Abstract and Keywords

Chapter 1 argued that conceptions of human rights can be recognized within Hinduism, once the categories which correspond to them in the Hindu tradition are identified. One must now contend with the fact that human rights discourse in the West is neither monolithic nor static. This chapter addresses the following question: does the Hindu tradition possess the resources to interact with diverse and evolving patterns of human rights discourse? It begins by considering the two traditions embodied in the Universal Declaration of Human Rights. It then examines how Hindu thought may be related to the idea of generations of human rights within human rights discourse. The final section discusses matters at the cutting edge of human rights discourse: those having to do with the evolution of international humanitarian law as it embodies the evolving tradition of human rights norms and standards.

Keywords: human rights discourse, Hindu tradition, Universal Declaration of Human Rights, international humanitarian law, Hinduism
It was the thesis of the previous chapter that conceptions of human rights can be recognized within Hinduism, once the categories which correspond to them in the Hindu tradition are identified. One must now contend with the fact that human rights discourse in the West is neither monolithic nor static. The introduction of this consideration into the discussion complicates matters. The argument evolved in the previous chapter may be sound so far as it goes but it no longer suffices, for the fact that human rights discourse is neither monolithic nor static raises the following question: does the Hindu tradition also possess the resources to interact with these diverse and evolving patterns of human rights discourse?

Such a question needs to be understood less ambiguously before it can be answered adequately. When one moves forward from a simple discussion of human rights as such to engage the complexities which surround the discourse, at least three such vectors of engagement come into clear view.

The first consists of the consideration that the Universal Declaration of Human Rights embodies two distinct traditions. As Mary Ann Glendon points out, the Universal Declaration of Human Rights did not suddenly drop from heaven engraved on tablets but rather was a milestone on a path on which humanity had already been travelling for at least the past few centuries.

The Declaration marked a new chapter in a history that began with the great charters of humanity’s first rights movements in the seventeenth and eighteenth centuries. The British Bill of Rights of 1689, the U.S. Declaration of Independence of 1776, and the French Declaration of the Rights of Man and Citizen of (p.31) 1789 were born out of struggles to overthrow autocratic rule and to establish governments based on the consent of the governed. They proclaimed that all men were born free and equal and that the purpose of government was to protect man’s natural liberties. They gave rise to the modern language of rights.¹

It is important to refer to this historical background of the Universal Declaration of Human Rights because it helps explain a special feature of the modern language of human rights.

From the outset, that language branched into two dialects. One, influenced by continental European thinkers, especially Rousseau, had more room for equality and ‘fraternity’ and tempered rights with duties and limits. It cast the state in a positive light as guarantor of rights and protector of the needy. Charters in this tradition—the French constitutions of the 1790s, the Prussian General Code of 1794, and the Norwegian Constitution of 1815—combined political and civil rights with public obligations to provide relief for the poor. In the late nineteenth and early twentieth centuries, as continental European Socialist and Christian Democratic parties reacted to the harsh effects of industrialization, these paternalistic principles evolved into social and economic rights.²
On the other hand,

The Anglo-American dialect of rights language emphasized individual liberty and initiative more than equality or social solidarity and was infused with a greater mistrust of government. The differences between the two traditions were mainly of degree and emphasis but their spirit penetrated every corner of their respective societies.3

The language of human right continued to reflect these two dialects.

When Latin American countries achieved independence in the nineteenth century, these two strains began to converge. Most of the new nations retained their continental European-style legal systems but adopted constitutions modeled on that of the United States, supplementing them with protections for workers and the poor. The Soviet Union’s constitutions took a different path, subordinating the individual to the state, exalting equality over freedom, and emphasizing social and economic rights over political and civil liberty.4

Mary Ann Glendon situates the Universal Declaration of Human Rights in this context as follows:

In 1948 the framers of the Universal Declaration achieved a distinctive synthesis of previous thinking about rights and duties. After canvassing sources from North and South, East and West, they believed they had found a core principle so basic that no nation would wish openly to disavow them. They wove those principles into a unified document that quickly displaced all antecedents as the principal model for the rights instruments in force in the world today.5

(p.32) The complexity introduced into human rights discourse, by the recognition of the presence of these two elements within it, did not come to an end with their synchronic incorporation in the Universal Declaration of Human Rights. Modern human rights discourse also recognizes their dynamic character by referring to these two kinds of rights as first-generation and second-generation human rights. As Paul Gordon Lauren notes:

Reform liberalism claimed that the rights of men and women could be obtained best by working to protect personal life, liberty, equality and ownership of property by individuals through the existing political process. Marx and his followers, on the other hand, emphasized the group rather than the individual. They argued that the most important human rights were not those of a civil or political nature, hopelessly individualistic, and part of ‘bourgeois democracy,’ but rather those that focused on real human social and economic needs and that these rights could be secured only through revolution. Such different visions between those first-generation and political rights initially arising out of the eighteenth century and those second-generation social and economic rights emerging from the nineteenth century, and the often sharply different methods to achieve them,
would play powerful roles in shaping the evolution of international human rights until our own day.  

