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# Rediscovering Human rights From Critical Legal Perspective

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# Rediscovering Human Rights Jurisprudence from Critical Legal Perspective

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## Re-discovering Human Rights Jurisprudence from Critical Legal Studies perspective

Dr. Durgambini Patel\*

### (I) Introduction:

In common understanding Law is a prescriptive code; it prescribes and regulates the social behavior in a given society so as to maintain Law and order. Law it is not *sui-generis* but is problem centric. In other words, Law is an instrument of social mobilization and a devise to resolve disputes and conflicts in the society. Law is also conceived as a formula for delivery of justice i.e. to do distributive and corrective justice. The nexus between Law, justice and development is indivisible. Every Law, while it is made, applied and interpreted must promote justice. The ideological content of rule of Law requires that an act shall not merely adhere to the procedure established by Law but due process must be followed. The end result of application of every Law must be just, fair and reasonable. The concept of justice is having farfetched connotations. Justice while done should not only be done, but seen to have been done, manifestly and undoubted done.

It is well-established cannon of Law that judges not only interpret the Law but also make Law, mould and shape it. In the discipline of Law it is often seen that there is wide gap between Law in books and Law in action. The Laws mostly remain decorative ornaments in books having lesser implications in reality. Law remains superficial and ineffective especially if it is opposed to public opinion and existing morality. It takes considerably long time to have optimum acceptability of legal norms. The internalization of legal norms is a slow process. Law making is quick and easy but implementation with public support is slow and difficult, especially when the law lays down new social order opposed to existing morality and tradition. There are

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multiple factors that influence Law making by the judiciary. Do the judges go by the letter or spirit of Law, while declaring the Law under Art 141 of the Constitution or there are some external factors with in the system that influence them while formulating judicial Law making?

The Realist school of Law contended that the judge is not an immune phenomenon. The role of judge is not static and mechanical, of just applying the laws to the situation but the judge, a human being, his personality, ideology and convictions are reflected in his decision making process. Law is considered as the tool for regulating the society and while maintaining peace and order, distributing justice to the weak and the vulnerable. According to the sociological school of Law the function of Law is to balance between the conflicting interests in the society from social perspective. In other words Law is the means to achieve the ends enumerated under the domain of human rights. The significance and relevance of the above discussion is verified in light of the prepositions and the contentions of the critical legal studies movement.

## **(II) Critical Legal Studies Movement:**

In 1970s a new movement called the Critical Legal Studies was evolved. Firstly, it was thought to be a ferment or extension of the realist but later the movement established its own place in the schools of Legal theory.

According to this movement, in every Legal system there are predominant political factors, which ultimately determine the some total of Law or the fate of the Law. The movement of CLS started in America, initially as a critical stance towards American domestic politics and eventually translated into a critical stance towards the dominant Legal ideology. The object of ‘crits’ (as they are called) is to demystify the numerous myths of Law and Legal practice.<sup>1</sup>

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<sup>1</sup> [http://en.wikipedia.org/wiki/critical\\_legal\\_studies](http://en.wikipedia.org/wiki/critical_legal_studies).

The prominent contentions or themes of the CLS movement are:

1. Legal materials (such as Statutes and Case Law) do not completely determine the outcome of legal disputes. In other words Law may impose several significant constraints on the adjudicators but in the final analysis they are not enough to bind them to come to a particular decision. There are several political factors that influence the decision making of adjudicators and administration. Therefore, though they actually work within the framework of the Law the existing political factors play dominant role in making choices between several available alternatives.
2. For that purpose they claim that the legislative process and judicial process both are outcome of 'political decisions'. Legal decisions are just like political decision. Judicial process has inherent within itself the influence of the political phenomenon operating at that particular point of time. The notion that is held by the western societies that discourses of Law and discourses of politics can be meaningfully separated is a myth and a false notion according to them.
3. The legislative debates and the arguments before the judicial forum are more or less of the same type. Law according to them tends to serve the interests of the wealthy and the powerful by protecting them against the demands of the poor and the subaltern (Women, ethnic minorities, working class, indigenous people)
4. What the Law says it does and what it actually tends to do are two different things. Law is nothing but power politics and at the end of the day every Law is Politics. Law is not neutral and value free. According to them dominant Legal doctrines and conceptions perpetuate patterns of injustice and dominance by whites, men, the wealthy employers and heterosexuals. Law is not set of neutral rules, but an

engine of oppression. Legal reasoning is powerless and is crippled by wars among contradictory Legal principles. They are concerned with politics of law.

