

BOOK REVIEWS

THE RIGHT TO BE HUMAN (1987). Edited by Upendra Baxi. Lancer Publications, New Delhi. Pp. 206. Rs. 180.

THE WORK is a compilation of essays on a well-trodden theme regarding origin, nature, scope and justification of human rights. Some of the discourses, however, cut new ground for exploration and thought. Dissatisfaction has been expressed with the liberal model of human rights primarily on the ground that an individual is abstracted from his social background and "stripped of his social relations, circumstances and background, facing the world in his sovereign isolation". Such an approach towards human rights has generated certain attitudes, expectations and impressions in the holder of these rights which impede the realization of the social goal of satisfying the wants and needs of human beings without which life is meaningless. Once the bearer of a right forms the impression that right confers on him a benefit to be exclusively enjoyed by him without regard to feelings of others, his attitude towards his fellow beings is bound to change. Fault has also been found with the equality of rights doctrine as practised at present in liberal democratic societies. It is true that citizens have equal rights in the formal sense of the term but not all of them are in a position to exercise them due to economic and social constraints. Consequently, the holder of rights is in a position to impose unequal burdens on others depending upon their economic and social situation. Looked at from this stand point the author of the essay on "The Modern Conception of Right and its Marxist Critique" concludes: "A right then is at once both a source of benefits and burdens. It benefits its bearer, but only by imposing legal disabilities, loss of liberty, suffering and emotional, moral, cultural and financial burdens on others."¹ He pleads for the adaptation of the Marxist thought to be a substitute for the currently dominant thought with a view to transform the concept of right into a "non-possessive, non-absolutist, non-exclusive and non-aggressive" notion by which the bearer of right would consider himself part of society in which human beings engage themselves in cooperation rather than confrontation.

In another essay on "From Human Rights to the Right to be Human" the author critically examines the existing liberal model of rights. According to him it is mainly responsible for giving rise to isolationist character of the bearer of rights. Consequently, the opinion has been expressed that it provides no assurance that "human rights, as rights against the state, will not be used so as to cause lawful harm to others. Indeed, heretical though it may seem, one way to formulate rights consists in conferral of capacities in men to engage in causing lawful harm to others." The real history of the modern notion of rights would indicate that with a view to assert their rights to be and

1. See Bhiku Parekh, in Upendra Baxi (ed.), *The Right to be Human* 10 (1987).

remain human the impoverished masses have not hesitated from using violence. In that sense violence has been the progenitor of new human rights. This is because the "model of universal human rights for all human beings contradicts the idea that all human beings, *without exception*, have a right to be human".² This discourse, therefore, introduces the still unchartered "right to be human". Whatever it may mean, exclusions and inclusions within the all embracing right shall be determined on the basis of certain *a priori* assumptions regarding the human needs at a particular time and place. It is well known that human needs proliferate with the progress of science and technology. Human needs of agricultural society were relatively few as compared to needs of the modern highly urbanised and industrial society. Does it not indicate that the concept of the right to be human raises problems of a different kind, that is the problems of a just society?

Other essays pertain to access of certain classes to the justice system and implementation of human rights imperatives. For historical reasons several segments of our society have been denied elementary human rights in the past. Thus rights of beggars and vagrants,³ of mentally ill,⁴ of tribals⁵ and of Scheduled Castes and Tribes⁶ have remained in animated suspension for centuries. The social prejudices have been mainly responsible for this neglect of these large sections of our society. Several suggestions in this connection have been made which include utilisation of non-punitive techniques against vagrants and beggars, generation of adequate therapeutic facilities and fair procedural rights for mentally ill, and consolidation of the trend to turn away from "older hierarchic model to a pluralistic participatory society" which would give a sense of belonging to Scheduled Castes and Tribes.

Two essays on "Human Rights and Sexism"⁷ and "A Child's Right to be Human"⁸ analyse problems of these weaker sections from a sociological point of view. In spite of the clear provisions of the law, it has not been possible to give them adequate protection against discrimination and exploitation. Though it has been conceded that since independence women's progress in several fields has been remarkable, yet they are not making full use of new vistas opened to them as a result of legislative reform. It has, therefore, been suggested: "there is need for a dynamic orientation whereby women's position is viewed in terms of full participation in social, political, cultural and economic aspects, and by their integration in national development." With regard to child concern has been expressed over the manner in which our National Policy for Children is being implemented. Among several steps suggested are a reexamination of laws governing marriage, custody, support,

2. Baxi, *id.* at 191.

3. B.B. Pande, *id.*, at 115.

4. Amita Dhanda, *id.*, at 147.

5. Vasudha Dhagamvar, *id.*, at 95.

6. Marc Galanter, *id.*, at 77.

7. Ratna Ghosh, *id.*, at 57.

8. Tara Ali Baig, *id.*, at 133.

guardianship etc. and a careful survey of instances of crime against children.

On the whole the work is thought-provoking and it should provide food for thought in the unending debate on human rights. The query whether a just society can be brought in existence without conferment of rights on individuals deserves further attention. At the same time it is to be asked whether it is possible to bring about attitudinal changes in the bearer of rights without structural changes in the social order. These are some of the important issues which will have to be examined in depth before any move is made to radically transform the character of human rights.

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