Abstract and Keywords

This chapter begins with a discussion of the concept of ‘human rights’ itself and then examines how viewing Hindu ethical discourse from this perspective might enrich the discourse on Hinduism. It argues that the protocols developed under the human rights tradition must recognize (1) the right to multiple religious participation and (2) the right to retain one’s religion. Such would be a Hindu contribution to human rights discourse. This is how Hinduism can make a contribution towards one article of the Universal Declaration of Human Rights, namely Article 18. The chapter then addresses the question: can Hinduism make a contribution of an even more general order to human rights discourse?

Keywords: human rights discourse, Hinduism, Hindu ethical discourse, multiple religious participation, Universal Declaration of Human Rights
I

What can Human Rights Discourse Contribute to Hinduism?

I would like to begin by stating that human rights discourse can make a positive contribution to the discourse of Hinduism. Once such a statement is made the next thought likely to cross our minds is that this statement is too trite to be taken seriously as Hinduism, at first glance, seems opposed to human rights. All one needs to do to be confirmed in this view is to scan the discourse of Hinduism with the searchlight of human rights norms. Such an effort will spotlight the glaring short-comings of Hinduism in the form of the evils of the caste system, the treatment of women down to that of female foetuses and so on. So the great contribution human rights discourse can make in relation to the discourse of Hinduism, or discourse around Hinduism, is to expose the shortcomings of Hinduism to popular attention. While this task in itself has a negative dimension to it, its effect will be positive. It will tell Hindus what is wrong with their religion and how they might go around rectifying it, or even abandoning it.

When I raise the question of how human rights discourse can contribute to the discourse on Hinduism, however, I have something more than this in mind. I value the critique human rights discourse offers of Hindu practices and associated doctrines. This critique now has been in existence for over half a century and, if anything, is becoming even more intense. This book, however, aims at approaching the relationship between Hinduism and human rights at a conceptual level. It is therefore at the conceptual level that I shall try to probe the issue as I proceed. The fact (p.138) that I shall not be addressing the issue of human rights violations within Hinduism should not be taken to mean that I do not attach importance to it; the fact that I shall not focus on it does not mean either that it is considered inconsequential by me, or is inconsequential. It only means that the focus of my interest at the moment lies elsewhere.

II

Now that the nature of the present task has been identified, I would like to focus on the concept of ‘rights’ itself, as in ‘Human Rights’, and try to examine how viewing Hindu ethical discourse from this perspective might enrich the discourse on Hinduism.

In order to achieve such an outcome I would like to proceed by asking the following four questions. (1) Are ‘rights’ discourse and ‘duties’ discourse comparable? (2) Are they comparable in such a way that one might ask of them the following question: (if the two are comparable, then) is it possible to discuss the pros and cons of utilizing one form of such discourse over another? And are there certain circumstances in which one form may be preferred to another? (3) If ‘rights’ and ‘duties’ discourses are comparable, could the category of dharma be placed in the matrix of this discussion to determine if there exists any analogous rights discourse associated with it, and if not, can such discourse be associated with it on the strength of the comparability of rights/duties discourse? (4) If there are certain situations in which rights discourse is preferable to duty discourse, and if the category of dharma is capable of mediating both rights as well as duties discourse, is the dharma discourse capable of shifting into such a semantic
III

Are ‘Rights’ and ‘Duties’ Discourse Comparable?

I would first like to begin by focusing on the concept of rights from a comparative perspective. It has been claimed that the concept of rights is a secular and Western concept. If this is indeed so, our understanding may turn out to be more complex than might be apparent at first sight. In order to pursue this point two questions might be raised: (1) what exactly is meant by rights in current discourse and (2) do other religions and cultures possess such a concept (or an analogous one), or are they devoid of it?

What are rights? Modern discourse seems to offer four main ways of looking at rights: (1) rights as liberties, (2) rights as claims, (3) rights as entitlements, and (4) rights as trumps. If we use the term reproductive rights, for instance, to refer to the cluster of ‘rights to family planning, contraception, and abortion’, it might also be of interest to determine the nature of this right from these four points of view.

**Rights as Liberties**

Rights as liberties are associated with civil and political rights, such as the right against unlawful detention, or interference with privacy, and so on. In sum: ‘Liberty rights, with which civil and political rights are associated, are negative rights in that they offer certain protections but do not necessarily generate duties, other than the duties to refrain from coercion or interference.’

The right to marry and raise a family, as part of the umbrella term reproductive rights, seems to belong here.

**Rights as Claims**

By comparison with rights as liberties, ‘Rights as claims involve a subject of the right (the person who is making the claim), what the subject has a right to, and who has responsibility for fulfilling the duty implied in the claim.’

The right to due process is a good example of such a concept of rights. The right to practice contraception and abortion seems to belong here.

**Rights as Entitlements**

‘Rights as entitlements view the nature of rights not as against someone, but as for something’. A good example of this is provided by the rights of children, where the ‘specific bearer of duty for the right may not be clear, but the obligation to provide protection is nevertheless valid’. The right to have access to facilities for exercising the right to contraception and abortion seems to fall under this rubric.

**Rights as Trumps**

Rights as trumps are a way of dealing with conflict among rights. ‘All rights talk signifies the moral weightiness of the liberty, negative or positive claim, entitlement, duty or
obligation. But when there is a conflict in serious moral claims, trumps signify that some rights, while not absolute, are nevertheless based on more compelling moral grounds. Such a view of rights might be helpful in ‘negotiating the tension between biotic rights and human reproductive rights. Human reproductive rights could trump biotic rights for the first child, or even the second. But (p.140) beyond replacement, biotic rights could then trump’, where biotic rights may involve restorative measures to preserve a species from extinction, for instance, or the protection of the biosphere.

