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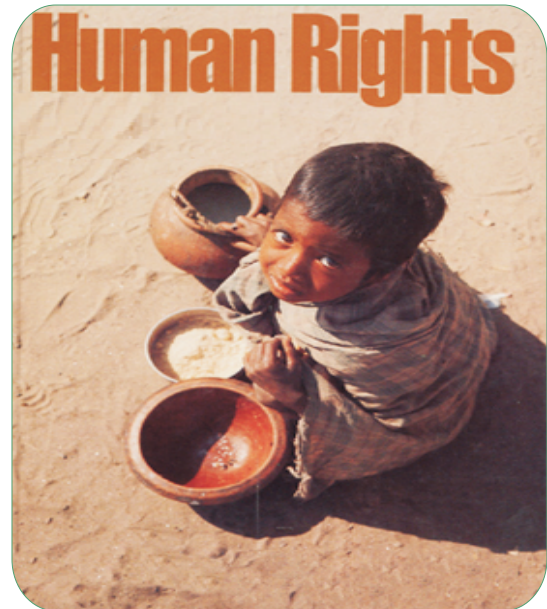
THE DIALECTICS AND DYNAMICS OF HUMAN RIGHTS IN INDIA

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ABSTRACT

Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian sub continent over a very long stretch of time. The Indian concept perceives the individual, the society and the universe as an organic whole. Everyone is a child of God and all fellow beings are related to one another and belong to a universal family. The expanded assertion and recognition of rights, and the dimensions to rights that are emerging, have given rise to situations of conflicts among rights, and consequently, among rights activists. Choices are being made, and a prioritization of rights occurring in a range of areas. The neglect of women's rights in the human rights arena for decades after the Universal Declaration on Human Rights (UDHR), and the Constitution of India, has had the women's movement demanding, and acquiring even if partially, recognition of women's rights as human rights. There were some among our respondents who held that human rights are those which are asserted against state action and inaction. A human rights lawyer, on the other hand, saw human rights as a strategy which ought not to be confined within an inflexible definition. For people in the women's movement, however, human rights are about patriarchy and systemic oppression and violence; domestic violence and death in the matrimonial home could not, clearly, be excluded from the universe of human rights issues. The Indian Constitution is a document rich in human rights jurisprudence. This is an elaborate charter on human rights ever framed by any State in the world. Part III of the Indian Constitution may be characterized as the 'Magna Carta' of India. The Judiciary in India plays a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor,



the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen.

KEYWORDS :human rights, jurisprudence, civil liberties, custodial violence, political violence.

INTRODUCTION

In India, the last quarter of the 20th century has been witness to a growing recognition of the place and relevance of human rights. It is axiomatic that this interest in human rights is rooted in the denial of life and liberty that was a pervasive aspect of the Emergency (1975-77). The involuntary disappearance of Rajan in Kerala is more than a symbol of the excesses of unbridled power.¹ Forced evictions carried out in Delhi in what is

known as 'Turkman Gate' conjures up visions of large scale razing of dwellings of those without economic clout, and of their displacement into what were the outlying areas of the city. The catastrophic programme of mass sterilization is an indelible part of emergency memory. The civil liberties movement was a product of the emergency. Arbitrary detention, custodial violence, prisons and the use of the judicial process were on the agenda of the civil liberties movement.² In an attempt to understand the role, and influence, of the courts in the context of human rights, the law reports covering cases from all the High Courts and from the Supreme Court were comprehensively researched from 1994 to 2000.

Custodial Violence

Custody death, torture in custody and custodial rape has been subjects of much concern. Custodial violence has been on the agenda of civil rights groups for over two decades, and reports documenting instances of violence and its systemic occurrence, have been instrumental in the campaigns against custodial violence. Although custody deaths have found an acknowledgment from the state, and the NHRC has issued directions to the states

- To report of the NHRC any death in custody within 24 hours of the occurrence, and
- To videotape the post-mortem proceedings.

The internally displaced due to conflicts

The large-scale internal migration caused by political violence has created classes of internal refugees. During the years of militancy in the Punjab, after the anti-Sikh riots in 1984, and the movement of Kashmiri Pandits out of the valley have provided visible evidence of such migration. While the violence that preceded the migration has been squarely addressed in human rights terms, the rehabilitation and return of the migrants after displacement appears to have been only on the margins of the human rights movement.

