



SPEECH

BY

**JUSTICE SHRI K.G. BALAKRISHNAN
HON'BLE CHAIRPERSON
NATIONAL HUMAN RIGHTS COMMISSION**

ON

STATE : PROTECTOR OR VIOLATOR OF HUMAN RIGHTS

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**STATE: PROTECTOR OR VIOLATOR OF HUMAN RIGHTS
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DRAFT SPEECH FOR CP

Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. Human dignity is in fact, the very foundation on which Human Rights rest. Emphasis on human dignity is enshrined in the UN Charter, the Universal Declaration of Human Rights and several covenants as also in the Constitution of India, which proclaims "dignity of individual" as a core value in its Preamble.

The universality of human rights with focus on protection of life, dignity and basic needs corresponding to social, economic and cultural rights makes them uniquely appropriate for re-shaping development, cooperation, fostering good governance and combating discrimination, disease and despair.

Human Rights is rooted in the simple insight that each one of us counts, that we are each equally worthy of esteem. This esteem is not on account of what we do, or what colour we are or what ethnic minority we are – but simply on account of that we are all human beings.

Human Rights in this sense a visibility project its driving force to see the people around us, particularly when we might otherwise not see at all or whom we try to ignore, if we did catch glimpse of them. The idea of human rights is a radical emancipatory. It should always be on the side of the underdog, perpetually trying for an invisible individual or group of individuals who are

pushed beyond the communities field of vision. Given them the language with which to shout for attention and better set of life chances.

Immanuel Kant said:-

“There is nothing more sacred in the wide world than the rights of others. They are inviolable. Woe into him who trespasses or triumphs it underfoot. His right should be his security, it should be stronger than shield or fortress. We have a holy ruler and the most sacred of his gifts to us is the rights of man”.

Human Rights must stand for progressive ideas like equality of colours, respect for individual's dignity or commitment to human flourishing and a reduction in cruelty. Law is the mean by which practical application of human rights aspirations are made realist. In a political system whether or not they are human rights to start with, they become legal rights, the moment are turned into legislation.

State as a protector of Human Rights

Governance usually plays an important role in the area like health, education, infrastructure, social security along with macroeconomic stability and creation of a good business environment and environment protection. The Government is mandated by the Constitution to do these things well with the objective of securing the basic human rights for people of the country. The Directive Principles of State Policy provide ample guidance to future governments in this respect. Article 38 of the Constitution states that State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life and that the State shall, in

particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 39 further states the State shall, in particular, direct its policy towards securing the rights of citizens, men and women equally, right to an adequate means to livelihood; equal pay for equal work for both men and women and that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

If government performs these functions poorly or inadequately or makes matters worse through inefficiency and corruption - the human rights are much more difficult to be secured and sustain and State is seen to be a violator of human rights.

The concept of State as a protector of human rights has wide connotations and is still evolving and tends to vary with social context. It refers to the standards set out in the Universal Declaration of Human Rights and later elaborated in a number of international conventions that define the minimum standards to ensure human dignity.

The historical context

Responsiveness of the government, efficiency of administration, well being and prosperity of the people, overall development of the community, good quality of life, ethical upward ness and economic affluence – have got prominent place in the thought process and administrative structures postulated by Kautilya in his Arthashastra. The primary objective of the authority has been

described as the happiness of the people; all other goals are complimentary and secondary.

An overview

Our nation has a comprehensive and progressive legal framework which guarantees human rights and fundamental freedoms, as enshrined, *inter alia*, in the Constitution, the Protection of Human Rights Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and the Right to Information Act. The draft Bill on the Prevention of Torture which would lead to the ratification of the Convention against Torture in the near future is also on its way!

Besides the National Human Rights Commission and State-level Human Rights Commissions, a wide range of Statutory Commissions mandated to promote and protect the rights of, *inter alia*, women, children, scheduled castes and scheduled tribes exist to protect and promote human rights.