The question of abrogation of reproductive rights under certain circumstances, or conversely their ability to ace other rights in certain cases, may belong here.

If one examines these four concepts of rights closely, one finds that they contain some elements in common. These are (1) an entitlement and (2) an entitlement to remedy, when that entitlement is disregarded. The fact that we have a category called rights as entitlement should not obscure the fact that all rights involve entitlements. Unless one is entitled to liberties, or claims, one cannot claim them as rights. Similarly, rights as trumps means that some rights possess a more compelling claim or entitlement than others. Perhaps another clarifying insight here consists of the realization that rights are like legal claims, whose violation involves punishment or compensation. The corresponding question to ask in relation to non-Western societies and cultures then is: through which category do people make claims in these cultures, such that their violation involves punishment or compensation?

The answer is duty. In most of the traditional cultures the entitlement of others, or their claims on us, are articulated as our duties towards them and failure to perform one’s duty involves atonement (in terms of conscience) or shame (in terms of society) or in some cases, even compensation. In duties then we seem to possess an analogue to rights.

In fact an even stronger statement might be possible. Duty discourse and rights discourse are not only comparable, to a certain extent they may even be convertible. The fact that the word duties crops up in the discussion of all the views of human rights lends credence to this view. This does not mean that rights and duties are coextensive, because duties can extend beyond rights. For instance, ‘some duties could precede the attribution of rights’, just as ‘there could be duties not grounded in rights’. Nevertheless though not coextensive, rights and duties are correlative in that (someone’s) rights are related to (someone’s) duty.

Three claims can be made, at this stage, on the nature of the relationship between rights and duties, each stronger than the other. One could begin by claiming that rights and duties are comparable entities. One can then go on to make the stronger claim that the two are convertible. Finally, one could claim that the two are coextensive for the light it sheds on the claim that they are convertible. Consider the case of infants. Infants, in (p.141) relation to parents, have rights without duties. And parents, in relation to infants, have duties without rights. Parents, however, could also be said to possess rights, in the sense that they have a right not to have the infant taken away from them. This right however is not in the form of direct reciprocation for duties performed for the
infant, but rather in relation to the state. It could now be argued that when the infant grows up and becomes an adult, parents do have a right to be looked after by the children and this right is indeed located in one who is now an ‘infant’ and not the state (although the state may have the obligation to enforce the right). In this sense the two are mutually implicative. The case of animals provides another possible example. Animals may have rights against human beings (as in animal rights), without corresponding duties, although in the case of some kinds of animals, such as draught animals, animals do have a ‘duty’ towards the owner, although the implication of the concept to animals is obviously problematical. There is no need to carry the exercise further because its purpose is served: even if rights and duties are not coextensive or cannot be correlated all the way, their mutual implication is difficult to deny. This is confirmed by the historical fact that the first Indian to use the English language in a major way in moral and religious discourse had no difficulty in making the switch. One has here Raja Rammohan Roy in mind, who, already in the early part of the nineteenth century, was talking about encroachment on the rights of Indian women.

IV
Is it possible to develop this point further? In our search for a non-Western analogue to the concept of rights we have come up with the concept of duties. Is that all? Does our investigation cease here, or is it capable of being carried further?

Let us select another culture for a closer comparison with the Western, as, for instance, the Hindu. We can now place two major systems of moral discourse side by side, and survey them in depth. Once this is done one finds that each of these forms its own pattern in which rights and duties respectively find a place. We also find that the patterns differ, and further, that such differences shed light on each other.

The results of the comparison can only be summarized here. While both the modern Western and the traditional Hindu worlds seem equally keen to do the right thing, the attempt to do so seems to have led them in different directions—in the direction of rights in the West, and the direction of righteousness in India. With the recognition of the individual in the West as ‘the autonomous possessor of his own person and capacities’, his rights were ‘now conceived essentially as the instrument for the protection of the individual and her property from the rest of society in the form of entitlements, while individual interests (were) identified prior to and independently of any moral or social bonds’. Such socio-economic individualism was morally recast by Kant. With him, ‘a rationally based concept of self-respect... breaks free of a notion of rights that in effect equate them with privileges of membership in a civic or religious organisation. It is in such a world that the idea of human rights, rights by virtue of the moral nature of human beings alone comes to the fore’. This results in a separation of ‘two senses of right, namely righteousness and entitlement’ in Western thought, or, more accurately, the locus of the two ceases to be identical. Hindu thought, however, developed along different lines. Within it dharma constitutes the key category. Dharma ‘is the order of the entire reality ... which both keeps the world together and maintains each thing according to its nature’. This carries two major implications:
(1) the two senses of right, namely righteousness and entitlement are brought together in the Indian conception in contrast to their separation in western thought, and (2) with this convergence, the primary category is not that of moral principle but of a primordial order that is neither exclusively moral or exclusively cosmological but both together at once.\(^\text{15}\)

This concept of order is also holistic by its very nature, encompassing the ‘three worlds’ of the individual, society, and cosmos, as it were. Rights and duties, nevertheless, do remain comparable, as it is the location of the two which is affected by this further argument rather than the relationship itself. Human Rights discourse, however, by definition, prefers rights discourse over duty discourse. This raises the possibility: could it be that Hinduism would benefit by favouring rights discourse in place of the duty discourse which is said to characterize it?

What are the Pros and Cons of ‘Rights’ and ‘Duties’ Discourse?
Thus it has often been pointed out that duties discourse and rights discourse can overlap and indeed that the two may be interchangeable. Alison Dundes Renteln writes:

Chapter 2 begins by exploring the traditional notion of human rights. After clarifying the idea of a right, I discuss some of the conceptual problems associated with human rights. In particular, I challenge the claim made by some human rights scholars that moral systems, which are duty-based, cannot accommodate (p.143) human rights. If, for example, the members of a given society have a duty to take care of the elderly, then the elderly could be said to have the right to proper care. The point is that just because the rubric of some peoples is not that of rights does not mean that human rights cannot be universal.\(^\text{16}\)

Given this equivalence between the two it might be worth examining the reasons for preferring one over the other, or the circumstances in which this might be desirable.

