



BOOK REVIEWS

THE MILLENNIUM DECLARATION RIGHTS AND CONSTITUTIONS (2011).
By Yash Ghai & Jill Cottrell. Oxford University Press, YMCA Library Building, Jai Singh Road, New Delhi, 110001. Pp. xvi + 204. Price Rs. 575/-.

THROUGH THE Millennium Development Goals (MDGs), the international community, and individual states, committed themselves to a major and sustained attack upon world poverty. The book under review recognizes that a considerable number of countries committed to the achievement of MDGs are also involved because of past conflicts or as a result of other types of political transition to constitutional change. In that change, the place of human rights is almost always central. The work argues that such countries can link their MDG commitments to their constitutional development through rights, especially through economic, social and cultural rights.

Taking examples of other countries' constitutions, and within a framework of rights, at the international, national and regional levels, the book explains how such rights can be included in national constitutions, and how the courts may respond to claims based on such rights. It also argues that the entirety of a constitution is relevant to the achievement to rights, *i.e.* that rights are supported not only by 'Bills of Rights'. Citing examples, they explain how such rights can be included in national constitutions and how the courts may respond to claims based on them. Philip Alston in his foreword says: "... there is every reason why a commitment to the fulfillment of economic and social rights should be in the constitutions and the book offers a deeply informed and clear-sighted analysis of how this might be done."

The Planning Commission and the United Nations signed a joint programme on convergence to help India's backward districts achieve the Millennium Development Goals with better utilization of government resources. As part of the joint programme, the U.N. has committed about \$ 15 million for select backward districts in seven states with low human development indices.

However, the absence of convergence leads to poor utilization. The programme aims at addressing this lacuna through improved district planning, better budgeting and collaborative implementation in which departments do not duplicate efforts. It also provides for better monitoring of outcomes of government programmes. The state governments and district administrations are the key partners.

Olson is of the view that the programme would be a good example of the U.N. working together with national, state and district authorities to build a vision and plan of action to achieve the MDGs. Chatterjee opines that the two projects, capacity building for district planning and state level support for livelihood promotion

strategies for which the Commission would be the implementing partner, would supplement the government efforts at enhancing the capacity of district level officials and panchayati raj institutions. The projects would also serve as a catalyst for inclusive development as was spelt out in the eleventh plan by developing replicable approaches to participatory planning and monitoring.

Further, the book deals with the MDGs and human rights. Human rights are essential to achieving and sustaining development. The Millennium Declaration, adopted by all the world's leaders in 2000 recognized the link between human rights, good governance and development.

Ten years after the MDGs were established, it is clear that the objectives of human well being and dignity for all, enshrined in the Universal Declaration of Human Rights, will not be achieved if the MDGs are pursued in isolation from human rights.

While some countries are on track to reaching a few of these goals, more than a billion people are still trapped in extreme poverty. The challenges are most severe in the least developed countries and land-locked countries, some small island developing states and those vulnerable to natural hazards and armed conflict. Yet, even in countries scoring major successes, large disparities still persist, with millions of people left behind in the race towards achieving the MDGs. Poverty and deprivation is often exacerbated by poor governance and multiple deprivations of human rights. With only five years until the 2015 deadline to achieve the Millennium Development Goals, it is essential to renew our commitment to a human rights-based development approach.

The book suggests that the MDGs are a way to achieve human rights. At the level of academic debate, and of individual organizations, these differences will continue, and in the Constitution Making and Implementation Handbook (Excerpt) the issues reflected are important. Nevertheless, the MDGs and human rights have common objectives to protect and uphold human dignity. The realization of human rights is critical particularly for the poor and marginalized. Hence, direct linkages between the MDGs and human rights provisions must be established.

The MDGs, although not cast in the language of rights, have pointed to the importance of life and dignity with adequate material resources. The goals often correspond with human rights obligations, standards or norms. The Millennium Declaration has drawn attention to social and economic rights by encouraging heads of state and government to commit themselves to “respect- fully and uphold the Universal Declaration of Human Rights” (paragraph 25).

A great deal of work has gone into the development of targets and indicators for the achievement of the MDGs. This information, and these approaches, can be used by governments and organizations pursuing a human rights perspective. Organizations may find that some financial and other support is more forthcoming



if they emphasize the MDGs rather than rights. The 'right to development' is unacceptable in some quarters, even though it is endorsed by the Millennium Declaration. It is also suggested that sometimes human rights encourages a short-term focus on violations rather than on the long term. "Human rights analysts find it difficult to factor in progress that is deferred, or uneven but positive, or to balance benefits of reform (for some) in relation to risks and threats (for others) over time", opines Robert Archer. This is less true of socio-economic rights and 'progressive realization'.

Authors also relate the constitutions of countries to MDGs, integrating the MDGs into the constitution as a vehicle for development taking the MDGs into account in the constitution making and reform process which can facilitate greater awareness among parliamentarians. It can enable both state and non-state actors to play a proper role in promoting and monitoring the implementation of the MDGs, enhancing accountability in the delivery mechanisms. The MDGs need to be integrated and harmonized with socio-economic and political rights and can in turn have an impact on the interpretation of other provisions of the constitution. In this way, the MDGs and the constitution can reinforce each other.

