Changing Dynamics Of Citizenship In A Global Age Of Human Rights Regime

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Abstract

In this paper "Changing Dynamics of Citizenship in a Global Age of Human Rights Regime", I have tried to explore how the idea of liberal citizenship is changing in the context of globalization where people, ideas and goods are on the move in relatively less time, less cost, and in more volume, which have created an inter-connected and inter-dependent world, where the idea of universal human rights is taking primacy over the citizenship one based on nationality. In order to getting coherence of ideas regarding changing contours of the idea of citizenship in a global age of human rights regime, particularly searching viable grounds of adjustments for the newer and contemporary issues which have been unfolding, I have taken reference primarily from three books.

For the sake of the purpose, first of all, I have taken Keith Faulk's book to highlight the conceptual tools of citizenship and its changing dynamics in different context for different communities in terms of its content, extent, and thickness. Then, to explore the concept of human rights, I have taken Upendra Baxi's book "The Future of Human Rights", which is theoretically rich in reflecting holistic view of human rights and its different meanings and claims of authorship in Euro-American vis-à-vis Third World social collectives, where Baxi rightfully claims that human rights are not 'gift of the West to the rest' in terms of emergence of the human rights movement. Further, he brilliantly contrasts the tension between 'politics of' and 'politics for' human rights intermeshed with flourishing of trade-related market-friendly human rights regime. Finally, I have taken Seyla Benhabib' book "The Rights of Others: Aliens, Residents, and Citizens", which raises the issue of conflict between national citizenship and universal human rights, and precisely begins where Baxi's book left with concerns over future of

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human rights in contemporary global scenario. Benhabib in trying to resolve the tension between national citizenship and universal human rights, brings different strands by political theorists like Hannah Arendt, John Rawls, Immanuel Kant and others and debated with them by presenting her own idea of 'discourse ethics' under the frame of deliberative democracy, building and extending the Kantian notion of cosmopolitan right.

The second part of my paper will try to explore the trajectory of some of the prominent human rights movements in India since Emergency period, in order to connect the theme of my present paper with my area of research, where I will try to summarize the existing literatures around human rights movements in India and will try to draw some inferences. In doing this first of all I will try to locate human rights movement in India in the existing frame of social movement theories and will demarcate the shift in social movements in post-industrial social formations, i.e., from the classical Marxist framework of class and collective action in structural-functional framework of M.S.A. Rao, Ghanshyam Shah and others to the 'Resource Mobilization Theory' of Mccarthy and Gald to the new social movement of Habermas and others from Critical School. This part will also reflect the scope and limitations of human rights movement in India.

SHIFT FROM NATIONAL CITIZENSHIP TO UNIVERSAL HUMAN RIGHTS

Citizenship has an almost universal appeal due to its egalitarian character and dynamic identity. As an status of entitlement it implies a sense of inclusion into the wider community. It is not merely a legal entitlement, but gradually it is becoming also deeply dialogical, reflective and transversal. Since, it contains both individualistic as well as collectivist elements it is inherently a relational idea that entails cooperation between individuals in the running of their lives. Keith Faulk in his book "Citizenship: An Introduction", argues that Conservatives, Communitarians, and Ecologists alike stress the responsibilities we all have to sustain our political communities and the natural environment. For only in this communal context are sustainable human relationships and therefore rights feasible.

In past, for Socialist, citizenship seemed to be imbued with a capitalist logic because they think it helped legitimized private property

and hid the inequalities of class society behind an abstract rhetoric of equality. Faulk argues the failure of communism and decline of class organization however, have led many Socialists to reconsider their rejection of citizenship. Similarly, Feminists too have found citizenship useful in conceptualizing the roots of women's oppression and thus, revisited and shifted the concept of gendered citizenship from purely rights and duties to the nature and context of communities.[2]

Faulk argues, citizenship is an excellent basis for human governance since, it implies rights as well as duties and obligation. Governance refers to the inherent human need to create and maintain social order and to distribute material and cultural resources. Therefore, politics is concerned with achieving and sustaining consensual governance. Citizenship is pivotal to the achievement of this goal precisely because it provides a strong legitimizing identity. Through its package of rights, duties and obligation, citizenship provides a way of distributing and managing resources justly, by sharing the benefits and burdens of social life. However, he criticizes political theorists for ignoring the social and political arrangements from the context in which it is practiced. For example, how class, gender and ethnic differences place upon individual citizens?