Reasons for Preferring Rights Idiom

(1) There are no duties without rights. This point may be argued as follows:
To live in a world of duties will be worse than to live in a world of rights. In the world of duties, when people sometimes do not perform their duties, we cannot even claim that they should do their duties. For we can make such a claim only when we are living in a world of rights (and corresponding duties). I have a binding obligation to do my duty to you only when you have a right claim upon me. But where you do not have a right on me, I may or may not do my duty.\(^\text{17}\)

(2) Duties idiom lends itself to deontological exploitation. This may be particularly true in the context of Hinduism. Even a sympathetic observer such as Louis Renou remarks:
If Hinduism is studied superficially or unilaterally, one might be tempted to see in it as chaos of irrational religious practices and superstitions and
degradation through magic and verbalism. The economic dysfunction engendered by certain religious prohibitions or by the entire caste system has been pointed out. The caste system has been held responsible for social stagnation, while extensive criticism has been offered of negative tendencies, excessive non-violence and certain deplorable customs such as the burning of widows in past time and child marriage, which is still sometimes practiced. It is evident that there is both good and evil in a religious context which has been allowed to go its own way for more than two thousand years without any internal checks while it retained an attitude approaching defiance which became even more audacious in the face of the temptations offered by the modern world.18

The absence of ‘internal checks’ may be accounted for by the absence of rights talk. In any case, Louis Renou goes on to say, in a passage also cited earlier:

But ambivalence is characteristic of India: for her, what is the good of killing her cows if she has to lose her soul? A factor in social and psychical equilibrium is found in the notion of dharma with its rigorous justice and the ‘truth’ which it implies (the Indians insist on the attitude of truthfulness as others insist on an (p.144) ‘attitude of consciousness’). An important consequence of this is tolerance, non-violence considered and active virtue; this is a manner of acting which must be respected—even in the political sphere—regardless of the attitude of others. In this perhaps is to be found the most spectacular contribution, which India has made to the modern world and the most worthy reply to Marxism and its materialism.19

Although Renou’s comments are appreciative, it is easy to see how this sublime unilateralism renders one liable to deception and exploitation.

(3) Rights idiom may be necessary to ensure the compliance with obligations. It may thus be argued that

... my obligations sometimes consist of nothing more than ‘feeling bound’ and these ‘binding feelings’ do not issue forth in the actual performance of obligations unless others make their rights-claim upon us. Rights-claims, in other words, act as an impetus for the discharge of my obligations which otherwise would remain in the realm of feelings.20

However, at the same time,

People would be less willing to perform their obligation unless the rights-holder makes the claim that others perform their obligations. For example, a debtor has an obligation to the creditor to return something he borrowed. If this obligation is founded only on the right of the creditor, then the debtor may not sometimes discharge his obligations unless the creditor demand that the debt be repaid. The reason for this hesitation in discharging one’s obligation is obvious, since the obligation of the debtor arises as a consequence of the right of the creditor, and since the creditor has the freedom not to exercise his right, the debtor may ‘wait and see’
whether the creditor will ‘make the first move’ and demand that the debt be repaid.\textsuperscript{21}

(4) Rights idiom provides more freedom to the individual. This becomes apparent when we compare the worldviews associated with the two forms of discourse. A world of obligations is a world in which everyone is bound, and therefore is inconsistent with freedom which is an important human value. A world of rights, on the other hand, gives the individual some freedom to exercise or not to exercise his rights.\textsuperscript{22}

(5) Rights idiom may be required to ensure that the state discharge its duties towards the people. For...

... problems arise in a ‘pure’ world of obligations, without any rights. To repeat, in an imperfect world like ours, if some people fail to perform their obligations \textsuperscript{(p.145)} we cannot, as a matter of right, insist that they ought to perform their obligations. Take, for example, the mutual obligations of a king to his subjects and the subjects to the king. If the king fails to perform his obligations to the subjects, the subjects may not perform their obligations to the king. What the subjects cannot do is to make demands on the king that he discharge his obligations because they are entitled to them, for ‘demanding’, ‘claiming’, ‘being entitled’, etc. flow from the concepts of rights and not obligations.\textsuperscript{23}

Reasons for Preferring Duties Idiom

(1) There can be no rights without duties. This point may be argued as follows: ... the world of obligations is logically prior to the world of rights. To say that X has a right to ‘A’ means not only that X is entitled to A; that X can make claims against others, if he so chooses; but also [that] others are required to do according to X’s pursuit of A. The obligations of others do not arise as a consequence of X’s claims.\textsuperscript{24}

Rama Rao Pappu, however, admits that one could choose to ‘ignore ... the logical priority of obligations and maintain ... that obligations are the logical consequences of rights.’\textsuperscript{25}

(2) Rights are claimed against others (individual, state) whereas the obligations of human beings pertain both to ‘man-as-such towards himself and others’.\textsuperscript{26} Thus the duties idiom provides for a broader base and goal for human development. Unlike the Western individualism, a person is never conceived in the East as an isolated monad who enjoys his rights in isolation. In the East, the individual is one who is essentially related to other persons—in fact, to the whole universe—and the relationship between persons is conceived in terms of mutual obligations. In Confucian thought, for example, ‘the basic social relations are between (1) rulers and subjects, (2) parents and children, (3) husband and wife, (4) older and younger brother and (5) friend and friend.’ In Indian thought, likewise, the concept of man is the
concept of a dharmic person or ‘obligatory man’. To be a person is to incur certain ṛṇas (debts) and to be in a dharmic (obligatory) relationship with other persons. Some of the dharmas or obligations of man are sādhāraṇa-dharmas (i.e. obligations pertaining to man-as-such towards himself and others).27

