

INDIA: NEED OF THIRD GENERATION HUMAN RIGHTS

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ABSTRACT

This study is an itinerant exploration into dimensions, and perceptions of human rights in terms of delving into the areas of human rights which are less thought about and less spoken too. India, the world's most populous democracy, has a vibrant media, active civil society, a respected judiciary, and significant human rights problems. This paper focuses on need of third generation human rights in India that would include, Right of Life during Imprisonment , Transgender Human Rights and Human Right for prevention against Family Honor killing to name a few.

KEYWORDS: *Third Generation Human Rights, Need, India*

INTRODUCTION

Preamble

Human being is the beginning and end of every organized society within the state or within the international community. Hence the realization of human rights should be the goal of every state. The subject of human rights has been evoking public interest all over the world. The interest in the subject is not only confined to the people of upper circle concerned with the affairs of the state. But a large number of people in various walk of i.e., academics lawyer and social workers have been taking active parts in promoting the cause of human rights.

The interdependence of human right democracy and development is broadly considered to be valid. Liberty, freedom of dissent, rule of law and all other matters which go to constitute human rights are necessary so that democracy should be maintained. This was so clear after the World War II that United Nation was found with two objects, not with one; the first object was to prevent war in the future; and the second object was to protect and promote human rights. The entire history of the World War II indicated the importance of human rights without which no democracy was possible, no freedom was possible.

Any reference to India often includes superlatives, such as the world's largest democracy, the second fastest growing economy and the second most populated country. India has managed to

convince the world's diplomatic community of its status and has become one of the leading voices in the United Nations, which was reflected in the UN Human Rights Council elections. India secured the maximum number of votes among the Asian countries in the election to the Council.

Based on this, the government of India projects the country as being a model to several other countries concerning the rule of law and human rights standards. This, however, only applies if the comparison is limited to India's immediate neighbors, such as Nepal, Burma, Bhutan, Pakistan, Bangladesh, Sri Lanka and Afghanistan. Economic growth is, however, not an indicator of the improvement of the rule of law and human rights standards in India, even though the government claims otherwise. In this paper the untapped or rather less thought of human rights areas in India are being discussed and proposed.

REVIEW OF LITERATURE

PUCL-K (2003) states that the Indian constitution recognises only two genders: male and female. **Hijras** have no space in it. The movement for sexuality minorities in India, even in its second decade, has confined itself to advocating the rights of only gay, lesbian, and bisexual people. The reluctance of the gay, lesbian and bisexual movement to take aboard the concerns of transgender people and others who don't identify as lesbians, gays, or bisexuals arguably flows from the larger mainstream discrimination meted out to the hijra community in India due to their non-conformist gender identity and class marginalisation.

This reluctance is now being questioned by the increasing demand of the hijra and kothi communities to be considered an integral part of the sexuality minority movement. This is reflective of a global shift in the discourse of queer politics from issues of sexual orientation to issues of gender identity. The prevailing civil laws for marriage, adoption, inheritance, property, insurance, pension, gratuity, housing etc. deny space for sexuality minorities, as they recognise only heterosexual marriages and families as legitimate.

Non-recognition of gender (after sex change) makes it impossible for hijras to avail employment opportunities, education, housing, health facilities, property rights, marriage rights, ration cards/passports/voter identity cards etc. Most kothis face sexual harassment at workplace from male colleagues. These situations leave hijras/kothis with very few choices, and many choose sex-work for a living. Living is hell for all sex workers (including hijras, kothis, men and women) as the Immoral Trafficking Prevention Act (ITPA) criminalises sex-work and gives enormous powers to the police to harass, abuse, rape, torture, and extort money from sex-workers.

The Asian Centre for Human Rights estimated that between 2002 and 2008, over four people per day died while in **police custody**, with "hundreds" of those deaths being due to police use of torture. According to a report written by the Institute of Correctional Administration in Punjab, up to 50% of police officers in the state have used physical or mental abuse on prisoners. Instances of torture, such as through a lack of sanitation, space, or water have been documented in West Bengal as well.

In his World Report 2001, Kenneth Roth states in the chapter about India that impunity for abusive policing remains a pressing concern in India, with continuing allegations in 2010 of police brutality, extrajudicial killings, and torture. While some policemen were prosecuted for

human rights abuses, legal hurdles to prosecution remained in place and long-promised police reforms remained in draft form or unimplemented. Alleged perpetrators use political influence, corruption, and intimidation to obstruct investigations, delay proceedings, discourage plaintiffs, and ultimately escape prosecution.

