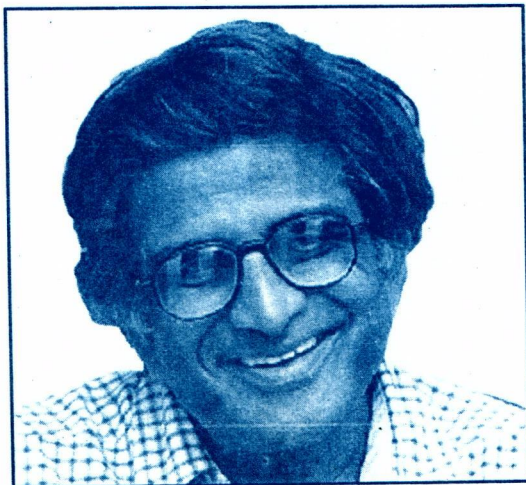




# **Kakatiya University**

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## **The 12<sup>th</sup> Endowment Lecture** in memory of



### **Late Dr. K. Balagopal**

Former Faculty Member of Kakatiya University and  
Human Rights Crusader

on

## **“Nationalism and the Question of Rights: Some Theoretical Reflections”**

by

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on

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# NATIONALISM AND THE QUESTION OF RIGHTS: SOME THEORETICAL REFLECTIONS

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Let me at the outset thank Prof Thatikonda Ramesh, Hon'ble Vice Chancellor of Kakatiya University, and Dr K Balagopal Endowment Committee for the invitation to deliver the 12<sup>th</sup> Dr K. Balagopal Endowment Lecture.

I deem it a privilege and honour to be invited to deliver this lecture on a theme that was central to the practical and intellectual engagement by Dr Balagopal, one of our well-known and highly regarded civil rights activist, advocate and intellectual.

Some of the writings of Dr Balagopal do engage with and reflect on the question of nationalism, democracy and civil rights in the context of the emergence and growth of neoliberal India and the influential ideological expanse of the Hindutva and organisational spread *sangh parivar* in Gujarat and to other parts of India.<sup>1</sup>

In the aftermath of the sad and untimely demise of Dr Balagopal, that is in the last decade or so, we have witnessed the molecular spread and ideological penetration of the Hindutva forces that cannot merely be treated as a phenomenon related to electoral dominance but as a case of deeper hegemonic influence that challenges the secular and constitutional idea of India as a nation thus paving the way for its proclaimed idea of Hindu rastra. True that it is as yet a project in the process of experimentation but its hegemonic aspiration and effort cannot be undermined.

This would definitely have been a matter of serious concern to Dr Balagopal as it has its grave implications for the civil and democratic rights discourse and practice in the country. It is instructive to note that civil rights question cannot be seen merely in terms of the violations and transgressions of the state agencies from their bounden constitutional and legal duties and responsibilities but in a substantive sense must be seen in relation to the domination and resultant violations by the powerful social forces that draw their influence and power from their privileged and preponderant position in the caste, class, patriarchal, regional and religious structures. In other words, it is imperative to see the civil rights question and actual scenario along with the state also in relation to the non-state actors that exercise social dominance and thereby enjoy unusual access to the structures of state power.

One of the signal contributions of Dr Balagopal both as an activist-theorist in the Andhra Pradesh Civil Liberties Committee and later in the Human Rights Forum was the expansion of the perspective(s) on civil liberties from the earlier restriction to state repression and excesses to the larger domain of economic and social dominance and subordination which correspondingly resulted in the massive expansion of civil rights activism covering political economic to family/ domestic issues: factional violence to drought conditions, excesses of developmentalism visible in the widespread displacement, dispossession due to land acquisition to starvation deaths and suicides among different occupational communities like the farmers and weavers to the ideological shift in Indian state, from anti-Mandal to sub-categorisation demand, domestic violence to dowry deaths, so on.<sup>ii</sup> This expansion apparently did disappoint and thereby attract disapproval of some sections of political spectrum which viewed it as a distraction of focus from the state and its abuse of power to perceivably 'less priority' private and civil society processes.

This expansive understanding of and engagement with civil liberties and human rights is instructive for in the context of India due to its historically

specific trajectory of development or rather emergent modes of uneven development<sup>iii</sup>, the multi-dimensionality of civic deficit, disengagement and apathy provides scope to the widespread normlessness and lawlessness in our society. In other words, a conscious civil society alone could be expected to raise the issues of responsibility and responsiveness of the state institutions at various levels. This has increasingly proved to be an important lesson in the context of the troubled times that we are in today.

The question of the precariousness of civil rights situation and perilous state that democratic institutions are found to be in, have been some of the issues found discursively most engaging in India and globally as well<sup>iv</sup>. And quite curiously this depreciation is principally sought to be justified in the name of nation/ nationalism and showing the real or perceived or even imagined threat to national security and state unity and integrity. The perception of threat to national security has historically been a strong pretext and ground for justification of the denial and violation of constitutionally guaranteed rights and restrictions on legal entitlements. Such an invocation of nation under threat globally has tended to attract wide acceptance and adherence among the citizens and compromise and compliance of the institutions that ought to act as a check on the executive concentration of power and its prospective mis-/abuse of power.

The writing on the precariousness and documentation of violations of rights - political, civil, and human - locally, regionally, nationally and globally has been quite ominously detailed and comprehensive. In other words, what we see is the elaborate recording of *what* of civil rights scenario, that is, the context and text of it.

