

Social Protection in India:
A Movement towards Enforceable Human Rights

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Outline of Talk: By Harsh Mander

Noam Chomsky has said that the idea of social protection is basically the idea simply that we should take care of each other. I think that summarizes as well as can be the idea of social protection. But he goes on to say that, however, we live in times where this is considered such a profoundly 'subversive' idea. For people who believe that markets alone and in themselves will solve all problems of poverty and want, this idea of social protection - or the duty of social caring - must be crushed at all costs. I think that is really the crisis that Socieux has to deal with right from its inception.

When you look at the literature over the decades and across countries - both the academic and the policy literature - one finds a large number of terms used, sometimes interchangeably, sometimes in overlapping ways, sometimes using the same words but meaning quite different things to different people. We talk about social security, we talk about social protection, we talk about social assistance, we talk about social insurance and social welfare; and there would also be other variations of this. So, I think that the one thing we need to be clear about is to define for ourselves what we are talking about.

Scanning the literature, I find that globally there are at least three major streams of discourse around the broad idea of social protection. One is a kind of risks related discourse. This takes as its starting point the desirability of globalized market led economic policies. But it acknowledges that there are cycles in market capitalism, and that people need to be protected from the rigours and suffering imposed by the downward phases of these cycles. Sometimes there is an acknowledgement that even in the upper crests of the cycle, you might still have some people facing some disempowerment and suffering. This is seen as a sort of unfortunate by-product of otherwise desirable sets of economic policies. So, this risk model of social protection, where we are looking at side effects and cyclical elements of market-led economic growth, attempts to protect people from these unfortunate side-effects.

There is a second stream in the discourse which derives from some notion of basic needs of all human beings, and the duty of a welfare state to provision these basic needs to all citizens. These ideas coming out of a 'basic needs' discourse, were around actually long before people used the word 'social protection'. There was the idea of the welfare state, committed to meeting the basic needs of all citizens, socialist states in which these basic needs were all directly provisioned by the state with a degree of social equity, and the aspiration in post-colonial countries like ours to bridge the gaps created by centuries of colonial rule by ensuring that all citizens have at least their minimum human needs fulfilled. It is from the aspiration of fulfilling these basic needs for all that some ideas of social protection derive.

There is a then a third river of human rights discourse, which begins from the conviction that all persons have some intrinsic human rights, which derive from the shared and equal intrinsic dignity of all human beings. It is the state's duty to ensure that all these human rights are adequately realized, either by directly provisioning these rights or by creating a regulatory or facilitating regime which ensures the supply and access to all of these rights.

In the second half of the twentieth century, there was what I regard to be a dubious and sterile debate, but one which held almost all countries in the globe in thrall. The debate was about which sets of rights - social, economic and cultural rights, or civil and political rights - should be guaranteed by the state, and which should be only a moral call on the state. In one set of countries - broadly called liberal democracies - your civil and political rights are enforceable in independent court systems, but you could not seek redress from these courts if your social and economic rights are violated. On the other hand, in the socialist world, although the rights discourse was not used, these governments did substantially ensure social and economic rights and extensive social protection; but this was at the cost of civil and political freedoms. It was as though people had to choose between bread and freedom. But I believe this was an illegitimate choice being offered, because to be human one needs *both* bread and freedom. To me the most exciting and promising discussions on social protection begin from an acceptance of the human rights discourse, the intrinsic and equal human dignity of all persons, and the indivisibility of all rights - social, economic and cultural rights, as well as civil and political rights. At the heart, intrinsically for every human being, there is of the core worth and equal dignity of every single human being, and for that reason, each deserves the means to live above a floor of human dignity. That is the thought space from which the best discussions around social protections come.

In India the Constitution accepted the division of rights within the framework of the liberal democratic common sense prevailing at that time, with civil and political rights (and also cultural rights) listed as Fundamental Rights enforceable in courts of law, whereas social, economic and cultural rights, listed as the Directive Principles, were moral but not legal claims on the state.

But courts - by extending the Fundamental Right to Life to include rights that which makes life with dignity possible, like food, health care, education, clean air and shelter - and more recently the executive and Parliament, with legislations like the National Rural Employment Guarantee Act and the Right of Children to Free and Compulsory Education Act, 2009, have changed this, and recognized the indivisibility of human rights. More recently, with the passage by India's Parliament of the National Food Security Act, 2013, the government has recognized the right to food of all people, and we hope that the right to universal health-care, and above all universal social security will also be enacted.

These important developments illuminate possible pathways not just for India, which is home to every third person living in poverty in the world, but to all countries, both of the North and the Global South. It helps recognize a growing

global consensus that there should be a floor of human dignity below which no man, woman and child should be allowed to fall. It should be the legally enforceable duty of every national government – supported by the global community of nations - to secure for every person on the planet this floor of social protection. For the realization of this great civilizational goal for all of humanity, India has a great deal to share, and even more to learn, from the rest of the world. It is then that we will build an India and a world which truly, actively cares for all, and which recognizes the intrinsic equal dignity of all persons, regardless of gender, class, race, nationality, caste, faith and disability.