

# The language of rights is alien to Hindu religion

articolo

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**T**he language of rights is alien to Hindu religion. As Hajime Nakamura, a Buddhist and Hindu scholar says, “we don’t usually speak of rights in our tradition,” referring to all of the Eastern religions<sup>1</sup>. On the other hand the religious texts are replete with the concepts of duty. Rights imply entitlements, duties are obligations.

The Sanskrit word *dharma*, often translated as religion, is also translated as duty or obligation. From the Sanskrit verb *dhri*, which means to hold, or sustain, *dharma* is that which holds a person and a society together. It is the principle that lends coherence to the personal and the social world. It derives from the concept of *rta*, meaning order, as in that of seasons, *Dharma* is the cosmic and moral order of the universe. It is also related to a later word, *Sat* meaning truth.

*Dharma* has its origin in the oldest religious texts, the Vedas, regarded as revelation, and are also known as *shrutis*, that which was heard (by the ancient sages). Following the heard texts are the remembered texts, the *Smritis*, or the Law books, principle and best known among them is the *Manusmriti*, (as remembered by Manu, a famous scholar and sage). This text is an elaboration on the nature of the social order, and among other things the four classes of people, the four stages of life, and the duties of each according to class, age, gender and status or relationship.

A third source of *dharma*, was good conduct, or rather the conduct of good men. This is an important development as it appears that conduct of good men, or largely the prevailing tradition trumps the Law-givers. In clari-

fying the issue Robert Lingat, a French scholar cautions that “One must take care to avoid confusing this ‘ideal custom’ with what we call custom, that is to say practices confirmed by immemorial usage, custom followed by everyone, habitual practices of a group, perhaps arising from convention. Custom pure and simple is indeed a source of law, but is not a source of *dharmā*”<sup>2</sup>.

This is a development that is perhaps related to the dispersal of population from the plains bounded by the rivers Indus and Ganges, originally occupied by the Indo Europeans. As the population expanded and grew, it moved farther east and south, away from the center, and thus a necessity for new schools of scholarship, that is ashrams of renowned teachers. As the tradition was essentially oral, written script having developed well after the 5<sup>th</sup> century BCE, the lore handed down, as remembered by a particular scholar, differed ever so slightly from the earlier. Thus the number of recognized law books grew into dozens. Another factor that also gave importance to custom was the interaction of the big tradition, which is that of the Indo-Europeans, with the little traditions, which is that of the local inhabitants where the Indo-Europeans moved in, esp. the south and East of India. P.V. Kane, a renowned scholar whose work on the law books attests to this (1968-77).

Robert Lingat goes on to illustrate this principle by showing that “the author of the code of Manu was hostile to marriages between the *dvija* (the upper classes) and a *Sudra* (the lowest class), to the act of meat-eating, to *niyoga* (the custom of childless – usually son-



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less couple, having a younger brother of the husband or a good Brahman impregnate a woman), to second marriages of a widow, but he was confronted by custom too deeply rooted for prohibitions to be efficacious. All he could do was to try to discredit them and to limit their practice and their importance. The foregoing is an important discussion about custom as we shall see later, in modern India the enactment of a new constitution for independent India trumps all customs by the laws enshrined in the new constitution, inspired by Western liberal values.

The fourth and the final source of *dharma* was “that which was pleasing to the self.” This did not mean that everybody could do what they pleased and “anything goes” but had to be according to one’s conscience, and generally regarded as appropriate to one’s age, gender and class. The four sources of dharma did not carry equal weight and in fact it meant that four were important in a descending order, that is the final arbiters of dharma were the Vedas, and when Vedas were silent on an issue, the later *smriti* (remembered) texts, the law books held sway, after which came custom or conduct of good men and finally absent all the three a person had to act according to his or her conscience.

#### *Differentiation of duties*

Like rights, the concept of equality is also alien to Hindu tradition. From the very moment of creation, according to the Rig-Veda human beings were not created equal. Purushasukta Hymn, visualizes a simple giant, the first created cosmic man, Purusha (the person) is the one who performs the sacrificial ritual that connects him to the creator. Purusha is a differentiated entity which arises from an undifferentiated uncertain and undefinable matrix, Brahman<sup>3</sup>. In the hymn *Purusha* falls apart in the act of creation, is broken down into parts which become the elements, his breath the wind, his eyes the sun, etc. He becomes the foundation of the social order. In later texts, his mouth becomes the priests (those who enunciate the laws) *Brahmans*, his arms become warriors, the *Kshatriyas*,

his thighs become the commoner the *Vaishya*, (agriculturalists) and his feet, the Sudra, the manual workers, the toilers. Thus a hierarchy between the various classes is given from the very act of creation. The classes were unequal from the beginning. Therefore, their duties were also different.