But what is correspondingly imperative is a commensurate attempt to ask *why* and *ought* of this. This needless to suggest requires us to transcend the empirical 'what' to attempt theoretical 'ought'. The dominant official understanding informing the nation and civil rights relation is obviously antithetical. It is necessary to note that the theoretical provenance The

informing the security vs. rights counter-position has a fairly long political-theoretical and legal-jurisprudential argument that constitutes a major challenge to liberal democratic theory and practice. It is an urgent task of our time to raise the issue at a theoretical level though the resolution of this antithesis may not be easily forthcoming. Contrarily, the issue has been configured essentially in terms of individuals, their actions, institutional fragility and compromise and what have you. Though they are important in the immediate sense and would be comforting in short-term but the wood would be missed and would remain elusive. This would mean that the critics would be engaged in documentation without a perspective necessary for finding the resolution.

In this presentation we are thus concerned with the relation between nationalism and rights question, their co-relation and antithesis, their complementarity and contradictoriness seen theoretically, historically and also contemporaneously.

This field is so vast and encompassing of so many questions that involve or related to our collective and individual life. Its complexity intensifies as the various dimensions of nationalism are explored. For instance, if the emphasis is on the muscularity and masculinity of nationalism then the relation between nation and gender (and beyond the male-female binary) demands to be addressed, if nation and its borders is in focus then the question of neighbours, migration, human rights of immigrant non-citizens gets into debate, if the focus is on majoritarian nationalism then the question of the minorities and their rights as citizens and as cultural or ethnic minorities needs to be addressed - the discursive scope would expand exponentially if ecology, natural resources, corporate and finance capital and rights violation implicit in these realms are included. In other words, nationalism and its poly-vocality involves the multi-dimensionality of rights - the more the aggressiveness of the former then the necessity to explore the unfolding transcript of rights going beyond the surface to unravel its hidden layers is felt. This is only to suggest the fact of the exhaustiveness and complexity of the issues involved in this relation. This presentation only aims at addressing the broad contours of the problematic in question.

theoretical evolution of nationalism and rights in modern politics are historically linked to European Enlightenment and evolution of democracy with its expansive conceptual, legal-jurisprudential and institutional mapping. Though their trajectories in the post-colonial world begin as a derivative with their grounding in the Western constitutional and institutional matrix, their working has displayed unique evolutions and outcomes largely determined by the conditions obtaining in different national contexts. It is also worth noting that despite this divergence there is an unmistakable affinity and resonance, understanding which would be instructive to appreciate its relational journey in one's own specific context.

The argument here is presented in five parts. Firstly, we seek to sketch the context and development of the nation and rights question in the context of the rise and development of capitalism and liberal democracy - their different trajectories in the Western and Eastern Europe and the strenuousness of their relation in the light of what is called the 'state of exception'; secondly, we try to map this relation as it was articulated in the Indian nationalist movement as a positive relation against the colonial rule and its draconian laws and policies; thirdly, try to show how the post-colonial state performed on this count by often invoking the national security concerns - the most dramatic and emphatic being the Emergency raj; the fourth section seeks to reflect on the present context informed by an aggressive and heightened Hindutva nationalism and the stated objective of creating a Hindu rastra figures out the place and status of rights - through a rearticulation/ redefinition of civil society, electoral politics both in terms of empirical presence and also theoretical projection; and lastly, we make an attempt to reflect on the challenges to and possibilities of a balanced and democratic resolution of the rights question in India.

# I

## **Nationalism, Democracy and Rights: Mapping the Trajectory**

Nation and nation-states as a specific discourse and formation governing the political and economic activity emerged with capitalism. The history of nationalism is coterminous with the emergence of capitalist mode of production that needed a clearly marked territory as market and political arrangement to have access to and control over the market. The absolutist state of the later medieval period which was a response to the unfolding resistance to feudal domination opened up possibilities for the rise and expansion of the merchantile and emerging manufacturing bourgeoisie. The relation between the bourgeoisie and the absolutist state was not singular; as Perry Anderson demonstrates there were multiple and differential trajectories of this relation.<sup>9</sup>

But in some specific contexts like for instance England the opposition to the absolutist authority by the emergent bourgeoisie opened up the possibilities for democratic experimentation. In this long historical process, it is instructive to note that the English historical trajectory presented the possibility of a positive co-relation between the rising bourgeoisie and democraticedifice in sharp contrast to the Southern and Eastern European experience that experienced compromises and collaborations across the class spectrum thereby manifesting relatively weaker democratic possibilities.

The larger point to be noted is that nation-state being the product of capitalism and furthering the class interests of the emergent capitalist class by shaping a national market and a framework of political arrangement that could facilitate its legitimacy with support from large masses of people. The economic ascendancy of this class could be seen necessitated by the very logic of capital to have its hegemony rather made realizable through its superiority over the earlier social formation.

As suggested earlier the path of capitalist development and nation-state formation in Europe was not uniform as there could be seen historical variations in their development and expansion. Broadly in theoretical

terms two models of capital and nation relation could be identified: the first path or 'classical' model and second path or 'belated' model.

In the first path, it is the capitalist class that seizing the historical initiative could play a leading role in shaping the market and organizing its intellectual and ideological hegemony based on bourgeois rationality and individualist worldview. In contrast to the absolutist regime of power we witness the flourish of liberal ideas that centred on the individual and ideas of liberty and freedoms that form the foundation of modern democratic nation state. In the pursuit of capital accumulation the bourgeoisie came to demonstrate itself as embodying the national spirit that is creating what following Benedict Anderson can be called the sense of 'imagined community' and unifying the national market through a standardised common language as the vehicle of homogenization facilitated by the expanding print capitalism<sup>vi</sup>. The historical process of formation of nation-state in Western Europe can be said to demonstrate the 'classical path' of nationalism.

In contrast, the process of nation formation in the Eastern Europe has been problematic, so also the democratic process and associated institutional expansion due to the belated capitalist development and continuance of the hold of absolutist power due to the compliance of the nascent struggling bourgeoisie here.