NHRC - In the protection of human rights

The National Human Rights Commission of India was constituted in the year 1993 as an overarching mechanism for the better protection of human rights. *For the Commission, the protection and promotion of human rights means protecting democracy itself, a democracy that is inclusive in character and caring in respect of its citizens.* In approaching diverse human rights concerns, including vexed issues such as the protection of human rights in the face of terrorism, the Commission has always been guided by the principles laid down in the Constitution which, in its Preamble, has *inter alia* propounded two core values that must always be protected and advanced; the life, liberty and dignity of the individual, and the

unity and integrity of the nation. There is, in fact, no incompatibility between the two; instead, they reinforce each other. A strong nation requires, as sine qua non, the strong protection of human rights of its citizens. To act otherwise, is to injure both.

The remarkable work done by the Commission has been appreciated often. Mary Robinson, former United Nations High Commissioner for Human Rights, described the Indian NHRC as one of the best in the world, to be emulated by others.

As a nation of people truly interested in the protection of human rights in the country, we need to ensure that the independence, integrity and the caliber of the NHRC is never compromised. The complaints to NHRC have risen from less than 500 in the year after inception to nearly a lakh/year at present. This is indicative of the fact that a large number of are still having sufficient protection of their human rights through normal delivery mechanism be they, police or other law enforcing agencies or the judicial system which is fraught with delays as well as cost which a poor person cannot afford. In spite of Prevention of Atrocities Act, there is large scale exploitation of dalits and with no recourse to remedies. Disabled people are not getting equal opportunities, long queues in public hospitals with unhygienic conditions is leading to lack of health care for people. Children are suffering from malnutrition. It is the duty of the State to look into these shortcomings.

The Way Forward

Human rights are legitimized claims and the State has an obligation to respect, protect and fulfill these rights. However, these rights are fulfilled only when the

State is a facilitator and individuals enjoy goods and services and freedom, and when measures to secure them are in place.

While reviewing the human rights record of State over the years, it may be said that in the last sixty+ years of independence, there have been some improvements in the protection of human rights—and some setbacks. While identity-based groups that have historically faced exclusion and deprivation have become more visibly engaged in political and social action, the inequalities still persist.

Considering the fact that we are a billion+ nation and accomplishments become difficult to achieve, we need to fix the gaps and make sure that we keep on the right track.

We need to devise suitable measures for quick redressal of citizens' grievances. We must keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times and in particular to secure - elimination of delays, speedy clearance of arrears and reduction in costs so as to secure quick and economical disposal of cases without affecting the cardinal principle that decisions should be just and fair, simplification of procedure to reduce and eliminate technicalities and devices for delay so that it operates not as an end in itself but as a means of achieving justice, improvement of standards of all concerned with the administration of justice.

To examine the existing laws with a view to promoting gender equality and suggesting amendments thereto, is also worth considering. Similarly, to create the environment necessary for development leading to a knowledge

society it is essential that we have good health care systems, good education systems and jobs commensurate with rising skills.

However, despite the aforementioned laws aimed at promoting and protecting human rights, there are some deficiencies in their full implementation at both central and state levels, adversely affecting the human rights of the people. *Perhaps a lot more needs to be done to ensure a safe and conducive environment for human rights throughout the country.*

Corruption

One important factor having a bearing on the development is the issue of corruption. Good governance is not possible unless it is free from corruption. Government spends huge amounts of funds on welfare schemes as well as programmes which seek to provide basic necessities like health, education, food security etc to people. However, there is a lot of leakage of the funds and the intended benefits do not reach the people. Corruption comes in the way of good governance. To bring the issue of corruption to the forefront, the NHRC, India organized a conference on the "Impact of corruption on good governance and human rights" in the year 2006. The idea behind the conference was to highlight the importance of tackling this issue as it is seen to be one of the biggest drains on the resources of a country. No country can afford to close its eyes to this malaise.

Poverty

When the State fails to address the issue of poverty, it leads to inadequacies and inequalities in the distribution of opportunities – economic, social, cultural and political - between women and men, across regions, within

communities and between rural and urban areas. Poverty needs to be addressed in such a way so as to enable people not only to have access to food or calories requirements but also to other important needs like....education for children and health needs. State has an important role to play here.