The introduction of this dynamic element enables one to identify a second vector of complexity in human rights discourse, introduced by the identification of various generations of human rights over and above the idea of an inner dialectical variation in the language of modern human rights. Before turning to a consideration of the conceptualizations of generations of human rights, however, it might be of interest to examine the dialectical variation in the modern human rights discourse from a Hindu perspective, specially as articulated in terms of duties and rights. It is clear that from a Hindu perspective the word dharma could be used in both the contexts, both at the level of the individual and the community. It is well known that the word dharma is used to refer to duties or moral obligations. Thus it is the dharma of the kṣatriya, or ruler, to protect. It is also the dharma of the kṣatriya to subsist through agriculture in a time of crisis, but engaging in agriculture is the duty of a vaiśya. Hence in such a context, to say that it is the dharma of a kṣatriya to engage in agriculture in a time of crisis, is tantamount to saying that the kṣatriya enjoys this ‘right’ in such troubled times. Similarly, at a collective level, it is the duty of the king to provide protection to workers, widows, the poor, and the like. That is to say, it is his dharma. But it is also stated that should the king not succeed in protecting the people, he (p.33) has to compensate the victim of a robbery by right (dharmena). It is also worth mentioning, as an additional point, that the Hindu perspective would tend to accord primacy to the dialect of duty.

K.B. Panda notes that, from a Hindu point of view, as mentioned earlier, Article 27 of the Universal Declaration of Human Rights (according to which ‘everyone has duties to the community’), should have been placed towards the beginning rather than the end of the Universal Declaration of Human Rights. The following remark of Mary Ann Glendon becomes highly significant in this context:

The human rights Commission’s desire for consistency of style—specifically, to use the formulas ‘Everyone has the right to …’ or ‘Everyone is entitled to …’—ruled out a common alternative approach to this group of issues. At the national level, welfare principles are sometimes framed as obligations of society and the state rather than entitlements of individuals. With hindsight, it is perhaps regrettable that the framers, in dealing with these provisions, did not adopt the obligation model. To couch the social security and welfare principles in terms of common responsibility might have resonated better than rights in most of the world’s cultures and would still have left room for experiments with different mixes of private and public approaches.  

Another point is perhaps even more significant. It is often claimed that Hindu ethical thought is duty-oriented rather than rights-oriented. It has even been claimed, perhaps as an extreme formulation of this view, that Hindus had no conception of rights, a view K.B. Panda challenges head on when he remarks that while Hindu texts are

replete with one’s duties rather than rights, from this let no one misunderstand
that Hindu society did not recognise any rights. For instance, in a joint family, one has a right to hold certain property, and if the husband has the right over the wife’s person and property, yet the wife has her absolute right over her stridhan property.\textsuperscript{9}

This impression that Hinduism fights shy of a discussion of rights has elements of truth in it but when Hinduism is analytically mined further, it seems capable of providing a rich vein in this respect. Such an analysis would proceed by drawing three kinds of distinctions: (1) a distinction between individual rights and group rights, (2) a distinction between individual duties and group duties, and (3) a distinction between our duties to ourselves—at both the individual and group level—and a similar distinction between our rights in relation to others and their rights in relation to ours. Finally, one needs to stir this soup with the realization that rights and duties are often correlational. As this correlationality (p.34) of rights and duties is a subject of much discussion and exploration in ethical discourse, it might be helpful to state the exact nuance of the relationship one has in mind here. It consists of the fact that someone’s right tends to be someone else’s duty. Hence it is my right to be protected and it is the duty of the state to protect me, or it is the right of the child to be taken care of and the duty of the parents to provide such care. In other words, my duties are someone else’s rights and vice versa.

In such a context the statement that Hinduism focuses more on duties rather than rights takes on a new complexion, for it can be reformulated as follows: Hinduism tends to accord greater recognition to the rights that others have in relation to us as compared to the rights we have in relation to them. Thus the issue morphs from being one of rights versus duties into one of the rights of others over us and our rights over them. But we will always be a singular right-bearing entity in relation to others and others will numerically always exceed us existentially as multiple right-bearing entities in relation to us. In this sense then the statement that Hinduism favours duty discourse over rights discourse could be seen as taking a patently existential situation and charging it with ethical meaning. Alternatively, it could be read as reflecting a preference for the group over the individual in a perhaps utilitarian way, as thereby the good of a larger number is secured. These views are being proposed to indicate how a Hindu perspective can enable one to incorporate new accents in the dialectical variation which characterizes modern human rights language.