The structural weakness of the bourgeoisie could be seen reflected in the social organization of capitalist production, in the expansion of market and associated with this material inadequacy was that the bourgeoisie in the belated contexts have demonstrated a lack of initiative in the organization of hegemony. This could be seen impacting on the formation and crystallization of nation-states in the late capitalist contexts. Thus the logic of uneven development of different instances of social reality in sharp contrast to the Western Europe could be seen pervading through capitalist economic production, civil society, hegemony and nation formation<sup>vii</sup>.

To understand the expansion of democracy and citizens' rights, which is our immediate concern here, it would be instructive to make an analytical



distinction between civil society and state. While the state comprises of the bureaucratic-institutional structure, through which political power relations are organized, civil society in contrast refers to the ensemble of institutions and relations that are non-economic and non-political/ non-state. This ensemble in fact distinguishes capitalist rule from pre-capitalist state for while the latter depend on the structures of domination, the capitalist rule relies on ideological hegemony organized in civil society and facilitates the democratic form of government with individual rights and liberties. Liberal democratic framework is based on the assumption that correspondence and symmetry between capitalist economy, civil society and rule of law and citizen's rights and entitlements is possible and sustainable.

But in the course of the career of capitalist rule organized through liberal democracy, there have not only been mere ups and downs but also very serious disruptions. The journey of liberal democracy has been a chequered one. The most explicit instance of failure of liberal democracy as a constitutional ideal and as institutional matrix was the subversion of the Weimar Constitution and the rise of Nazi state which stood for a total subversion in every aspect of the principle and value of liberal constitutionalism - rule of law, civil and political rights, independent judiciary, social harmony and balance through secular and judicious state action. Curiously enough the subversion was initiated and justified in the name of nation and its security and integrity. Nationalism combined with liberal democracy that began and promised to be liberatory as an idea and ideal within a short span of time proved to be contrary to the initial promise.

This raises the following questions: Is it a mere aberration? Is it a result of institutional disarray? Or is it internal to the very theoretical edifice of liberal idea of democracy?

The answer to this has to be historical, sociological, political and institutional - as it is in the belated capitalist contexts of Germany and Italy the subversion proved to be most conspicuous and comprehensive.

In the case of advanced capitalist democracies like England and France for instance it was specific or short term.

Nevertheless the relationship of democracy and nationalism proved to be precarious and open to suspension and subversion. Therefore it would be instructive to pay some attention to the theoretical dimension of the possibility of inversion in their relationship.

### **Schmitt and State of Exception**

One of the prominent scholars in the field of jurisprudence who shed some light on this critical issue of course was the German legal theorist Carl Schmitt. The question central to him was: how would a liberal democratic political system respond to unexpected and unforeseen challenges facing it? Would it be possible to defend the system and restore its stability without suspending the rule of law and rights guaranteed in the constitution and the necessity of the sovereign or executive assuming extra-legal powers to quell the threat? Though this challenge of emergency has been as ancient as the history of organized political life but posed no serious conceptual problems in the context of pre-modern pre-democratic contexts as the source of law and exercise of power was vested in the persona of the sovereign. But in the context of liberal democratic constitutionalism such an emergency invariably poses a major challenge that could be addressed only through the curtailment of, restrictions on, even abrogation of rights and freedoms of individual. Introducing the concept of 'state of exception' he prepares the ground for the exercise of extraordinary powers by the executive so as to meet the challenge with necessary resolve and expeditiously.<sup>viii</sup> What is interesting is that this thinking is informed by a conception of politics that differs from dominant liberal notion of politics. The liberal notion assumes some kind of order among the adversaries in spite of their competition for power. The acceptance of the rules of liberal democracy necessitates mutual tolerance and respect among the contestants for political power despite the differences of ideology, policy and practices.

In contrast, Schmitt defines politics as a field not of competition among political adversaries but between enemies. This extreme position lends credence to the possibility of systemic subversion by the adversaries defined as enemies.<sup>ix</sup> The legal and softer options get precluded when the field is seen as one between enemies; then this opens up the possibility of rules of the game being violated at will and logically leading to unrest and instability which could create a state of exception. Politics defined so in any instance could turn precarious enough demanding extraordinary measures in which case 'exception' no longer could be said to be an exception in real sense but could become and remain 'normal'. Further the enemy of the nation is seen to be internal or collaborator of an external enemy as in the case of Jews by the Nazi regime. Subsequently the list went on expanding with the Communists, Gypsies, homosexuals, imbeciles included in the list of the enemies and identified as the forces weakening the Aryan race thus becoming 'anti-national' therefore deserved to be eliminated and exterminated.

This reasoning could very easily and conveniently be used as justification for the executive usurpation of extraordinary power and trampling of the rights to life, liberty and property and other protections constitutionally promised to the citizens in a liberal democracy. History is witness to plethora of such cases.

We have been witnessing the use of national integrity and security as major justification in the subversion of democracy and legal safeguards to the citizens and their rights. Underlining this is a steady and definite shift in the idea of nationalism from being inclusive, tolerant, pro-actively democratic and standing for expansive rights and therefore counterposed to the absolutist notion of state to a notion of nationalism that fuelled by security-centrism identifies certain communities as the internal threat to the national unity and deserving to be disenfranchised and exterminated. Though it is not at all logical that inclusive nationalist project should turn into exclusivist ethnic nationalism but catalyzed by certain socio-political conditions it is quite probable that it could become real especially when the institutional edifice and civil society that ought to be the

watchdogs of democracy and civil rights surrender to the will of the sovereign justified by the alarmist pretext of unity and security of the state.

## II

### **Colonial State and Indian Nationalist Movement**

The above discussion on the background of the European experience is instructive to understand the Indian experience for in the Indian case as in the case of other colonial contexts of Asia and Africa nationalism both in theory and practice, and modern discourse of democracy and rights in terms of law and institutions are largely derivatives from the Western (colonial) experience. It is only once they are sought to be grounded we notice the manifestation of unique national features and divergent trajectories of elaboration.

