

A Critical Overview of the Evolution of Human Rights Movement in India

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Abstract

India, unlike its counterpart in developing world, has witnessed a vibrant human rights movement (HRM) in the last four decades despite formidable challenges from the authoritarian tendency of state and traditional power structure of the society. Along with global human rights movement, Indian HRM started its journey opposing state violence and atrocities. However, over the years, it has expanded its horizon by incorporating many more issues relating to rights violation. The authoritarian tendency of the state; ideological divisions and dilemmas, limited social base, rise of fundamentalism and terrorism and ‘war against terror’ are some of the problems acting as deterrents to the growth of Indian HRM while, on the other hand, democratic politics and institutions along with civil society and judiciary have contributed immensely towards the consolidation of the movement.

Keywords: State, Human Rights, Human Rights Movement,

Introduction

The journey of human rights movement both at the international and domestic level has passed through numerous challenges encountered from different quarters. The most triggering factor behind the evolution of HRM (Human Rights Movement) in any society is the violation of human rights by authoritarian regime. The HRM, after the Second World War, has evolved world over in an unanticipated manner and penetrated into the new domain of national and local level and their culture (Meyer, et al., 1997). The atrocities and inhuman treatment during the war provided the impetus for developing the international consensus on human rights (Lauren, 2003). Along with the above, a number of human rights laws, treaties and institutions that developed after the Second World War, promoted a global human rights movement (Cole 2005; Koo & Ramirez, 2009). With the expanding concern for preventing violation of human rights and implementation of international human rights laws and treaties, HRM in the last few decades have made its foundation strong in almost every society including India.

The Indian HRM, like its counterparts, emerged as a reaction to the state violence and atrocities. The journey of consolidation of this movement which mostly started during the national emergency (1975-77) has witnessed a lot of ups and downs and faced many formidable challenges from the authoritarian tendency of state and traditional power structure of the society besides the political and ideological differences it encounters. A moderate attempt has been made in this paper to develop a critical understanding of its evolution to understand the factors that acted as a deterrent as well as the supportive environment that helped strengthening the movement. Along with this it evaluates the impact of this movement in respect to checking the violation of human rights in Indian societies. This paper also tries to examine how the human rights organizations and groups are adapting to the changing situation by transforming their ideological positions and changing their objectives and strategies.

The Genesis of HRM in India

The foundation of Indian HRM probably has been laid down during the anti-colonial struggle when indigenous people were fighting for liberty, rights, justice, and freedom against the authoritarian British rule. However, some scholars argue that since the nationalist movement was primarily concerned with the liberation of the nation and achieving statehood, not with the individual civil liberties, it might not be right to call the national movement as the movement for protecting human rights (Ray, 2003).

Historical evidence, however, reveals that a very small section of Indian society, mainly the intellectuals, being influenced by the French and American revolutions, started the discussion and assertion of rights. The social reformers trying to reform social traditions and customs that hinder the enjoyment of rights by the women and lower strata of society and liberal political leaders working for individual freedom of association and expression, equality before law and other civil liberties were the main proponents of human rights of pre-independence time (Shaha, 2004). However, Sitharamam Kakarala argued that the rights consciousness was thus concomitant to the emergence of organised landed gentry and middle class. They tended to perceive 'civil liberties' as something that only advanced section of the natives can enjoy and appreciate (Kakarala, 1994).

The Indian National Congress (INC) at its Karachi Session of 1931, for the first time passed a resolution demanding civil liberties and individual rights for citizens after the Congress Declaration of 1918 and Motilal Nehru Committee of 1928 failed to yield any result. However, the institutional beginning of the HRM was started with the formation of Indian Civil Liberties Union (ICLU) in 1934 mainly at the behest of Jawaharlal Nehru, to extend legal help and other assistance to the freedom fighters who were accused of treason and under detention or in prison. The primary activities of ICLU were to collect information regarding police brutality, violation of civil liberties, condition of people in detention and prisoners, restrictions on the freedom of expression and press, etc. and to spread these messages of violation of human rights among people at a very rudimentary level (SAHRDC, 2000).

The initial enthusiasm created by the establishment of ICLU led to the setting up of other regional civil liberties organization like Madras Civil Liberties Union, Bombay Civil Liberties Union, Punjab Civil Liberties Union, etc. However, the initial euphoria continued for a short period as the movement faced lots of challenges coming from both the powerful and autocratic British government and from the conflict with the political leader of INC who formed provincial government in 1937 following the Government of India Act of 1935. As a result, ICLU which could not face these challenges met with an untimely demise.