Access to Justice

A strong criminal justice system is necessary for people to feel a sense of security and for the promotion and protection of social stability and human rights. Here, the State has the most important role to play. Ensuring law and order is a primary function of the State. Besides there is a need to ensure that justice to the victims of crime is easy to avail and is timely. In India, delayed justice is the order of the day, due to huge pendencies in courts. The factual situation leaves a question mark on the, 'State as a protector of Human Rights.'

Maintaining public security and order and preventing crime, still remains a major concern in the country. To consider a statistics on crime, and I'm talking in a limited perspective - about crime against women in India - a total of 2,03,804 incidents of crime (both under Indian Penal Code and Special and Local Laws) were reported in the country during 2009 as compared to 1,95,856 during 2008, recording an increase of 4.1% during 2009. These crimes have continuously increased during 2005 - 2009 with 1,55,553 in 2005, 1,64,765 cases in 2006, 1,85,312 cases in 2007, 1,95,856 cases in 2008 and 2,03,804 cases in 2009. These are the issues the State needs to work on...the focus should be on enhancing people's own capabilities and building on the strengths of people and institutions with an integrated approach that includes:

- protection of rights, especially those of the poor and disadvantaged
- strengthening capacities to seek remedies through formal and informal mechanisms

- improving institutional capacities to provide remedies in relation to adjudication, due process, enforcement mechanisms (police and prisons), and civil society efforts to foster accountability.

Right to Food

The state authorities are charged with the responsibility to ensure that every man, woman and child in their jurisdictions have access to sufficient food for their survival with dignity. However, in practice they are not held responsible when a person loses her life because she cannot access sufficient food for her survival. The Government of India has put in place, the public distribution system (PDS) to streamline procurement of food grains and distribution to public especially those in the disadvantaged sections of society. However, there are pilferages which lead to denial of food security.

Sustainable development

Around the world, people now see global warming as a serious threat to their wellbeing. It is an issue common to both Human Rights and Human Development. Various HDRs¹ have contributed, alongside other major reports, to transforming the policy landscape and expanding recognition of the environment and sustainability, including climate change. Human development is about enabling people to lead long, healthy, educated and fulfilling lives. Sustainable human development is about making sure that future generations can do the same. Human development, if not sustainable, is not true human development. State has to regulate development activity so that unharnessed industrial activity does not lead to spoiling of environment. The regulatory mechanism like pollution control boards should perform effectively. Industrial

¹ Human Development Reports

houses and even small enterprises do not follow the labor laws properly. They do not pay minimum wages to their employees. Other form of exploitation like child labor, bonded labor is prevalent. State has an important role to prevent such practices.

Today in India, these prerequisites are missing for the majority of the population. Very often we keep wondering as to which issue one tackles first. *My contention is that these issues go hand in hand and progress in one leads to progress in all almost simultaneously.* Using *benchmarking process* can be a good idea, to assess the performance of the State and the progress achieved in the realization of rights, eliminate discriminatory gaps, improve the efficiency of the judicial process and increase participation.

Millennium Development Goals could be one way of benchmarking. The targets – the Millennium Development Goals – include halving extreme poverty, cutting child deaths, providing all of the world’s children with an education, rolling back infectious disease and forging a new global partnership to deliver results. By delineating a set of time-bound and quantified targets for extending universal rights by 2015, the Millennium Development Goals do provide a crucial benchmark for measuring progress towards the realization of some important human rights. However, unfortunately we are lagging behind on most of these goals.

The State needs to develop an enabling environment for human rights by ensuring that there is no fear and discrimination of any kind! Along with the State, each one of us have to work together to create a human rights culture within our society by inculcating the values of humanity and love for others.

Human Rights actualize only when people begin to realize their full potential as human beings and assert their rights in the private and public sphere.

It is a mission for all of us, I would say.

To-day the concept of Human Rights is understood as embracing all legal rights of individuals set out in international covenants and national Constitutions. They are of no importance until the acts and the legal situations in which they purport to establish, implement and materialize in respect of the individual human being. This depends on the institution that are in power in the society.

It is well known that it was the brutal criminal acts against humanity performed by Nazi Germany during World War-II which inspired and motivated the civilized nations to adopt Universal Declarations of Human Rights in 1948. Human Rights existed even before UDHR.