India could be seen to be proximate, though cannot be collapsed into, to the belated capitalist model. What have influenced and shaped the national consciousness in India are the factors like historical diversity, cultural heterogeneity and uneven development of regions, communities, etc. Further the retardation in the developmental process of India as a result of colonial intervention could be seen impacting on the national formation. This has led to the structural weakness of the capitalist class whose position in the process of social transformation was inadequate to assume a strategically leading position thereby resulting in its compromises with the pre-capitalist forces instead of directing them to be under its hegemony.

Indian nationalist movement needs to be appreciated against the historical fact of the above structural constraints imposed by the colonial power. The overarching contradiction faced by the Indian nationalist movement like in all the colonial contexts is with the fact of colonial state and its structure of power. If colonialism opened the window to modernity and to the ideas of nation, democracy, secularism, rights and resources of print capitalism then the access to modern western education, though It

limited to a miniscule urban middle class and rural landed classes, could sow the seeds of antithesis to colonialism with these elite influenced by modern ideas becoming the harbingers of nationalism. The relations between colonialism and nationalism had contradictory impulses and consequences as argued by scholars like Ananda Coomaraswamy and AshishNandy<sup>x</sup>: the central critical aspect being colonial modernity's distortion of the native self.<sup>xi</sup> That debate is important for its profound insights into the shaping of the self that continues to be of relevance to understand the post-Independence India. It also helps us to understand the paradox of colonial contact and implications for self and bourgeois libertarian prospect.

In fact the Indian nationalist movement was highly plural and differentiated reflecting the internal dynamics of Indiansociety. Correspondingly, the idea and vision of India was also not singular or uniform. This is reflected in the different streams of anti-colonialism (moderate, Gandhian nationalist, the socialist and communist streams and the pro-Hindu tendency) and their ideological divergence, leadership patterns, political strategies and mobilisational politics. Because of this pluralism and diversity, the nationalist movement was highly tolerant and accommodative of different tendencies, interests and formats. The above observation is relevant to our discussion for what in fact coalesced if not united these streams was their opposition to colonial power.

In substance, the perception and approach of the colonial power to the demand for independence was one of refusal to accord legitimacy to it and denial of civil rights and freedom to the political activists. In fact the repression by the colonial state became increasingly brutal as its security assumed supreme importance. This is evident in the legal response of the colonial state in terms of draconian Defence of India, Preventive Detention, sedition law, restrictions on freedom to speech and expression which, as we shall see in the next section, unfortunately some of which continue to exist in our statute books and followed well after independence.

is in response to the gross violation of human and civil rights by the colonial administration that under the guidance of Jawaharlal Nehru Indian Civil Liberties Union was formed in 1936 as a non-party organisation<sup>xii</sup> to highlight state repression and denial of rights by the self-claimed agent of civilizational mission. This attempt was not only meant to raise the awareness among Indian people but also to mobilise opinion in Britain as well in the West. The Jallianwala Bagh massacre was one such incident of police brutality on a peaceful gathering that raised serious challenge to the British claims of civilised behaviour worldwide. Gandhian notions of *satyagraha* and ahimsa had salutary effect on public mood and moral stature of the movement.

The nationalist movement put a premium on the question of democratic right to expression, dissent, mobilisation, etc., not only in relation to the colonial state but also internally within the politics of anti-colonial struggle. It is true as Dr Ambedkar critically notes that, with the possible exception of reformist focus of Gandhi - for instance, on the removal of untouchability - there was no substantive social reform focus on the structural negation or preclusion of freedom within Indian society due to the hierarchies and inequalities of caste, gender, community, etc. Ambedkar's appreciation of Justice M G Ranade<sup>xiii</sup> in contrast to his vocal criticism of mainstream nationalism springs from the perspective that without annihilating the internal structures of inequality and oppression the project of nation-building could not be realised.

### III

#### **State, Nation and Security: Continuity and Change**

The civil rights scenario after independence cannot be said to be all that cozy. The brutal suppression of the peasant struggle in Telangana in the immediate aftermath of Independence as a follow up of the Police Action in 1948 to integrate the Hyderabad state into Indian union through armed intervention is a case in point.

The continuation of the colonial laws in large measure have been quite contentious and acquired greater resistance in the recent times. It would be instructive to mention two cases of the sedition law (Section 124A) and blasphemy provision (Section 295A) in the IPC which have survived the colonial power to scuttle the Indian struggle for independence. In spite of such association and despite the wider demand to scrap them they continued to be there in our legal statute and be used widely and often allegedly not fairly.

Section 124 A of the IPC defines sedition as "hatred or contempt excited against the government" by means of speech, writing or through visual representation. This law is strongly remembered for the notoriety it acquired during the Raj for stalwarts of India's Independence like Tilak and Gandhi were charged and writings were banned under it. This law has continuously come under tremendous criticism for its indiscriminate use to stifle freedom of speech and expression the rights basic and essential in any democratic country. The evidence shown for this claim of misuse of such a harsh law is that for instance during the period of five years between 2014 and 2019 when 326 sedition cases were filed the conviction rate was as low as six.<sup>xiv</sup>

Section 295A under the IPC, traced back to 1920s, dealing with blasphemy defined as an act of outraging the religious feelings by maligning or mocking the religious beliefs of a religious community has seen a similar course.

Ironically though the blasphemy and sedition laws were abolished in the UK in 2008 and 2009 respectively these laws which owe their origins to the British colonial rule continue to be actively and widely used in India. This is when the prosecution in these cases is pathetically tardy and conviction rate is abysmally low.

It is instructive to note in this context the specificity of the US case wherein the First Amendment guaranteed five rights concerning speech and expression, assembly, religion, press, and petition the government. Of course, restrictions on these rights are from the side of fraud, obscenity, child pornography, and threats and incitement to violence and defamation.

