On Indian Democracy: The Gulf between Legal India and Real India

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The Hindu (read: Indian) society is like a python that swallows logical contradictions, without resolving them.

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As India celebrates 55 years of Republic this year, it is necessary to take stock of her democratic experiences since independence. It is true that there are a few success stories of Indian democracy. India is one of the very few democracies that have managed to survive in Third World after decolonization. There are many democratic experiments being conducted within India, some of which are relatively successful. While we may notice such success stories as recounted by several studies in recent times, it is necessary to remember that these success stories have trickle-down effects and are thus fraught with limits as the nationalist project is carried out through a Nehruvian legal framework rather than a Gandhian framework of mass movements that actually brought us independence. Thus, an attempt is made below to tread a cautious path in this narrative on Indian democracy.

In the early 1980s, a faculty member from the Indian Social Institute, Delhi attended a seminar in South Africa and said that un- touchability still persisted in Indian society. When this view was reported in the African press, a local NRI retorted in a Delhi newspaper and argued how the Indian Constitution abolished untouchability long back and yet the concerned Indian, that too in a foreign country, tried to vilify India's achievement in 'abolishing' untouchability.

What is interesting to observe in the above case is that the concerned NRI simply assumes that if there is a legal solution to a social problem, it is solved. However, it is more important to note that the NRI is not alone in taking legal solutions for granted. He shares the mentality of the Indian middle classes who usually think that the developmental promises need to be translated into legal measures in order to remove societal backwardness in India.

Several scholars have described India's democracy differently. Amiya Bagchi calls it 'semi-feudal demo- cracy', i.e. democracy operates in a semi-feudal society thus posing serious limits to democracy.[1] Instead of interrogating the framework of democracy, Bagchi questions the framework of society that poses major hindrances to Indian demo- cracy. Yogendra Yadav describes it as 'creolised democracy', meaning thus Indian democracy is elite-initiated[2]. But it is true for democracy every- where including Europe. Moreover, it does not explain why the Indian elites are always prone to think in haste of legal solutions to political problems of democracy. As Peter De Souza argues, it is necessary to capture specificities of elite-initiatives in Indian context[3]. More recently, Atul Kohli draws our attention to 'procedural democracy' in India[4]. In other words, the papers in Kohli's volume discuss the legal-institutional aspect of democracy and try to show how procedural democracy has taken roots in India or has failed to do so. However, Kohli's volume does not critically examine the intrinsic limits of the Nehruvian legal framework of defining and nurturing Indian democracy that continues to trouble us even in the post- Nehruvian era despite the Nehruvian development model being weakened

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by India's commitment to globalization/privatization.

This paper tries to argue that it is necessary to locate democracy in relation to the overall transitions in Indian society. I suggest that only when we look at democracy in relation to the macro transitions of society in India, it is possible to identify and interrogate the framework of democracy as pursued by the Indian elites. In this connection I am reminded of a hypothesis offered by RS Rao. The present work leans heavily on his hypothesis that the Indian ruling classes have tried to usher in capitalist modernization through changes in property laws rather than changes in production relations (as in Japan) or through changes of productive forces (as in Europe).[5] Rao's hypothesis satisfies De Souza'a above criteria that we must identify the specifities of elite initiatives towards transitions in the Indian context. It tries to show how development pursued through a legal institutional framework has intrinsic limits and how indeed under-development may persist because legal measures cannot be translated in the absence of a proper 'political will' to transform a backward society. The faith of the Indian middle classes in legal solutions to the problems of nation building can be traced back to the nationalist politics which, after independence, began relying more on the state and its law rather than the Indian people and their organizations in resolving problems of nation building.

This paper argues that since independence, the state power as readopted by the nationalists being colonial in essence refracted rather than reflected social realities. This stance of the nationalists conse-

quently generated a gulf between India as perceived by the legal functionaries (legal India) and India as experienced by the ordinary people (real India). The varied moments of crisis of the Indian nation today, as we shall see below, are deeply associated with the above-mentioned gulf between legal India and real India.