II

One may now revert to the consideration of an earlier point to move ahead, in the spirit of taking one step backwards to march two steps forward. It was noted earlier how the two kinds of rights—individual rights along with civil and political rights, and group rights along with social and economic rights—may be viewed as composing two fundamental elements in the formulation of human rights, or, more dynamically, as two stages in the growth and development of the discourse on human rights. This latter point of view leads one to examine how Hindu thought may be related to the idea of generations of human rights within human rights discourse.

One way of making a friendly entrée into the discussion would be to begin with the
recognition of the presence of group rights within Hinduism. Caste rights of course constitute the obvious example here but some (p.35) less obvious examples are equally instructive. Under Hindu law, women as a group were only liable to half the punishment for the same crimes, just as old men and children as a group were exempted from culpability for crime on account of age. Thus not just caste but gender and age also provided the axes for group rights. From this perspective the development of the various generations of human rights could be viewed as a struggle on the part of human rights discourse in the West to break out of the conceptual shell of its obsessive concern with individual rights.

Nowhere are these difficulties more apparent than in the current discourse on human rights. On account of the individualistic starting point of modern human rights discourse, such discourse runs into difficulties as soon as it attempts to embrace first socio-cultural and then environmental concerns, which extend human rights discourse beyond the individual. This is not to say that such an attempt has not been made. The scheme of the three generations of human rights, even though the three generations are not always uniformly stated, constitutes precisely such an attempt. According to one version, civil and political rights constitute the first generation; social, cultural, and economic rights the second; and environmental and developmental rights the third. This attempt to enlarge the circumference of human rights from its individualistic centre leads precisely to the kinds of difficulties one would expect on the basis of the foregoing analysis. John Witte Jr. draws attention to one such difficulty as follows:

The simple state vs. individual dialectic of modern human rights theories leaves it to the state to protect rights of all sorts—‘first generation’ civil and political rights, ‘second generation’ social, cultural, and ‘third generation’ developmental rights. In reality, the state is not, and cannot be, so omnicompetent—as the recently failed experiments in socialism have vividly shown. A vast plurality of ‘voluntary associations’ or ‘mediating structures’ stands between the state and the individual, religious institutions prominently among them. Religious institutions, among others, play a vital role in the cultivation and realization of all rights, including religious rights. They create the conditions (if not the prototypes) for the realization of first generation civil and political rights. They provide a critical (and sometimes the principal) means to meet second-generation rights of education, health care, childcare, labour organizations, employment, and artistic opportunities, among others. Religious institutions offer some of the deepest insights into norms of creation, stewardship and servanthood that lie at the heart of third generation rights.

Carol S. Robb similarly draws attention to another difficulty which has to do with the concept of group rights vis-à-vis individual rights, just as (p.36) the earlier difficulty had to do with the state vis-à-vis the individual. She writes:

It is common to speak of the development of arguments in the domain of human rights in terms of the first, second, and third generations of proposed rights. The first-generation rights are the civil and political rights, the protection against
coercion. The second-generation rights are the economic, social, and cultural rights, or positive rights, which usually involve outlays or expenditures. The third-generation rights are group rights, which are hardly digestible in the United States legal tradition which is heavily rooted in the first generation. Group rights tend to be associated with claims of peoples in the two-thirds world, particularly indigenous peoples claiming rights to land and culture. Such rights are focused largely on a people’s right to self-development, which involves both claims for the positive provision of certain goods and also restraints on the conduct of economic relations between poor and rich countries. The two Covenants of the United Nations Declaration seem generally to discuss and protect, separately and respectively, rights of the first and second generations. However, since both Covenants have articles promoting the inherent right of all people to enjoy and use fully and freely their natural wealth and resources, there already exists the basis for group rights, though this generation is still developing.12

The point then is that on account of the original individualistic orientation of human rights, extensions of it to cover society or social groups and the environment are not achieved without struggle.

One may now turn to the Hindu view which starts out not with the individual but from the cosmos. If the modern secular view takes the individual as the starting point and then expands beyond this point to embrace society and environment, the traditional Hindu view starts out from the cosmos and then zeroes in on the individual through the intervening layer of society. A movement of this kind is also not without its problems, for while this ensures that such a perspective is relatively more at ease in dealing with ecological and social and cultural rights and so on, it becomes a struggle to do full justice to the individual’s rights, as distinguished from duties, in such a framework.13

Nevertheless, just as human rights discourse in the West has tried to overcome its individualistic orientation, by evolving the concept of different generations of rights, dharmic discourse in India is also trying to overcome the overshadowing of the individual by the collectivities which surround it and of his or her rights by an emphasis on duties, by reviving and moving the concept of adhikāra or entitlement into a moral and legal realm and then privileging it. In this respect