It is said that these freedoms in fact make the US different for the expansiveness of freedoms as the first amendment in fact imposes no restrictions on speech including hate speech and racist speech. This openness, perhaps it is assumed, would allow and help to know the extent of intolerance and hatred along communal, racial and gender lines and if it is not allowed to be expressed it would remain underground and as prohibition most often than not lends certain degree of attraction and even acquires character of adventure. It is always helpful to have, of course at the level of speech and expression, with strict criminality attached to the translation of these thoughts into actions. If allowed to be vented then the extent and depth of these emotions in the society could be gauged and responded to at different levels - at individual, civil society and state levels.

The assumption informing this, it seems, is that durable decent social behaviour and civic responsibility cannot be treated as a law and order issue and expected to be effected by applying force but can effectively be achieved through collective social action.

The transgression of human rights in independent India has mostly been facilitated by the inherited colonial legal frame seen as a continuation of the colonial legacy. Suffice to note that the provision of Preventive Detention under Article 22 (Clause 3) which is placed between Article 21 guaranteeing life and personal liberty and Article 23 assuring freedom from exploitation is almost lifted from the Rowlatt Act that the Indian National Congress opposed which Gandhiji called a "black act" for the immense powers it bestowed on the police in the form of arrest *sans* warrant and detention *sans* trial.

The legislations invoking national or internal security concerns have a long history. They include: the Armed Forces Special Powers Act (AFSPA) 1958, Unlawful Activities (Prevention) Amendment Act, 1967 (and 2008), Maintenance of Internal Security Act (MISA) (1971), Terrorist and Disruptive Activities (Prevention) (TADA) Act, 1985, UAPA so on. These acts reflect variations on the security discourse and state's response through enhanced penal provisions.



Just to have a sense of why and how of these laws it is instructive to note that the change of government has not made any substantive material difference to the political flair for these draconian laws by successive governments. For instance, the Janata government, when those who came to form it had suffered during the Emergency principally being detained under the MISA, though repealed it immediately after coming to power but all the same brought it back in its spirit through the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities act which included the provision of the Preventive Detention.

There is so much of excellent analysis in the public domain - in print and digital media- especially in the context of UAPA excesses, so it may suffice here to note what all these acts have in common, of course with certain variations. In this context there have been detailed analyses critically reviewing the approach and response of the higher constitutional judiciary mandated to safeguard the rights of citizens and the constitution.<sup>xv</sup>

What is common to these acts is the anxiety with national security and security of the state, with PD as the basis, with the onus of innocence put on the accused, the condition of denial of bail or impossible terms of getting one, long delays in even filing the FIR, very often denial of information on the terms of accusation which is otherwise the basic right of the accused to know the charges and their basis, protracted process of trial and the process of adjudication for all the above reasons itself being so harsh that it is equated with the punishment through the act of imprisonment without conviction. What makes these acts go contrary to the spirit of any democracy worth its salt is the abysmally low conviction rate thus making it the cause of unfair suffering. It almost reverses and makes the adage 'innocent till proven guilty' stand on its head.

Sadly enough, the judicial behavior regarding the cases of national security has not been commensurate with the consequences to the possible human rights violations. This in a significant sense is inferable from the low rate of conviction. In the view of legal scholar Chitan Chandrachud

"when governments defend their conduct citing national security concerns, courts tend to freeze"<sup>xvi</sup>. In this context Chandrachud cites very few cases where a lone judge could be seen dissenting with the majority who were reluctant to interrogate what and why of security. One is the case of Lord Atkin in England differing with the majority called their decision as "more executive minded than the executive" in the context of sweeping preventive detention rules during the second worldwar. During the war when a man in England was arrested for calling the PM Churchill a fool - Churchill's response that crime was not calling him a fool but for letting the state secret (of PM being a fool) out during war time. Though it is meant to illustrate Churchill's British sense of humour but the gravity of human rights issue involved is not that funny!

The other instance is of the well-known ADM Jabalpur case of 1976 during the Emergency. It was Justice HR Khanna who was the lone judge to uphold the fundamental rights in opposition to their suspension under the pretext of security of the nation.

The question of the antithetical relation between citizens' rights and security of the state has been a major issue of concern for the civil rights movements worldwide and much graver it becomes when the judiciary sides with the security justification by taking Schmittian position on the issue.

#### IV

### **Majoritarianism, Civil Society and Kartavya Discourse**

The coming to power of the BJP with a majority on its own could be seen marking a major shift in the career of Indian state and its nationalist framework. If secular constitutional conception of nationalism is premised on the geographical spatiality of India as a nation, then the Hindutva nationalist project emphasises India as a nation on the religious/ cultural basis.<sup>xvii</sup>

Theoretically, the idea of Hindu *rastra* that is central to Hindutva is an antithesis of the constitutional mapping of Indian state as a secular power structure. Hindutva, drawing on the intellectual *oeuvre* of VD Savarkar, defines nation in terms of the concepts of *Pitrubhoomi* (fatherland) and *Punyabhoomi* (holy land).<sup>xviii</sup> Upon this view, only those for whom India is both *Pitrubhoomi* and *Punyabhoomi* can be considered for full pledged Indian citizenship. A large proportion of population in India - the Muslims and Christians - does not consider India as their *Punyabhoomi* for given their religious faith they have their holy lands outside India. Therefore, the followers of the so-called Abrahmic religions do not fulfil an important criterion on account of their faith to claim entitlement to full nationality and citizenship. The Hindutva's conceptual shift to cultural territoriality defined in religious terms could be seen laying the ideological basis of the Hindu *rastra* and its politics of exclusion and denial.