THE NATIONALISTS AND THEIR POLITICS OF ADJUSTMENT

After independence, the nationalist leadership relied on the British-created bureaucracy—police, army, judiciary and law.[6] Needless to say, all these British organs stood in direct opposition to various streams of freedom struggle during the first half of the twentieth century. What was still worse, the Congress Seva Dal activists and freedom fighters of the village committees, lost their autonomy in mass mobilization and rapidly became the appendages of the ruling Congress party and the newly incarnated nation state.

Following the transfer of power, the Khadi-clad activists crowned with Gandhi caps immediately became spectators and subservient to the police in the arbitration of village disputes. This process was dramatized in a tele-serial, 'Maila Anchal', telecast by the Doordarshan in the late 80s. This serial based on a famous Hindi novel with the same title by Phanishwar Nath Renu shows how in a village submerged in freedom struggle, a doctor and two other village workers played a critical role in mobilizing villagers to participate in the on-going freedom struggle led by the Congress. They suffered many personal emotional traumas in the process. They used to settle many village-level disputes and thus avoided any police interference.

They were imprisoned several times and faced police torture but they fought uncompromisingly. Following independence, however, they found no role for themselves in settling their village disputes. In one such dispute, they found that the village 'Daroga babu' (police inspector) took precedence over them and locked them up for meddling' in the village affairs when they tried to intervene to settle a dispute as they used to do before. The village heroes were shocked to discover the supremacy of the same British police over the Khadi-clad activists in settling their own disputes under their Swaraj that had just dawned on India.

As the above description shows, a statist conception of nation where the state is the sole agency of nation building process and the masses being passive was imposed on the Indian society. But this strategy begs certain serious questions. Can a society be asked to adjust to the state images? Can a communal society, for example, be expected to adjust to a 'secular' image of the state power? Can a feudal society adjust to an 'agrarian reformist' image of the state? Can a caste society adjust to a 'democratic' image of the state? And so on.

After independence, the nationalists presumed that the feudal forces which were culturally communal, socially casteist and male-centric, economically anti-reformist would gradually adjust to the nationalist aspirations for a secular, democratic and egalitarian society. The nationalists became over-confident in this regard simply because they now assumed control over the state power. The state agencies, however, were not their own creation. The colonial rulers created the state organs—judiciary, police, bureau-

cracy and army—in order to assist in colonial exploitation and also to suppress all kinds of anti-colonial struggles. The nationalists also assumed that a parliamentary control over the British-created state organs would be enough to regulate the state agencies to make them conform to the goals of nationalism, as they perceived. They did not make any serious effort to transform the feudal society or the colonial state. They became unusually wary of mass movements to carry out their goals. As a result, the perceived nationalist goals, which were adopted as the state images, lacked any resemblance with social realities. While the state images appeared to be progressive the social forces, which were supposed to adjust to these images remained by and large regressive.

The nationalist project now acquired a dual character. On the one hand, it expected a feudal/communal/casteist/patriarchal society to adjust to its agenda of nation building. On the other hand, it expected the colonial state power to adjust to its agenda of democracy, secularism and egalitarianism. This programme of social change through adjustment was surely fraught with dangerous possibilities. While there was no guarantee that the parliamentary control over civil and military apparatus would be decisive enough, the nationalist parliament was actually vulnerable to control by the semi-feudal forces, which, by acquiring a possible 'brute majority' in the parliament, could defeat the agenda of democracy, secularism and agrarian reformism. Thus, the reliance on the parliamentary strategy was perhaps not enough to fulfil the stated goals. It was rather a tacit admission of a fundamental weakness that, as we shall see below, could not be rectified because of the

nationalists' refusal to organise the masses against the traditional conservative forces along the Gandhian lines.

Though, after independence, legal India symbolized the nationalist spirit, it was also an embodiment of the colonial institutions and their principles of governance. Many of the British Acts such as the Indian Penal Code, Forest Act, Land Acquisition Act, Trade Union Laws, Factory Act, etc., to cite a few, were simply retained by the nationalists. As a result, the new nation state now in charge of interpreting society has produced the most perverse images of the social groups which occupy subordinate positions in real India, even though they were the backbone of freedom struggle.