The Indian constitution (which as a whole is termed ‘Adhikāra-patra’) draws attention to what it calls ‘Fundamental Rights’, reinforcing the view of the progressive realisation for all citizens of something to which they are entitled. It was, (p.37) however, Gandhi’s strong influence which led to the inclusion of special rights for the ‘Harijans’ and the extension of certain fundamental rights for all individuals, regardless of whether they are citizens of the nation or not. Several amendments have since been introduced or mooted to iron out certain deficiencies and inadequacies in the constitution on issues of rights and their implementation, or to curtail certain rights which the government (or rather elite) of the day felt were being misappropriated by one group or another.14
III

In extending the engagement of Hindu thought with human rights discourse beyond merely the Universal Declaration of Human Rights document we first took a closer look at the document itself, as woven out of two strands of human rights discourse and examined this aspect of it in a Hindu light. This provided one vector of extension for the discussion. A second vector was provided by taking a dynamic view of this distinction, which led to the identification of ‘generations’ of human rights and the assessment of their significance in a Hindu context. A third vector of further discussion is provided by our effort to answer the question: what forces propelled the human rights discourse in a direction which required the formulation of these new generations of human rights? We shall discover, in answering this question, that while the first two vectors involved the question of the existing and evolving structure of human rights, the third vector involves the question of their scope.

The point is best made by turning to the historical documents which launched human rights on their present course and noticing whom they excluded from their ambit. Thus the American documents excluded ‘at least four categories of Americans: slaves, women, the unpropertied, and the indigenous peoples’. Paul Gordon Lauren has pointed out how both George Washington and Thomas Jefferson owned slaves, how fugitive slaves could be returned to the owners and how the Congress was prohibited by the Constitution for twenty years from eliminating the slave trade. Similarly, women are not mentioned in the Constitution and as the qualifications for suffrage was a state subject women came to be denied the right for a century. The restriction on voting rights on the basis of age, race, and property meant that the unpropertied majority was excluded for a long time, while the general attitude towards the indigenous people offered little hope to them. Lauren pointedly notes that George Washington and Benjamin Franklin called them ‘ignorant savages’ and ‘beasts’ while Thomas Jefferson would pursue them to their ‘extinction’.

Even France, for all its revolutionary enthusiasm, had difficulty matching rhetoric with reality. Paul Gordon Lauren again notes that the equal rights granted to the blacks by the Declaration of the Rights of the Man and Citizen were rescinded within months; slavery was re-established soon thereafter in the colonies and the rights which were enjoyed by the people of France were never extended to the peoples in the French empire. Even in France a distinction was drawn between ‘active’ and ‘passive’ citizens and only those who passed a wealth test could be active citizens. Women were theoretically citizens but practically denied the rights of being one. Revolutionary leaders in both France and America ‘understood that the extension of genuinely equal rights would entail vast social and political consequences that they were unwilling to accept’.

In such a context, three major extensions in scope of human rights discourse in our own times are represented by (1) the International Convention on the Elimination of All Forms of Racial Discrimination (1966); (2) Convention on the Elimination of All Forms of Discrimination Against Women (1979); and (3) Convention on the Rights of the Child (1989).
The significance of these developments tends to get obscured by a somewhat dull recitation of the titles of these documents. One needs to delve underneath to assess their significance. The abolition of racial discrimination may now sound like a cliche, but what an electrifying call it must have been—before it became a cliché—may be judged from the following words of Carlos Romulo, uttered at the first international conference of African and Asian Nations at Bandung in Indonesia in 1955.

I have said that besides the issues of colonialism and political freedom, all of us here are concerned with the matter of racial equality. This is a touchstone, I think, for most of us assembled here and the people we represent. The systems and the manner of it have varied, but there has not been and there is not a Western colonial regime which has not imposed, to a greater or lesser degree, on the people it ruled the doctrine of their own racial inferiority. We have known, and some of us still know, the searing experience of being demeaned in our lands, of being systematically relegated to subject status not only politically and economically and militarily—but racially as well. Here was a stigma that could be applied to rich and poor alike, to prince and slave, bossman and workingman, landlord and peasant, scholar and ignoramus. To bolster his rule, to justify his own power to himself, the Western white man assumed that his superiority lay in his genes, in the colour of his skin. This made the lowest drunken sot superior in colonial society to the highest product of culture and scholarship and industry among subject people.... For many it has made the goal of regaining a status of simple manhood the be-all and end-all of a lifetime of devoted struggle and sacrifice.19