It is needless to state, since only Hindus consider India as both their *Pitrubhoomi* and *Punyabhoomi*, they alone could be the proper citizens of an 'imagined' Hindu *rastra*. By projecting an imagined homogenous community of Hindus, the Hindutva nationalism attempts to underplay or rather ignore the seriousness of the internal differences among the so-called Hindus in terms of sects, divisions and hierarchy based on caste. Curiously enough, in the same token it also treats the Muslims and even the Christians as a uniform monolithic community ignoring the denominational, sectoral and caste differences among them. Needless to say, this internal homogenisation of these communities is quite contrary to their history and sociology.

The Hindutva view of nationalism and citizenship through its logic of homogenisation not only ignores the internal divisions and caste based exclusions within Hinduism but also sharpens their difference from the similarly homogenous and monolithic 'other' in pursuance of its politics of exclusion.

Historically, one of the formidable obstacles, deprivation and denial of basic human rights are premised on low and high, inclusion and exclusion, prohibitions and restrictions based on and inherent in caste and gender. In the Indian context these deprivations have been expansive enough to influence and penetrate into even Abrahmic religious practices<sup>xix</sup>. The most important consequence of the homogeneous view of religious communities is the deliberately cultivated blindness to the intra-religious differences, inequalities and hierarchies. If a sense of community has to be forged then it is imperative to address the structures of dominance and discrimination within a specific group through conscious reform. Through a forged homogeneity the necessity of reform within religion is not only ignored but importantly rendered inessential and inconsequential.

The fall-out of this kind of nationalism sans social reform agenda, is that the religious basis of denial, negation and violation of basic human rights to vast sections of subaltern castes and women, as Dr Ambedkar<sup>xx</sup> elaborately dealt with in his writings on Hinduism and caste system, are turned a blind eye to and sought to be erased from civic and political discourse.

Hindutva through its homogenising agenda: firstly, set the field for ethnic communal polarisation and conflict forged through the idea of Hindus, Muslims and other religious communities being internally monolithic and placed in opposition to each other in terms their idea of nation and imagination of India seen predominantly in ethnic terms; secondly, it refused to see the internal structural denial of basic human rights due to caste hierarchy and inequality in pursuit of its homogenising and singular view of Hindu society; thirdly, externalisation and exclusion of the communities other than the majority is premised on the figuration of 'other' as different from the majority 'we'. Thus the configuration of identity in the name of ethnic 'majoritarian' nationalism becomes the cause of denial and violation of rights of other ethnic groups treated as minorities. These elements go into the making of Hindutva a hegemonic force in the ideological sphere as distinct from the state and explicitly 'political' domain.

The idea of Hindu rastra informed by the theory of Hindutva goes contrary to and in fact leads to the undermining or even rejection of the some of the basic constitutional values of secularism, democracy and the promises of justice, liberty, equality and of fraternity. This fabricated view of Hindu nation supported by the notion of Hindus and Muslims being monolithic denies the internal differences in these communities and difference, diversity and pluralism that characterized the history of India. By essentialising the Hindu identity it seeks to imagine India as a nation in exclusive Hindu terms.

The paradigm of nationalism - secularism - communalism popularised by historians like Bipan Chandra<sup>xxi</sup> that dominated the social science view of communal question is inadequate to capture the larger agenda of Hindutva as a nation-state project for Hindutva is not a mere variant of communalism that is opposed to secularism.

Logically, the problematization of the Muslims' citizen status and associated entitlement to rights on the basis of punyabhoomi criterion could be seen going beyond the realm of theory or ideology and rather widespread in the popular discourse with serious implications for security and integrity of the nation. If the global Islamophobia is any indication it is not far from the truth to see the dominant discursive figuration of Muslim ranging from being a trouble creator to potential terrorist having its echoes here too.

This idea of religious majoritarianism has its immediate and violent manifestation in the domain of the activities of the fringe communal elements, small, decentralised, that attack the right to speech and expression in general and in the fields of art, literature, cinema, scholarship with the pretext that the creations in these fields are hurtful to the sentiments of communities, be they religious, caste or linguistic ones.

What is increasingly seen is the action of the state in terms of its tolerance of vandalism and the impression that the 'hurt sentiment' especially on account of religion is a sufficient ground for the attacks on artists and art

works and wider street violence, orchestrated rather than spontaneous. If the rise of the demands for proscription and ban on works of art, cinema, literature and scholarship is a clear vindication of growing intolerance to creativity, criticism and dissent at the social level then the inaction or delayed response on the part of the law enforcing authorities is clearly an indication of the perilous state of civil and democratic rights. There is no dearth of cases where the victim of such violations is seen as the culprit rather as someone in need of legal protection.<sup>xxii</sup>

In the context of Neo-liberalism and Hindutva the basis for a new phase of denial of rights through exclusions could be seen laid down - both as a continuation and shift from the earlier times with the state playing a key role in the creation of a new paradigm of denial and exclusion of rights and entitlements. The path of capitalist development in the neo-liberal context pursuing an aggressive policy of privatisation of common property resources and primitive accumulation (or Harvey's accumulation by dispossession) has paved the way for the dispossession and displacement of vast sections of primary producers - small farmers, petty produces, *adivasis*, women - by depriving them of their resources, entitlements and livelihoods thus preparing a vast ground for the denial of basic human rights on a vast scale. This has been a global phenomenon and India has been an active part of this process.<sup>xxiii</sup>

What is bizarrely observable in the present dispensation is the attempt to criminalise dissent and criticism by delegitimising the civil society as a sphere of rights. In the liberal theory, both classical and modern, civil society seen as a contractual construct is positioned as the basis of legitimacy of the state - the government as a dimension of which requiring to renew its contract periodically through proper electoral process. This condition of contract makes the state and government responsible and requires them to be responsive. What is curiously sought to be done is to renege it as an unrestrained and unconditional consent at least for the period falling between elections.

The major challenges to the establishment and its policy regime in the last few years has been witnessed from below - from students, ordinary citizens, farmers, minority communities and especially with preponderant participation of women. This subaltern and civil society action, in contrast to the organised politics - i.e., the opposition parties - has proved to be effective resistance to the establishment and exposure of its failure at persuasion and consent creation.