5. Like the realist they also reject formalism. Disputes according to them cannot be resolved by the neutral application of objective rules. However, realist saw legal reasoning as autonomous and distinct based on the personality of the judge. The 'crits' consider Legal reasoning as a part of political process. According to them law is politics and does not have any independent existence outside the ideological battles within the society.

6. Law is indeterminate and there is relation between Law and established power structure. The realist only emphasis on Judge's personality and ignore the influence of the forces that creates pressures on the Judge while declaring the Law.

7. Certain aspects of Marxist approach also influence the critical Legal Studies movement. Scholars like Gabel and Harris argue that in capitalist societies the source of alienation is found in the prevalence of hierarchy as the dominant form of social organization with damaging consequence. Alienation is the inability of the people to achieve genuine power and freedom.

The CLS scholars assert that Legal rights are crucial as symbols of social aspirations, however, in actual society, such rights or promises are only realized partially. The right oriented approach in legal practice does not address to a precondition for building a sustained political movement. In fact, it tends to reinforce the alienation and powerlessness. On the other hand the power oriented legal practice seeks to develop relationship of genuine equality and mutual respect. The lawyer shall demystify the symbolic authority of the State and bring out the true socio-economic and political foundations of legal dispute. He shall therefore, reshape the law in this context<sup>2</sup>. Law is a social phenomenon. The true science or logic of Law can only be discovered from social angle i.e. the political forces that determine the ultimate fate of the Law .Law

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<sup>2</sup> ibid

and politics have emerged as two indispensable pillars of democracy. The right oriented approach in Legal practice does not extend rights to the weak and vulnerable. Therefore, power (empowerment) oriented approach should be adopted to combat with alienation and powerlessness. Alienation and powerlessness are self-generating sources of social repression that leads to the reproduction of class, race and sex hierarchies from generation to generation. It is therefore, strong conviction of the CLS scholars that mere legal rights are just formal procedure of recognizing rights but is not effective means to guarantee freedom from hunger, sickness, ignorance or any other social ills. Therefore, it is positive empowerment which is power oriented can assure Human rights and dignity<sup>3</sup>.

The focus of this paper is to venture into the domain of Human rights Jurisprudence and to identify the relevance of the basic themes developed by the CLS movement while determining the Law on some human rights issues. To bring to surface the disparity between Human Rights in books and Human rights in action. To unfold the myths of implementation of Human Rights. How independent the judges are and what are the pressures, counter current and under current that induce them to give a particular type of decisions? Human Rights in this sense can be rediscovered from this perspective.

### **(III) Dilemma of Human Rights:**

Rights are opportunities essential for development of human dignity, faculties and personality. In their negative aspect rights protect one against arbitrary behavior of another person, and of the State machinery. In positive aspect they promote human aspirations. Human Rights are categorized as political, civil, social, economic and cultural. These are rights to life, liberty, equality, employment, education, practice any faith, etc. Some rights, particularly political and economic, are allowed to citizens only, the rest are for all to enjoy in a democracy. Rights enlarge the area of freedom,

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<sup>3</sup> See, generally <http://www.library.und.ac.za>.

offer security from violence and discriminatory treatment and are expected to ensure general protection against all kinds of oppression. A right is a social concept. Without a society conscious of common moral and social interests and obligations there may not be any right. There is likely to be display of power and might becomes rights, but rights do not become might. The Right to justice is among the foremost human right. As stated above to exercise a right there is need of power. With out power to exercise right, the right is meaningless.