(p.39) It is crucial to distinguish between casteism and racism in this context. Dr B.R. Ambedkar has convincingly demonstrated that casteism is not to be equated with racism and the attempt by Western scholars to establish such an equation only testifies to the strength of racism in the West.20

The incorporation of women’s rights in the discourse on human rights has ‘introduced unprecedented complexity in the theory and practice of human rights’. In this context a distinction must be drawn between a synchronic and a diachronic perspective on Hindu law in relation to women. The numerous legal disabilities from which Hindu women suffered in Hindu law have been widely documented, and the modern Indian state has been active in correcting these. A diachronic view of Hindu law in this respect generates the possibility that even traditional Hindu legal theory should not necessarily be viewed as opposed to the legal empowerment of women. Room for such a perspective is created by a consideration of the following facts. The foundational Hindu texts, the Vedas, also referred to as śruti or revelation, do not provide for proprietary rights to women, which is restricted to sons in these texts. In the course of Hinduism’s chequered history, however, when the age of marriage of women was radically lowered between 200 BC and AD 300 and led to the emergence of the phenomenon of child widows, the right of the widow to inherit the share of her husband came to be eventually recognized all over the country by c. AD 1200. ‘despite the fact that it went against śruti’,21 or sacred textual authority in Hinduism. Context trumped text.
The incorporation of the rights of the child has also extended human rights discourse further. This constitutes an extension of human rights discourse in a direction congenial to Hinduism. The conception of Kṛṣṇa as a child-god in the legends about him is not irrelevant here, as it represents a fundamentally positive orientation towards the child. The same positive orientation is also perhaps reflected in the fact that ‘the cult of the child Kṛṣṇa made a special appeal to the warm maternity of Indian womanhood; and even today the simpler women of India, while worshipping the divine child so delightfully naughty despite his mighty power, refer to themselves as “the Mother of God”’.

The attitude does not remain merely legendary; it also acquires a legal dimension in the story of Aṇī-Μāṇḍavya, a cause célèbre of Hindu literature. Māṇḍavya, the sage, was practising austerities at the gate of his hermitage, with his hands raised upright, and observing the vow of silence, when a gang of robbers fleeing a posse of guardsmen in hot pursuit appeared at the gate. While passing through the hermitage the gang hid its plunder in the hermitage and fled. When the guardsmen arrived they questioned the sage about the whereabouts of the robbers. The sage, however, continued to observe his vow of silence, remaining fixed in his posture of self-mortification. The guardsmen thereupon searched the hermitage, and finding the loot, charged him with the crime. The silent sage was sentenced to death by impalement.

Sage Μāṇḍavya, however, managed to survive his impalement long enough to attract the attention of other seers, and ultimately the king, mortified by the apparent miscarriage of justice when the facts became known, had him lowered from the stake. A piece of the stake however had become so firmly lodged in his flesh that it had to be sawed off. It became such a distinct part of his physiognomy thereafter that the sage himself came to be known as Māṇḍavya-with-the-stake or Αṇī-Māṇḍavya.

Once released from the stake, Aṇī-Μāṇḍavya demanded an explanation of his condition from Dharma, or the God of Justice himself. Dharma pointed out that as a child Μāṇḍavya had stuck blades of grass in the tails of little flies and had thus now got his karmic comeuppance. Aṇī-Μāṇḍavya was however outraged by the disproportionate nature of the punishment and said:

> When I was a child I speared a little bird on a stock of reed. This sin I do remember, Dharma, but no other. Why have my thousand austerities not overcome it? The killing of a Brahmin is worse than the murder of any other creature. Therefore, because of your sin, you shall be born in the womb of a serf!

This story is told in the First Book of the Mahābhārata to account for the anomalous birth of Dharma in the form of Vidura, who in the epic is a person of low birth. After having reproached Dharma, Aṇī-Μāṇḍavya also declared:

> Now I lay down the limit on the fruition of the law; nothing shall be a sin up to the age of fourteen years; but if they do it beyond that age it shall be counted an offence.
A child thereafter was only liable for his actions on reaching the age of fourteen. The deeper significance of this case, however, which to us accounts for its celebrated nature, does not lie in its details but in the fact that it establishes the thoroughly empirical nature of the law within Hinduism, somewhat in the spirit of the Talmud. In a famous story in the Talmud it is stated that even a voice from heaven cannot override the majority opinion of the Rabbis because the Torah is no longer in heaven—as it was delivered to Moses, and thereafter all issues of law are to be settled by the majority opinion of the Rabbis.

