

*Notes*

## **Minorities and Human Rights**

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We often tend to forget that every member of a majority community is a minority in some context or when somewhere else. For a segment of any society anywhere, a majority status is only true when confined within a fixed boundary or compartment. Germans living outside Germany are a minority as are the Chinese outside China, Taiwan, Hong Kong and Macau and Russians outside Russia. A Sunni Muslim in Iran or a Shia in Pakistan. Even inside Pakistan a Sunni of the Deobandi sect may find he is in the midst of a great number of Brelvis in a certain area or vice versa. It is axiomatic that in almost all countries of the world there are ethnic, linguistic or religious minorities. And in many, their cultural freedom and human rights need protection.

Some of the ancient empires built by the sword also perished by the sword. A Roman citizen in England and another in Italy took on different Nationalities when the Roman empire disintegrated. An Austrian and a Hungarian national became such only after the Austro-Hungarian empire of the Hapsburgs collapsed. Maria Theresa (1717-80) was the queen of Hungary and Bohemia and the Archduchess of Austria. She succeeded her father Charles VI as empress of Germany in 1740. Her right to the throne was contested and caused the war of the Austrian succession (1740-48). During her reign Frederick the great attacked and defeated Austria in the seven year war (1756-63). Her daughter Marie Antoinette became the queen of Louis XVI of France and was guillotined on 16 October 1793. To try and decipher the nationality and citizenship of the mother and daughter would require quite a bit of working at the jigsaw puzzle. People in Alsace and Lorraine as well as Schleswig Holstein were alternately French and German as well as German and Danish nationals even in the 20<sup>th</sup> century. The seat of the European parliament today, Strasbourg in Alsace, is back in France.

The process of historical change gave birth to the present day concept of political sovereignty in the nation state. In the last three hundred years due to centrifugal forces the political map of the world has

changed a number of times, Nation States emerged as in the cases of the Central Asian nations on the demise of the Soviet Union, the resurrection of Latvia, Estonia and Lithuania, the separation of Slovakia and the Czech Republic, the dismemberment of Yugoslavia, Cyprus, Pakistan and to a small extent Indonesia (after the emergence of East Timor). On the other hand, sometimes states voluntarily decide to give up some of their sovereignty and state powers as in the case of countries that formed the European Union, by abolishing visas and the national currencies and adopting some common laws and shared responsibilities. So even if national boundaries exist they are being transcended by common consent in many fields. In this continuous process of political evolution, a majority can and does become a minority or the converse. The Jews, almost a perpetual minority in known history, have now become a majority in the state of Israel. East and West Germany became one state and much of Europe is getting closer to forming one government, allowing centripetal forces full play. People thus keep groping in their eternal quest for the most viable forms of inter-relationship between man and man, between state and state and between citizen and state.

Minorities, religious and ethnic, almost everywhere feel discriminated against. Discrimination, whether actual and real or perceived, is a fact of life. In Canada, the US, Australia, and even in Japan and Brazil Italy there have been instances of judicial and sometimes governmental actions in affording the minorities a measure of relief, like the creation of autonomous Nunavut. The Cree in Canada, the Inuit, earlier known to the West as Eskimos in Alaska (discovered by the Danish explorer Vitus Bering in 1741), the Amerindians and some of the Australian Aborigines are beneficiaries of these belated but welcome gestures. The modern day Americans too care increasingly aware of the ancestral wrong done to the first peoples, to the African slaves, and to the Japanese Americans during World War II. And have consequently started a process antithetical to the previously racist and imperialistic attitude towards these unfortunate groups.

This salutary trend deserves emulation worldwide. Particularly in Latin America, Asia and Africa, where subtle to the grossest discrimination exists. As far as Europe is concerned it is not that blatant today but it is nevertheless on the increase against African and Asian ethnic groups. We would do well to keep in mind the massacre of Jews in Russia in 1905-6, of the Jews and Gypsies between 1939 and 1945 under the Nazis, and Stalin's 'purges', wherein millions perished. Going further back, to the days of the emperor Caligula (37-41 A.D) and his nephew Nero (54-68), it was the custom to throw Christians and slaves to Hungry lions merely for sport. Apart from the saying current even today

that Nero fiddled while Rome burned, while it may or may not be literally true it is nonetheless an indication of his attitude. Undeniable, moreover, is the fact that his mother was executed on the charge of plotting to dethrone him. Nero ignored her plea of innocence and letters for reprieve. Yet it was through his mother's efforts that Nero had become heir to the throne. The emperor Justine brought about the cessation of persecution of the Christians and they were no longer lion-freed, and in 313 A.D. Christianity was accepted as a religion in the Roman empire.

In 1189, king Richard the Lion heart was crowned in Westminster Cathedral. Shortly thereafter he joined emperor Frederick Barbarossa and Philip Augustus of the Christians has conquered in the first crusade (1096-99). In the third crusade (1189-91) they captured Acre and set up a Latin Kingdom in the East. They fought against the gathering might of the Muslims led by one of the noblest of warriors, sultan Salahuddin Ayubi, a Kurd who often forgave and released his enemies after capturing them. It is ironical that today the Kurds are fighting against the soldiers of Turkey, Syria, Iran and Iraq. The Ottoman Turks overran much of Christian Europe the 16<sup>th</sup> century and twice knocked at the gates of Vienna. If Vietnam had fallen, which it had almost done, the history of Europe and perhaps much of the world would have been vastly different today.