There were duties common to all and incumbent on human beings alike. First among these was to speak the truth, followed by non-violence toward sentient beings, the two duties that Mahatma Gandhi later made his guiding and abiding life principles. True to geographic dispersal of population and rise of multiple schools of scholarship, the oral tradition had differing lists of duties common to all as the number of *smritis* (remembered) works multiplied. Here also there must have been accommodation to local custom. For example, one work has avoiding back-biting jealousy, pride, egoism, unbelief, crookedness, self-praise, abuse of others, deceit, covetousness, delusion, anger and envy is the dharma of all life-stages. Kane further adds that in the midst of countless rules of outward conduct there is insistence on the necessity to satisfy the inner man (*antara-purusa*) or conscience. This returns us to the fourth source of dharma, that which is appropriate to the self.

The four classes, or *Varnas* originally meaning color, that is the color of the skin, supposedly distinguish the invading/immigrating Indo-Europeans who were white and the original inhabitants of India who were dark. The light-skinned ones are the *Brahmans*, the priest scholars and teachers, the *Kshatriyas*, the rulers, soldiers and the protectors, the *Vaishyas* who were agriculturalists and traders, and the dark skinned ones are the Sudras who did manual work. The untouchables, a much later designation, was reserved for those who did the most menial work and became polluted by coming in touch with human waste, dead bodies and dead animals, etc.

Bhagavad Gita, (Gita hereafter) a later religious text, one to achieve a truly all India status and remain a living guide over the last two millennia, extolled the virtue which is holding fast to the duty assigned to one’s caste when

it declared that death is preferable in doing one's duty than following someone else's, as that is perilous. Here the Gita invokes the Guna theory, the notion that although all the *Gunas* (satva, rajas, and tamas, goodness, passion and darkness or sloth resp.) are present in all beings but Some are dominant in one as opposed to another. In the case of different classes (Varnas) goodness strand, which promotes contemplation, reflection, study, etc. is dominant in the Brahmins, passion as the name suggests promotes aggression, dominant in the warrior class (Kshtriyas), Vaishyas have mixed dominance and Sudras, the toilers have sloth dominance. With time, the classes became biological and hence hereditary from being simply occupational. And hence the duties

incumbent on a particular class also become given and permanent.

Age was an important variable that assigned special duties. Elders received respect, deference and obedience as well as veneration. Small differences in age called for differences in status, and in turn entailed upon the elder the obligation to care for and protect the young. This authority and dependence became closely tied to each other, although an aged father became dependant on his son. Gender also regulated status in that women were subservient to men. It is said that a woman is dependant on the father as a child, on her husband as a wife and on her son when she gets old. In practice though, a mother commands respect of her children even when they become adults. As in the case of classes, so also for age and gender, hierarchy was the order of the relationships<sup>4</sup>. Surabhi Sheth (1987) correctly points out that hierarchy is the opposite of equality, but, she adds, the system allowed for a harmony of motives and a sense of balance prevailed and that the rules and codes were always contextualized, which then permitted discretion, mobility and transitions.

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As one can easily see rights which in some ways presuppose equality is not a concept that Hindus from focused upon from early on. The idea that "all men are created equal" is certainly a Western product, resulting from the interaction of the early Middle Eastern religions with Greek thought and culture and much later socio-political, economic, philosophical and religious developments during the periods of Reformation and especially the Renaissance. 20<sup>th</sup> century American dominance, experience of the holocaust, and

communism became later imperatives that focused on Human Rights.

Rights can be constructed imaginatively, that is not by text or tradition in the Hindu tradition, by looking at duties from the other end that is if a son has

a duty to his father and teacher to obey them, then the father and the teacher have a right to expect obedience from the son. If a King or a ruler – from the Kshtriya (warrior) class has a duty to protect those over whom he rules, the populace has a right to expect protection. But this is logical thinking, certainly something that attains in practice regularly, but is not part of the religious tradition and its discourse. But here too, there is no notion that duties or rights are common to all humans or those duties and rights are reciprocal processes presuming equality.