Faulk argues, by taking reference to T.H. Marshall that how citizenship have been portrayed by liberals as part of an evolutionary structuration process towards a more rational, just and well-governed society. However,he argues that the processes that determine how citizenship is defined are bound up with questions of self-interest, power and conflict which are intimately linked with priorities set by the state and the market system.[3] For example, economic crises may lead to a reduction in rights, as social entitlements are rolled back in the name of industrial competitiveness. Further apart from context, he argues that citizenship is actually linked with certain pertinent questions, like its extent in terms of who should be treated as citizen and what are those criterions, its content in terms of rights, and its thickness in terms of its substance.

Regarding the extent of citizenship, Faulk argues that all states however liberal their immigration laws, impose controls upon who can become resident within their territory and under what condition they can remain? Thus, citizenship is closely associated with nationality, with the two terms often being used interchangeably in international law. Particularly, for refugees and immigrants, then the primary question is often that of social

membership. In the contemporary world, this means membership of a state. To be deprived of citizenship of a state, when the state is the key distributor of social resources, is to be deprived of the basis of other rights.

Because of its importance to the idea of citizenship to an exploration of the nation-state, Faulk argues that in terms of modern citizenship the key event was the French Revolution, which fused citizenship with the nation-state.[4] He discusses the implication of this fusion in context of current debates in Europe regarding refugees and immigrants to highlight the controversies and contradictions of citizenship which is defined as membership of the nation-state. He argues, about contemporary France, that how an apparent neutrality towards citizenship in fact masks a deep-seated racism and pathology towards immigrants. He argues that in order to unlock the inclusive potential of citizenship, the concept must be freed from its association with the nation-state. Similarly, groups within for instance women exercise their citizenship within the constraints of a patriarchal system, hence in substantive terms their citizenship is worth less than that of men. Thus, he argues that the extent and content of citizenship is intimately bound up with the context of this status. Therefore, to fulfill the promise of liberal citizenship by transforming the context in which it is practiced and to make citizenship more inclusive, Faulk argues that it is imperative to recognize the inherently racialized, patriarchal, and class-based character of the state and the corrosive effects of the free market upon rights and responsibilities.

He further explores how globalization is transforming the context of citizenship' content, extent, and depth and begins by raising question that, could contemporary social change has rendered citizenship outmoded? Here, he draws Soysal (1994)' idea of 'postnational citizenship' which argues that citizenship will be increasingly replaced by the more inclusive idea of human rights that extends to all people regardless of their nationality. He argues, "globalization appears to challenge the contemporary relevance of citizenship because it blurs the boundaries, both material and psychological, which have made citizenship significant in modernity".[5] Here he believes that political communities like the 'European Union' provides a new context and meaning to the idea what Heater (1990) refers to as 'multiple citizenship'. His approach seems to be influenced by Ecologists and Feminists. Like Ecologists, he agrees that in order to fulfill its universalistic potential

citizenship must look beyond the state and involve international obligations as well as human rights.In context of the risk of intensifying ecological disaster, he held the view that citizenship must be inseparable and sensitive to the needs of the environment. Similarly in his view, the ethic of care advanced by some feminists has a part to play in a reformulated theory of citizenship. He argues, care implies the recognition of the social nature and interdependence of all citizens and helps challenge the abstract liberal notion of independent citizens. But, ultimately he builds his theory upon strengths of liberalism as he submits that liberalism is at heart a perfectionist theory, due to its emphasis on our ability as humans to create and improve our systems of governance which is compatible with democratic citizenship.