Legal India today, in a sense, also symbolizes certain elements of an anti-feudal package like rationalism, democracy, secularism and social freedom as, for example, adopted in the Constitution of India, which is a legal document. But real India is still dominated by the semi-feudal forces that are interested only in the symbols of anti-feudalism for political containment of the social forces like peasants, labourers, Adivasis, Dalits and women. As stated above, the gulf between legal India and real India was (still is) created in two different senses because of a state-centred approach adopted by the nationalists. First, an organic gulf was created between Nehru's legal India and real India of subordinate social groups. The former refracted rather than reflected real needs of the latter and produced most perverse images of the subaltern classes. Second, a gulf was also created between 'India', a secular, modern, legal society and 'Bharat', a pre-modern, pre-legal society as described by Sharad Joshi or the Hindutva forces.

A scope for compromise with the rural rich representing the so-called 'Bharat' was kept open by the nationalist leadership so that the latter could develop bases in the rural areas. In fact, the re-adoption of the colonial state power by the nationalists was the beginning of certain premeditated compromises with the feudal landlords who had actually sided with the British throughout the years of struggle against colonialism. It would be interesting to explore elsewhere how a continuous process of erosion of the nationalist project began to take place because of its programme of adjustment with semi-feudalism. In the following presentation, however, we shall confine ourselves to an analysis of how the nation state being colonial in character, actually refracted rather than reflected real needs of the common people thereby engendering an organic gulf between the Indian state on the one hand and 'we, the people of India' on the other hand.

THE GULF BETWEEN THE STATE AND PEOPLE: CASE BY CASE

The Formation of the Linguistic States

First, we can begin by examining the case of the reorganization of the Indian nation on the nationality lines. During the course of freedom struggle the nationalist leadership in the Nagpur Congress (1920) reluctantly agreed to reorganize India on the basis of a new union of socio-linguistic states. As part of this policy, the State Congress committees were first reorganised on linguistic lines to carry on the freedom struggle. After the transfer of power, however, the Nagpur resolution remained only on paper. The new state insisted on the old colonial principle of

'administrative convenience' to build a new nation.[7] In the early fifties the Andhra Mahasabha questioned this stance and demanded that the administrative criteria be abandoned in favour of a cultural basis to reconstruct new India. Nehru and Rajagopalachari argued for a different set of priorities such as industrialization and modernization. However, the Vishala Andhra movement asserted itself. The new nation state was forced to organize its administrative boundary on a cultural basis in Andhra Pradesh, to begin with. But this criterion was not applied to other areas.

In the sixties, however, when the Maharashtra movement and the Punjabi Suba were launched, the legal state was forced to adjust itself to real India in two more main cultural zones. Yet the Jharkhand, Uttarakhand, Gorkhaland, Bodoland, etc., represented another panorama of movements indicating the persistence of the gulf between legal and real India. However, this problem has been partly solved by the establishment of new states in Jharakhand, Uttaranchal, Chattisgarh and the establishment of new district council in Gorkhaland. Legal India still adheres to colonial administrative criteria whereas real India is based on a political and cultural union of distinct sociocultural zones. As early as 1978, Rasheeduddin Khan underlined 59 cultural zones for the reorganization of the Indian state.[8] But the gulf continues to persist signifying the weaknesses of the centralized Indian state to resolve this crisis.