There has been a conscious attempt to legitimise executive actions with the pretext of legislative majority and the electoral support as the sole legal basis. By this logic all political and people's actions - disagreement, protest, dissent, opposition, organised or otherwise - that are seen in the liberal theoretical tradition as legitimate and constitutionally sanctified have been rendered questionable and liable to restrictions.

The recent official stand on pre-eminence of duties and responsibilities (*kartavya*) over rights is a clear indication of the discursive shift in the thinking of the establishment on the question of citizens' rights. Further, the reported pronouncement of NSA Ajit Doval, addressing the IPS probationers at the Police Academy at Hyderabad on November 11, 2021 that the civil society constituting the "the new frontier of war" could be "suborned, manipulated, subverted and divided and thus hurt the interests of the nation" is worth noting.<sup>xxiv</sup> Civil society as defined in the liberal theory is a sphere that is distinct from state and market and thereby constitutes an explicitly non-political and non-economic ensemble of formal and informal relations that is invested with democratic possibilities of facilitating the articulation of aspirations, demands, disagreements, criticism of different sections of the population so that the powers that be could know, assess the popular opinion and mood towards the governance and make necessary corrections and engage in interaction, dialogue and negotiation as a continuous process. In other words, civil society in democratic contexts can be compared to the gadfly that Socrates alluded to as warning system to alert the rulers<sup>xxv</sup>.

By visualising the possibility of the civil society becoming 'anti-national' on the presumption that it could be used as a platform to hurt the national interests by the enemy, a major system to gauge popular aspirations and prevarication of executive excesses that is essential to ensure good governance could be rendered vacuous. The reasoning underlying the above position is amazingly convoluted. For it is viewed that the party with a majority in the legislature because of the fact of its electoral mandate is entitled to make laws and the responsibility of the law and order machinery is to see that any criticism and opposition to it is not allowed easy passage. In other words, civil society as an important concept in democratic theory, as a historically evolved ensemble to ensure and protect rights of the citizens, a valuable platform of critical engagement by the citizenry with the structures of governance and check on the possible abuse and excesses of power is sought to be devalued and delegitimised. This once again pursued in the pretext of nation and national interest as the global experience amply demonstrates results in the diminution of citizens' rights and entitlements and lays a sure path to authoritarianism.

## V

### **Concluding Remarks**

Both conceptually and historically the relationship between nationalism and civil rights question has been quite complex and multi-faceted and has been a seesaw like vacillation between being progressive and inverse, complimentary and contradictory. Historically, the emergence and expansion of the idea and reality of nation, nation-state could be seen enveloped with the political economy of capitalist development and democratization process. In the early phases of its history, nationalism was ideationally inclusive and civic in its emphasis therefore it could be seen expanding in opposition to the reality of absolutism. As a result there could be seen a positive correlation between the ideas of nationalism, liberal democracy and the question of rights - all in a significant sense positing the values of freedom, equality and justice as of foundational importance.



The war period in the last century and the post- September 11 scenario raised the heightened alarms of national security and homeland security which became the grounds of justification for human rights restrictions and violations within and without. The Carl Schmittian thesis of 'state of exception' whose invocation is justified on the ground of national security could be seen in its full form throwing all safeguards to citizens' rights to winds. The reality of an antithesis between nation and rights continues to be a major challenge to the liberal theory and practice of democracy and civil rights in India as in the rest of the world including the advanced Western democracies.

Thus similar trajectory of relationship between nationalism, democracy and civil rights could be seen in the post-colonial world - of course with thematic variation, institutional diversity and temporal differences. In some contexts the distraction and disjunction between them has been fast and others protracted depending on the nature of colonial rule, the expanse and intensity of anti-colonial nationalism and the level of popular participation and of course post-colonial efforts at institutionalization of democracy<sup>xxvi</sup> and safeguards and mechanisms for rights protection.

In many of these post-colonial societies, one could see nationalism moving away from its civic and benign mode and taking an overtly ethnic divisive form. With the rise and consolidation of ethnic nationalism, the threat to security and integrity of nation-state is seen to be internal (rather than external). Given the complex ethnic dispersal and inter-mixing across the national territorial borders across most of the post-colonial world that is shaped by the colonial power politics the loyalty of different ethnic communities to the 'nation' identified in territorial terms and increasingly defined in cultural, religious and ethnic terms becomes susceptible to suspicion and especially it is politically beneficial to the forces aiming at dominance and power.

In other words, if nationalism was creatively beneficial during the anti-colonial struggle when turned around and defined in narrow ethnical terms it could and in fact did in many instances become a regressive force in social and civic senses. The real or imagined threat to state

security and public order when premised on doubtful national loyalty all the safeguards to the citizenry and their legitimate rights and claims become facile.

The restoration of a balanced relationship between nation and civil rights issue could only be seen to be a difficult and protracted journey. The Schmittian imaginary of legitimacy of the exceptional and absolute power of the sovereign in the times of emergency can only be checked and prevented by civic forces -through their conscious participation and watch, supported by vigilant media, through institutional checks and balances and by building and sustaining a vibrant civil society. It must be emphasised that there is no easy way to the protection of rights even in constitutional democracies despite their promised safeguards except for continuous vigilance of the citizenry.

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### Notes and References:

<sup>i</sup>The quantum of his writing was mostly reflective of the issues raised and engaged with in the course of his civil rights activity. This reflects the unity of practice and thought in his life. Most of his writings in English were published in *Economic and Political Weekly (EPW)*. For an exhaustive depository of his work in Telugu and English see the web resource at <https://balagopal.org>.