IV

Human rights discourse has evolved in several directions as already noted since the landmark adoption of the Universal Declaration of Human Rights in 1948. It has since evolved new structures. It has greatly extended its embrace. It has also come to be distinguished by certain saliences represented by the Convention on the Prevention and Punishment of the Crime of Genocide (1948); the Convention relating to the Status of Refugees (1951); the Slavery Convention (1926), amended by the Protocol (1953) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956); the International Convention on the Elimination of All Forms of Racial Discrimination (1966); the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960); the Declaration on Protection from Torture (1975); the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (1984); the Convention on the Elimination of All Forms of Discrimination Against Women (1979); and the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities (1993). A United Nations Declaration on the Rights of Indigenous Peoples is on the anvil.

The material from the history and philosophy of Hinduism which bears on genocide is such as tends towards its prevention. The caste system and the problems it raises from the point of human rights are discussed in a subsequent chapter. It is worth noting here that despite all that could be said against the caste system, according to many scholars it could be claimed in its favour that it may have prevented genocide. It is true that the Arthaśāstra recommends a price of twenty paṇas upwards for the enemy’s head but this is a far cry from the disbursements made from the state treasury for the scalps of ‘red’ Indians towards the end of the last century, which is a matter of public record in the state of California. It seems to be the clear implication of the following passage by S. Radhakrishnan that the caste system averted such outcomes in India:

The trail of man is dotted with the graves of countless communities which reached an untimely end. But is there any justification for this violation of human (p.42) life? Have we any idea of what the world loses when one racial culture is extinguished? It is true that the Red Indians have not made, to all appearance, any contribution to the world’s progress, but have we any clear understanding of their undeveloped possibilities which, in God’s good time, might have come to fruition?

Do we know so much of ourselves and the world and God’s purpose as to believe
that our civilization, our institutions and our customs are so immeasurably superior to those of others, not only what others actually possess but what existed in them potentially? We cannot measure beforehand the possibilities of a race. Civilizations are not made in a day, and had the fates been kindlier and we less arrogant in our ignorance, the world, I dare say, would have been richer for the contributions of the Red Indian.\textsuperscript{26}

It would be wise however to temper this realization with the recognition that the lives may have been spared but at the price of dignity, if caste discrimination is also seen as part and parcel of the caste system. The humiliating details of some of the experiences of even a person of the stature of Dr B.R. Ambedkar are sobering in this regard.\textsuperscript{27}

The evidence from the history of Hinduism on the question of colonization is similarly instructive. The political setbacks suffered by the Hindus in the last millennium, which saw them in a ruler-ruled relationship with first the Muslims and then the Christians tend to obscure the fact that the Hindus themselves in some sense were once a colonizing people. R.C. Majumdar may be faulted for making the following politically incorrect statement except for the fact that many would not consider it wide off the mark:

\begin{quote}
The most important remains of the Hindu colonists are Sanskrit inscriptions, written in Indian scripts, pure or slightly modified. They have been found all over the region, in Burma, Siam, Malay Peninsula, Annam, Cambodia, Sumatra, Java and Borneo. A perusal of these inscriptions shows that the language, literature, religion and political and social institutions of India made a thorough conquest of these far off lands and, to a large extent, eliminated or absorbed the native elements in these respects. The local peoples mostly belonged to a very primitive type of civilization, and it was the glorious mission of the Indian colonists to introduce a higher culture among them. In this task they achieved a large measure of success.\textsuperscript{28}
\end{quote}

Indic colonization, however, was of a markedly different character from Islamic and Christian colonization. Islamic imperialism advanced with the concept of one worldwide umma in the forefront, at least in theory, and Christian imperialism claimed the lands it conquered in the name of the conquering king and his religion. Both these imperialisms thus worked with a centre-periphery model, politically as well as culturally. Indic imperialism, however, only exhibited the cultural dimension, as the new kingdoms founded in such far-off lands as Cambodia and Java were independent kingdoms, for which the Indian counterparts may have served as models but in relation to which a ruled-ruler relationship never emerged. Hence Hindu concepts of colonialism are quite hospitable to the sentiments which actuated the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960).

The Hindu position regarding the status of refugees as exemplified by its history is quite consistent with the provision of the Convention relating to their status which was adopted in 1951. The Jewish tradition of Malabar speaks of a community at Cochin in the first century AD which may have consisted of refugees after the Destruction of the Temple in AD 70. More certain is the arrival of Zoroastrians as refugees from Iran after the Arab
invasion of Persia; ‘according to the Parsis’ own tradition one band of refugees settled first at Diu in Kathiawar, and then at Thana, near Bombay, in the early 8th century’.  