The Case of Land Reforms

Let us now take the case of land reforms. The state thinks that once 'pattas' are given, whatever be the nature of lands, the question of land reforms is over. First the laws are framed with so many loopholes that the reforms would not be seriously implemented. In the Gangetic India, the big landowners in collusion with the local bureaucracy could smoothly transfer the surplus lands above the legal ceiling in the names of even their domestic animals. This process popularly known as 'benami' land transfers was aided by the parliamentry system, which represents only economic and cultural interests of the upper caste landowners.[9] Second, even where 'pattas' are still distributed, the lands are usually government wastelands, mostly uncultivable. Hardly any care is taken by the ruling elites to sustain the land redistribution by a post-reform package like the supply of agricultural inputs, water, extension services and so on. And where the radical political movements redistribute lands—the surplus cultivable lands owned by the big landlord families—the state does neither issue 'patta' nor allows the labourers and poor peasants to cultivate and reap the harvests as in the 'killing field' of Bihar and in the Telengana districts of Andhra Pradesh today. Ironically, the state's legal machinery does not show any 'political will' to enforce its own policy of land reforms. The state prefers to keep the contested surplus land fallow rather than redistribute the same to the poor.[10] Thus, the state misses the fact that the radicals represent its political will to enforce land reforms, though through 'illegal' means. That is how the legal apparatus is organically separated from the real India of poor peasants and agricultural labourers. The State land ceiling acts typify the comment of KT Shah, a member of the Constituent Assembly, about the Indian Constitution: what it gives you on the left hand, it takes away on the right hand.

The Story of Anti-Poverty Programme

The present day experiences of the poverty alleviation programme are no better. The programme is formulated to generate a stable income and offer employment opportunities mainly for the agricultural labour, poor peasants and small tenants by providing them with livestock and other non-land assets. But the main question is: can a poor peasant effectively use, for example, a sheep unit in a village where the grazing fields are not 'freely' accessible? Moreover his/her household may be hard pressed for daily consumption while the sheep unit would generate income only after a 10 month long gestation period when lamb would be born and sold in the market for money. Such problems arise because, among other things, the scheme presupposes the individual or the individual household as an autonomous unit whereas, in reality, the individuals in rural India are tied up with needs and consumption demands of community or village, signifying thus a gulf between planning and performance of rural development. Such problems, however, come into being only if the programme reaches the rural poor.

On the other hand, LC Jain says that there is a leakage of about 40 to 60 per cent of targets in the implementation of rural development programmes.[11] The bureaucracy and landlords siphon off the schemes in one form or another. What appears to be a legally well-intended scheme is utterly frustrated by the rural power lobbies that cannot tolerate any alleviation in the status of their 'servants'. Ironically,

the state's rural policy is responsible for distancing its welfare motives from the reality of semi-feudal power process as the massive leakage indicates. These leakage trends as well as the failure to recognize here the household/community clusters as units for development, represent the two sides of the same chasm as described before.

The Story of Displacement

One more example would be the history of displacement and resettlement of people affected by the construction of development projects like steel plants, big dams and other factories sponsored by the state. The Indian state has been following the British formulated Land Acquisition Act, 1894 which recognizes only 'legal' property and does not have any conception whatsoever of the 'communal' property and 'communal' rights of the peasants and especially Adivasis. RS Rao says that following the colonial rulers, the nationalist leadership also ordered the survey of land and maintenance of land records provided the land would generate 'sufficient revenue' for the Indian state.[12]

The story of the acquisition of land for 'development' stretching from Rourkela (Orissa) in the mid-1950s to the Indravati (Orissa) and Srisailam projects (Andhra Pradesh) in the late 1970s clearly underscores that the Land Acquisition Act totally failed to accommodate the reality that many peasants and Adivasis did not have 'patta' but cultivated their land and reaped their harvests through a certain set of conventional community rules. As a result, there arose massive litigation cases for 'proper' compensation amount. For those who could not afford litigation

to win a case against the government, the road to poverty was wide open. In the Srisailam project area alone, a few surveys indicate that about 30 to 40 per cent of the peasants were pauperized.[13] In addition, the compensation amount was fixed on the basis of registered (legal) prices of land rather than the real land prices. By the time people were given compensation money to buy land and house, their prices had increased sharply in and around the resettled areas. In the Indravati project area, the compensation amount fixed before the displacement of Adivasis was about Rs 2,000 per acre of irrigated land whereas the tribal peasants had to pay Rs 10, 000 to buy the same type of land after their displacement. That is the real logic of land available in the 'free market', which ironically the Indian state has never followed in the fixation of the compensation to be paid for the acquisition of land owned by peasants and tribals, thus revealing double standards in the state policies.