Upendra Baxi in his book 'The Future of Human Rights' begins with starting chapter as 'An Age of Human Rights' which itself conveys us that how contemporary times informs us human rights as a 'common language of humanity' in the words of Boutros Boutros Ghali, then Secretary General of United Nations in Vienna Conference in 1993. Baxi argues that it would be true to say that in some ways a human rights sociolect emerges, in this era of the end of ideology, as the only universal ideology in the making, and enabling both the legitimation of power and the praxis of emancipatory politics.[6]

Baxi's book seeks to explain the future of social action collectives, which he calls 'human rights' and thus problematizes the standard narratives of their origin, and ideologies of production of human rights. He talks about conflict of human rights and state sovereignty as Faulk also talks about and argues that the histories of contemporary human rights emerges as chronicles of contingency. He tries to grasp the future from the perspectives of social theory of human rights.Baxi argues that the intergovernmental, international laws are not primary source of human rights, and the originary authors of human rights are people in struggle and resistance and hence claims of 'authorship' are plural and are not 'gifts of the West to the rest'. He basically highlights ways in which the birth and growth of 'modern' human rights entailed legitimation of the suffering of the non Euro-American 'Other'. In contrast he argues, 'contemporary' human rights normatively renders altogether obsolete imperialism and racism as the cornerstones of 'civilized' international law and order.

Extending the idea of contemporary human rights, Baxi argues that the practices of contemporary human rights remain enormously varied and conflicted embodying diverse interests and value-orientations, all under the banner of 'human rights'. Expressing concerns over future of human rights quite seemingly Baxi argues, that this enables the flourishing of different forms of 'politics of' and 'politics for' human rights, imparting both a measure of cogency and incoherence to the field of human rights as a whole. In this way, when the violated feel that like previous languages (of distributive justice, revolutionary transformation, and the like) 'human rights' languages interpellate or insert them merely as discursive objects in the politics of rights, the future of human rights must become radically insecure.[7]

Talking about too many or too few human rights, Baxi argues that 20th century suffers from unbearable overproduction of human rights norms and standards, which is an altruistic exercise for the Third World societies in their historic tryst with democratic self-governance. He argues that the number of the rightless people also grows even as human rights norms and standards proliferate, and hence the 'politics of' human rights, interestingly creates conditions for the 'politics for' human rights.

Talking about 'Politics of Identity and Difference', Baxi takes example of famous 'Shah Bano' case of 1985, and argues that how Supreme Court of India constructed the Quranic texts to provide a right of maintenance to divorced Muslim wives and the Indian Parliament restored what was thought to be the orthodox reading of the Quran. This provides a striking case of 'multiplicity of collective identities' where contestation is between an Indian citizen's vindication of rights on the one hand and communitarian recourse to judicial power on the other and hence beyond the 'Global Project' of universal human rights.[8]

Baxi further raises the debate of universality thesis with the idea of relativism and multiculturalism, where he argues, that "the universality of human rights symbolizes the universality of the collective human aspiration to make power increasingly accountable, governance progressively just, and the state incrementally more ethical".[9] Here Baxi distinguishes between globalization of human rights and universality of human rights, where he argues that globalization of human rights necessarily fragments their universality, whereas universality makes problematic practices of production of the 'politics of' human rights.

Whereas, on the one hand he expresses skepticism about the politics of relativism and multiculturalism, on the other hand he argues that the universal notion in the United Nations vocabulary and cobweb of NGOs is actually not universal, but global whose norms and standards are set by the West to the rest.

Baxi highlights the weaknesses of current paradigms of universal human rights by drawing distinction between human rights movements and trade-related human rights markets, by heavily stressing on troubled relationship between human suffering and human rights. He argues, the tradition in international law of war and peace reserves languages of pain and suffering for the development of international humanitarian law, and languages of suffering are not writ as large in times of peace as they are in times of war. He raises an important issue here that the emerging standards of international criminal law in war-like situations do not extend to systemic, sustained and planned peace time denials of the right to satisfaction of basic human needs, such as food, clothing, housing, and health. Millions of rightless people have different stakes in the future of human rights than many epistemic human rights communities.

