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**C.R. BIJOY** [https://www.academia.edu/92020187/Whats\\_Wrong\\_with\\_Rights](https://www.academia.edu/92020187/Whats_Wrong_with_Rights)

The dominant discourse on "rights" has seen a distinct shift since the 1990s, in which "rights" have been quietly reinterpreted to mean "right of access" to a set of precisely identifiable and realisable forms of services, which necessarily requires that the citizen be reduced to a mere consumer in the emerging high-growth market. These services are packaged to conform to the market norms of a "product". This shift is accompanied by, and is partly a result of: first, a separation of the concept of human rights from the law, so that the law becomes the focus of the concept rather than vice versa; and, second, a separation of human rights and the law from the state and politics.

One result of these separations is that the law acquires a certain autonomy and mythic status. This serves to de-legitimise peoples' struggles as historically the valid source of both the concept of human rights and the laws that the courts must enforce. Instead, the courts' decisions are self-legitimised. Just as the state is no longer managed by the democratic aspirations of a nation's people, so the courts are today expected to be amenable to the dictates of the market. The redefinition of "rights", therefore, comes along with the restructuring of the state and the subjugation of democracy by capital.

How has this transition come about? It is linked to changes in the global economy. Beginning in the 1970s, there was a shift from a world economy dominated by industrial capital to one dominated by finance capital. With the over-accumulation of capital, traders (that is, the market), rather than producers, began to dominate decision-making in production. Free-marketeers begin to impose their view of reality, in which everything that is achieved through market forces is seen as positive. The market is presented as capable of resolving all problems, even of protecting human rights through the façade of corporate social responsibility. Globalisation is seen as the answer to everything, and with it comes a redefinition of the nation state, democracy, human rights, governance and national security. Relations within and between nation

states are restructured, so that capital is freed from all the constraints (however ineffective they might in practice have been) that were devised to protect democracy, equity and justice.

### Market hegemony

Globalised capital, ever eager to extend its reach, has moved into "accumulation through dispossession", by taking communities' land, biodiversity and culture. The exclusion of vast sections of the population from meaningful economic activity, rather than mere expropriation of resources, has become one of the engines of economic growth, and of progress and development itself. This creates widespread insecurity, all in the name of the hegemony of the market.

To achieve this, "rights" have been reinterpreted to suit the "free" movement of capital and, with this, relations between production and labour are restructured. Trade flows, investment flows, financial flows, and flows of services, technology, information, ideas and persons across national boundaries are all promoted. But it is not just this: social relations between communities and within communities are also redefined. The market must have "access" to everything, so people's rights to livelihood, natural resources, and knowledge, whether traditional/customary or modern – in short, the resources needed for survival – must all be modified to permit such access. Rights-holders are converted into duty-bearers, with duty itself defined by the market. Diverse forms of inequity are legitimised.

Paradoxically, while this is happening, international and national standards of human rights are being continually refined and upgraded through increasingly complex processes (so complex, in fact, that they make it impossible to achieve decisive outcomes). Elaborate but weak international institutions, such as the various UN and multilateral bodies, along with equally ineffective national institutions, have been established to implement these upgraded standards. Even so, it is clear that the global hegemonic economic agenda is dominant; components in national laws,

\* The repression took the form of the forcible eviction of some hundreds of thousands of traditional forest inhabitants, and large-scale clearing of forests, in the name of "development". The resistance movement forced the state to acknowledge formally the "historic injustice" that it had perpetrated. Formal recognition of rights followed through the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.



initially introduced to protect national rights, are being dismantled; in stark contrast, instruments and institutional mechanisms in pursuance of the hegemonic economic agenda are predictably well in place and functioning (such as those of the WTO).

### Legitimising pretexts

These bodies form the administrative, governing and judicial basis for reinterpreting policies, programmes and laws. Democratic rights are being sacrificed to facilitate the expansion of global capital and globalisation. Again, paradoxically, imperialist powers are using both human rights and democracy as legitimising pretexts for sending multinational armies into recalcitrant regions. Ironically, the pretext of promoting national and global security, along with peace and prosperity, is being used to legitimise the flouting of laws.

Both equity and justice are being ignored, replaced by paternalistic ideas of individual compensation, defined largely in economic and market terms. The judiciary is internalising an ideology that venerates the virtues of the free market and undermines the role of the state in matters of justice, while endorsing unquestioningly its role in promoting the logic of globalisation and all that it entails, including militarisation in the name of internal and external security.