In the case of displacement history, the gulf between the state perception of the displaced women and the real position of the affected women is more perverse. Commenting on the 1981 Census dealing with the Indravati project areas of Orissa RS Rao says, 'the Census puts that 65% of the women are non-workers, 15% of them are marginal workers, 7.53% of them are agricultural labourers and 10.33% of the women are cultivators. But the reality is otherwise. In these villages, the women are the centres of the economy. From a small item like a broomstick to a variety of products for domestic consumption women and women alone do the work. The collection of forest products, shipping and reshipping of the

house, growing vegetables in the courtyard, cultivating on the hill slopes, storing of the products and marketing . . . fetching drinking water—all these economic activities (or works) centre around the women. But, according to the Census, those women are marginal workers or non-workers. The distortion of the (social) reality in the (state) images is maximum and the images look perverse' (the bracket insertions are mine).[14] When the displacement of these Adivasi women took place in the Indravati areas, the compensation policy did not take into account how they would be affected.

Antinomies of Secularism

The experience with secularism and democracy is not very different. While the real society has remained fragmented on the lines of caste, religion, ethnicity and gender, the nationalist leadership relied on the state to promote secularism. How could a secular state promote secularism in a society that is 'communal' and 'undemocratic'?[15] As usual in the absence of mass movements, the state images have to adjust to the dominant social realities. The dominant castes have launched parliamentary coups and have lumpenized the Indian state. The net result is that now the Indian state stands in direct opposition to its own images and ideals it cherished in the beginning of independence. The state agents, bureaucrats and police, actively participate in subverting all that the Indian Constitution stands for—decentralization, land reforms, equal wages, protective discrimination for the Scheduled Caste/Scheduled Tribe, civil liberties, secularism and above all, the right to vote.

In many parts of India, political struggles are still waged around the right to vote by the Dalits whose votes have been rigged by dominant castes since independence. Even in the Left-led West Bengal, the nominated Scheduled Caste/Scheduled Tribe members of some village Panchayats controlled by the Left forces are allowed to sit only in the corner of the Panchayat meeting halls.[16] While the macabre massacre of Dalits recurs in the 'cow protection belt', their so-called elected representatives in the Assemblies and Parliament could not even demur inside the cosy corners of power, let alone launch crusades of Gandhian mass movements against the upper caste landlords of the Gangetic India. Thus there lies a great chasm between the slogan of 'equality before law' as legally upheld by the Indian state and the reality of political and social inequalities existing before the same law that is envisaged to solve social inequalities.

Like its all other images, the secular image of the Indian state has also to adjust to the 'communal' social reality, not vice versa. Today parts of the state power, especially bureaucracy and police, represent the forces of Hindu communalism. The police brutality on the Muslims in Maliana, Meerut, Panthanagar, Bhagalpur, Bombay and Gujarat and other places even excels the records of the religious terrorists of Kashmir or Punjab. The TADA cases are found more in Gujarat rather than in the terrorist affected areas, thus indicating the brutalization of the state power even in the areas where the terrorist groups are almost non-existent. The colonial apparatus that the nationalists used in order to propagate secularism have now boomeranged against their own

ideals. This has forced many commentators to describe the Indian state as partly communal and terrorist.[17]

After the transfer of power the nationalists paralyzed the grass-root committees of the freedom struggle tradition, which had a potentiality to propagate the values of Bhakti, Universal 'brotherhood' through sects like Mahima Dharma (Orissa), Dhaval Malak (South Maharashtra), Sufis and others.[18] The elite nationalists have rather relied more on the state created new middle classes as the messengers of secularism and democracy. But the education system, which has produced these groups who are more or less the hangers-on of the state system, has transmitted day in and day out religious prejudices and has only done lip services to the great Bhakti movement. In other words, the education system, presumably the great transmission belt of secularism, has re-established Brahminism in Uttar Pradesh and Bihar and has also encouraged the Sudras/peasant castes to adopt neo-Brahminism in Karnataka, Tamil Nadu and Andhra Pradesh. Thus, the Bhakti movement has been subverted by its followers among the peasant castes who are now the neo-rich and neo-Brahmins of India today. And they know only how to exhibit their primitively accumulated wealth in the most vulgar ways in the marriage functions or public rallies as the pro-Mandal Devi Lal and his Jat cohorts did recently by displaying golden sticks and diamond-laden crowns in a public rally in Haryana.