Baxi argues that grammars of governance are often based on the moral hierarchy of orders of pain and suffering by the languages of 'progressive realization' of social, economic and cultural human rights. And grammars of global governance increasingly creates markets for human rights which leads to commodification of human suffering. He argues that when human rights languages supplant all other ethical languages, when every new social movement tends to coalesce with the logic of human rights, when all resistance to power begins to present itself as morally worthy in human rights talk, the politics of human rights brings to us both human hope and hazards. The hope lies in the construction of visions of an 'ethical' state and the hazards lie in the acts of mystification of the modes of production of human misery and suffering. Baxi suggest that the way out is to understand the distinction between forms of 'politics of' and 'politics for' human rights, while the former serving the ends of Realpolitik, and the latter seeking to combat the modes of governance that command the power to cause unjustifiable human suffering.

Baxi further argues about trade-related, market-friendly human rights paradigm, subverting the paradigm of universal human rights of all human beings. In this way, the notion of human itself stands periclated, and represented in an era of digital capitalism, as networks of information, wholly capable of corporate ownership. Baxi here taking examples of various Human Genomic Projects and technologies of human cloning as redemptive human suffering, argues challenges century's attainment of an 'Age of Human Rights'. Thus, technoscience, a regime of representation codifying new material practices of power affects the very imagination of human rights praxis and what means to be human have rendered obsolete. Baxi calls this regime of technoscience as 'New World Order Inc'.

Therefore, one may argue from Baxi's reading of human rights, that the problem with proliferation of human rights regime drawing legitimacy from self-crafted international institutions have created monopoly of Euro-American specific human rights regime which advances their particular liberal values and economic interests by invading the 'Third World' countries through their civilizing mission of democracy and human rights. Thus, the actually existing world of human rights has little or no space, for example for the stateless, the refugee, the impoverished human beings, the indigenously peoples of the world, and peoples living with disabilities.

It seems that the future of human rights stands imperiled by a whole variety of developments in theory and practice. For example, genealogies of human rights; realities of overproduction of human rights norms and standards; development of postmodernist suspicion; emergence of the politics of identity and difference; resurfacing of arguments from ethical and cultural relativism; conversion of human rights movements into human rights markets; and transformation of the paradigm of UDHR into a trade-related, market-friendly paradigm of human rights ushered in by globalization, ideologies of economic rationalism, good governance, and structural adjustments etc. Like Baxi's reading of human rights, one may find similar skepticism in L.W. Sumner's work, 'The Moral Foundations of Rights, where he seems to argue that today human rights have been increasingly articulated for everything and everyone holds each other under certain obligation to certain rights, therefore have become too much vague in its content and hence losing its potential for certain genuine basic human rights.

Seyla Benhabib in her book 'The Rights of Other: Aliens, Residents, and Citizens', argues that "the modern nation-state system

has regulated political membership in terms of one principal category, i.e., national citizenship accompanied by the processes of rituals of entry, access, belonging and privilege".[10]However, new modalities of membership have emerged with transnational migrations which have bring to the fore the constitutive dilemma at the heart of liberal democracy between sovereign self-determination claims on the one hand and adherence to universal human rights principles on the other.

Benhabib argues that the period since 1948, UDHR has witnessed the emergence of international human rights norms, in at least three international areas. Firstly; crimes against humanity, genocide, and war crimes, secondly; humanitarian intervention, and thirdly; transnational migrations.[11] Benhabib asserts that the concept of crime against humanity, was first articulated by the 'Allied Powers' in Nuremberg trials of Nazi war criminals, which stipulated certain norms with which state officials as well as private individuals how to treat one another even under the conditions of extreme hostility and war.