(3) Duties idiom is morally superior because it enshrines the idea of ‘the progressive assumption of obligations to others, whether or not others claim their rights. A child, for instance, first develops a sense (p.146) of obligation towards his parents, brothers, and sisters, before he realizes or claims that he may have rights against them, or that he has obligations to them because they have rights against him’.28

(4) It is also morally superior because duties idiom addresses a wider world. Thus altruistic duties are not viewed as ‘stopping short at mankind, but as including within their scope sub-human beings which are regarded as having rights though no duties’.29 This argument suffers from some limitations: (1) What it really questions is a correspondence view of rights and duties. (2) Moreover, it can be used to argue the opposite that as beings can have rights but no duties, rights idiom is broader in scope than duties idiom.

However in general it does seem to be the case that the world of obligations is wider than the world of rights. It is now widely recognized that rights and obligations are not correlatives, that though every right implies a corresponding duty, not every duty or obligation implies a corresponding right. Thus we have obligations to be kind, charitable, benevolent, and so on though there are no corresponding rights to receive kindness or charity. Some philosophers also maintain that we have obligations to sub-human beings, to nature and to environment, though they do not have corresponding rights on us.30

(5) Rights-centredness leads to self-centredness. This point may be developed as follows:

...because every individual is a possessor of rights, he thinks of others discharging their obligations to him. ‘What do others owe me?’ ‘Should I not compel others to perform their obligations?’ are the foremost concerns in the world of rights. When the individual asks these questions, he makes himself the centre of attention and making the demand on others, he may not care whether others have the ability or capacity to discharge their obligations to him. Some of the problems with the economic and welfare rights contained in the Universal Declaration arise because they do not take into consideration the abilities or capacities of other individuals/nations into account.31

How does Dharma Fit into ‘Rights’ and ‘Duties’ Discourse?

It has usually been held that dharma talk corresponds to duty discourse rather than rights discourse. Thus, for instance, it was rāja-dharma—the king’s duty—to rule and to
rule well, but the subjects had no right to be ruled over fairly or justly. The prajā-dharma was their duty to be loyal. It could be argued that there was no way, in terms of dharma talk, of enforcing their rights. This point comes out in clear relief in Hartmut Scharfe’s discussion of the deposition of an (undesirable) king, both in an epic and Arthashastraic context, as well as in historic times. In relation to the former context he writes:

In the period of epics, the dharmasūtra-s and the Arthaśāstra, the people seem to have lost most of their influence on the king’s tenure; it may be more than a coincidence that at about the same time they had also lost their right to bear arms. Mbh XII 60, 19ff. does, however, grant the people the moral right to rebel against a king who fails to fulfill his duty to protect the people, and kill him like a mad dog. Invariably the rationale behind an uprising is this failure of the king rather than the people’s assertion of any inalienable citizens’ rights being violated. In Arthaśāstra I 17, 39 the king’s agents warn a rebellious prince that even if his attack on the king should succeed, he would be ‘destroyed by the people like a single clod of earth (which the plowman breaks up with a thick club)’. The king himself is warned to control his temper because ‘kings under the influence of anger are known to have been killed by risings among the subjects (prakti-kopa)’, while he, on the other hand, attempts to have his enemy’s administrators killed by popular uprisings. Such uprisings are mentioned as an ever present threat, but the author of this state manual never endorses them as a political strategy for the state whose king and courtiers he tries to counsel. Actually, there is no recorded uprising in pre-Muslim India after the Vedic period, i.e., for almost two millennia. For the Arthaśāstra, the most serious revolt was that of the innermost circle of officers (i.e. ministers, purohita, commander of the army and crown prince), whereas the ‘inner revolt’, apparently of the people caused little concern. If others were enemies ‘not just beyond the frontiers but in the capital, in the government, in the council chamber, in the kitchen, under the bed, in it,’ each subsequent one was more cause for concern. In the ninth century, the commentator Medhātithi (on Manu VII 198) held that effective dissension in the enemy camp was achievable only if the rival king’s family members were to go against him.

In the context of historical times, Hartmut Scharfe goes on to say:

In historic times, people more likely vented their anger by failing to support an unpopular king or by actively supporting his rivals or even outside enemies when an opportunity arose. A king that is honoured by his people is respected even by his foreign enemies, whereas one that is despised will be overpowered. The most potent independent action of the people, however, was emigration to another kingdom. A constant shortage of manpower led kings to entice residents of other states to migrate; an unpopular king could thus suffer severe losses in his state’s population and revenue. The most common theme of political justice in our brahminical texts is the fervent if somewhat irrational belief that righteous Brahmans bring about the fall of an unrighteous king, and that unjust coercion or punishment
strikes down the unjust king directly, or that violations of righteousness lead to hell.\textsuperscript{32}

\textbf{(p.148)} The crux of the matter turns out to be that

There was no legal way to remove a bad king. Even the traditional freedom of peasants to turn their backs on oppressive taxes and move away was curtailed by zamindars and tax-collectors in the Benares region in the latter part of the 18\textsuperscript{th} century. Interruptions in a dynastic line (besides those caused by foreign conquest) were mostly due to palace intrigues involving the royal family, ministers and other courtiers. The overthrow of the rulers by brahmins—through armed force if need be—in the Śukranītī IV 7,332f. (early 19\textsuperscript{th} century) may be a traditional cliché, or it may refer to the sannyāsin movement in Bengal.\textsuperscript{33}

It could be argued however that this interpretation is too one-sided. For we also read:

