

DEMOCRATIC STATE FORMATION AND HUMAN RIGHTS

Laksiri Fernando

Democratic state formation is crucial to the protection and promotion of human rights in any country in the developing world. Most of the countries in this part of the world, including Sri Lanka, are still in the initial stages of democratic state formation. This matter is not adequately recognized in the dominant approaches to human rights. As a result, human rights movements in these countries appear defensive and protectionist. For human rights movements to be effective and constructive, it is essential that they participate in the debates on, and movements for, the democratization of state structures.

Different Approaches

There are at least five clearly identifiable approaches to the issue of human rights: liberalism, Marxism, cultural relativism, international law and humanitarian ethics. All these approaches have relative merits, but fail to capture the central importance of democratic state formation in developing countries.

The liberal approach takes the individual as its main unit of analysis. This approach is opposed by the Marxists who argue that the theory of rights should go beyond the 'egoistic individual.' Marx himself put forward this idea when discussing the Jewish question. The Marxists, at a later stage, especially the theoreticians from the Soviet Union, very crudely related human rights to the means of production and as a result subordinated the civil and political rights to the economic and social rights. These two approaches dominated the debates on human rights until the 1970s when an integrated approach, recognizing the interdependence of all rights—i.e. economic, political, social, civil and cultural—was developed. This new approach emerged from ideologically independent sources consisting of certain social democratic and/or third world viewpoints.

The recognition of cultural rights, related to ethnicity and language, is the most positive contribution of the cultural approach. This recognition does not occur easily in Western discourse. However, cultural relativism has recently been developed by a group of third world academics/politicians with regressive intentions. Their aim has been to safeguard the status quo in some developing

countries which, in effect, is inimical to human rights. This approach exaggerates relative aspects of human rights and argues against its universality. In this sense, it has to be understood mainly as a counter approach to human rights.

International law is the main approach of the UN organisations and international lawyers. It takes the international instruments (the declarations and covenants) as the main axiom. It prescribes the national governments to follow the international standards of human rights as a solution to a particular human rights situation. It does not, however, prescribe conducive state structures for the protection or promotion of human rights. This approach assumes that the accession to the UN standards would instantly resolve all human rights problems.

The humanitarian ethic is the main basis of international/national human rights organisations. These organisations play a significant role in exposing violations and calling on the UN and other agencies to take action against such violations. Unfortunately their role often ends just at that.

International law and humanitarian ethics are the predominant approaches, going hand in hand, to human rights at present. There is a reluctance on the part of both these approaches to recognize the importance of the state, or the problems of state formation in developing countries, fearing that it would compromise human rights principles.

The State and Human Rights

From a historical point of view, it would be correct to say that state formation is a violent process, characterized by grave violations of human rights. This historical point of view is mainly conditioned by the European experience, taking its individual national developments in isolation. The Westphalian agreement of 1648 is considered to be the land mark of the nation state in Europe which demarcated the national boundaries. The preceding three centuries marked violent struggles between nations, religions and classes, quite akin to the situation in the developing world today. Even after this period, the development of a democratic state was slow and erratic, marked by persistent, violent eruptions.

The above experience does not mean that countries like Sri Lanka have a long way to go in achieving democracy

Laksiri Fernando, researcher in human rights, is with the University of Sydney, Australia.



and human rights. On the contrary, it means that our countries should learn to avoid repeating Western history and try to combine state formation with democracy at the very initial stages of their development. 'Democratic state formation' is the more appropriate term in this context.

The democratic process in countries like Sri Lanka has been an accident of colonialism. There have been other colonies which did not acquire democratic institutions, i.e., countries colonised by Portugal and Spain. The British, in contrast, had no alternative but to transplant their democratic institutions in the administration of their colonies. This was a great historical advantage to the democratic state formation in countries like Sri Lanka.

The pre-colonial state in Sri Lanka was of a despotic nature although there had been benevolent kings at exceptional times. Given the economic and social conditions of the country during this period, there was no possibility of the evolution of democratic state structures. The norms and practices of the state/s were borrowed or transplanted from India. This was a common pattern in many Asian countries at that time, for example, in Burma, Cambodia and Java (Indonesia). It is because of this Indian influence that ancient Asian states are described as the Indianized states. In these states, king was at the helm of affairs and kingship was the main notion of state power.

Another major aspect of the ancient Sri Lankan state was its ethnic character. The Sinhalese were a dynasty and a tribe which dominated other tribes and petty kingdoms, both of so-called Aryan or Dravidian origin. It was through this process of domination and assimilation that the Sri Lankan state developed. Religion and language also played a major role in this process of assimilation. When other tribes were suppressed or taken slaves, they were eventually given a low caste-status. The castes were not natural social formations. Caste formation of the pre-colonial society also represented a particular type of class society.

The state in the pre-colonial society did not evolve in linear progression. It is not, in fact, correct to talk about one state. States appeared and disappeared in a circular fashion. It is only at particular historical times that the whole country was controlled by one state.

What we can deduce from this experience is the necessity to transcend the heritage of the pre-colonial state, constructively and creatively, when talking about democratic state formation. This is particularly important in respect of ethnicity, religion and caste. In such an attempt, cultural traditions of our country need not be denied; rather, they can be incorporated into a democratic process.

Some Lessons

From the beginning of this century, Sri Lanka showed healthy tendencies toward democratic state formation. The nationalist movement, trade unions, the left and various other democratic political formations contributed towards this end while, unfortunately, certain ethnic and religious groupings played a regressive role. Sri Lanka also inherited from the British some basic infrastructure for a democratic state: universal franchise, the rule of law, the independence of the judiciary etc.

During the period since independence, however, the state succumbed to many pressures which arose from pre-colonial and colonial social relations. These pressures were reinforced by an underdeveloped economy. As a result, the democratic system became vulnerable. This was a trend since the mid 1950s. The deprivation of citizenship (1948) and language rights (1956) of different groups of minorities emphasised the ethnic bias of the state. Major changes to the state structure followed suite; dismantling of democratic constitutional safeguards in 1972 and the creation of a presidential system in 1978 were the main landmarks of this process.

Human rights are predominantly analysed within a legal and/or ethical context. But laws and their operations occur within a particular state structure. Unless these structures are democratically reformed, there cannot be a lasting solution to the problem of human rights. One important question in Sri Lanka is how to rectify the deformations that have taken place in the democratic structure of the state during the last four decades. This is not enough. We need to think of ways and means of promoting and developing democratic institutions at various levels of the state structure. This is a task that should be addressed directly or indirectly, by promoters of human rights.