#### *Rights and Conflicts*

The idea of human rights has been incorporated in the Indian Constitution drafted after independence in 1947. The slow march to independence and a century of struggle to attain independence from the British Raj culminating in the leadership of Mahatma Gandhi did usher in an era of liberation of the down trodden from centuries of discrimination. Gandhi embarked on the culturally difficult path of eliminating untouchability and kicked up a storm among the conserva-

tive Hindus and religious leadership. His mass movement encouraged women to join the fight which also was opening new doors but approved with less apparent conflict. Jawaharlal Nehru, the chosen political heir to Gandhi was a flaming liberal and as he gradually assumed Gandhi's mantle he began to steer the elite thinking more in the direction of Western liberalism. But even as a champion of the new constitution Jawaharlal Nehru bemoaned the fact that the constitution enumerated rights for citizens but no duties, "All of us now talk of and demand rights and privileges, but the teaching of the old dharma was about duties and obligations. Rights follow duties discharged". Here was an

example of the reverse of what happened at the beginning, namely the law triumphed over tradition.

When it came to choosing an intellectual to head the drafting a new constitution he, as the Prime-Min-

ister of India, chose, Bhimrao Ramji Ambedkar, an untouchable himself, but educated at Columbia in law, a leader of the untouchables, for the job. (Ambedkar converted to Buddhism as that religion for him was a way of liberating himself from the humiliation of being an untouchable). And the resulting document was fashioned with the American Constitution with its notion of human rights as the point of reference, with special reparatory reservation in educational institutions as well as jobs for the former untouchables. The institution of untouchability was formally abolished. But in practice this was easier said than done. Former untouchables continue to struggle to this day for their rights and continue to be victims of harassment, cruelty, flogging, blinding, and just plain murder in retaliation by the upper castes for their assertion of their rights, especially in rural areas. Riots have broken out in city streets against "quotas" or as the system calls reservations for those dubbed the lowest castes in the Hindu hierarchy (termed scheduled castes in

the constitution as they are listed in a special schedule, along with the tribal populations referred to as scheduled tribes).

The situation with women's rights is a little less virulent but far more pervasive as it is a story of every household, albeit that in most urban areas and also in some parts of India, women have achieved a far greater public space than in the past both through education and employment. But domestic abuse occurs on a massive scale as is rape. The more recent incident of gang rape and eventual murder (she died as a result of massive internal injuries) of a young woman (who has been given the name Nirbhaya, (the one without fear) in the capital city of New Delhi has

created a national uproar all over the country and has forced the hands of politicians to enact a new law to prosecute the crime of rape. The discrimination against women is best told by the adverse gender ratios in India.

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In contrast to most of the Western world there are fewer women to per 1,000 men in India, which is an indication of their neglect as infants and children both in forms of nutrition and health care, as well as female feticide, infanticide<sup>5</sup> and poor access to peri-natal care for mothers, and their female off springs.

The revolution that occurred in political thinking in independent India with adult franchise and the place of human rights and secular laws has far outpaced a similar cultural revolution. Perhaps the last religious revolution in India was in the times of Buddha who led an anti-brahminical movement, promising people of all classes to an equal access to God and equality before the deities. A more recent and a pernicious development has been the revival of caste (these are further divisions of the classes into smaller groups, called Jatis, a word of common origin with the Latin general with strict rules about marriage and sharing of cooked foods), *panchayats*, old institutional arrangements in



which a group of elders (punch-meaning five) who act as a court adjudicated disputes between members of the caste. Some pan-chayats have taken a strong stance against marriages of young man and women with partners of their own choice who may belong to other castes or religion. Starting with sanctions against the whole family should such an arrangement go through, sometimes culminating in murders to preserve the prestige of the caste and the affected family, the pan-chayats (and the affected family) seek to enforce the tradition of their caste.

Another area of conflict emerged when the Indian parliament enacted the so called Hindu Code Bill, especially its provision for daughters to inherit their ancestral property. The prevailing Hindu traditional inheritance laws until then, accepted under the British, only the sons inherited their parents' ancestral property. The change in the new constitution for daughters to have equal rights was a major departure from tradition and although there was a great deal of consternation the Bill was finally enacted. Today there is little discussion of this provision in the law. In spite of claims to having ushered in a secular era and equality in the eyes of the law for all people, the legislature, in order to perhaps assume that Muslims felt at home in India after partition into India and Pakistan enacted different civil codes for the conduct of their traditional practices like allowing polygamous marriage for Muslims and for tax laws affect Hindu family arrangements. This has been a major cause of strife, sometimes explicit and at others not, esp. since the emergence of a political party that champions the Hindu tradition. The slogan of the party is to uphold "Hindutva", the essence of being a Hindu and a call to and expectation of other religious groups who are in minority to adopt this sense of "hinduness". This is what is being labeled as identity politics

Questions of cultural and political identity are at the heart of the rise of Hindu fundamentalist sentiment and a political party, and civil unrest between the two communities more seriously so in the last 25 years but an issue ever since the demand for a separate

state for Muslims arose in India. And with her later partition communal tensions became virulent. Mahatma Gandhi's assassination was a manifestation of this strife. As might be expected Christian Churches have also been targets of mass violence on account of their conversion practices.