Since the Universal Declaration of 1948, a flood of legislations in various countries has been witnessed seeking to implement the International Bill of Human rights and follow-up instruments. Even so, it is a sardonic comment, that many countries, including India, may be criticized for the 'petty done and the undone vast', statutory profusion notwithstanding. An impeachment of the defaulting nations may, perhaps, begin with the United States itself which is 'full of sound and fury' about fulfillment of human rights by other countries. At this stage, it is essential to realize the nature of the dominant forces, which control the countries' courses of action that explains why and when the human rights instruments are to be given effect to by ratification or other legal formalities. According to Krishna Iyer India lives in several centuries simultaneously, practices contrary ideologies and political systems is symbiosis and operates an obsolete Justice System, which hibernates long when even habeas corpus cases pend and wears the inscrutable face of a sphinx even in human rights litigation. The misfortune is that these classes sustain the status quo insensitive to the human conditions, radical tho' their diction be, and do business as usual, constitutional commands notwithstanding. They are not disturbed by noises about human rights. They go by the books as they learnt it long ago, which is silent about humanism and litigation or human rights and administration. The old order is their official outfit. The new order is struggling to dawn. The old time bureaucrat is puzzled by fundamental freedoms claimed by the rag-and-bone person. Even the robed judges are legalistic about radical words like equality and dignity asserted by the proletariat. The human rights activists speak Greek, not Law. But the United Nations Bill of rights and our Constitution possess a verbal militancy that sounds like a 'riddle

wrapped in a mystery inside an enigma.’ This illiteracy in the elite establishment is innocent but denies human justice to the vast numbers of victims of inhuman wrongs. So we begin with the watershed of human rights jurisprudence.<sup>4</sup>

The standards set by the Universal declaration and the two companion Covenants are still shining like omnipotence in the sky. But has humanity actualized much from this Bill of Rights? The International Order, with its entire printed luster, falls far short of actualization of human rights and fundamental freedoms. Surrounded by several questions, the right to be human is a very complex and dynamic. Therefore, according to Justice Krishna Iyer we need to find answers for following questions. Do we recognize the right to be human as a supreme value or its practice as serious duty? Do we recognize what flows from humanism, namely the right of everyone born on the earth as a full member of the human family? What is meant by being human, to be higher from beast or just a beast or less than a beast according to his kismet (destiny)? Does he possesses the dignity and worth associated with human personality? The answers for these questions are mostly in the form of NO, as that is the harsh reality<sup>5</sup>.

#### **(IV) Inter – country political influences and Human Rights:**

Basic facts about the United Nation need to be understood for conducting an inquiry into Human Rights jurisprudence. In the days of globalization and liberalization, international cooperation and world peace is essential to foster human rights. Globalization causes massive transformations in all walks of life leading to conflicts. Globalization at the out set tends to exploit the economically weak nation by the powerful. The prosperity that is offer by globalization does not reach all people and too many are excluded or unable to find access to it. The new economic order leads to fragmentation of the society due to unmet needs on national level and rising insecurity. The fragmentation can breed fanaticism, isolationism, separatism and the proliferation of civil conflict. These developments in the recent times have put vast responsibilities on the U.N., which has to face new challenges, however, without any upgraded or

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<sup>4</sup> Justice V.R.Krishna Iyer, *Some thoughts on Human Rights in India*(University of Pune, Pune.2000, p.16

<sup>5</sup> id.at pp.17-18

additional political, military, material and financial resources. The U.N therefore fails to accomplish the task of protection and promotion of the Human Rights in majority of cases. The world's conscience and the nations' consensus are needed to solve these escalating forces and new structures like regional arrangements, non-governmental organizations, parliamentarians, academic and policy research institutions, and the media. All are needed to take on greater global roles and strengthen the sinking UN to stay afloat and fulfill its humanitarian tasks. It is a universal instrumentality and inspiration which should never fade or flounder.<sup>6</sup> The U.S. and like countries are bypassing the UN and weakening it. They are also controlling other global institutions like IMF, World Bank GATT, and WTO. In such weather the human rights have to struggle if they are not to be drowned. As Justice Krishana Iyer observes the United Nation is caught in dilemma of realism versus responsibility. American hegemony *vis-à-vis* the aggression on Iraq is the clear evidence of the overuse of UN authorization by the U.S.<sup>7</sup> The role of the UN with about 185 membership of the States, cannot be totally marginalized in protection and promotion of the Human Rights .It has been successful in articulating strong world opinion and generating sensitive debate in matters relating to Gender Justice, eradication of racial discrimination, enhancing the rights of child, trying to end nuclear tests, altering the world community about environmental protection through various summits, conferences, covenants, conventions, declarations and protocols with help of various UN agencies, instrumentalities and charters.