<sup>ii</sup>The following list, though not exhaustive, illustrates the range of issues engaged with: 'Land Unrest in Andhra Pradesh- I: Ceiling Surpluses and Public Lands', *EPW*, Vol. 42, Issue No. 38, 22 Sep, 2007; Land Unrest in Andhra Pradesh-II: Impact of Grants to Industries, *EPW*, Vol. 42, Issue No. 39, 29 Sep, 2007; Land Unrest in Andhra Pradesh-III: Illegal Acquisition in Tribal Areas, *EPW*, Vol. 42, Issue No. 40, 06 Oct, 2007;

'Economic Liberalism and Decline of Democracy: Case of Andhra Pradesh', *EPW*, Vol. 27, No. 37, 12 Sep, 1992;

'A Tangled Web', *EPW*, Vol. 35, No. 13, 25 Mar, 2000; 'Ideology and Adjudication: The Supreme Court and OBC Reservations', *EPW*, Vol. 44, No. 43, 24 Oct, 2009;

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'A Year of Drought', *EPW*, Vol. 28, No. 38, 18 Sep, 1993.

<sup>iii</sup>Bardhan, Pranab (1984), *The Political Economy of Development in India*, OUP, Delhi.

<sup>iv</sup>For the analyses of Indian situation, in the midst of proliferating writing, the following could be found instructive: Chowdhury, Debasish Roy and John Keane (2021), *To Kill a Democracy: India's Passage to Despotism*, Macmillan, Delhi;

Jaffrelot, Christophe (2021), *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy*, Context, Chennai.

For a perspective on the US and global democratic decline, see, Levitsky, Steven and Daniel Ziblatt (2019), *How Democracies Die: What History Reveals about Our Future*, Viking, Delhi.

<sup>v</sup>For a comparative analysis of absolutist states in Western and Eastern Europe, see, Anderson, Perry (1974), *Lineages of the Absolutist State*, Verso.

<sup>vi</sup>For the idea of nation as an imagined community, see, Anderson, Benedict (2006), *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Verso, Pp. 46-47.

<sup>vii</sup>Kaviraj, Sudipto and Sunil Khilnani (Eds) (2002), *Civil Society: History and Possibilities*, Cambridge UP, Delhi.

<sup>viii</sup>Schmitt, Carl (2005), *Political Theology: Four Chapters on the Concept of Sovereignty*, University of Chicago Press, Chicago

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<sup>ix</sup>On the nature of 'the political' and 'friend and enemy', Schmitt, Carl (2007), *The Concept of the Political*, University of Chicago Press, Chicago.

<sup>x</sup>Nandy, A (2002), *Intimate Enemy in Exiled at Home*, OUP, Delhi

<sup>xi</sup>For an overview of this position, see, DR Nagaraj's 'Introduction' to this volume.

<sup>xii</sup>Mukherjee, Mridula (2017), 'Civil Liberties and Indian Nationalism', in Azad, Rohit, Janaki Nair, Mohinder Singh, Mallarika Sinha Roy (Eds), *What the Nation Really Needs to Know: The JNU Nationalism Lectures*, HarperCollins, Delhi, P.81.

<sup>xiii</sup>Ambedkar, BR (2017), *Ranade, Gandhi and Jinnah*, Samyak Prakashan.

<sup>xiv</sup>Mukesh Ranjan, '326 sedition cases filed during 2014-19, but only 6 convictions', *The Tribune*, Jul 19, 2021.

<https://www.thequint.com/news/India/Colonial-laws-still-in-practice-India-section-377-sedition#read-more>.

<sup>xv</sup>For an excellent documentation of the democratic rights violations, see, Desai, AR (Ed) (1986), *Violation of Democratic Rights in India*, Popular Prakashan, Bombay.

For an accessible overview of the judiciary in this respect, Chandrachud, Chintan (2019), *The Cases that India Forgot*, Juggernaut, Delhi.

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<sup>xvi</sup>Chandrachud, Chintan (2019), *The Cases that India Forgot*, Juggernaut, Delhi, P. 149.

<sup>xvii</sup>For a discussion on these issues, see, Srinivasulu, K (2016), 'Discourses on Nationalism and Question of Secular state', Zaheer Ali (Ed), *Secularism under Seige*, Akaar, Delhi.

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<sup>xviii</sup>Savarkar, *Hindutva*.

Also, see, Golwalkar, *We or our Nationhood Defined*.

<sup>xix</sup>For caste in Islam see, Ahmed, Imtiaz (Ed) (2018), *Caste and social stratification among Muslims in India*, Aakar, Delhi.

<sup>xx</sup>For Ambedkar's anti-caste vision, see, Srinivasulu, K (2021), 'Dr Ambedkar and Annihilation of Caste', in S Simhadri and A Ramagoud (Eds), *The Routledge Handbook of the Other Backward Classes in India: Thought, Movements and Development*, Routledge, London.

<sup>xxi</sup>Chandra, Bipan (1984), *Communalism in Modern India*, Vikas, Delhi.

<sup>xxii</sup>At another level this raises the serious question of importance of dissent and contra thinking in the social and intellectual development and progress of any society. Can new ideas, insights and views be curtailed on the ground of them being found hurtful to some section of society?

A cursory look at the history of human progress and development would show the absurdity of the above scenario.

<sup>xxiii</sup>Harvey, David (2004), 'The 'new' imperialism: accumulation by dispossession', *Socialist Register* (40) Pp. 63-87.

<sup>xxiv</sup>Ramdas, L (2021), 'Connect the Dots From Doval and Rawat to Arun Mishra and a Disturbing Picture Emerges', *The Wire*, November 30.

<sup>xxv</sup>For Socrates' description of himself as gadfly, see, Plato, *Apology*.

<sup>xxvi</sup>For an analytical overview of the institutional mapping in India, Kaviraj, S (1984), 'On the Crisis of Political Institutions in India', *Contributions to Indian Sociology*, 2.

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