The king who harasses his subjects loses his life, family and kingdom. Moreover stories of kings killed for their tyranny are found in the ancient literature. For example, Vena, who was jealous of the gods, wanted sacrificial offerings to be made to himself (and not to the gods) and violated dharma, was killed by the brāhmaṇas (Śāntiparva 59.93–5, Bhāgavatapurāṇa IV.14). The Anuśānaparva (61.32–3) solemnly sanctions the killing of a king in certain circumstances. ‘The people should gird themselves up and kill a cruel king who does not protect subjects, who extracts taxes and simply robs them of their wealth, who gives no lead. Such a king is Kali (evil and strife) incarnate. That king who after declaring ‘I shall protect you’ does not protect his subjects should be killed (by the people) after forming a confederacy, like a dog that is afflicted with madness.’ Manu (VII.27–8) states that the great principle of \textit{daṇḍa} if properly wielded conduces to the advancement of the three \textit{puruṣārthas}, but if a voluptuous, mean and unjust king wields it, it recoils on his head and destroys the king together with his relations. Kām. 2.38 makes it clear that \textit{daṇḍa} foolishly wielded might exasperate even hermits. The Śāntiparva 92.19 recommends that a king who has false and very wicked ministers and who puts down dharma should be killed by the people. Even as early as the Tai. S. II 3.1 it appears that kings were driven away, while the Śatapatha Brāhmaṇa (XII.9.3.1 and 3) mentions a king Duṣṭarītu Pauṁsāyana who had been expelled from the kingdom which had descended to him through ten ancestors. The Saurāmaṇi \textit{iṣṭi} is prescribed as a rite for a king to regain a kingdom from which he had been driven away (vide H. Dh. Vol. II., p. 1227). Śānti 92. 6 and 9, Manu VII. 27 and 34, Yaj. I. 356 appear to justify at least deposing a king, if not tyrannicide.

P.V. Kane goes on to say:

Similarly, the Śukranītīsāra (II.274–5) states that a king, though of a noble pedigree, should be abandoned, if he violates dharma, if he hates good qualities (in others), lines of policy and the army and if his conduct would lead to the destruction of the kingdom and that the family priest with the consent of the principal \textbf{(p.149)}
officers of state should place on the throne another scion of the royal family who is possessed of the requisite virtues. Nārada props up the theory of divine right by stating that the king secures dominion over (lit. purchases) his subjects by his austerities (performed in former lives) and therefore the king is their lord (prakīrṇaka 25). Śukranitī I.20 also brings in the doctrine of Karma ‘the king holds the earth by the actions of his former lives and by his austerities.’ Compare Manu VII.111–12, Śānti 78.36. The Śukranītisāra (IV.7 332–3) says that brāhmaṇas may even fight and destroy an oppressive ksatriya king and would thereby incur no sin. The Yaśastilaka (III., p. 431) gives examples of kings killed by their subjects, one a Kaliṅga king who made a barber his commander-in-chief. In fact in all works on polity we find comparatively little about the king’s rights and special privileges, but on the other hand the greatest emphasis is laid on the king’s duties and responsibilities.34

One hesitates to test the patience of the reader further. It is easy to become pedantic in one’s eagerness to document differing points of view fully but the point is a subtle one. The situation which seems to emerge is that rights exist, but there is little rights talk. It is also possible to argue that Hindu subjects displayed an increasing reluctance to avail of their right to dispose of a bad king as duty discourse became pervasive.

I would now like to propose that by exclusively understanding dharma as duties, many scholars have overlooked the rights dimension of the word dharma. This will pave the way for the discussion which awaits us in the next section. I provide two illustrations to substantiate my point.

The first example is one with which we are already familiar. A passage from the Brhadāraṇyaka Upaniṣad (I.4.14) was cited in an earlier chapter, in which the following expression occurred: ‘so that a weak man hopes (to defeat) a strong man by means of justice (dharma) as one does through a king’.35 We may supplement this translation of S. Radhakrishnan by that of Robert Ernest Hume: ‘So a weak man controls a strong man by law, just as if by a king’.36 It is however a more recent translation which helps one make the point more decidedly: ‘Therefore a weaker man makes demands of a stronger man by appealing to the law, just as one does by appealing to a king.’37

It is difficult not to see the word dharma here freighted with the semantic weight of the word right.

One could even venture the view that when the word dharma is used in a relationship which involves a claim against one in a higher position, it has the connotation of a right. The following example might lend support to the view. The smṛti texts regularly describe the professional duties of the four varṇas. Thus Manusmṛti (I.88–92):

(p.150) 88. To Brāhmaṇas he assigned teaching and studying (the Veda), sacrificing for their own benefit and for others, giving and accepting (of alms).
89. The Kṣatriya he commanded to protect the people, to bestow gifts, to offer sacrifices, to study (the Veda), and to abstain from attaching himself to sensual
pleasures;

90. The Vaiśya to tend cattle, to bestow gifts, to offer sacrifices, to study (the Veda), to trade, to lend money, and to cultivate land.

91. One occupation only the lord prescribed to Śūdra, to serve meekly even these (other) three castes.

These are the duties assigned to the varṇas in normal times. Manusmṛti also takes up the question of how these four varṇas are to pursue their vocation in ‘times of troubles’ (or āpad-dharma). The general principle laid down is that the higher varṇa may resort to the professions of the lower varṇa in such a time, with due restrictions and precautions. Now the question arises: if, in extremis, the brāhmaṇa can resort to the vocation of kṣatriya, the kṣatriya to that of a vaisya and the vaisya to that of a śūdra; where does the śūdra turn to in a crisis?