Refugees

India has not ratified the 1951 UN Convention on Refugees, nor has it signed the 1967 protocol. The Indian state has generally resisted visits from the UNHCR to camps where refugees are housed. Activists say that the Indian state has been relatively benign towards refugees. According to one non-governmental source, in 1999, India hosted more than 2, 92,000 refugees; which includes more than 16,000 persons from Afghanistan, 65,000 Chakmas from Bangladesh, 30,000 Bhutanese of Nepali origin, 50,000 Chin indigenous people from Myanmar and about 39,000 pro-democracy student activists from Rangoon and the Mandalay region, 1, 10,000 Sri Lankan Tamils of whom 70,000 are in camps and 40,000 outside, 1, 10,000 Tibetans and around 7000 persons from other countries.

Right over Resources

The right of the forest dwellers to reside in forests, and for those dependent on forest produce to have access to forests, is contested terrain. Till recently, there were conservation groups which demanded that removing tribal from within forest areas was necessary in the interest of conservation. This stand has softened somewhat, and a more symbiotic relationship between the forest and the dweller recognized as possible. The problems are now spoken of in terms of overpopulation, and over-grazing, in the forest area.

Livelihood

Apart from issues of rights over resources, and in the context of displacement and relocation, the death of cotton farmers has, for instance, raised questions about protection of livelihood. Liberalization has resulted in loss of jobs to large numbers in the workforce, and we hear of deaths among the working classes. This is an area that seems to demand closer attention. The withdrawing of protective labour legislation, which is proposed, such as the 'abolition' part of the Contract Labour (Prohibition and Regulation) Act 1970, or the prohibition of night work for women except where specifically attempted, it is feared, is likely to shrink the rights of workers to a great degree. Freedom of association is also being re-cast in a new Trade Unions Bill, which labour leaders and activists believe is meant to stifle the powers of labour to group together and be heard. The casualisation of labour which the changes portend is expected to drastically reduce the bargaining power of labour.

Sexual Harassment at the Workplace

This issue acquired visibility with the decision of the Supreme Court in Vishaka³ Earlier efforts at having the problem addressed, as, for instance, in the Delhi University, has drawn strength from the guidelines set out in the judgment. It was widely reported, however, that it was still proving difficult to get institutions to adopt the guidelines and act upon it. Sexual harassment accompanied by violence has become a common feature with cases of acid throwing where there is unrequited love,⁴ and harassment which has culminated in the murder of a hounded girl.⁵

Death Penalty

The civil liberties movement has been consistent in its opposition to the death penalty. For a brief while, there were some sections in the women's movement that supported - either vocally, or by their silence - the imposition of death penalty for rape. This too has been retracted, and death penalty for rape opposed. After the period in the early '80s, when the Supreme Court drew up the 'rarest of rare' rule,⁶ there has been a downward slide, particularly discernible in the 1990s.

- Multiple death sentences,
- Death penalty to minors, and
- Death sentence while reversing acquittal are not uncommon.

Dalits

The practice of untouchability has persisted, and dalit activists and unions have been making efforts to demonstrate its pervasiveness and variety, even while they contest its practice. In Andhra Pradesh a study done by dalit activists, 46 ways of practicing untouchability have been documented. In Kerala, there was collaboration underway between caste groups and dalits in combating caste and Brahmanism. In Gujarat, a study of the practice of untouchability has been recently done. Some groups working among dalits, and including some dalit groups, have been lobbying to place caste as an agenda in the World Conference against Racism. The definition evolving in the conference, which includes discrimination based on descent and occupation is seen as an acknowledgment of caste discrimination. This is an avowed effort to internationalize the issue of caste-based discrimination and oppression.