The international relations are governed by political forces that operate at the international levels. It is the power politics of the developed and strong nations to exploit the developing and the weak nations. The international instruments like, treaties and agreements especially on trade are used to perpetuate the inequalities among the nations. Dumping policies, whereby the developing countries are flooded with commodities unwanted by the developed nations, whereby developing countries become lucrative markets for selling unwanted goods of the developed countries, are the illustrations of clear-cut violation of Human Rights and economic exploitations

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<sup>6</sup> See generally V.R. Krishna Iyer, '*The Dialectics and Dynamics of Human Rights in India*' (Eastern Law House) Calcutta, 1999, p. 141.

<sup>7</sup> Ibid. pp 142-143.

based on market forces. Industrialized countries like the G 7 (Group of Seven) produce enormous toxic and dangerous substances and waste, potentially threatening the rights to life and health of many. They dump these heaps of killer substance on Third World countries. Development is a human right and has been the subject of the Declaration on the Right to Development. However, in the name of 'development' the guilty establishment has sanctioned disastrous displacements of humbler humans in hundreds of thousands. What is forgotten is that development is not of things but of man. "(Cocoyoc Declaration) Vienna emphatically, though tersely, holds that the Human person- is the central subject of development. The debt burden of the developing countries is a menacing phenomenon of global significance which makes slaves of developing countries and bonded labourers of the people of those countries. All human rights end where debt burden becomes a death trap and suffocates a nation. The truth is that the North robs the South and claims unpaid indebtedness. Most ordinary people have heard about Aid. It is from the rich countries to the economic south. They have never heard of Aid from south to north. What these innocent people do not realize is that through the working of the present international economic arrangements, wealth flows almost all the time from the poor developing countries of the third world to industrialize and rich countries of the developed world. It flows from the primary producer to the industrialize countries, from the ignorant to the knowledgeable.<sup>8</sup>

Human Rights debate during the last decade or so, has thrown up several new issues. Of all the debates the debates on International standards that are being prescribed have come under severe attack- from the governing elite of the third world or developing countries. The consensus that was arrived at in the mid forties, particularly in the wake of universal declaration of human rights seems to be no longer held valid. It is striking that after almost so many years, instead of arriving at a greater consensus and clearer direction, the world opinion is found to be more fragmented and fractured on universal norms for human rights. The criticism reached a stage where they are not only questioning the international standards and their Euro-centric character on the ground that they are hegemonic, but even the very philosophy that

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<sup>8</sup> Supra note 4 .at p.26

governs the human rights vision is questioned. It is this approach that is giving rise to the demand for 'domestic jurisdiction' in human rights.<sup>9</sup>

In the Euro-centric view of human rights the individual is the bearer of rights. In the western industrialized societies, the rise of the market forces has given rise to the individual enterprise, self-interest, and creativity so on. Such an atomized individual is the cause and also consequence of industrial development. In the societies which have not experienced industrial revolution the way the western societies did, the atomized individual has not yet emerged. The third world critique maintains that the ethnicity, collective existence, joint family, caste institutions indicate that the identification of the individual with himself is relatively far lesser compared to his counter part in the western societies.

This historical and social context calls for reformulation of the liberal construct of rights and obligations. In a society where human being are deprived of their basic needs and where services are unevenly distributed, there the logic of rights and obligations so operate that those who are powerful and privileged end up with the enjoyment of rights and the poorer sections would end up with obligations. How does one change this structure? For the western notion of rights and obligations presupposes certain level of equality between individual and individual, individual and group, and group and group. When such equality does not exist, that society should use logic of a different kind. In this logic the powerful are required to observe obligations towards the poorer sections and the latter would have to be granted rights which would empower them to become equal. The entire logic of protective discrimination is justified on these grounds. This would enable the poor to have claims on the limited opportunities. The under development of productive forces reduces the capacity of the State and also of society to provide, protect and promote rights. The

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<sup>9</sup> Prof. G.Haragopal, Human Rights: The Third World Critique. (Centre for distance education. University of Hyderabad, Hyderabad.) p178.

developed societies and international agencies are increasingly applying this scale to judge the human rights performance.<sup>10</sup>

This context led to a major debate on civil and political rights vs. social, economic and cultural rights. The level of the debate is raised to a higher level in terms of justice vs. freedom. The major argument revolves around the logic that if the stomach is empty what does political freedom mean? A hungry man needs bread and not civil and political freedom. The logic can be even reversed and one can ask the question why or how does freedom come in the way of bread? The super imposition of western notion of rights is not only an invasion into the cultural domain but unrealistic in the third world context.

