



Review

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THE FUTURE OF HUMAN RIGHTS (3
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by Upendra Baxi

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THE FUTURE OF HUMAN RIGHTS (3rd edn. 2012). By Upendra Baxi. Oxford University Press, YMCA Library Building, 1 Jai Singh Road, New Delhi. Pp xlix + 393. Price Rs. 475/-.

THE BOOK has emerged as a classic text on the understanding of human rights.¹ As distinguished from the other works on human rights it inaugurates a conversation with the reader so as to collectively evolve the meaning of human as a possessor of human rights. It is a 'labour of love' on the part of the author which makes it possible to simultaneously construct and deconstruct the notion and logics of what it means to be 'human' and 'bearer of human rights'.² In its rigorous and reflexive analysis of the genealogies and futures of human rights, the book serves as a theoretical touchstone to fully situate and comprehend the practises of human rights activism.

The fundamental insight of the book is that the future of human rights remains uncertain unless we reconceptualise their historic moments of evolution and engage with both their emancipatory potential of resistance against power and dominance as well as their caveat to become instruments of dominance by the structures of power. This inaugurates both the subversive potential of the human rights languages for emancipation or alleviation of the suffering humans, and, at the same time, alerts towards the possible appropriation of the logics of human rights to provide legitimacy to oppressive structures of power and repressive dimensions of the state. The latter aspect of use of human rights as 'legitimizing power of the state' signals to the limits and inadequacy of the discourse and languages of human rights. The author throughout the book is involved with the dialectic or Janus-faced nature of the discourse of human rights – simultaneously loaded with the potential for emancipation and repression, hope of liberation but at the same time the scope of the legitimization of state-sponsored terror and oppression. This constitutes the fundamental premise of this book.

Politics of and for human rights

The author invents novel expressions for a clearer conceptualisation of this dialectic of human rights. He distinguishes the two forms of politics as politics 'of' and 'for' human rights. By 'politics of human rights' he means the appropriation of the language and vocabularies of human rights by the state as well as by global multinational

1 The distinction between 'work' and 'text' as employed by Barthes. See Roland Barthes, *Image, Music, Text* (Hill and Wang, New York, 1977).

2 *Id.* at 8. This is the most foundational category that the author uses to convey that "not every *human* violation is necessarily a *human rights* violation". Such "normative impoverishment" of the existing standards of human rights, in the reviewer view, are also reflective in the fact that even after recent amendments made in rape law after Criminal Law Amendment Act, 2013, marital rape stands as a classic illustration of violation of human without any corresponding violation of human rights.

corporations. The state uses/abuses the vocabulary of human rights to derive 'legitimacy of its sovereignty' or legitimacy to the use of sovereign power.³ On the other end of the spectrum remains the praxis of 'emancipatory politics'. Here, human rights retain the 'potential' of indicting and resisting the state and non-state actors for their practices and politics of cruelty. This emancipatory or the progressive dimension potentiality of human rights to arrest the structures of cruelty and domination is what the author describes as 'politics for human rights'.

The book provokes the reader for a more complex notion of the genesis and genealogy of human rights. It proposes that it is neither the UN declarations and treaties nor the western enlightenment which enwombs the notion of human rights. Instead, the author suggests, and here in his most radical assertion, that the origins of rights remains in the peoples' resistance, movements and struggle against the various practises of cruelty perpetrated by those wielding state or state-like power.

It is in this backdrop that one can conceptualize a further distinction that the author draws between 'contemporary' as opposed to 'modern' notion of human rights.⁴ The paradigm of 'modern' notion of human rights is fraught with immanent violence as it is based on the logic of exclusion. The 'modern' here seems to be reflective of the European modernity tradition which on the one hand heralded and scripted charters of rights but at the same time excluded the vast humanity of the non-European and on the other who could never be styled as human enough to be a subject of these rights. It is this exclusionary aspect of 'modern' conception of rights that allowed for coexistence of charters rights and freedom declarations along with the dark night of colonialism as well as the gender-based denial of civic right to political participation to women. Thus, the modern conception of human rights originates with the emergence of industrial capitalism and its logics remain exclusionary as the right to freedom and liberty justified the right to an imperial empire by the Euro-western forces.⁵ Thus, the modern notion of human rights is also a classic instance of what the author styles as the politics of human rights.

3 The use of the language and discourse of human rights for legitimacy of sovereignty/power is reminiscent of the classic distinction between repressive state apparatus and ideological state apparatus formulated by Althusser. On this account, the human rights vocabulary becomes an ideological state apparatus which becomes instrumental in legitimizing repressive state order. This is starkly visible in the post 26/11 security regime and retributivist punishments meted out by the state. For distinction between ideological and repressive state apparatus, see Louis Althusser, *Lenin and Philosophy & Other Essays* 127-193 (Monthly Review Press, New York, 1971).

4 Upendra Baxi, *The Future of Human Rights* (Oxford University Press, New Delhi, 2012). Ch. 2 of the book attends to these two categories in somewhat detailed manner.

5 *Id.* at 38. The author exquisitely designates such dominant conception as the 'gift of the West to the Rest' while at the same time reminding the reader of the unilateral nature of the 'gift' which painfully reduces it to a 'curse' for those who are at the receiving end of it.

