

Human rights and Indian democracy

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Sixty years after Independence, India has achieved the reputation of being a functioning democracy. That is no doubt true and is not a small achievement considering that there are not many functioning democracies in the third world, but nevertheless stock must be taken of how it is functioning. For that, the definition of democracy cannot be restricted to more or less free elections, freedom of expression, and an independent judiciary. These are the attributes on the touchstone of which India has been certified a viable democracy. An equally important element of democracy is the availability of the right to protest by peaceful means.

This right is very important since a democracy is measured by the extent to which it is a Government is responsive to the needs of the people. That we have the right to vote out a Government, which has turned out to be a real right on more than one occasion inspite of the sick effluence of money that engulfs elections, that we have the right to say what we feel like, which too is quite a real right inspite of the occasional travails of a Tasleema Nasreen, and that we have the right to move the Courts against arbitrary governance, which too is a real right notwithstanding that it is only in one out a hundred cases that the Courts feel like reining in the Government, does not make democracy complete on this touchstone because all these put together do not make the people the sovereign. They merely allow the people an entry into the portals of sovereignty on occasion. They only make India an occassional democracy. The right to agitate to put pressure upon the rulers to listen to us is an important complement.

This right, which in India we exercise by means of mass action such as processions on public roads, public demonstrations, strike, dharna, bandh, rasta roko, find no place in the law and are viewed not as expressions of democracy but as a nuisance and an obstacle to democracy. Excepting occasionally as when the Supreme Court held in 1973 that to take out a procession on a public highway is a fundamental right of Indians that can be only be subjected to reasonable restrictions, the Courts too have taken a negative view of the democratic right to agitate. As in most social issues, in this too the view of the highest Courts is that pickerd up in the market place and not a view informed by philosophical cogitation on the meaning and content of democracy.

With the Courts taking a myopic view, the administration has over the years learnt to indulge in the worst repression of the right to agitate. One of the matters in which things

have worsened in the last sixty years is the administration's intolerance of protest. We have seen a number of instances of police firing on protestors resulting in massive loss of life in recent months: Nandigram, the killing of Gujjars in Rajasthan, the police firing at Mecca Masjid and Mudigonda in Andhra Pradesh. Each incident has its peculiarities but the common theme is intolerance of protest. People exercising their right to protest must be treated with as much respect as a voter going out to vote on polling day. The inconvenience the protest causes to the movement or other rights of other citizens can be occasion for only reasonable regulation of the protest. To treat all protest as a nuisance, a violation of public order, the most common attitude of the administration and the Courts, is to misunderstand democracy fundamentally.

This negative attitude, which has grown more rigid over the years, is the single most important obstacle to the realisation of the people's basic human rights such as the right to shelter, food, work and dignified existence. The Government on its own cares the least for these rights, and without the right to protest, none of them can be realised. Yet the right to protest is itself devalued and denied, in the Constitution, in judicial pronouncements and in administrative practices. With the growing denial of basic human rights in the neo-liberal milieu, this lack is more of a debility today than it ever was.