The developing societies, while being critical of the western notion of rights, they have not come out with an alternative creative notion of rights. For the criticism is only negation of western rights but that does provide neither a creative framework nor a reference point to the debate on rights in their own context. It is this absence of framework of rights that has led to a political void, which in turn made the sensitive individuals, groups and the state as such helpless in the event of social or civil strife.

There is yet another criticism from the third world. This relates to Western criticism which maintains that the criticism is politically motivated. They maintain that the insistence on certain normative standards in human rights is not out of genuine human concern but is a part of political manipulation to embarrass the third world states. They are using the human rights stick like social clause, child labour, environmental concerns, social sanctions, most preferred status or linking World Bank and IMF loans to human rights record not out of their commitment to human rights or conviction but to maximize their profits or block certain goods in the international market. This criticism is valid in the sense that the standards are not uniformly

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<sup>10</sup> Ibid at p. 179-181; see also, V.R.krishana Iyer, *The dialectics & Dynamics of Human Rights* (op.cit) at pp 210-215. where in it is discussed that the presentation of universal human rights are not truly universal but largely a set of values which appeal to the whites, affluent people of Europe and north America And there must be Asian charter on human rights in tune with Asian traditions and culture along with other Human Rights agencies and instrumentalities at par with Europe and America.

applied. If the market interests of the advanced countries are likely to be adversely affected, then they may insist on the conditionalities. This selective use of the stick of human rights has given rise to serious doubts.<sup>11</sup> There is another part of this criticism. The third world particularly the developing societies have been maintaining that the industrially developed societies, if they are sincerely committed to the cause of universal human rights, should be willing to share their affluence with the societies which are not in a position to provide the basic or elementary needs of the people. This question was raised in Vienna Conference by the Nobel Laureet – Soyanka who asked: whether the first world countries would write off the loans that they have given to the developing countries in the genuine interest or pursuit of human rights.<sup>12</sup>

#### **(V) Human Rights and Intra-country political influences:**

The political influences and other functional forces (social, cultural etc) are evident in all walks of life. The judges, law makers and the executives are no exceptions. They are continuously under influences of political counter currents and under currents prevailing in the society. The impact of the influences can be briefly discussed under the following heads:

##### **(a) The Legislative Bodies:**

The making of Legislative Laws in democracy shall be by the representatives of the people. In reality it is the articulated Public Opinion of organized pressure groups that exerts pressure on the Law makers. Public Opinion is one of the sub systems that operates in society and regulates human conduct. Therefore, Law either has to mould and shape Public opinion or follow it, but in democracy, Law cannot be imposed on totally hostile community. There are several instances of Legislative bills that have not seen the day light in spite there being realization that they are needed. The dominant reasons can be the political influences operating through identified pressure groups. To name some of them:

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<sup>11</sup> Ibid

<sup>12</sup> supra note—at p.

a) Ombudsman. No Central Act has been passed in spite of the bill being tabled in the Parliament couple of times. The bureaucratic democracy of India is not able to accept the interventions that may be caused due to creation of this institution.

b) Uniform Civil Code is another such example which arouses several political issues and ultimately the statutory Law remains under the carpet in spite of judicial pronouncements.<sup>13</sup>

C) The 74<sup>th</sup> Amendment of the Constitution (1992) reserved 33% seats for women in municipalities and Local self-governments. However, it is nearly 16 years the same has not been extended to the State and Union Legislatures. In several Parliamentary sessions the matter was discussed. The male lobby also suggests that 33% seats should be added on an above the present number of seats rather than providing reservation within the existing seats. The politics of patriarchy can be said to be the dominant factor for the Legislative inaction.

There are several Legislations and Legislative amendments that are languishing in the Bill form never either tabled or if tabled never passed. There are several recommendations of the committees and specifically of the Law Commissions of India which are of paramount importance and need of the day but are put in cold storage due to lack of political will and support.

