

**HUMAN RIGHTS  
AND  
DEVELOPMENT POLICIES**

*BY*  
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## TRANSACTIONS

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### **TRANSACTION NO. 96**

Justice Shri H.G. Balakrishna is a distinguished jurist who adorned both the Bar and the Bench in Karnataka. As a judge of the High Court of Karnataka from 1987 to 1991, he was known for his humanism and trendsetting judgments. We feel privileged in being able to bring out his illuminating paper on “Human Rights and Development Policies” as a Transaction of the Institute. It formed the basis of his “Founder’s Day Address” delivered before an enlightened audience under the auspices of the Institute on 13th August 1996.

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# **HUMAN RIGHTS & DEVELOPMENT POLICIES**

*- Justice H.G. Balakrishna*

## **INTRODUCTION**

The improvement of the condition of human beings is closely related to the protection of human dignity. A life rich in human dignity calls for certain minimum standard in the realm of civil and political liberties as well as economic and social requirements.

In the past five decades, endeavours have been made to codify these economic, social and cultural requirements.

The International Covenant on Economic, Social and Cultural Rights [ICESCR] is one of them. It is one of the most important instruments embodying economic, social and cultural rights. These rights constitute legally binding obligations for states.

We have been witnessing in countries throughout the world, the expansion of prosperity for some unfortunately coupled with an expansion of unspeakable poverty and misery for others.

The universal declaration of Human Rights which was adopted by the U.N. General Assembly in 1948, enumerates some of the Human Rights such as:

1. Everyone has the right to social security (Art. 22)
2. The right to work and protection against unemployment (Art. 23)
3. The right to adequate standard of living (Art. 25)
4. The right to education (Art. 26)
5. The right to participate in the cultural life of the community (Art. 27)

These and other provisions have been elaborated as rights in the International Covenant on economic, social and cultural rights (ICESCR) which was adopted in 1966 and actually came into force in 1976. It is presently ratified by over 130 countries.

Furthermore these economic and social rights have been included in the U.N. Convention on the elimination of racial discrimination (CERD), the convention on the elimination of discrimination against women (CEDAW), and the convention on the rights of the child and in several ILO Conventions.

They have also been included in regional documents like the European Social Charter, the African Convention on Human and Peoples' Rights and the San Salvador Protocol to the American Convention on Human Rights.

The improvement of Global Social situations warrants a reminder to Governments all over the world which has faith in Human Rights, of their obligations emanating from International Law regarding social and economic rights.

## **SOCIO-ECONOMIC RIGHTS AND CONSTITUTION OF INDIA**

Socio-economic rights which engender socio-economic justice are state obligations. India which is one of the earliest signatories to the U N Charter on Universal Human Rights, has incorporated the material provisions relating to economic and social rights in Part IV of the

constitution of India under the caption "Directive Principles of State Policy" as far back as 1949 when the people of India adopted a constitution during the post-independence period. The heart and soul of the constitution is to be found in part IV ranging from Article 37 to Article 51. A wide spectrum of Human Rights is spread over these articles. Even though part III of the constitution consists of political fundamental rights of the citizen, part IV is stated to contain the 'conscience' of the constitution. It may be observed that the Indian Constitution is a happy blending of fundamental rights and socio-economic rights. Our constitution is more a social document than a political one. Though the rights mentioned in part IV are regarded as non-justiciable, the apex court of our country namely the Supreme Court of India broke new ground in its trend-setting "Judgment declaring that the Right to Education" enshrined in Art.45, is the fundamental right of the child, thus elevating a pious obligation of the state to the status of a fundamental right entailing fundamental state obligation.

Forceful arguments were advanced on the floor of the Constituent Assembly that all the socio-economic rights ought to find a place in Part III as they are as fundamental in the governance of the country as the fundamental Rights themselves. The Founding Fathers came to the conclusion that it cannot be so because India did not have the economic potential for enforcement of Socio-economic rights. Thus they came to be retained in part IV as directive principles of state policy.

Article 38 envisages the securing of a social order for the promotion of Welfare of the people.

Article 39 envisages that men and women equally have the right to an adequate means of livelihood, that the ownership and the control of material resources of the community are so distributed as best to subserve the common good.

That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

That there is equal pay for equal work for both men and women.

That the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Those children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Similarly the right to education of children upto the age of 14 years, protection of environment, free legal aid to the poor, right to work, just and fair conditions of work, separation of Judiciary from Executive have been included in part IV of the constitution. Whereas part III paved the way for the achievement of political democracy in India, part IV paved the way for the attainment of economic democracy. Part IV offers the national agenda for the party capturing power.