### *Health Care and Human Rights*

In the area of health care the real ethical problem is that of access to health care for the poor, and especially in the rural and tribal areas. A fragmented, and either commercialized or bureaucratic system of health care, neither easily accessible nor affordable, is the issue and has defied decades of attempts at solution. Although soon after Independence India embarked on providing community based health care through primary Health Care Centers in rural areas with Satellite clinics further into the hinterland which made a dramatic difference in especially the provision of a maternal and children's health care, it is far from adequate. In fact mortality which stood at 180 per 1,000 live births in the 1950's has dropped to 47.2 in a 2013 according to the WHO and UNESCO statistics<sup>6</sup>. Similarly there has been a marked drop in maternal mortality, death and birth rates. Population growth has also abated through aggressive family planning campaigns of health education and free contraceptive services but remains an area that needs more work.

The care of female children is still problematic. Infanticide of female children was practiced in India at one time, especially in the North and Northwest regions and only an occasional occurrence is reported more recently. When prenatal gender diagnosis became available through amniocentesis and other technologies a national outcry arose against female feticide. Subsequently, in 1984 all preconception and prenatal diagnostic testing was banned in India, although an underground network offering such services continues to operate. The gender ratio in India, not surprisingly, is adverse for women. For the country as a whole it stands at 940 females per 1000, with a wide variation be-

tween regions of India. In the northern state of Haryana the ratio of females to males stands at 877:1,000, whereas for the Southern State of Kerala the ratio is 1,084:1,000. The statistics for Kerala are likely the result of a number of historical, cultural, religious, socio-economic and political dimensions of the state. In short, the practice of infanticide and feticide along with poor care of female children, have led to these adverse gender ratios<sup>7</sup>.

The relatively more recent introduction of assisted reproductive technology has been a boon to infertile couples, and especially to women for whom infertility is a stigma. In vivo and in vitro fertilization, as well as surrogacy are easily available. India's poverty and low health care costs compared to those in the West make it ripe ground for Western couples seeking ova donors and surrogate mothers. For a while this was a free-for-all market place which engendered a variety of ethical human rights questions as well as legal and economic problems. A bill was introduced in 2008 to regulate this market and still under deliberation, attempting to protect donor and surrogate mothers as well as eager Indian and Western couples.

Neither the publicly funded health care system nor the parallel private health care services that mainly cater to the upper and middle class, in both urban and semi-urban areas fill the woeful gaps in health care. The paradox

is that in the metropolitan areas state of the art hospitals cater to those who can afford them and large swaths of India go without any respectable delivery of health care. Given the large differences in health care costs in the West (and the rich from the Middle East) and in India, these medical centers have become a haven for medical tourism. Emigration of physicians and nurses to the West has not helped improve the health care network in India. Cultivation of mobile health care has been taken over by non-governmental voluntary agencies as like in the West it is difficult to get health care professionals to settle in the rural areas of the country.

#### NOTE

<sup>1</sup> Cited in L. ROUNER (ed.), *Human rights and World Religions*, University of Notre Dame Press, Indiana 1988, 1.

<sup>2</sup> R. LINGAT, *The Classical Law of India*, Translated by J. D. M. DERRETT, University of California Press, Berkeley and Los Angeles 1973.

<sup>3</sup> J. CAMPBELL (ed.), *The Philosophies of India*, Princeton University Press, Princeton 1969, 77.

<sup>4</sup> L. DUMONT, *Homo Hierarchicus*, University of Chicago Press, Chicago 1980.

<sup>5</sup> D. B. MILLER, *The Endangered Sex: Neglect of Female Children in Rural North India*, Cornell University Press, Ithaca 1981.

<sup>6</sup> *Index Mundi*, 2013, *Health Indicators*. Accessed August 6. [Http://www.indexmundi.com/facts/topics/health](http://www.indexmundi.com/facts/topics/health).

<sup>7</sup> J.P. SINGH, "Socio-cultural Aspects of the High Masculinity Ratio in India," *Journal of Asian and African Studies*, 45/6 (2010), 628-44.