The pre-independence HRM, though sketchy and very brief, has significant influence on the shaping of civil and democratic movements in post-independence time. The human right activists of that time, mainly the nationalist leaders, were more influenced by the western liberal notion of individual rights and advocated that these rights to be provided to the natives of the country by the colonial government. This ideological position continued to influence the HRM for a long time after independence and also became cause of its split among rights groups (Pandey; Haskar, 2008). Secondly, the advocates of human rights at that point of time demonstrated their preference for national interest over human rights.

HRM after Independence

The move from pre-independence to post-independence is marked by a very distinctive feature that the HRM in the previous period was mainly engaged in getting rights recognized and protected by the government while, in the later phase, its primary focus, not necessarily always, was to prevent the violation of the constitutionally guaranteed human rights by the state. Our constitution makers preferred national security and integrity and nation-building to human rights and for that purpose they deliberately created provisions like emergency, preventive detention, limitations on fundamental rights through constitutional amendment, in the constitution that empower any government to put the fundamental rights in jeopardy.

Immediately after India became a democratic republic, Indian state, with the help of draconian laws and coercive forces like police and para-military agencies, under the framework of ‘strong state and weak civil society’, started behaving autocratically and violated human rights in the pretext of protecting national security and promoting development; and in reaction to this, civil and democratic rights movements emerged along with the state violence and violation of human rights (Ray, 2003).

The post-independence HRM may be divided into two phases; (i) pre-emergency and (ii) post-emergency, even though most of the scholars are of the opinion that Indian HRM started in the real sense only after the emergency (1975-1977). In the beginning years after independence civil rights movement was started against the state repression on the communist leaders and to carry out this struggle the Civil Liberties Committee was formed in West Bengal in the year 1948 (Dutta, 1998). In the subsequent years, violation of human rights occurred in the context of class struggle mostly in the rural areas. The Naxalite movement that emerged as the champion of rights of the landless and impoverished peasants and poor and innocent tribal (indigenous people) challenged the feudal unjust society, rich peasantry class and state authority and its structure. It raised the issue of exploitation of and violence against these people. In the stark reality, the state took measures to deal with this situation in an autocratic manner with little respect to human rights.

The Communist Party of India (Marxist-Leninist) [CPI (ML)], Naxalite Movement and Civil Rights Movements were very closely linked ideologically and organizationally in the first phase after independence; a link to some extent is still associated with the HRM even today. (Kakarala, 1994; Jha, 2006). It’s also true that Marxist-Leninist parties felt the need to develop civil rights groups to challenge the state violence. As a consequence, most of the civil rights activist of Association for the Protection of Democratic Rights (APDR) of West Bengal and Andhra Pradesh Civil Liberties Committee (APCLC) had a very close relationship with the ML parties. Therefore, human rights organizations of that period were not independent or autonomous (Jha, 2006). Most of the Civil Liberties Groups formed in 1960s and early 1970s to fight for the rights of the naxalites in the context of state’s brutal attack and aggression, followed the method of identification, investigation and documentation of such cases and sometime through campaign.

HRM in Post-Emergency Period

The National Emergency of 1975-77 was a turning point in the history of HRM in India. It gave a new direction to the human rights groups by setting new goals for them but some scholars argue that emergency gave birth to the Civil Rights Movement in India. There is no

renunciation of the fact that, it is only after the emergency, Civil Rights Movement became more organised and took the shape of a nation-wide movement. The atrocities committed by the state machineries, suspension of fundamental rights and violation of democratic procedure and values during that period brought new widespread impetus for the growth of HRM in India (Shah, 2004). In fact, authoritarianism during emergency, besides intensifying the movement, led it in the direction of focusing on the civil-political rights, state brutality and state violation of human rights. Indira Gandhi's government suspended the fundamental rights on the argument that these rights (Civil and Political) were enjoyed by the privileged section of the society and this situation prevents her government from carrying out developmental and welfare programmers in the interest of the majority (Rubin, 1987).

Aswini K. Ray argued "the liberal intelligentsia was shocked by the realization of the built-in-authoritarian proclivities within the political system, and the pitfalls endemic in any assumption of the durability of the democratic process, as heretofore. This shaped the intellectual and political milieu that led to the origin of civil and democratic rights movement in its present shape" (Ray, 1986). The Indian HRM was germinated out of (i) collapse of democratic state structure and legitimization of arbitrariness in the use of state power; (ii) sudden deprivation of power and privileged status by the media, legal and learned professionals and (iii) middle class radicalization during the emergency period. In fact, HRM in India emerged as an urban-based educated middle class and upper caste movement (Baxi, 1998; Haksar, 2008).