## **RIGHTS UNDER ICESCR**

The right to work is included in Art. 6 of ICESCR, the right to health in Art. 12, the right to education in Art. 13, the right to adequate housing in Art. 11, the right to food, non-discrimination, (Art. 26), rights and protection of indigenous people consistent with RIO declaration recognized by U.N. and the rights of people with disabilities since they are

Vulnerable to violation of their human rights.

## **CLASSIFICATION OF HUMAN RIGHTS**

Though controversial, three classifications of Human Rights have been recognized today.

The first generation of Human rights, which encompass civil and political rights enunciated by the thinkers and writers of 18th century.

The second generation of human rights which are presumed to include economic, social and cultural rights which are supposed to be the contributions of Marxist-Leninist Societies.

The third generation of human rights being a combination of issues developed during the last quarter century inclusive of the right to clean environment, the right to die and other relatively new matters of social concern.

Nuclear disarmament has also been incorporated into the debate under the rubric “Right to Life.”

The economic, social and cultural rights may not be necessarily the product of Marxist-Leninist thinking because the rights enumerated in the Universal Declaration of Human Rights and the covenant on social, economic and cultural rights got into the programme of Franklin D. Roosevelt rather than Karl Marx or Lenin. Indeed it was Eleanor Roosevelt who in her capacity of chairman of U.N. Human Rights commission played a stellar role in the framing and ultimate adoption of the universal declaration whose text served as the basis for the preparation of covenants.

Claims have been made to collective rights apart from individual rights such as Minority Rights, aboriginal rights, and rights of people under colonial Rule.

More recently, claims have been made to “rights of peoples”. They include rights of an economic kind such as right to development, and right to permanent sovereignty over natural resources. There are more ambitious claims like the right to peace and the right to a healthy government.

In some quarters it is contended that the “people’s rights” are third generation rights. This development is manifested and recognized in the African Charter of Human and peoples Rights 1981.

However, it is emphasised that all the issues covered by the three generations of Human rights focus on the relationship between the government and the individual citizens. A realization of these rights calls for imposition of limitations upon the state in order to safeguard the dignity and integrity of the individual apart from introduction of affirmative programmes and policies by the state in order to achieve the same objective within a time-frame.

Human desire to express freely, to write freely, to worship God, are part of the natural human aspirations and that is precisely why an ideology based on them, has global appeal and has served as an underpinning for Universal Declaration of Human Rights which is an international standard-setting instrument.

The choice before humanity is not one of starving in freedom and eating in slavery. The idea is to ensure that freedom and prosperity go hand in hand. Not only the welfare of the masses has to be taken care of but also of the individual citizen. There can be no mutual exclusion. The basic precepts are not in doubt When the rights of an individual are chipped away the right of all erode, is the axiom.

All are born with certain inalienable and inviolable rights. They cannot be subordinated to any allegedly higher objective as willed by a single potentate or a collective, self-perpetuating leadership group. There can be no compromise with democratic centralism. It is an euphemism so sophisticated as to camouflage dictatorship of a kind.

Protection of personal liberties does not exclude a reasonable and fair consideration of issues of public policy like unemployment, destitution and sickness.

Employment, Shelter and medicare ought to be on the agenda of first priorities with rehabilitation of slum-dwellers not excluded.

## **MARGINAL QUESTIONS**

Marginal questions do arise for consideration. For example, how serious must be a person's mental illness before involuntary admission to a mental asylum or a psychiatric institution?

What restriction should be imposed on a public assembly if it attempts to block entry into a public building?

What are permissible limits on obscenity?

In the course of elections in a democratic process, public debates and election campaigns revolve around questions of economic and social policy since they are increasingly in the forefront of the people who are the sovereign of the nation and who are the ultimate decision makers and beneficiaries.

The voters are more likely to choose from among candidates on the basis of who, in their opinion advocate better solutions to the problems confronted in the social and economic sphere. The real criterion is the ultimate delivery of results and not of guarantees written into the constitution or into the basic documents.

It is necessary to discuss ways and means of tackling the unemployment problem, vocational training, propriety of subsidising uneconomic enterprises and creation of make-shift jobs.

Discussion on different approaches to promote construction of quality housing, providing adequate, safe and sanitary dwelling for those who are presently ill-housed, provision of quality medicare, measures for the welfare of the elderly and the senior citizens, have to be done by those who have the necessary expertise in the related field.

## **ROLE OF THE JUDICIARY**

Against the background of proliferating Human Rights, the constitutional question is whether and to what extent the judiciary generally has the institutional capacity to formulate and enforce socio-economic rights which cost money?