On the other hand there are Laws that have been made in a hurried fashion under well articulated and organized political influences for example the amending of the old law and passing of the Parliament (Prevention of Disqualification) Amendment Act, 2006, better known as the office of profit law.<sup>14</sup> The most influential voices are heard and the weak of powerless go unheard this is the apathy of Indian democracy.

### **(b) The judicial organs:**

The issues that arise here are relating to Independence of judiciary. How Independent is the judiciary is a million dollar question? The judge is not an immune

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<sup>13</sup> *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531. *Jorden Diengdeh v. S.S. Chopra*, AIR 1985 SC 934.

<sup>14</sup> The Act was passed to protect the Parliamentarians, who would otherwise lose their seats in the Parliament. The 42<sup>nd</sup> amendment of the Constitution is also a suitable illustration of political inclinations guiding the Law.

phenomenon but is governed and influenced by the political factors operating in a given society. This theme of CLC is the stark reality in every legal system. To evaluate the said contentions let us take up some illustrative cases<sup>15</sup> that indicate judicial will to protect the politicians and policy makers<sup>16</sup> and their actions.

With the emergence of the LPG era (Liberalization, privatization, globalization) in the post 1990 period, the courts are seen to have diminished their social responsibility and commitment towards the poor and vulnerable masses. This is more prominently evident in the area of the rights of the workers and the slum dwellers. The Indian Supreme Court was globally known for developing worker friendly industrial jurisprudence, but it changed its approach and attitude – perhaps due to influence of the political and economic forces operating in the given situation. It may be pertinent to note that, the substantive Laws did not change but the interpretative approach and focus of the courts underwent a drastic change. This shows that, the Courts are not neutral to political will and forces operating in the society. In the *T.K. Rangrajan v. State of Tamil Nadu*<sup>17</sup> the Supreme Court held that the Government employees have neither fundamental nor legal, nor statutory right nor any moral or equitable justification for resorting to strike. Such kind of blanket ban on protest not only infringes fundamental rights but also statutory and moral rights. Article 19 (1) (a) confers the freedom of speech and expression. It is settled position that speech and expression includes an expression of protest. A total ban on all forms of protest without differentiating the legal from the illegal and without showing how such protests are against public order and morality, it would be wrong to deny right to strike. The statutory provisions in the Industrial Disputes Act and the Trade Unions Act recognizes the right to collective bargaining with the help of legal and justifiable protests.<sup>18</sup>

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<sup>15</sup> It is submitted here that the author does not deny the activist role of the Indian judiciary in developing dynamic law in the post Independence period but is pinpointing at the selective cases to show the contrary situation.

<sup>16</sup> The courts have formulated the doctrine of political question to restrain it self from interfering in political matters which according to them shall be resolved only through political process.

<sup>17</sup> AIR 2003 SC 3032

<sup>18</sup> *Kameshwar Prasad v. State of Bihar*, 1962 Suppl. 3 SCR 369 : and *O.K. Ghose v. E.X. Joseph*, AIR 1963 SC 812.

The Judicial activism was at its peak in the post emergency period. The Indian Supreme Court gave several decisions to protect the weak and the disadvantaged section of the society with zeal to deliver social justice to the masses. However, in *Almitra Patel v. Union of India*<sup>19</sup> the Court, while adversely commenting upon the government's policy to rehabilitate slum dwellers, remarked that the promise of free land, at the taxpayers cost, in place of a *jhuggi*, is a proposal which attracts more land grabbers. Rewarding an encroacher on public land with the free alternative sites is like giving a reward to a pickpocket. The judgment was given despite the fact that, most of the dwellers live in sub-human conditions and do not have access to other houses. The judgment was contrary to courts earlier repeated pronouncement, that the right to shelter and housing was fundamental right of every citizen of the country.<sup>20</sup> The Supreme Court also changed its philosophy regarding public interest litigation during the era of economic reforms. In *BALCO employees' Union v. Union of India*<sup>21</sup> the employees' union of the government company had challenges disinvestment policy of the Government on various grounds including the arbitrary and non-transparent fixation of its reserve price. While dismissing the public interest litigation, the Supreme Court observed that public interest litigations are becoming publicity interest litigation or private interest litigation and is counter-productive. The Supreme Court upheld the Govt. policy of disinvestment by stating that disinvestment is a policy decision and the Supreme Court while doing judicial review can not intervene in the policy decision making process and can only look into the merits based on law. It is essential to note here that it was the same Court that had in past strived to protect the rights of the workers by use of harmonious construction and beneficial rules of interpretation, depicting activist role of the judiciary.