A good number, though not all, of present day civil and democratic rights organizations were originated during the period of national emergency. People's Union for Civil Liberties and Democratic Rights (PUCLDR), one of the prominent and probably the largest such organization of the country come up in 1976 under the leadership of great political leader Jayprakash Narayan, which was soon divided into two groups- PUCL and PUDR- mainly on ideological ground. Consequently, India witnessed a constant proliferation of active human rights organizations in different part of the country with the similar agenda of fighting against the violation of human rights by state agencies. The prominent human rights organizations, besides the regional branches of PUCL and PUDR, that emerged around the time of emergency and remained active in the last four decades are Committee for the Protection of Democratic Rights (CPDR), Association for the Protection of Democratic Rights (APDR), Citizens for Democracy (CFD), Peoples' Rights Organisation (PRO), Andhra Pradesh Civil Liberties Committee (APCLC), All India Federation of Organisation for democratic Rights (AIFOFR), etc.

The human rights movement that was so much attached to the Marxist ideology and CPI (ML) before emergency became relatively independent both from ideology and political parties during and after emergency. A good number of people those who had no earlier association with ML movement or those without any particular political affiliation, began to join human rights groups/movement (Kothari, 1989).

Though some human rights groups in some point of time fight for the socio-economic rights for the improvement of the condition of the mass, but mostly HRM in India has been engaged in fighting against the state authoritarianism and state violation of civil and political rights. Nandita Haksar argues "the civil liberties movement does not offer an alternative political ideology. The sole purpose of the movement is to act as a watchdog monitoring the state. Other

complex social, political, economic and cultural problems facing our country have to be solved through other political processes and movements” (Haskar, 1991). Though human rights groups take up cases of human rights violation relating to police lawlessness, land and labour disputes, suspension of freedom of expression, academic freedom, communal and regional conflict, treatment of women and children, urban and rural poverty etc. but its primary focus is on state violation of civil and political rights. Nandita Haksar divided the cases mostly taken up by the human rights organizations into the following 4 broad categories:

- (i) Issues relating to rights of prisoners including under trials, illegal detentions and prison conditions.
- (ii) Violence by the police (later the armed forces) including custodial torture, death and rape and extrajudicial killings, illegal firing and deaths in false encounters.
- (iii) Anti-people draconian laws including various disturbed areas laws, TADA/MISA/POTA and laws affecting certain sections of the oppressed such as the Forest Act.
- (iv) Oppression of the state on various unorganized sections of the society such as bonded labourer, tribal, slum dwellers, landless labourers and the religious minorities (Haksar, 2008).

Summing up

Human rights organizations have undergone significant changes in their nature, functions, objectives and priorities in response to the changing dynamics of human rights vis a vis role of state and socio-economic forces since emergency. In the pre-emergency period, civil and democratic rights groups were primarily engaged in the human rights issues pertaining to landless peasants, poor and tribal people. The socio-economic rights which were later considered as ‘democratic rights’ in human rights discourse in India were the fundamental concern of HRM. However, the focus shifted to civil and political rights after the emergency. The human rights groups were involved in exposing various forms of state abuse of human rights and state terror. Nandita Haksar considered this “as a great challenge that human rights movement took up with great deal of political commitment, facing the wrath of the state but maintaining its integrity”. (Haksar, 2008)

However, soon after emergency, human rights movement faced its greatest divide on ideological ground. The largest human rights organization People’s Union for Civil Liberties and Democratic Rights (PUCLDR) was divided into two groups; PUCL and PUDR. The PUDR and some other groups like APDR and APCLC, being influenced by communist ideology, believed in socio-economic rights (democratic rights) while PUCL, PRO and CFD, under the influence of liberal tradition, focused on the first generation (civil and political) rights (Haragopal & Balagopal, 1998). However, in the matter of state violation of human rights like police brutality, rights of prisoners, draconian laws, etc. both has been taking similar stand despite their ideological difference (Shah, 2004). The struggle against the state arbitrariness and atrocities remained the main focus of all human rights groups irrespective of their ideological deference in the last four decades. The Indian HRM generally work on the assumption that state violation of rights come under the purview of human rights while other forms of violation of rights come under the fold of ‘crime’ or ‘private violence’. In support of the radical human rights activists it is also argued that state violence is more harmful to civil

society than the violence against the state practiced by the revolutionaries and terrorist groups (Dutta, 1998).