This issue permits an exploration into the relationship between movements - in this case, the dalit movement - and groups working with dalits and/or dalit issues in terms of their respective politics and priorities. Police firing on a group of dalit villagers in Nadunalumoolaikkinaru in Tamil Nadu in 1991 is believed to have occurred to put down a young leadership that was emerging in the village. A chain of

circumstances from the support given to the villagers by activists, to filing the matter as a case in the Supreme Court, to three committees which investigated the matter, to the awarding and disbursement of compensation to the injured villagers and the court order which prohibited the indicted policemen from being posted in the vicinity appears to have empowered the village. It has also bolstered their confidence that help could well come from beyond the village. In Melavalavur it was a different story. This is a panchayat which is reserved for dalit leadership within the panchayat system. When elections were first to be held

- The dalits were chastised, subjected to a community fine of Rs.2000 and warned to withdraw their nominations.
- In the second round, the administration urged the dalits to file nominations, which they did. The ballot boxes were taken away by the non-dalit villagers.
- The third time around, the administration promised protection and conducted the elections amidst threats and tight security. About a month after the elections, the dalit panchayat leader, Murugesan, and five of his comrades were waylaid when they were travelling in a public bus, and brutally hacked to death on the highway. This was in June 1997. Since then, another election has nominally installed a dalit as panchayat head. But the village lives in a state of permanent terror. A police outpost has been set up, but in that part of the village from where the threat to the dalits emanates. A memorial has been constructed to the memory of the six dead men.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been on the statute books since 1989. There are however hardly any convictions under this Act. Dalit activists say that there are many loopholes in the law which help offenders slip out of both the Atrocities Act as well as the Penal Code. An activist made particular mention of (iv) and (v) of the Act⁷ in illustrating the non-user of this law. Studies on the working of this Act have been started in some states. Manual scavenging, and the disinterest of the state in putting an end to this inhuman practice which involves the carrying of excreta manually, and which additionally aggravates caste-based exclusion has been identified as a priority for action in Andhra Pradesh and Tamil Nadu.

Right to Information

A concerted, and effective, campaign for the right to information has been underway in Rajasthan, spearheaded by the Mazdoor Kisan Sangharsh Samiti (MKSS). It has caught the imagination of activists and groups across the country, particularly as a tool for preventing and challenging violations as well as asserting the right to development. A norm of transparency has been given prominence, including transparency of the government as well as the group working in the area. The irresistible force it has generated has moved the government, albeit reluctantly, to table a Freedom of Information Bill 2000. Meanwhile, the right to information has been introduced into the law following the Bhopal Gas disaster. Among the persons now entitled to receive information about potential hazards in a factory are

- The workers
- The local authority
- People living in the vicinity of the factory as also the Inspector appointed under the Factories Act 1948. The information is to include the means of disposal of hazardous substances, and the arrangements for their storage or transportation. Information on what should be done to limit damage

in the event of a disaster is also to be disseminated; the onus is on those running the factory. We did not, however, hear of anyone having used these provisions. The rights inherent in these provisions demand to be asserted.

CONFLICT AMONG RIGHTS

The expanded assertion and recognition of rights, and the dimensions to rights that are emerging, have given rise to situations of conflicts among rights, and consequently, among rights activists. Choices are being made, and a prioritization of rights occurring in a range of areas. The neglect of women's rights in the human rights arena for decades after the Universal Declaration on Human Rights (UDHR), and the Constitution of India, has had the women's movement demanding, and acquiring even if partially, recognition of women's rights as human rights. There were some among our respondents who held that human rights are those which are asserted against state action and inaction.

A human rights lawyer, on the other hand, saw human rights as a strategy which ought not to be confined within an inflexible definition. For people in the women's movement, however, human rights are about patriarchy and systemic oppression and violence; domestic violence and death in the matrimonial home could not, clearly, be excluded from the universe of human rights issues. As a civil liberties' activist told us, in a pamphlet they prepared in 1990 (when the debate about whether violence and death in the home should be on their agenda), she compared statistics in dowry deaths with encounter killings: it was 2000:300. Though it stoked a lot of controversy, the women members of the organization were very happy that the issue had been raised, she said. The emergence of women's rights in the human rights universe has also brought with it some contradictions which demand to be addressed.

DALIT MOVEMENT AND THE CASTE AS RACE REPRESENTATION

The effort by NGOs to get caste on the race agenda at the Conference for the Elimination of Racial Discrimination has been an attempt to internationalize the issue of caste. Some activists and leaders in the dalit movement have also been involved. While some of them have got on board as in Gujarat, the dalit activists/leaders in Andhra Pradesh and Tamil Nadu have been consulted but have chosen not to enter the arena themselves. This is how a dalit activist leader explained it: 'We need international pressure. So far we have treated it as an internal matter. This will help the issue get focus.... This has been raised by NGOs, not by the movement. I don't know about donor politics. We only tried to get some control by putting some of our academicians in it. But we are not sure what it means.'