Would the judiciary press into service its capacity and authority in resolving the complex issues of social and economic welfare leading to reallocation of scarce and diminishing fiscal resources?

There is a substantial difference between the developed and affluent countries and the newly emerging sovereign states liberated from colonialism and also the developing nations. The stage of a nation's economic development will largely affect or influence fulfillment of these rights which are as fundamental as the civic and political liberties.

When a Government diverts a vast proportion of its country's scarce resources to corrupt officials or to creation of luxuries for the elite while millions wallow in privation and hunger, the violation of the right may be due to Government's action or inaction.

The constitutional policy-making by the judiciary is an essential matrix of human rights. The question is how efficient the growth of welfare state will be and how respectful the state will be of the basic human rights. One of the views is that judicial directions in institutional reform cases at least if not suitably limited in scope, are not enforceable by courts themselves.

The function of non-interpretive review in human rights cases is the elaboration and enforcement by court of values pertaining to human rights which are not constitutionalised by the framers.

In the matter of protection and judicial safeguard of marginal persons, the role of the judiciary is one of nobility.

### **NATIONAL HUMAN RIGHTS COMMISSION OF INDIA**

On 8th January, 1994, our parliament enacted a law called "The Protection of Human Rights Act 1993" in order to provide for the creation of national Human Rights Commission. State Human Rights Commissions and human rights courts for better protection of Human Rights.

National Human Rights Commission of India was established in October 1993. It has submitted two reports so far, one for the period October, 1993 to March 1994 and another for the period April 1994 to March 1995.

The display of dynamism and remarkable efficiency discernible in the two reports redound to the credit of National Human Rights Commission of India. The Commission has succeeded in injecting sensitiveness, seriousness and accountably into the attitude of the State in cases of Human Rights violation relating to civic liberties, TADA, Insurgency and Terrorism, police and prison reforms, custodial violence, review of laws on International treaties and their implementation, child labour, Human Rights literacy and awareness, role of non-governmental organizations, inquiry into complaints, custodial death, fake encounters etc.,

Setting up of a state commission in every state along with courts deserves to be made mandatory. The relationship between the national commission and the state commission has to be spelled out these bodies should enjoy autonomy in order to ensure independence in functioning and non-interference by the state in the discharge of their functions. District committees ought to be set up on a priority basis.

### **SUGGESTED REFORMS**

The following are some of the recommendations made by the National Human Rights Commission.

1. Indian Prison Act 1894 needs to be revised.
2. Unlawful detention - High level committee to be set up to ensure against unlawful detention.
3. Conditions in lock-ups and sub jails - Corrective action of concerned government needed.

4. 1984 Convention against torture and other forms of cruel, inhuman and degrading treatment of prisoners to be adopted.
5. Elimination of child labour in glass, carpet industries and in all hazardous occupation.
6. Compulsory primary education (Art. 45) should be implemented.
7. Non-discrimination against women in all forms.
8. An act to support persons with disabilities.
9. Human Rights education at University level.
10. Proper training to police and Para-military personnel and prompt prosecution for violations.

The question of universal validity of moral judgment is an old one in the history of human rights.

About three centuries ago, Pascal exclaimed with a sense of discovery that what is truth on one side of the Pyrenees is error on the other.

It may be so. But it is idle to seek the soul of man outside the society as it is idle to seek society outside the soul of man. Let us be human in our daily lives and be considerate to others.

## **DEVELOPMENT POLICIES**

Our developmental policies should be anchored in directive principles. As far as India is concerned, the principles underlying the Directive Principles of State Policy set out in part IV of the Constitution are the beacon lights for the men in power to manage, administer and develop the country and also in making suitable laws for the implementation of the principles. Something has been done in the course of five decades after independence but much more and far more remains to be done if both political democracy and economic democracy have to be achieved. Till then, the people of India have to wait for piping days of glory. State craft needs political will, economic realism, integrity and no less diplomatic finesse and sincerity of purpose.

The vision that the flower of freedom and prosperity can flourish only in a virtuous garden should not elude either the leaders or the people. In our parliamentary democracy, sovereignty rests with the people. People are the masters and the state is the servant. People should participate in the affairs of the state and assert their rights. Eternal vigilance is the price of liberty. People should closely watch the conduct of the power-wielders and guard against power abuse. The dictum is that the people get the Government they deserve.

Before I conclude let me quote from the Earl of Devon.

“I expect to pass through this life but  
once. If, therefore, thereby any kindness  
I can show or any good thing I can do to  
my fellow human beings, let me do it now.  
Let me not defer it or neglect it, for, I  
Shall not pass this way again”.

- Edmond Courtenay

- Earl of Devon

Let these beautiful sentiments guide us and our leaders.