source; however, children in India are also acquiring HIV through sexual contact, including sexual abuse; blood transfusions; and unsterilized syringes, including injection drug use. Most of those dying of AIDS are between fifteen and forty-nine years old, the age when many are raising children. The number of AIDS orphans has not been adequately measured, but some calculate more than a million children under age fifteen in India have lost one or both parents to AIDS, and that the numbers are growing.

Discrimination to Disabled Persons

The Persons with Disabilities Act provides equal rights to all persons with disabilities; however, advocacy organizations admitted that its practical effects have so far been minimal, in part due to a clause that makes the implementation of programs dependent on the "economic capacity" of the Government. Widespread discrimination occurred against persons with physical and mental disabilities in employment, education, and in access to health care. Neither law nor regulation requires accessibility for persons with disabilities. Government buildings, educational establishments, and public spaces throughout the country have almost no provisions for wheelchair access.

III. Efforts to Minimize the Human Rights Violations

In India, the Supreme Court is the guardian of the fundamental rights and freedoms of the individuals. The independence of the Judiciary is, therefore, crucial.

Fundamental rights and freedoms are guaranteed in the Constitution. The inclusion of certain human rights as part of the Constitution generally means that they have some degree of priority over the laws enacted by the legislature (and administrative action) and that special requirements must be observed in order to amend them. Their 'entrenchment' in this way clearly has the advantage of protecting them against infringements but it also restricts the will of the majority. In reality it has been considered that constitutional guarantees are not sufficient measures for the protection and safeguard of human rights. The Supreme Court, as guardian of the Constitution, can provide redress whenever an individual claims that any of his guaranteed rights have been, are being or are likely to be contravened. The Supreme Court has been drawing the attention of policy makers and public officials on the human rights implications of their decisions and actions. However, it is necessary to recognize that the law alone cannot guarantee the preservation of human rights. Mere existence of a Human Rights Commission is not adequate.

Human rights education programmes need to be devised and it needs to be ensured that these programmes will be an integral part of the curriculum. This is extremely important to sensitize the society at large from a young age to resent and resist human rights violations.

The United Nations is leading the efforts to establish minimum humanitarian standards, seeking to identify fundamental rules of human rights and humanitarian law that can be applied in all circumstances, in times of conflict, as well as in situations of mass exodus, for the protection of human rights. These efforts aim at providing the human rights framework necessary to find long-term solutions to the root causes of conflict and to prevent the excesses that make reconciliation so difficult. The United Nations urges

national authorities to respect international human rights standards in such situations. All nations need to respect them.

The first imperative in preventing conflict and building peace is establishing human security. Without security, human rights are seldom safe. We must find more effective ways to assure economic and physical security for populations that are vulnerable to, or targeted for, abuse. The establishment and support of free-market democracies is a critical safeguard for human rights. We must also learn how to integrate our democratic rule, rule of law and good governance programs with preservation and respect of human rights.

Helping contending groups in a society to live together in peace can only serve the cause of human rights. Ensuring economic equality can encourage different groups to work together to address various economic issues. All of these can further our goal of protecting human rights and improving individual security.

The term “human security” appears prominently in the World Bank’s “World Development Report 2000/2001—Attacking Poverty,” which among other things recommended addressing the vulnerability of the world’s poor to violence. The report defined security primarily in economic and financial terms; however, the term increasingly also carries implications of physical security of persons. While alleviating poverty remains a very important issue, assuring people’s security is also a very important part of the human rights picture.

Today’s challenge is to resolve societal differences through non-violent methods. Human rights have an important place in this. It is not to suggest that some rights are more important than others, but clearly when the right to life, liberty, and the security of person is respected, few conflicts arise. However, is not always a simple matter. Hence, our conflict-prevention efforts need to be integrated with efforts to promote democracy, free markets, and the rule of law, all of which are firmly rooted in universal human rights, is perhaps the right approach.

Human rights and human survival are inalienably linked. But this basic human right to live with peace and security, liberty and equality and prosperity cannot be rejuvenated by any government faced with the threat of terrorism. Terrorism is a negation of life and violation of norms of human behaviour recognized by all civilised people of the world. By spreading terror and panic among people, it hits the very roots of democracy. So every society cherishing the democratic way of life is bound to fight terrorism.

The relationships in the area of protection of human rights are basically intra-State relationships, and these rights and freedoms are guaranteed mainly by the State, making use of norms of national law and internal mechanisms and procedures. However, legal reform may not provide answers to all problems. Implementing agencies including the judiciary needs to take note of this reality and consider various options.

IV. Concluding Remarks

Human rights refer to the basic rights and freedoms to which all human beings are entitled. These include: life, liberty, freedom of thought and expression, equality before the law, and material well-being. The history of human rights is that of the struggle against exploitation of one person by another. It is based on the recognition of basic rights founded on the concept of the inherent dignity and worth of every individual. Martin Ennals, who is a well known champion of human rights says, *"Ironically, I think there is less cynicism about human rights than there was. The work we are doing is part of the overall pattern of human development, whatever the political system, whatever the country, whatever the cultural background, whatever the religion."* But, in reality the human rights abuses have not only become common but rampant in all parts of the world.

Let us not forget, as long as human rights are abused and violated, fear stalks the public life. Economic freedom has no meaning with a dismal human rights record. Dag Hammarskjöld, Former UN General Secretary once said *"'freedom from fear' could be said to sum up the whole philosophy of human*

rights.”. Mary Robinson, United Nations High Commissioner for Human Rights believes that “*today's human rights violations are the causes of tomorrow's conflicts.*” As Aung San Suu Kyi , the well known Nobel Laureate and pro-democracy activist in Burma puts it “*fear is not the natural state of a civilized man.*” Therefore, societies across the globe need to shun the fear psychosis through upholding and preserving the human rights.

It is clear that safeguarding the rights of a human being or a group of human beings squarely lies in the hands of another human being or another group of human beings. Surely, the issue of human rights is a complex subject that defies a perfect solution. Law alone cannot guarantee to uphold the human rights. Nelson Mandela once said “*if you want to make peace with your enemy, you have to work with your enemy. Then he becomes your partner.*” This is one way of removing the misunderstanding and striving for reconciliation. The Secretary General of the United Nations Kofi Annan feels that “*we must put people at the center of everything we do. That is the essence of human security.*” Conflict resolution, empathy for others, consideration of others’ views in an objective manner, respect for other religions and castes, economic equality and a host of other factors need to be weighed in our quest for safeguarding the human rights. Obviously, such a state of affairs in today’s complex society is easier to aspire than to secure. This is not to despair that it is impossible to secure human rights, but to recognize that it is an extremely arduous task warranting education, compassion and understanding from all the sections of the society.