As instances of ‘**honor killings**’ are reported with alarming — and increasing — regularity across the country, a research paper to be presented at an international conference in London by some Indian jurists on crimes against women next week suggests that the total number of such killings could be well over 1,000 every year in India. The research paper titled ‘Social-legal perspective of forced marriages’, prepared by Chandigarh-based senior lawyer Ranjit Malhotra, an alumnus of the University of London and dealing with cases of intercontinental marital disputes and custody of children, says that at least 900 incidences of honour killings’ take place in three states alone — Punjab, Haryana and Uttar Pradesh — every year.

“Honor” killings of women and girls continued in 2010, mostly in the northern states of Haryana, Punjab, and Uttar Pradesh. Khap panchayats (unofficial village councils) issued edicts condemning couples for marrying outside their caste or religion and censured marriages within a gotra (kinship group) as incestuous even though there was no biological connection. To enforce these decrees, family members threatened couples, filed false cases of abduction, and killed spouses to protect the family's "honor." Some local politicians and officials were sympathetic to the councils' edicts, implicitly supporting the violence.

Objectives

The aim of this paper is not to produce a bullet-pointed list of conclusions about third generation human rights. Its aim, rather, is to take a snapshot of what is required around the use of these rights in India, with the hope that doubts, confusions, and beliefs we encounter along the way will emerge as sources of learning for all of us. And that these observations will guide us in finding pathways of social change that will make the circumstances with which this paper began something we can expect, rather than simply imagine.

Research Methodology

The research paper attempts to explain the concept of human rights and seeks to examine need of newer human rights in areas untouched or less explored. In order to propose these aspects, we have adopted the standard methodology generally followed by the social scientist particular political scientist. The present study is an explanatory descriptive and analytical in nature and based upon primary and secondary sources. For the collection of data we have mainly relied upon the report of government as well as non-governmental organization, books, journal magazines and newspapers etc.

Discussion

The area of human right is very vast and expanding. Apart from the enforcement of fundamental rights in the Indian context, it also contains such economic rights as right to health, freedom from hunger, women’s rights etc. In addition to the traditional classification of civil and political rights, economic, social and cultural rights were added to it in 1966. Additional human rights such as human rights to compensation resulting from natural disasters such as floods, cyclones, volcanoes, earthquakes etc. continue to be proposed.

Among the new human rights, mention is of peace, development, environmental protection and the benefits stemming from the common heritage of mankind etc. The new human rights are also known as the third generation human rights. The above review of literature gives us an overview about some of the areas where the Human rights in Indian system need to be reformed. In this paper a selected few according to the need understood are being presented. The areas of concern can be identified as

- A) Right of Life during Imprisonment
- B) Transgender Human Rights
- C) Human Right for prevention against Family Honor killing.

Third Generation Human rights

A) Right of Life during Imprisonment

Through the creative interpretation of the fundamental rights and a great understanding of the International Human Rights standards, a great deal of human rights jurisprudence has been developed by the Supreme Court of India. Moreover, it has attempted to strike a balance between the liberty of citizens (the most precious of all fundamental rights) and the social interest in the maintenance of peace and law and order. But still there is a need for modification of the situation and thereby the agency of criminal justice system namely the police to protect the human rights of citizens and fulfill the objective of welfare state.

There should be regard for civil liberties and human rights. The most important transition that merits urgent attention hinges on the attitude of the average policemen in their day-to-day work. It is here that the leadership has to pull their collective weight in bringing first the attitudinal change of Police in their actions as well as their thinking. The changes like that in arrest procedures in the law in relation to the specific issues of the Human Rights abuses are urgently needed.

Modernization of the police work, better investment in the terms of overall organisational reform and so on must be put on a national agenda. In such a scenario, the law enforcement can be made effective without discarding the reasonable and minimum standards of Human Rights provided by the Constitutional provisions relating to fundamental rights and national and international policies and treaties on the Human Rights [45].

To make this task really a possibility a great amount of social awareness coupled with the self-awareness on the part of the police personnel is a primary pre-requisite. In specific cases related to arrests and other offences also where there is a scope for the misuse of police power the abuse of police power can be stopped by Transparency of action and accountability. These two steps are perhaps the possible safeguards which our Courts and legislature must insist upon.

Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring at the very implementation level. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation.