If a śūdra was unable to maintain himself and his family by serving dvijas, he was allowed to maintain himself by having recourse to crafts like carpentry or drawing or painting pictures etc. Nārada (ṛṇadāna 58) allowed him to perform the work of kṣatriyas and vaisyas in times of distress. Yāj. (I.120) also says that, if unable to maintain himself by the service of dvijas, the śūdra may carry on the profession of a vaisya or may take to the various crafts. The Mahābhārata allowed a śūdra who could not maintain himself by the service of higher varṇas to resort to the avocation of a vaisya, to rearing cattle and to crafts.38

What is worth noting here is that śūdra is allowed to adopt the professions of a higher varṇa: that of a vaisya, and even of a kṣatriya. But in normal times it is the duty of the śūdra to serve them; then how are we now going to describe this āpad-dharma of a śūdra? It seems to me that ‘right’ is the appropriate word here. Thus one may say that in times of crisis a śūdra has the right to adopt the profession of a vaisya.

Can Dharma Make the Semantic Gear Shift from ‘Duty’ Discourse to ‘Rights’ Discourse?

It just did—in the illustration cited above, in the light of the fact that when one discusses dharma in the context of times of distress (āpad-dharma) the word dharma does take on the meaning of a right.

The above discussion borders on the esoteric, but is significant for it converts what is usually perceived as a problem into a puzzle. What has often been perceived as a problem is the fact that the Hindus did not have a word for rights, no conception of rights and so on. And this problem was (p.151) exemplified by the word dharma which means duty, a word central to their discourse. It now becomes clear that at least in two situations it doubled for rights: (1) when the person in a hierarchically lower position in terms of status or power appealed to dharma, the word took on the connotation of a right; (2) in times of crisis, one acquired the right—as āpad-dharma—to perform certain actions one was not entitled to in normal times. Given the fact that from AD 1200 Hinduism faced such a crisis brought on by foreign rule, the puzzle now is as to why the word dharma did not more palpably acquire the sense of right? One possible explanation of why this did not happen could well be that the whole socio-political structure in which
the word now functioned prevented this from happening because one segment of the architectonics of the fourfold class system in which it functioned had gone ‘foreign’. The kśatriya had been eliminated and replaced by foreign rule, which did not subscribe to the system, unlike earlier foreign rulers such as the Śakas who presumably did so once they became part of the system. The new rulers were just not part of the system or did not share the same frame of reference. Irfan Habib describes the situation in its broadest and most fundamental form as follows:

There were the religious traditions coming from ancient India, which by Mughal times began to be described under the term ‘Hindu’. The author of Dabistān-i-Mazāhib is hard put to describe what the beliefs of a Hindu are and ultimately he takes shelter in a very convenient position but the only possible position—Hindus are those who have been arguing with each other within the same framework of argument over the centuries. If they recognise each other as persons whom we can either support or oppose in a religious argument, then both parties are Hindus. The Jains, although they rejected Brahmanism, were still Hindus because they were arguing and polemicising with Brahmins. Such arguments were not taking place between Hindus and Muslims. The Muslims did not share any basic terminology with the others. Muslims did their own framework, an ideological framework, the semitic framework.39

But now with an Indian rather than a foreign government in place, the original semantic thrust towards ‘rights’ contained in dharma can be restored, and even magnified. This is not to say that one must use that very word to denote it—if the word adhikāra has become the current location for rights in Indian languages there is no need to abandon it. One could use the expression dharmādhikāra if one wanted to combine the modernity of tradition with the tradition of modernity in a single expression.

But what contribution does human rights discourse make here to Hindu discourse? Just this that by detaching the concept of a right from dharma that of duty in its own evolution, it alerts us to the danger that duty discourse can subvert rights assertion and thus makes two contributions: (1) it alerts us to this danger in modern Hindu discourse and (2) it enables the rights component of the duty-rights coupling in the term dharma to be clearly grasped. The second point is clear. But how great the potential danger of duty discourse subverting rights discourse is, can be gauged from the fact that the British argued against Hindu participation in the drive to do away with British rule on the ground that it was immoral for them as Hindus to do so, for it was their dharma to be loyal to the ruler. One can foresee a would-be dictator in India invoking the same argument.

V

What can Hinduism Contribute to Human Rights Discourse?

The contribution Hindu discourse can make to human rights discourse has already been indicated in an earlier section. It has to do with the concept of ‘religion’ with which human rights discourse operates. Although it is nowhere stated as such, human rights discourse
seems to operate with the idea that belonging to a religion involves exclusive adherence to a single religious tradition.

Such a concept of religion is historically and geographically restricted. It is historically restricted in the sense that it is essentially Abrahamic. However, people in Abrahamic times, and before Abraham, also followed certain religions and practices which may or may not have involved mutual exclusion. It is more likely that they involved separation rather than exclusion. That is to say, people carried out their practices separately, without the sense that others were being deliberately included or excluded.

It could be maintained that the Jews enacted on a social scale what Abraham had accomplished at the personal level, when they occupied Canaan. Abraham had wiped out with past faith and adopted a new one for himself and his family. The Hebrews wiped out the earlier occupants of Canaan and adopted the new land as their own.

The other Abrahamic religions repeated the same pattern over larger territories. Elimination of earlier peoples was partially substituted by conversion but a break with the past was necessary. With the passage of time Judaism developed a different attitude in the matter but its ethnic (p.153) restraint on its universalism was removed by Christianity, which ultimately went on to spread over Europe and beyond. Islam followed the same pattern. Such exclusiveness was internal as well as external: Judaism, Christianity, and Islam also differentiated themselves from each other, just as they differentiated themselves from others.

In the course of its emergence the modern West distanced itself from Christianity in some ways, but not from its ideal of religion as something involving exclusive adherence. The secular discourse of religion accepted it axiomatically. Ironically, the concept is even more potent in its secular version. For the focus of Christianity was God, and religion, while closely associated with God, could never replace God. But in a godless society ‘religion’ becomes God. The Universal Declaration of Human Rights speaks not of God but of religion.