The MDGs are not time-limited; they need to be pursued over a long period of time, well beyond 2015. It is important to establish a proper legal, social and political context for achieving these goals, particularly within the constitutional framework. However, there will be objections to this. Some will object that including the MDGs in the national constitution is to constitutionalize poverty and to assume that 'the poor will always be with us' when the whole thrust of the MDGs is to deny this inevitability.

Some people will object on the grounds that a constitution is something that should last for 200 years or more (like the US Constitution). But here it is important to make various distinctions. Firstly, it is not the targets but the goals that is argued can and should be integrated into the constitutional framework and it is not the precise words, but the underlying spirit of the goals, and even more so of the Millennium Declaration, that may be most appropriately embodied in a constitution. Even if the goals were realized in a particular society, continued vigilance is needed to maintain that progress. For example, many countries have experienced increased inequality with at least increased relative poverty. At the same time, disease will not disappear from the earth. Constitutions should not be changed at whim, but the supposed perpetuity of a constitution should not be made an article of faith.

Moreover, it continues to say that a constitution should respond to the needs of the particular country, and reflect what the citizens believe is important. There is a price to be paid for this, one of which is length and some unwieldiness, and another of which is the likelihood that a constitution will be changed or even replaced. Another objection with some validity is that a constitution is a national document,

but that the MDGs are a commitment not of individual nations in regard to their own citizens, but of the whole community of nations.

Would not enshrining the MDGs in the constitutions of developing countries let developed countries ‘off the hook’? There is some truth in this, because a constitution is a sort of modern social contract between citizens, and between citizens and the state about how the people of that state will live together. But, a country might decide to reflect in its national constitution an obligation on the part of government to work with the whole community of nations to achieve the spirit of the MDGs or the Declaration. Of course, some countries might find this objectionable. Secondly, developed countries also make and amend their constitutions.

Is there any reason why an ‘MDG spirit’ should not be reflected in the constitutions of all countries? The importance of the integration of the MDGs and socio-economic rights arises from the fact that the primary responsibility for their promotion lies with national governments and societies – despite the considerable development of international norms and institutions. The international community can do relatively little to stop violations of rights taking place within national jurisdictions – unless they are of genocidal proportions, and even then with great difficulty, as the situation in Darfur, Sudan well illustrates. Even in well established regional systems, where the regional courts make final determination of violations and remedies, implementation depends on national institutions. The future of human rights therefore depends substantially, even fundamentally, on protection and promotion at the national level.

In recent years the court has held that the words ‘life’ and ‘liberty’ in article 21 comprehend rights such as right to education, right to shelter or right to health care. These are social and economic rights, which are part of the International Covenant on Civil and Political Rights. The Constitution had mandated the state to provide free and compulsory education to all children below the age of 14 years within ten years from the commencement of the Constitution. People in India are not protected against old age, disease and unemployment. They have no shelter. Can a state be called democratic if a large number of people are denied such basic entitlements? These rights require an infrastructure, which only the legislature and the executive can provide. But the politics of populism has thrived on promises and patronages. Has the court not catalyzed the social pressure for the creation of those rights? Is the court wrong in saying that those human rights ought to be made enforceable? The fact that the present government had to bring in a constitutional amendment (93rd Amendment Bill) for making the right to education a fundamental right is the result of the social pressure created by the court’s decisions. One cannot expect the Indian Supreme Court to play a limited role such as the apex courts of developed countries play because civil society in those countries can look after such matters. The court’s decisions have been exercises in public advocacy. This may sound



unconventional but this is the reality of a developing democracy.

The irreplaceable value of the power (of judicial activism) articulated by Marshall CJ (in *Marbury v. Madison*) lies in the protection it has accorded to the constitutional rights and liberties of individual citizens and minority groups against oppression or discriminatory government action. It is this role not some amorphous general supervision of the government that has maintained public esteem for the federal courts and has permitted the peaceful existence of counter-majoritarian implications of judicial review and the democratic principles on which the federal government in the final analysis rests.

With no prospect of a change in responsive government in the immediate future, the pressure on courts to resolve the nation's social and political problems and maladministration in the country is bound to increase. If the Indian judicial system is to be saved from collapse, the need is not only for more judges and courts but also a need to conserve judicial power where it can be utilized most effectively on a principled and predictable way and in areas where it is most needed.

As mentioned in the Foreword “ the prescriptions contained in the book can go a long way to bring about the deep transformation of the societies in which we live and thus to make a reality of the fine sentiments so often proclaimed in the name of human rights but so determinedly neglected in reality.”¹

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1. Philip Alston, “Foreword” in Yash Ghai & Jill Cottrell, *The Millenium Declaration Rights and Constitutions* xiii(2011).

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