A Dalit leader who had not heard of this move objected to the caste-as- race representation. Race is not our politics, he said. Our fight is against Brahmanism and casteism, he said. Even if it were to be considered that NGOs may not be able to consult with all affected or concerned persons, groups, organizations or movements before espousing causes, the conflict that could exist where the NGO position and that of movement politics do not converge has to be addressed.

STRATEGIES AND RESPONSES

Organizing People

This may be for effective and informed protest, as has been done by the NBA, for instance. Or in getting people to re-capturing control over their resources, as in the Aruvari Sansad in Alwar District in Rajasthan, or to form collectives, as with the Durbar Mahila Sammanvaya Committee.

Working on the Right to Information

Led by the MKSS in Rajasthan, it has caught the imagination of activists across states, and fields of activity. It has also resulted in bureaucratic and political acknowledgment of the right/freedom. One aspect of this right is explored by activists who gain access to 'top secret' documents and share them with grassroot level workers as also with the rest of the interested community. This happened with the Land Acquisition (Amendment) Bill, for instance, exploding thereby the unsustainable position that proposed legislation of this kind may need to be kept secret from the people it is likely to affect. The use of information technology to gather facts about offending enterprises, for instance, and disseminating them is another facet of the interpretation of this right.

Bringing in the Media

While press briefings are frequent, taking the press along to witness an event is not unknown, e.g., the Disability Rights Group being accompanied by press persons while doing a disability audit of public buildings in Delhi in April 2001. The presence of empathetic persons within the press establishment was also said to make a difference, as when dalits were professional journalists.

Visiting Zones of Conflict and Violence

The cutting off of a free flow of people between areas of conflict and violence and the rest of the country also cuts off the possibility of understanding what the people experience, of information being shared, of extending solidarity and support. The report of the Women's Initiative in 1994, 'Women's Testimonies from Kashmir: The Green of the Valley is Khaki' is testimony and photographic depiction of the women in Kashmir. Uma Chakravarthi and Nandita Haksar's 'Delhi Riots' is a testimony collected even while curfew made it difficult to reach the victims and witnesses of the anti-Sikh riots in Delhi.

People to People Dialogue

This has been held, for instance, in the North East to break the barriers of distance and incomprehension. This also helps in exploring, in areas where the issue is of self-determination or autonomy, after the conflict, what is to follow. The meeting of Naga women and Kashmiri women, both caught in situations of conflict, organized in Delhi in April 2001 is another instance.

Negotiating Conflict

The efforts of the Committee of Concerned Citizens in Andhra Pradesh to reduce the violence practised by the state and the naxalites are documented in 'Report of the Committee of Concerned Citizens (1997-2000)'. Comprising persons with whom both the state and the PWG would not be unwilling to speak, the CCC started its correspondence with asking the state for a cessation of 'encounter' killings, and asking the PWG to desist from killing its adversaries. While the state response has been more formal than substantive, the PWG has had the CCC recognize the fundamental nature of land reforms and land re-distribution before violence ceases. The openness of this process of talks and dialogue, and the establishing of credible persons as dialogists, is a significant aspect of this process.

Truth Commission

This was organized in the context of deaths of young women in their matrimonial home in Karnataka. A panel heard the parents and relatives of the murdered woman, giving the victim's version a space that it is not able to find in the systems of the state.

Peace Committees

This was particularly spoken of where political violence is widespread and routine, especially in West Bengal and Kerala and was also found in Tamil Nadu in the context of caste violence. Human rights groups send out peace committees to bring warring groups to negotiate peace.

Census

The use of 'census' on the practice of untouchability is seen as a way of squarely placing the issue on the table. Disability having been brought on board as a factor to record in the 2001 census, disability groups have been motivating persons with disability to enter their data in the Census as a step towards recognition of their rights in state policy.

Setting the non-negotiable

This establishes the base lines in an issue. For instance, regarding child labour, a non-governmental organization has set them out like this: All children must attend full-time formal day schools; any child out of school is child labour; all work/labour is hazardous, and harms the overall growth and development of the child; any justification perpetuating the existence of child labour must be condemned.