The Abrahamic notion of religion as implying exclusive adherence is historically limited, in the sense that there was a ‘religion’ living and being practised in some sense, before the Abrahamic religions ‘terminated’ it. Some form of religious life must have prevailed in the Roman Empire before it became Christian, as also in Arabia before it became Muslim, or in Canaan before it was taken over by the Hebrews. The point simply is that an ‘exclusive concept of religion’ does not give us a full purchase on the religious life of humanity.

But even more to the point—such a concept is not representative of the religious life of humanity as it is lived around the globe. So to operate with such a concept in a document, which purports to be universal, is likely to lead to grave problems. To avoid these, the protocols developed under the human rights tradition must clearly recognize (1) the right to multiple religious participation and (2) the right to retain one’s religion. Such would be a Hindu contribution to human rights discourse.
This is how Hinduism can make a contribution towards one article of the Universal Declaration of Human Rights, namely Article 18. This paves the way to the question: can Hinduism also make a contribution of an even more general order to human rights discourse?

What follows now is an attempt to answer this question. One may begin with the concept of ‘Universal Human Rights’ itself. In the expression: ‘Universal Human Rights’, each of the three terms can be problematized; and furthermore can be problematized individually as well as collectively.

First, the word universal. No moral or ethical system, or even political or economic system consciously claims to be unjust, at least in the sense (p.154) of being founded on injustice. So justice would appear to qualify as some kind of a universal, or at least the appeal to it. However, as soon as one descends from the heights of pure principle and attempts to flesh it out in terms of actual contents, differences surface. Take the death penalty, for instance: is it just or unjust?

Now the second word: human. As soon as one raises the question: what makes human beings human, differences surface again. The answers cover a whole range of opinion varying from the theological to the biological.

The third word ‘rights’ poses its own set of problems. For instance, one might raise the question: is the concept legal or moral in nature? If the concept is considered legal, that is to say, if rights are positivistic in nature, what the law gives the law can take away. If the concept is considered to be moral in nature, the problem posed by different moralities, not necessarily convergent in nature, arises.

This is how each of the words can be said to be problematical when taken individually. Let us now examine the expression collectively by asking the question: what is universal in human beings that entitles them to rights?

Body and mind could be said to be in the universal possession of all human beings, but when spelled out in such an unqualified way they are too broad to serve as useful categories to anchor human rights in. Indeed, the concept of rights itself seems to suffer from a similar vagueness. For instance, when we say that something is a human right, we often mean that it ought to be a legal right.

Very briefly then, appeal to universal human rights does not seem to resolve anything; one needs to re-solve everything—what is meant by universal, by human, and by rights.

As an illustration of how the Hindu tradition might help us think more clearly and even helpfully in such matters, let me choose one category and demonstrate the result, which follows from examining it in the light of the Hindu tradition. Let me focus on the category of universal for this purpose.

One can think of three specific contexts in which the word universal occurs within the Hindu tradition, which it might be useful to take into account. The first of these contexts is
provided by the Yogasūtra of Patañjali. The system of yoga as espoused by Patañjali consists of eight parts or limbs. The first two are technically called yama and niyama, and constitute the moral preparation for following the path of yoga, as it were. Yama consists of five rules: ahimsā (non-injury), satya (truth), asteya (non-stealing), brahmacarya (celibacy), and aparigraha (non-possession), whereas niyama consists of the following five: śauca (purity), santoṣa (contentment), tapas (austerity), svādhyāya (study), and īśvarapranidhāna (devotion to God). It has been said that ‘the five yamas and the five niyamas together constitute all that is necessary for a perfect moral and religious life. They are, so to say, the ten commandments of yoga’.  

The time has come to redeem oneself in terms of this somewhat dull recitation by pointing out that according to the text of Patañjali (II. 31) ‘These universal moral principles, unrestricted by conditions of birth, place, time or circumstance, are the great vow of yoga.’ That is to say, they are unbounded by time and space and are thus universal.

Another context is provided by the discussion of the concept of the ‘universal’ in the schools of Hindu thought (technically called darśanas). Compendia on Hindu philosophical systems have linked the discussion of the universal in Hindu thought to three orientations: realistic, conceptualistic, and nominal, as noted in an earlier chapter.

According to the Nyāya-Vaiśeṣika school the universal is eternal. It exists apart from the individuals, but inheres in them. This constitutes the realistic understanding of the universal. According to the school of Advaita Vedānta the universal exists but ‘does not stand for an independent entity over and above the individuals’. This constitutes the conceptualistic understanding of the universal. According to the Buddhist school the universal is a linguistic category. ‘Thus certain animals are called cow, not because they possess any common essence but because they are different from all animals that are not cows.’ This constitutes the nominal understanding of the universal.

Yet another context in which the term occurs in Hinduism is that of Hindu Law, in the body of literature technically known as darmaśāstra. Parts of this literature deal with the duties and obligations incumbent upon people. In this context it distinguishes between two sets of duties and obligations—specific and general. Specific duties and obligations are those specific to one’s station in life (varṇa) and one’s stage in life (āśrama). General duties are common to all in all stations and stages and thus called sāmānya dharma as distinguished from varnāśrama dharma. Thus it is the duty of the farmer to till the soil and of the student to study but the duty to control one’s temper applies to both.

I would like to now derive three aphoristic statements based on the discussion of the universal in Hinduism, so as to lift up these insights above their context-bound nature to see what light they might shed on human rights discourse. These aphoristic insights may be formulated as follows:

(1) We have intimations of an absolute, but that does not mean that we possess an absolute intimation.