Instead of creating a society where rights are genuinely respected, a new paradigm is being created, with the creation of market-friendly “rights”, where the very concept of rights – and thus of rights violations -- is severely restricted. The new paradigm is progressively legislated into existence and strongly promoted by the media. The idea is to manufacture consent, thus completing the deception.

The new market regime further disenfranchises marginalised and powerless people. With widespread rights violations, the focus is on the development of rights services to meet different demands, rather than on a democratic overhaul of the governance system. The citizen becomes a consumer or a potential consumer, not a holder of rights.

### Resistance and change

The victims and the losers in this system, as well as those working to bring about greater equity and justice in the world, need to analyse carefully the dominant discourse of “rights” in order to

understand its truly diabolical and subversive nature and the way it is being used to promote neo-imperialist interests. Those struggling against the new hegemony need to understand the enemy they are facing.

The essential goals of those active in the struggle for rights are, on the one hand, to protect the people against all actual and potential abuses of power and, on the other, to promote a society that guarantees the fundamental freedoms and basic entitlements needed to respect everyone’s basic human dignity.

The struggle for rights must be seen for what it really is: an ongoing collective dynamic process of resistance and change that engages and transforms unequal relations of power. Rights can be achieved only through the involvement and empowerment of the community as a whole, particularly those whose rights are most violated. The struggle for rights must be grounded in people’s needs. In their struggle, people use human rights standards as a powerful resource for transformative, action-oriented political change. People do not begin the struggle by seeing how rights are defined in the international human rights framework that their governments have agreed to, or by turning to national or regional legal instruments.

The struggle begins and develops from people themselves and their day-to-day reality. They come to identify themselves as rights holders, seeing rights as an indivisible whole, where individual rights, while embedded in collective rights, are subordinate to them. Rights are tools for communities in their struggle to understand why their basic human dignity is not being respected. They need to identify who is responsible, to analyse the possible entry points for action, and to take action, formal and informal, to change the conditions preventing the realisation of these needs.

### From object to subject

People move from being the object of a service to being the subject of their own destiny. Those in struggle recognise that:

- rights may not be entrenched within an accessible, independent and effective legal system where citizens can readily make claims;
- there may be social, cultural and political realities that prevent people from being



# “Rights” panel

able to make claims, even where there is an enforceable legal system

Those in struggle seek:

- to move beyond these formal mechanisms of protection
- to engage in a broader struggle.

This involves

- a process of confronting and transforming unequal power ideologies, relationships and structures that deny rights.

Some key tools are to:

- recognise and accept the oppressed as the central actors in the process of change;
- engage in protest and resistance wherever the abuse of power affects peoples’ capacity to sustain their daily livelihoods;

- negotiate responsibilities with authorities at different levels to change the adverse power equation;
- confront not just the state, but also other actors whose action impinges on people’s basic rights, including corporations, businesses, traditional leaders and development agencies;
- run creative judicial interventions to challenge and expose the system and the legal edifice that perpetuates the system;
- move beyond the traditional ineffective and often dubious protest-oriented and monitoring approach to human rights strategies;
- present concrete alternatives grounded in people’s needs and mobilisation towards sustainable solutions, to recharacterise the state and other duty-bearers, and renegotiate their engagement with the people.



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## EVA ROBLES

What is the problem with the concept of rights, what is it that allows it to be co-opted?

That’s a complicated question. It’s linked to the question of what’s happening to the legal system. We used to be able to use the legal system as a weapon in our defence, but today we see it being used more and more to destroy collective rights and the rights of communities.

An example is what has happened in Mexico. The 1917 Constitution, adopted after the Revolution, responded to the concerns of the people and enshrined their right to their land, to their wish to have land seen as social property, whether in the form of the *ejido* [land held in common] or as an indigenous reserve. In the case of the indigenous communities, their right to hold communal goods

was recognised. This allowed the communities for many years to breathe freely and to work their land. But in 1992, Article 27 of the Constitution was amended, with important changes in the articles referring to land, forests and mining. Out of this amendment the New Agrarian Law was born, which in its turn led to the Programme for the Certification of *Ejido* Rights (PROCEDE). The official objective of this programme is to give “legal certainty” to members of the *ejidos* so that they have “full possession” of the land. In other words, it permits individual ownership of land. Later the Programme for the Certification of Communal Rights (PROCECOM), which applies the same mentality to indigenous land, was created. At the same time, the government changed laws governing the environment, water and mining, all in the sense of permitting greater private ownership.