Under existing circumstances, policing suffers badly from the practice of custodial torture. This practice, along with issues like corruption, ineptitude and political interference, has resulted in the local police being feared by the ordinary people. The impression about the local police is often worse than that of a criminal. In common conversations the image of police is such that a police officer is often referred to as the criminal's associate or the uniformed criminal. Ordinary people avoid going to police

B) Transgender Human Rights

What became apparent in the course of our study is that discrimination against hijras and kothis is embedded in both state and civil society. The violence that this community faces is not only due to the state but also has deep societal roots. As has been argued in the course of the paper, wider change is premised on changing existing social relations. Any proposal which tries to ensure that the dignity and selfhood of kothis and hijras is respect has to deal with a complex reality in which class, gender and sexuality play a crucial role.

Apart from shifts in class relations, change would also crucially hinge upon overturning the existing regime of both gender and sexuality that enforces its own hierarchies, (e.g. heterosexuality over homosexuality), exclusions (e.g. hijras as the excluded category) and oppressions. While keeping in mind this wider context, a human rights approach has to deal with the various institutional contexts and think through ways in which change can be brought about.

C) Human Right for prevention against Family Honor killing.

Killing of women on the basis of family honor is considered one of the forms of discrimination against woman and is a serious violation to her basic human rights. Yet it is a phenomenon that continues in the Asian world. It is a reflection of various social, psychological, economical and cultural factors.

Honour killing is defined as a death that is awarded to a woman of the family for marrying against the parent's wishes, having extramarital and premarital relationships, marrying within the same gotra or outside one's caste or marrying a cousin from a different caste. Honour killing is different from the dowry deaths that are also a very common practice in India as, in the case of dowry deaths, the perpetrators of that action claim that they have not been given enough material rewards for accepting the woman into the family.

We have had a tradition of honour killing. This tradition was first viewed in its most horrible form during the Partition of the country in between the years 1947 and 1950 when many women were forcefully killed so that family honour could be preserved. During the Partition, there were a lot of forced marriages which were causing women from India to marry men from Pakistan and vice-versa. And then there was a search to hunt down these women who were forced to marry a person from another country and another religion and when they returned 'home' they were killed so that the family honor could be preserved and they were not declared social outcasts from their region.

Now, there are various reasons why people or family members decide to kill the daughter in the name of preserving their family honour. The most obvious reason for this practice to continue in India, albeit, at a much faster and almost daily basis, is because of the fact that the caste system continues to be at its rigid best and also because people from the rural areas refuse to change

their attitude to marriage. According to them, if any daughter dares to disobey her parents on the issue of marriage and decides to marry a man of her wishes but from another gotra or outside her caste, it would bring disrepute to the family honour and hence they decide to give the ultimate sentence that is death to the daughter.

Now as has become the norm, the son-in-law is killed as well. Sociologists believe that the reason why honour killings continue to take place is because of the continued rigidity of the caste system. Hence the fear of losing their caste status through which they gain many benefits makes them commit this heinous crime. The other reason why honour killings are taking place is because the mentality of people has not changed and they just cannot accept that marriages can take place in the same gotra or outside one's caste. The root of the cause for the increase in the number of honour killings is because the formal governance has not been able to reach the rural areas and as a result. Thus, this practices continues though it should have been removed by now.

There are various misconceptions regarding the practice of honor killing. The first misconception about honor killing is that this is a practice that is limited to the rural areas. The truth is that it is spread over such a large geographical area that we cannot isolate honor killings to rural areas only, though one has to admit that majority of the killings take place in the rural areas. But it has also been seen recently that even the metropolitan cities like Delhi and Tamil Nadu are not safe from this crime because 5 honor killings were reported from Delhi and in Tamil Nadu; a daughter and son in law were killed due to marriage into the same gotra.

We need to have stricter laws to tackle these kinds of killings as this is a crime which cannot be pardoned because. Humans do not have the right to write down death sentences of innocent fellow humans.

CONCLUSION

To conclude, the suggestions and recommendations enumerated above are not exhaustive. Many other have been suggested throughout the study. There may be many more. "Every day we see how discredited human rights and United Nations itself would be, in the eyes of the world, if the declarations, covenants, charters, conventions and treaties that we draft in order to protect Human Rights remained theoretical or were constantly violated. Human Rights should therefore, be covered by effective mechanisms and procedures to guarantee and protect them and to provide sanction". Undoubtedly several efforts have been made and suggested in the direction of better protection of human rights at different for as in India.

This scenario leaves much to be desired as it runs counter to two basic premises of universal human rights. First, that all human beings have these rights, by virtue of their being so, and that these are universal, irrespective of any irrelevant (mostly) 'man'- made distinctions. Second, that human rights shield the powerless from the powerful, including minority from the majority.

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