(2) That fact that we all speak a language does not mean either that we speak
'language' or that we speak no language at all.
(3) All human beings possess a sense of right and wrong but not necessarily the same sense of right and wrong.

From these the following implications in the context of the universality of human rights may be derived: (1) current human rights discourse tends to conflate the universal with the absolute. In the case of the absolute one proceeds from top downwards—it is spelled out. In the case of the universal one may proceed from bottom upwards—it is built up. (2) Current human rights discourse waves the flag of universalism, failing to distinguish between universality and universalizability. Whether universal rights are universal or not is one debate, but whether they are universalizable is another and more relevant debate. This point is not unconnected with the previous one. (3) Ironically, the specificity of a case may contribute to its universality. It is remarkable how, among a group of people drawn from different religious and cultural backgrounds engaged in a debate on universality in the abstract, agreement is often forthcoming on a specific instance as to whether it constitutes a violation of human rights.47 Conclusion: all the three points made above converge on the need to evolve a universal out of the various individuals or particulars. Such a negotiated universal may lack the transcendental majesty of an apodictically proclaimed universal but its immanent inclusiveness might ensure its practical acceptance.

Notes

Notes:
(1) . Carol S. Robb, op. cit., p. 289.
(2) . Ibid.
(3) . Ibid., p. 290.
(4) . Ibid.
(5) . Ibid., p. 291.
(6) . Ibid.
(7) . Ibid., pp. 290–1.
(8) . Ibid., pp. 289–91.
(9) . Ibid., p. 291.
(10) . Ibid.
(12) Ibid., p. 176.

(13) Ibid.

(14) Ibid., p. 178.

(15) Ibid. The two senses are explained earlier by Prabhu as follows (ibid., p. 175): ‘I start with the notion of human rights. The term “right” has two senses, one connoting righteousness or conformity to some standard as when we say, for example, that it is right that X should visit her grandmother who is ill; the second connoting entitlement, as when I say that I have a right to privacy. Now, while there may be cases where the two senses converge, such that, for example, it is both right and a matter of right to keep a contractual promise, the two concepts are by no means synonymous. Thus, if I am being mugged and you happen to be a bystander, it is right that you help me, but I have no right to your help. The same asymmetry prevails in the matter of duties and rights. In spite of the fact that rights have an essentially relational character, such that A has a right to something with respect to other parties, the obligation created by the relationship may well conflict with what these other parties regard as their duty in the situation. The classic example here is civil disobedience.’


(19) Ibid., pp. 55–6.


(21) Ibid., pp. 22–3.

(22) Ibid., p. 20.

(23) Ibid., pp. 20–1.

(24) Ibid., p. 22.

(25) Ibid.

(26) Ibid., p. 15. Emphasis added.

(27) Ibid.
(28) Ibid. Emphasis added.

(29) M. Hiriyanna, Essentials of Indian Philosophy, p. 38.


(31) Ibid., pp. 23–4.

(32) Peter Scharfe, op. cit., p. 68. He goes on to say (ibid., p. 69): ‘In the millennium before the Muslim conquest the role of the people diminished further. “Whatever a king does is right, that is a settled rule…. As a husband though feeble must be constantly worshipped by his wives, in the same way a ruler though worthless must be (constantly) worshipped by his subjects”, declares the Nārada-smṛti XVIII 21f. For the Kashmiri historian Kalhana, the people exercise influence mainly through their moral power. The wicked king “at last found his death through the superior effect of his subjects’ merit”, and the fact that the bad king Harṣa “was never shot at with an arrow and killed—that must be due to … the sinfulness of his subjects”. Occasionally this historian sees divine interference: “That a king of such wickedness was not killed by a rising of his subjects, can only be due to his having been protected by the gods who caused him to act in this manner”.

How much the king has become a force majeure at the end of this period can be seen in a remark found in two state manuals, where a ritual against the six plagues (ītī) is taught: itayah ('plagues') is well known, viz. deluge, drought, rats, locusts, parrots, and kings that are too near [to their subjects] (and thus able to satisfy their greed) are known as the six plagues.' Compared to the list of calamities in the much older Arthaśāstra, the king stands out as an addition. The depravity of some kings made for useful slogans in the campaign of the king’s relatives or of state officers who tried to usurp power, but there was no legal way to remove a bad king.

(33) Ibid., p. 69. He goes on to say (ibid., p. 69–70): ‘While incompetent rulers could lose throne and life, well organized states often managed to weather a weak reign, and bad kings were made bearable by capable advisors. The sadistic ‘Mad Avanti’ (Unmattāvanti) held on to his rule over Kashmir for two years (AD 937–939), until he died from an incurable disease, after murdering his own family and untold other people, shamelessly humoured and entertained by his worthless courtiers: one of them “danced in the royal assembly with his loincloth taken off”; Virūpākṣa II (AD 1465–1485) of Vijayanagar was, according to the Portuguese traveller Nuniz ‘given over to vice, caring for nothing but women, and to fuddle himself with drink’. The state suffered severe losses and recovered only through the bravery and loyalty of provincial governors. Still, only after twenty years did this king’s rule come to an end when he was murdered by his eldest son. In the 16th century, Rāo Surthān of Būndi in Rājasthān was deposed and banished by his nobles for his sadistic excesses in the worship of Kālī.’

A Human Rights Contribution to Hinduism and a Hindu Contribution to Human Rights


(38) . P.V. Kane, op. cit., Vol. II, Part I, pp. 120–1.


(42) . Barbara Stoler Miller, op. cit., p. 53.

(43) . See Satischandra Chatterjee and Dhirendramohan Datta, An Introduction to Indian Philosophy, Calcutta: University of Calcutta, 1950.

(44) . Ibid., p. 240.

(45) . Ibid.


(47) . Mary Ann Glendon, op. cit., p. 222.

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