The emergence of regionalism, terrorism and militancy in 1980s and state's violent and oppressive method to deal with them significantly affected the HRM. The national level human rights groups were marginalized and isolated with the emergence of many regional organizations focusing exclusively on the human rights violation in their regional and local areas. Secondly, these regional human rights movements turned from nationalist struggle to religion-based movement which further weakened the HRM (Haksar, 2008). The violation of human rights on the basis of caste, religion, ethnicity and gender were brought to the mainstream during and after 1990s and to address these issues many other social movements evolved like women movement, dalit movement, etc. The HRM, partly out of their principles and partly due to organizational compulsion, failed to focus on such issues (Haksar, 2008).

Other than the above developments, the horizon of HRM has been expanded in the last two decades with the joining of a large number of institutions/organizations, groups and individuals working in the field of human rights to HRM. The globalization followed by mushrooming growth of internationally funded Non-Governmental Organizations (NGOs) mainly taking up the social, economic, and environmental rights further changed the nature and direction of the movements and started new debates in the human rights discourse. The active role that the civil society is playing in promoting the human rights has also added new dimension to the already active HRM. The issues involving socio-economic and cultural rights and third generation rights such as collective and group rights have been taken up by the above institutions and NGOs, which hitherto remain outside the agenda of civil and democratic rights groups.

The judicial activism of the last three decades has provided the impetus to the HRM in many ways. As the guardian of the 'Fundamental Rights', the higher judiciary has exhibited a strong commitment to the issues raised by the civil rights groups and in many cases tried to boost the morale of the activists against the authoritarian state. Highlighting the role of Judiciary Upendra Baxi observed: "Social action litigation is itself an extension of human rights and popular movements into the state formative practices. The initiators of the social action litigation comprise a variety of activists, individuals and groups, supported by the media and the bar. In this sense, people participate, through activation and legitimation of adjudicatory power, in fashioning an expansive regime of rights converting the Supreme Court of India into a permanent Constituent Assembly of India, sculpting the nature and future of rights movement, steadily converting Directive Principles of State Policy into judicially enforceable rights" (Baxi, 1998).

The Indian 'human rights activism' was very much supported by the 'judicial activism' which mainly started with the judicial invention of Public Interest litigation (PIL). The human rights groups and activists got a legal sanctity to their efforts to protect and promote human rights of the people with the advent of PIL which prompted them to adopt judicial remedy for the restoration of rights (Ray, 2003). It has been a formidable legal instrument in the hands of the right activists and NGOs to protect and promote the human rights particularly the collective/group rights in a very complex social situation.

The establishment of National Human Rights Commission (NHRC) in 1993 following widespread criticism of human rights violation in India and pressure to set up such an

organization from both international and domestic human rights communities and institutions supported and strengthened the HRM in India (Tripathy, 2009). Since its inception as an autonomous organization under the Protection of Human Rights Act, NHRC has been working as a watchdog on the violation of human rights; more specifically state violation which is very close to the objective of human rights organizations of the country (Mahapatra, 2016). Its creation not only puts a check on the state authorities and redress human rights violation (Tripathy, 2009) but also provides a moral and extra-judicial support to the rights activists in terms of accepting their complaint of human rights abuses and investigating them. Aswini k.Ray rightly said “The commission now have forged formal links and informal networks with the civil rights groups in the country, and have cumulatively widened the political space for these normative concerns within some of the corrupt, inefficient, partisan institutions of governance” (Ray, 2003). It has helped the HRM movement to grow in two ways: (i) by receiving complaints of human rights violation from rights groups and activists and (ii) by exposing the state violence and violation of human rights which is very much complementary to the actions and objectives of the HRM (Tripathy, 2009).

Conclusion

The Indian HRM, unlike many other developing countries, has been able to sustain and continue their struggle against the state atrocities and lawlessness despite the wrath of the state, because of the space that is being created by the judiciary, press, National Human Rights Commission (NHRC), institutions like SCs and STs Commission, Women Commission, National Commission for Minorities, etc. and broad democratic polity. Beside the domestic factors, the international pressure from UN, International Human Rights Organizations, World Bank and WTO has also provided additional strength to the movement in India. The judicial activism, assertive role of NHRC, free and strong media, free educational system, international pressure and democratization of society and emerging civil society have played a formidable role in making Indian HRM a vibrant one in the developing countries in spite of a strong authoritarian state system. Along with the above stimulating factors, certain developments at different point of time has posed very formidable challenges before the HRM; some of them are authoritarian tendency of the state; ideological divisions; reluctance to self-criticism (Baxi, 1998); limited social base of human rights groups; dilemma regarding violence; rise of fundamentalism and terrorism; strong socio-political support to ‘war against terror’, rise of other social movements and NGOs addressing the human rights of marginalized sections of the society, etc.

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