Situations like ethnic cleansing, mass executions, rape, cruel punishments by the enemies, such as 'dismemberment', are common under conditions of 'systemic attack'. She argues that the continuous articulation of international law and its extension from situations of international armed conflict to civil wars within a country and to the actions of government against their own citizens, has in turn encouraged the emergence of the concept of 'humanitarian interventions'. When a sovereign nation state egregiously violates the basic human rights of a section of its population on account of their religion, race, ethnicity, languages and culture, there is a general moral obligation on all to end such acts of genocide and crimes against humanity. Benhabib argues that humanitarian interventions are based on the growing consensus that the sovereignty of the state to dispose over the life, liberty and property of its citizens or residents is neither unconditional nor unlimited. Talking about third dimension, i.e., transnational migration, she argues that it pertains to the rights of individuals as they are human beings, when they come into contact with, seek entry into, or want to become members of a territoriality bounded communities.

Trying to resolve the tension between national citizenship and universal human rights through various strands in her book, Benhabib brings the Kantian notion of cosmopolitan right in 'perpetual peace'

which argues about universal hospitality which can guide our thinking on transnational migration, refugee problems and asylum claims.[12]Therefore, hospitality as a right belongs to all human being as participants in world republic. It is rights of humanity or relations among citizens and strangers and occupies that space between civil rights and human rights. United Nations' 1951, 'Geneva Convention on the Status of Refugee', obliges signatory states not to forcibly return refugees and asylum seekers to their countries of origin if doing so would pose a clear danger to their lives and freedom have clearly influenced by Kantian notion of cosmopolitan right.

Benhabib examines the disaggregation of citizenship claims, bringingthe case of the European Union where the collective identity, privileges of political membership, and the entitlements to social benefits can no longer bundled together within a unified institution of national citizenship, because of different right regimes and multiple sovereignties.She tries to resolve the inherent tension between aspects of national citizenship and values of universal human rights, by proposing 'discourse ethics' and a normative theory of deliberative democracy that is only those norms and institutional arrangements are valid which can be agreed by all concerned under special argumentation situations called discourses. She calls discourses as 'metanorms' which is premised on the principle of universal moral respect and egalitarian reciprocity. Here, the universal respect means that we recognize the rights of all beings capable of speech and action to participate in the moral conversation. Whereas, the principle of egalitarian reciprocity, interpreted as each should have same rights to various speech acts, to initiate new topics, to ask for the justification of the presupposition of the conversation.

She also develops the concept of 'democratic iteration' to show how constitutional and international norms in different context can be mediated with the will of democratic majorities. Democratic iteration here, is complex process of public argumentation and deliberation, through which universal rights claims can be contested and contextualized and hence, invoked throughout legal and political institutions as well as public sphere of liberal democracies. She argues that through this process the democratic people show itself to be not only the subject but also the author of its laws. Therefore, in that sense, sovereignty seems to be a relational concept, it is not merely self-referential. Here, identity of

democratic people she defines, as an ongoing process of constitutional self-creation.

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Footnotes

[2]   Keith Faulk: "Citizenship: An Introduction", p. 2-5, (2000).

[3]   Keith Faulk: " Citizenship: An Introduction", p. 9-10, (2000).

[4]   Keith Faulk: "Citizenship: An Introduction", p. 30, (2000).

[5]   Keith Faulk: "Citizenship: An Introduction", p. 133, (2000).

[6]   Upendra Baxi: "The Future of Human Rights", p. 1, (2002).

[7]   Upendra Baxi: "The Future of Human Rights", p. 66, (2002).

[8]   Upendra Baxi: "The Future of Human Rights", p. 83, (2002).

[9]   Upendra Baxi: "The Future of Human Rights", p. 105, (2002).

[10]   Seyla Benhabib: "The Rights of Others: Aliens, Residents and Citizens", p. 1, (2003).

[11]   Seyla Benhabib: "The Rights of Others: Aliens, Residents and Citizens", p. 8, (2003).

[12]   Seyla Benhabib: "The Rights of Others: Aliens, Residents and Citizens", p.25, (2003).