Campaigns

The Campaign against Death Penalty is one instance. Campaigns often accompany other modes of intervention, legislation or recognition of rights (or wrongs), for instance. Campaigns may also take on issues such as opposition to the WTO, or to the manner of opening up of the Indian economy to multinational power companies, for instance.

Resistance and Protest

This may take the form of rallies, padayatras, cycle rallies, processions, dharna, bandh, hartal and roadblocks. Apart from the 23 conditions that the Madras High Court has imposed on processions,⁹ the Kerala High Court has declared that bandhs are unconstitutional since they deny freedom of movement and the right to carry on one's avocation.¹⁰ This stands affirmed by the Supreme Court.¹¹ Bandh seems to have got devalued as a means of protest because of the indiscriminate use of protest because of the indiscriminate use to which it has been subjected by political parties. This is particularly true in Kerala, where activists broadly supported the court's decision. This appropriation of non-governmental methods by governments - in power or in the opposition - appears to have robbed it of its legitimacy and meaning.

Help lines

This has been established for street children, lesbians and gays, and for women in distress. While the first and the last mentioned have endorsement in state policy and practice, help lines for lesbians and gays is denied legalized spaces for operation. Help lines have also existed for some years now for those with suicide on their minds.

Trial Observers

This appears to be an underused method of demanding accountability in judicial and quasi-judicial processes. Yet we did hear of its use in two situations: at the Justice Mohan Commission of Inquiry into the Manjulai tea estate incident where 17 people drowned in the Tamaraparani River - 6-7

persons attended the hearings each day of its sitting. And, the Kerala State Commission for women had two lawyers attending as trial observers in the Vidhura case. As Jawaharlal Nehru notes, there is "an unbroken continuity between the most: modern and the most ancient phases of Hindu thought extending over- three thousand years.¹²" The rights of man have been the concern of all civilizations from time immemorial. "The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods¹³." Mahatma Gandhi remarks, "I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore my service to India includes the services of humanity¹⁴."

CONCLUSION

The Indian Constitution is a document rich in human rights jurisprudence. This is an elaborate charter on human rights ever framed by any State in the world. Part III of the Indian Constitution may be characterized as the 'Magna Carta' of India. The Judiciary in India plays a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen.

FOOTNOTES

1. Another instance from the Emergency era is reported in *Niyamavedi v. CBI* (1999) 1 Ker LT 56, where the confessions of a police officer who pulled the trigger in a fake encounter a quarter of a century ago reopened hitherto unresolved questions.
2. *A.D.M. Jabalpur v. Shiv Kant Shukla* (1976) 2 SCC 521 had been a blow to civil liberties. But while the court as an institution that could speak on the side of civil liberties stood discredited, the decision did little to staunch the tide of resistance and protest.
3. *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.
4. *Students of Andhra Pradesh Agricultural University v. Registrar, Andhra Pradesh Agricultural University* 1997 AIHC 2671 (AP)
5. As happened when Priyadarshini Mattoo, a law student, was followed by another student. She was killed in her house, all leads pointed to the university pursuer, but he was acquitted, with the judge castigating the prosecution for not having done its work adequately though the judge professed to being otherwise convinced of his guilt.
6. *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, where it was held that death penalty would be the exception, and awarded only in the 'rarest of rare' cases, after considering 'mitigating' and 'aggravating' circumstances.
7. S.3: Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, - (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred; (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;
8. In fact, the number of killings in encounters has risen in these years. But the channel of communication has, at least, stayed open, and the state cannot refuse to listen.
9. It was a direction in one case, but the police have been able to use it to get it extended to processions generally, in practice.
10. *Bharat Kumar K Palicha v. State of Kerala* (1997) 2 Ker LT 287.
11. *Communist Party of India (M) v. Bharat Kumar* (1998) 1 SCC 201.

12. Jawaharlal Nehru. The Discovery of India, 2nd ed. (New Delhi. Jawaharlal Nehru Memorial Fund, 1992) 88.
13. Attar Chand, Politics of Human Rights and Civil Liberties - A Global Survey (Delhi: UDH Publishers, 1985) 45.
14. Jawaharlal Nehru 420



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