The Hindu attitude towards slavery seems to be one predisposed towards its abolition. Megasthenes even made the sensational claim that there were no slaves in India; the claim is questionable but scholars think it was the mildness of the Indian phenomenon which made him presume its non-existence. It is a striking fact, given the caste system, that ‘there was no caste of slaves’. This does not mean that slavery in its more sinister forms did not exist at all. The Periplus of the Erythrean Sea, an anonymous work of the first century of the Christian era, attests to trade in slave girls, and slave markets are known to have existed in the sixteenth-century Vijayanagar empire. The Hindu position in the matter has basically been the one formulated in the Arthaśāstra which associates slavery with foreigners and states that the ārya (a category in which he explicitly includes the śūdra) may not be enslaved. Once again one may wonder whether the caste system insulated Hindu society against slavery as it did against genocide.

As was the case with genocide and slavery, the Hindu milieu was also basically predisposed against racial discrimination. Once again the caste system may have been a factor, specially that dimension of it which explains the emergence of the various jātis as arising out of the admixture of the various varṇas. This may not be historically accurate but was sociologically revolutionary in that it made all the people of India theoretically of one blood and therefore race. Or in the words of Madhav Deshpande: ‘By failing to recognize the foreign and racially different origins of the different peoples of India, and by focusing on their synchronic socio-religious positions, rights and duties, the classical Indian tradition brought about a wonderful racial and cultural synthesis of the Indian people.’ He goes on to point out while ‘classical India never saw the Aryan-Dravidian racial and cultural tensions’, modern historical scholarship has destroyed ‘the grand designs of Manu’ by creating it. Hindu attitudes by themselves then would not set much store by racial difference. The word mleccha is sometimes used to indicate its existence but its referent is cultural and linguistic rather than racial, and a common humanity is never overlooked.

V

In this last section of this chapter, one has now to discuss matters at the cutting edge of human rights discourse: those having to do with the evolution of international humanitarian law as it embodies the evolving tradition of human rights norms and standards. It has already been noted by scholars like Charles Alexandrowicz and Upendra Baxi that on this register Hindu laws and jurisprudence could be seen as anticipating modern developments rather remarkably. In the rest of this section one may travel down that road further by using the concept of a ‘just war’ as the starting point for developing an Indic perspective on humanitarian intervention.

The ‘just war’ doctrine has received considerable treatment in Christian literature. It has also received some attention in the two other Abrahamic religions of Judaism and Islam. The purpose of this section is to examine this topic in the light of Indic material.
At the most general level, the doctrine of war may be viewed as a way of limiting the use of war as an instrument of state policy. This element of the situation is most clearly expressed in the view that war must constitute a measure of ‘last resort’. The temper underlying this view also finds expression within Indic civilization. Hartmut Scharfe writes that one approach to the resolution of conflicts within the Indic religions consists primarily of conciliation (sāman), gifts (îupaprajdāna), dissension (bhedā), and force (daṇḍa), which are listed in order of declining value. It is widely agreed that conciliation is the best way to political success, force the worst. There were differences of opinion on the relative merit of gifts and dissension: Mānasollāsa II 972; 975 rates gifts as expensive and unreliable and puts them below the sowing of dissension. The important distinction is between the use of force and the other means: the force is recommended only as a last resort since war is always uncertain and the ideal conquest is attained without a fight. The KA takes a situational approach: one shall subjugate the weak with conciliation and gifts, the strong through dissension and force.39

(p.45) At a less but still abstract level, the attitude underlying the doctrine of the ‘just war’, in a general way, is implicit in the typology of conquest in Indic political theory. Indic political thought classifies the nature of conquest resulting from the successful prosecution of war as follows:

According to the Arthaśāstra, there are three types of conquest: righteous conquest, conquest of greed, and demoniac conquest. The first is conquest in which the defeated king is forced to render homage and tribute, after which he or a member of his family is reinstated as a vassal. The second is victory in which enormous booty is demanded and large portions of enemy territory is annexed. The third involves the political annihilation of the conquered kingdom and its incorporation in that of the victor. The two latter types are generally disapproved of by all sources except the Arthaśāstra.40

The Sanskrit words for these three types are dharma-vijaya, lobha-vijaya, and asura-vijaya. The fact that dharma-vijaya came to be preferred seems to reflect a ‘just war’ mentality.

One may supplement the standard concept of dharma-vijaya with the version of it propounded by King Aśoka (r.c. 273–232 BC). The following passage from the Thirteenth Rock Edict enables one to form some concept of what he had in mind.

I have had this inscription of righteousness engraved that all my sons and grandsons may not seek to gain new victories, that in whatever victories they may gain they may prefer forgiveness and light punishment, that they may consider the only [valid] victory the victory of righteousness, which is of value both in this world and the next, and that all their pleasure may be in righteousness ...41

This passage, upon investigation, discloses three dimensions of the concept of dharma-
vijaya (or dhamma-vijaya) that Aśoka had in mind:

(1) abjuring further military conquest,
(2) mildness in such conquest when undertaken, and
(3) active benevolence.