Ironically, these are the rich groups produced by the state-sponsored green revolution and they could shamelessly preach austerity in the company of poor people who

survive only on the distress sale of their crops and labour power. Some of the neo-rich like sections of the liquor lobby and the real estate mafia in Mysore and Hyderabad respectively, in collusion with the political dissidents of the then ruling parties, even invested few lakhs of rupees and engineered communal riots to kill a few hundreds of slum dwellers during the early 1990s. Their main target, apart from the slum clearance or liberalization in liquor trade, was to unseat the then Chief Ministers Veerendra Patil and M Channa Reddy respectively.[19] As Asghar Ali Engineer has shown, the real estate mafia has repeatedly aided in communal riots in the Ahmedabad slums to evict its dwellers and grab their land for real estate business whereas the legal arm of the state watches 'the other way around'.

New Stories of Empowerment

We should try describing recent events of empowerment laws enacted by the nation state. Following the 73rd and 74th Constitutional Amendment Acts, there is a vast amount of literature produced by the official intellectuals that claim that democracy is deepened by empowerment of Dalits and women in grass-roots local self-bodies. First, the constitution has devolved powers from the state government to local bodies. But nowhere in Indian States such devolution of powers has happened barring Kerala where only 40 of State funds have been allocated to local bodies of self-government. The Indian state has no 'political will' to enforce its legal decisions. Second, in so far as Dalit empowerment is concerned, it is better if we talk about less and least loud. While surveying 100 Dalit panchayats in the

Bundelkhand region P Sainath in *The Hindu* argues that in all these panchayats, Dalit Sarpanchs were voted out of power by passing no-confidence motions on corruption charges exactly after one year of their 'empowerment' in the mid-90s. In all these Panchayats non-Dalit Upa-Sarapanchs were holding Sarpanch's powers after the latter's removal. In fact, many Dalit Sarpanchs did not know that they were framed by corruption charges and that no-confidence motions dismissed them. So much for Dalit empowerment through law. The less we talk about women's empowerment, it is better.

Such stories of contradiction between law and reality abound in almost all cases of democratic programmes that have anti-feudal contents/objectives. Both progressive legal-institutional measures and reactionary social forces apparently contradict each other; yet, they co-exist in the very embodiment of the state power. One is thus reminded of DD Kosambi's words, "The Hindu society is like a python that swallows logical contradictions, without resolving them". It continues to adopt new and new legal measures that run counter to its power structures. Old contradictions of the caste system that surfaced at the very beginning of this Hindu civilization are not yet resolved. But new contradictions such as the ones arising out of universal suffrage are adopted and assimilated by the Indian state, without any attempt to resolve them. Sometimes, the state images of people are so perverse, that they come in direct conflict with the real images of real people. Yet, both these conflicting images co-exist. Sometimes, legal measures themselves are contradictory and co-exist in an unholy alliance as KT Shah observed about the con-stitutional laws (its left hand co-existing with its right hand) or as in the case of contradictions within rural land ceiling laws which we have cited before. Sometimes, both progressive legal measures and reactionary politics co-exist within the domain of the state power, without any resolution in sight, as our numerous case studies point out. Like a python after devouring its preys slows down to assimilate, the Indian state cannot but test success very slowly in all its democratic measures that have only trickle-down effects on real India. That is why any attempt to tell the success story of Indian democracy must be blended with a measure of scepticism about its excessive reliance on legal-institutional path to democracy.

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