

Recognising a Reinvented Constitution

Usha Ramanathan

The text of the Indian Constitution remains largely unchanged; it is the context that has changed. Liberalisation, globalisation and the expanded connotations given to 'terrorism' have altered the conception of human rights. They have also set rights in conflict. And a lexical prioritising of rights has come into being.

This lexical priority is propositioned on malleable concepts that include:
the interests of national security
public purpose
the public interest
and, increasingly, the market.

Anti-terrorism laws are an instance of the use of national security concerns as justification for arrogation of powers in the hands of the agencies of state. the arbitrary detentions, 'encounter' killings (or extra-judicial executions), 'disappearances', harassment and alienation of populations that may result -- and are known to have occurred under the dispensation of the Terrorist and Disruptive Activities (Prevention) Act 1985 and 1987 (commonly referred to as as TADA, and which lapsed in 1995) -- are explained as mere aberrations while in pursuit of national security interests. And the more recent Prevention of Terrorism Ordinance, 2001, which is a version of the TADA, is, for instance, justified on the basis that 'terrorists aren't human beings' and therefore human rights aren't relevant while dealing with them, and that extraordinary situations require extraordinary measures. The exorcising from the Constitution of terrorists, suspected terrorists, protestors, dissenters, extremists, secessionists, those asserting their right to self-determination is, then, accompanied by the reduced responsibility of the state and its agents for violations of human rights and breaches of constitutional norms.

The logic of public purpose is like the image in a funny mirror. In this, the development debate presents large masses of project-displaced people in front of the mirror, and 'development' is said to stare back at them, in reflection. The displacement of whole communities of people is, then projected as a cost of development; and development is a public purpose. So, too, 'public interest'. The public interest requires cities to be clean, environmentally friendly, with lung spaces, and safe and healthy for the 'legal' resident. The 'illegal' residents, of slums and squatter settlements, for instance, therefore have their housing demolished en masse; they are divided into the eligible and the ineligible. And, while the eligibles are relegated to the periphery of the city, where they may stay till they are held to have breached any condition of the licence under which they are permitted residence, the ineligibles disappear from the view of public policy and state responsibility. The 'rule of law' then acquires a threatening presence especially for those in whom may be the detected the inability to purchase legality.

With the market as reigning deity, the rights against exploitation have necessarily had to be reconstructed. The escalating demands that the 'protective' laws concerning the employment of contract labour, night work for women, and minimum wages be amended, allowing capital to meet the market and find profit in their ventures is illustrative of the changes afoot. The entry of multinational corporations into the mining sector, the

dispossession of the land of tribal people based on a calculus of opportunity costs, globalisation and the market, is another illustration.

Conflicts among rights have begun to witness a prioritising of interests among non-state actors who, till not very long ago, shared perceptions of having, broadly, a common denominator of interests. When an environmental group approached a High Court asking for the demolition, and possible re-settlement (an exercise that has been known, almost inevitably, to fail, and to impoverish the displaced) of the 'encroachers' in a part of a National Park, this conflict rose to the fore. The ARENA where such contending priorities will be debated and resolved has acquired significance.

The language of globalised concerns has lent itself to an ordering of priorities among rights (e.g., when environmental groups exclude the rights of the immediately affected from their discourse), or in edging out rights even including the right to life and personal liberty (as in 'anti-terrorism' laws). the free movement of capital, the less-free movement of goods, and the restricted movement of populations in a 'globalised' world have had their impact on the understanding of human rights, including the right over resources, right to livelihood and the right to shelter.

The pragmatism of constitutional interpretation is not-so-subtly suggestive of a reconstruing of human rights as not being 'practical' or 'realistic', or even relevant. There is a task at hand: to halt, and reverse, a tide of opinion that holds that human rights are redundant in a country in the throes of economic growth, or where political dissent, militancy or manufactured terrorism is resident.