This third sense is instantiated by the following passage in the Second Rock Edict:

Everywhere in the empire of the Beloved of the Gods, and even beyond his frontiers in the lands of the Cholas, Pandyas, Satyaputras, Keralaputras, and as far as Ceylon, and in the Kingdoms of Antiochus the Greek king and the kings who are his neighbours, the Beloved of the Gods has provided medicines for man and beast. Whenever medicinal plants have not been found they have been sent there and planted. Wells have been dug along the roads for the use of man and beast.42

(p.46) It is also clear that the second of the three senses in which Aśoka uses the terms corresponds to the sense it possesses in the Arthaśāstra and Hindu smṛti literature. The two new senses Aśoka imparts to it are (1) pacifism and (2) humanitarianism.

Observations of foreign visitors of India during the period of its history represented by the Mauryan Dynasty enable one to define these senses further. Aśoka is explicit about abjuring foreign conquest under his policy of dharma-vijaya, but he does not rule out such ‘conquest’ within his empire:

The Beloved of the Gods will forgive as far as he can, and he even conciliates the forest tribes of his dominions; but he warns them that there is power even in the remorse of the Beloved of the Gods, and he tells them to reform, lest they be killed.43

This further confirms the fact that he used the word dharma-vijaya in the context of areas lying within his territory, which might contain recalcitrant elements, in the traditional sense. It is in his extension of this concept to territories outside India that new features emerge. The first of these is a policy of non-aggression towards states lying outside his empire. This attitude, however, seems to be a manifestation of an attitude already present in Indic thought. Megasthenes, the Seleucid ambassador at the court of Candragupta Maurya (r.c. 322–298 BC) declared of India that ‘Its people ... never sent an expedition abroad’,44 according to the fragment preserved in Strabo (first century BC). The explanation of this attitude is provided in the fragment from Megasthenes preserved by Arrian (second century) that ‘a sense of justice, they say, prevented any Indian king from attempting conquest beyond the limits of India’.45

The idea of carrying out humanitarian activities in other lands outside the empire—or even India—as part of dharma-vijaya then seems to be Aśoka’s unique contribution to the concept.

A contribution to Indic thought in the context of contemporary international law from the Aśokan point of view would consist of the claim that, under international law, only
humanitarian intervention is permissible, as distinguished from international intervention on humanitarian grounds. From the point of view of Asoka, a humanitarian crisis would only justify humanitarian relief and not any other form of intervention such as military action on humanitarian grounds.\textsuperscript{46}

These are just some of the ways in which discourses on Hinduism and human rights can be meaningfully aligned. One can go even further (p.47) and suggest that the two may not merely stand side-by-side as in a garden, but may also be capable of cross-pollination. The reader might wish to review appendices II and III in this light.

Notes

Notes:

(2) Ibid.

(3) Ibid.

(4) Ibid., pp. xvii–xviii.

(5) Ibid., p. xviii.


(7) Hartmut Scharfe, op. cit., p. 41.

(8) Mary Ann Glendon, op. cit., p. 189.


(12) Carol S. Robb, op. cit., p. 286.

(13) See Purushottama Bilimoria, ‘Rights and Duties: The (Modern) Indian Dilemma’, in \textit{Ethical and Political Dilemmas in Modern India}, (eds) Ninian Smart and Shivesh Thakur,

(14) Ibid., p. 48.

(15) Paul Gordon Lauren, op. cit., p. 31.

(16) Ibid.


(19) Cited in Mary Ann Glendon, op. cit., p. 216.


(22) A.L. Basham, op. cit., p. 306.


(24) For the texts of the documents please consult Ian Brownlie (ed.), op. cit.


(29) A.L. Basham, op. cit., p. 344.


(34) Ibid.


(37) According to Christian just war theory, a war is just if the following seven criteria are observed: (1) the cause must be just—and hence only defence is permitted; (2) war must be declared by a competent authority—and hence excludes surprise attack; (3) war must be chosen as a means of last resort; (4) the intention must be good—excluding vengeance or pride; (5) the immunity of non-combatants must be assured (many Christians argue that today’s massive weaponry inevitably kills civilians, making just war an impossibility); (6) the principle of proportionality in the matter of damage inflicted must be respected so that the harm inflicted in self-defence may not exceed the harm caused by the attack; and (7) a speedy victory should be expected. I owe this summary statement to Professor Gregory Baum. For more details see James Turner Johnson, Just War Tradition and the Restraint of War: A Moral and Historical Inquiry, Princeton, NJ: Princeton University Press, 1981.


(39) Hartmut Scharfe, op. cit., p. 209.

(40) A.L. Basham, op. cit., p. 124.


(42) Ibid., pp. 144–5.

(43) Ibid., p. 142.


(45) Ibid., p. 209.