The political factors operating at its optimum level is clearly evident from the Law relating to Parliamentary privileges in India. The sub clause (3) of article 105 of the Indian Constitution states that the powers, privileges and immunities of the houses of Parliament, members, and committees shall be such as may from time to time be defined by the Parliament by Law and until so defined as the Law prevailing before the

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<sup>19</sup> (2000) 3 SCC 575

<sup>20</sup> *Prabhakaran Nair v. State of Tamilnadu*, AIR 1987 SC 2117.

<sup>21</sup> (2000) 2 SCC 343

44<sup>th</sup> amendment of the Constitution will continue. The fact remains that the Parliament has failed to define the immunities and privileges by not codifying the Law and meantime the courts of Law have also shown uncertainty and absence of precise will to give some concrete shape to the said Law. We can say that the Court's inconclusive and imprecise stand is a reflection of their reluctance to take lead or that they are governed by political factors operating in the legal system and therefore prefer neutral stand towards such sensitive issues.

In *P.V. Narsimha Rao v. State*<sup>22</sup> the court gave very broad interpretation to article 105 (2) and opined that the members of Parliament are protected against proceedings in court that relates to or concern, or have a connection or nexus with anything said or a vote given by him in Parliament. The court held that though bribe giver (to cast vote) can claim no immunity the bribe taker is immune provided he exercises vote or delivers a speech. The result of the decision was that the Parliamentarians who took bribe to vote against the no confidence motion were left unpunished and also in case of the bribe giver it was stated that sanction of speaker is required before taking an action in the court which in a political situation is unpalatable. Thus to change the legal position the presence of political will is utmost needed.

**(c)The administrative wing**

In the Parliamentary form of democracy there is no water tight compartment between the legislature and the executives especially at the top level. The cabinet controls both the legislative as well as the executive functions; therefore, the executives can not be free from political interference. The ruling Government largely influences the working of the system.

The constitutional powers conferred upon the Governor and the President is exercised in consultation with the cabinet and the Chief Minister at the State level and in consultation with the Prime Minister and his cabinet at the Union level. There is protection extended to the executive against political intervention by well established Constitutional principles like the doctrine of pleasure and the doctrine of anonymity,

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<sup>22</sup> AIR 1998 SC 2120

but in practice they have negative implications. Many a times it is seen that the Government is weak and the executives indulge in red tapism bringing the system to halt. Most of the laws fail to be effective due to the incapable administrative machinery. The cause of non implementation of Law is mostly due to non administration or mal administration on the part of the executives. There is rampant abuse of power and corruption. The significant laws like the Environmental, Criminal and Social laws that generate important Human Rights remain dormant and ineffective under faulty administrative system and there is total chaos in administration of justice system.

**(d) The public spirited vis-à-vis publicity based media:**

In the modern democracy the media is regarded as the fourth pillar of the state. The freedom of press is the integral part of the freedom of speech and expression. The introduction of Right to Information Act has made the role of media more important and crucial in the democratic set up. However, we often witness that the media is used by the influential and politically dominant classes to lure the masses with views rather than news. In fact all the large publishing houses are owned by the political parties. Media is used by the political parties to have control on the masses. The modern investigative journalism is mostly party based and rarely public based. The social accountability of the media has political implications and colour. They are publicity oriented rather than public.

**(VI) Conclusions, deductions and inferences:**

If Human Rights are to triumph, executives must be sensitized; legislators ethicalised and judges conscientised with the help of positive support of the masses.

Due to prevailing non favourable social conditions and power structure based upon economic condition, social status, caste and sex based discriminations the beneficiaries of the Law can not assert and avail the rights conferred upon them.

It is not only law making but legal awareness and legal literacy that can bridge the gap between law in books and law in action. Poverty, over population, corruption and

illiteracy are the factors that contribute to the tragic situation of denial of Human rights in India.

The Law can become reality only when each individual in the society is sensitized to honour the Human Rights of others. Recognizing and respecting the human rights of others is a social and moral responsibility and not merely legal responsibility. Mere law making can not bring social change and social transformation. Each of us must honour others Human Rights and all must get due space to grow.

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