The 'contemporary' notion of human rights, on the contrary, is rooted in popular struggles of resistance of the oppressed against the dominance of the oppressor. They originate from the sites of human suffering and thus reverse the 'modern' logic of exclusion. They inaugurate the logic of inclusion of the suffering masses to be and remain human and inventing new forms of participatory governance. The contemporary notion of human rights is deeply etched in the experiences of those who have suffered. The struggles of resistance against colonialism have become instrumental in generating the principle of self-determination under UN instruments and simultaneously de-legitimizing the human right to empire. So does the suffragist movement which paved the way for UN convention against gender discrimination. It is this triumph of these movements of resistance "that finally transformed 'modern' into 'contemporary' human rights paradigm."⁶ This paradigmatic shift of contemporary human rights from its modern counterpart is an illustrative transformation from politics of human rights to politics for human rights.

Lastly, the author invites the reader for an exploration of new power structures which he describes as wielding state-like power in form of multi-national and global corporations. These new-state-like multinational corporations appropriate the discourse of human rights for enhancement of the profit-making enterprise. This form of 'politics of human rights', where the powerful corporations use human rights to serve their ends, is evocatively described by the author as 'trade related market friendly human rights'.

From movements to markets of human rights

In the latter half of the book an attempt is made to theorise new forms or *avatars* of power. If one of the preeminent tasks of the book is to forge ways, through practices of human rights, to make the state power more accountable, then here the author wrestles and engages with the reader in formulating tools to conceptualise the accountability of the new forms of non-state but 'state like' or 'state-transcending' actors. These include the global and multi/transnational corporations as well as the community of direct foreign investors. The personification of these corporations as legal persons raises fresh challenges to the universe of human rights. The latter half of the book also scripts the narrative of the human rights and responsibilities of the emerging breed of business entities as persons. The issue of business and human rights or the responsibilities of the corporations has become important for human rights scholarship as these state like entities already lay their claim to human rights as an inter/national legal person. However, as the author painfully illustrates that the issues of responsibility or accountability of these corporations remains at best eclectic or at worst illusionary in the present international framework.

6 *Id.* at 109.

The question of responsibility becomes important as the global capital lays its claims to rights in a similar manner as human beings have under the regime of International Bill of Rights. One classic illustration of this is the decision of the US Supreme Court upholding the unlimited right of corporations for campaign financing in state and federal election in the US⁷ thereby clearing the way for industrial enterprises for reducing the political process to trading and business. The claims of corporations to freedom of speech and expression transform logics of human rights into ventures of profiteering and market commodities. This is what the author terms as ‘trade related market friendly human rights’. Rawls alerts his readers to such impending danger of buying and selling in politics in his last book:⁸

When politicians are beholden to their constituents for essential campaign funds, and a very unequal distribution of income and wealth obtains in the background culture, with the great wealth being in the control of corporate economic power, is it any wonder that congressional legislation is, in effect, written by lobbyists, and Congress becomes a bargaining chamber in which laws are bought and sold.

The question arises that if corporations claim the same human rights then should they not be bound to same human obligations?. However, as the author displays in chapter 9 of the book, the responsibilities of these global corporations towards human beings remain constricted in “Ideologies of voluntarism” by which he refers to initiatives such as, United Nations Global Compact where the companies “self-select” their responsibility towards basic human rights obligations and standards and it is expected to display the compliance of the same on their websites. The author aptly borrows the phrase to describe this phenomenon as ‘global compact with little impact’.¹⁰ The chapter enumerates various practices of resistance against the regime of trade related market friendly human rights and at the same time alerts the reader to the possibility of appropriation of the framework of contemporary human rights by the global capital.

The work remains reflexive throughout about the limitations, and to some extent the complicity, of the language of human rights in perpetuating inhuman wrongs and their failure to address ever creative forms of regime sponsored cruelties. It is also mindful of the teasing and painful irony that ‘(i)mpunity for human – and human rights – violation co-exist with human rights implementation and enforcement’. Thus,

7 *Citizens United v. Federal Election Commission* 558 U.S. 310 (2010). The court, by majority, held that the campaign financing by corporation falls within the right of freedom of speech and expression guaranteed by the first amendment to the US constitution.

8 John Rawls, *Laws of the Peoples* 24th edn. (Harvard University Press, Massachusetts, 1999).

9 *Supra* note 4 at 323.

10 Global Compact, Little Impact, *Bus. Wk. Online*, July 12, 2004. Available at: http://www.businessweek.com/magazine/content/04_28/b3891132_mz021.htm (last visited Jan 17, 2014).

the author celebrates the hope of potentiality or the 'possibility' more than the 'actuality' of existing regimes of human rights. This imagined potentiality, the author suggests, is not merely of emergence or creation of new forms of human rights but also the potentiality to "decreate" or annihilate the many actually existing worlds of human rights.¹¹

The book interrogates the possible reductionism of human rights movements into any form of regime or organisational framework where the resistance movements while struggling against the monster may themselves turn monstrous. Thus, the author acutely points out that "NGO-isation" of human rights has the danger of getting "infected by the governmental and governance processes...[as]...most NGOs themselves face dilemmas of legitimation not wholly dissimilar to those...which they often systematically oppose".¹² Similar is the unease of the book with the human rights documents that remain unrelated to the "concreteness of everyday suffering" of the ordinary masses. The future of human rights remains ambivalent in its possibility to embrace the "organic/experiential of pain and suffering of the violated", which the author aptly feels "does not always find articulation in erudite knowledge formations concerning human rights law and jurisprudence".¹³ One may sum up the review by quoting Twinnings that "(w)hile his arguments are complex, dialectical, and often ironic, one clear message rings out: taking human rights seriously must involve taking human suffering seriously".¹⁴

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11 *Supra* note 4 at 5.

12 *Id.* at 72.

13 *Id.* at 9-10.

14 William Twinning (ed.), *Human Rights: Southern Voices* 159 (Cambridge University Press, Cambridge, 2009).

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