On 12 October 1492 Columbus landed in the Bahamas, then sailed on to Cuba and the island, of Hispaniola that makes up today's Haiti and the Dominican Republic. However, until the arrival of the pilgrim Fathers in the 'Mayflower' in Jamestown, Maryland in 1650, the indigence or native Americans, the Cherokees, the Iroquois, the Sioux and other Amerindians, continued to live their traditional lives in freedom, by and large unmolested by intruding foreign palefaces, though the hostile but defensive 'us' against 'them' state of mind was there even then. But once the Anglo-Saxons arrived, they wanted to take over everything, including the land. They began massacring the natives and appropriating their lands, having developed the credo that the only good Indian. The WASP, White Anglo-Saxon Protestant, entity or group feeling developed later, despite large sections of Irish Catholics in New York and pockets in the eastern seaboard like the Kennedys of Boston, and in the southern counties portrayed by Margaret Mitchell's O' Haras at Tara in '*Gone with the Wind*'.

The Amerindians fought back with bows, arrows and tomahawks, in an effort to save their land, their culture and their honour. The Sioux fought a war and were finally defeated as late as in 1862, in Minnesota. The Europeans also introduced hitherto unknown diseases

that decimated whole populations in North and South America. After numerous massacres, the Amerindians, or what was left of them, were corralled into 'Reservations' in the United States. Frustration, humiliation and dishonour propelled the proud and upright son of the soil to a slothful existence, and to alcohol, the Amerindians therefore have had no cause to forget the genocide by the Anglo-Saxon in North America, by the *conquistadores* in Mexico, Central and South America, and also by some of the Argentine *caudillos*.

Human rights violations at the hands of despots or extremist in multifarious forms demonstrate how essentially inhuman beings have often been when charged with power or with racial or religious fervour.

The Australian Prime Minister Howard had expressed regrets over the past policies of government that has caused so much suffering to the aboriginal population. In July 2000, a 'UN committee rebuked Australia', a Reuter report says, 'for its treatment of Aborigines who make up about 2.3% of the 19 million populations. It urged Australia to do more to amends for a past government policy under which about 100,000 aboriginal children were taken from their families, some forcibly, between 1910 and 1970, to raise them in a civilized environment. Official figures show that death rates among aboriginal are higher in all age groups than for other Australians, with many of the deaths attributed to socio-economic disadvantage. Rates of suicide, crime, alcoholism, smoking and deaths in police custody are also significantly higher for Aborigines'. A recent judicial denial of compensation to those who years ago as children had been forcibly taken from their parents and raised by white foster-parents, was deeply disappointing. The Hon. John N. Button, former Member of the Australian Parliament, leader of government in Senate, and Industry Minister 1983-1993, in his foreword to *Patrol in dreamtime* by Colin Macleod, says, 'Today there is an uneasy soul-searching debate about the issue of Aboriginal reconciliation. The High Court's Mabo decision of 1992 and the 1996 Wik decision have not in the short term made it any easier, but they have enhanced the probability of a just and more equitable solution'.

The right of the indigenous peoples have even stirred the judiciary in homogeneous Japan. The *Time* magazine, August 21-28, 2000, reports: In a landmark 1998 ruling, a judge in Hokkaido recognized the Ainu as an indigenous people for the first time. While Tokyo has yet to follow suit, it no longer claims Japan has no racial minorities. Recognizing the Ainu as an indigenous people would raise land-rights issues the government would rather avoid. But after intense lobbying by Kayano and others, Tokyo officially accorded the Ainu

minority status in a law passed in 1997'. The Ainu number less than twenty thousand souls. In Brazil, too, the indigenous people are speaking up.

Sad as it is, today violence and discrimination against ethnic religious minorities in the subcontinent have become endemic and are almost looked upon as natural phenomena. In Sri Lanka the ongoing negotiations between the government and Tamil tigers, brought about through Norwegian mediation is a hopeful sign. In Bangladesh the conflict between the majority Bengalis and the ethnic minorities like the Chakmas and others collectively called the Jumma, and in India the insurgencies in the northeast have caused many deaths, not to speak of the terrible ongoing tragedy in Kashmir, and the horrors in Gujarat state.

In Pakistan, religious minorities often feel discriminated against, not as a consequence of state policy but for lack of political will to confront the extremist elements, which though a minority in themselves wield disproportion power and authority on society at large. President Musharraf took some courageous measures to counter the onslaughts of the extremist elements, concrete measures (a) the constitution of a Minorities Commission under the chairmanship of a sitting or retired Judge of the Supreme Court. The second most important measure would be the implementation of its recommendations and not its relegation to the dustbin as has been the case with so many important commission report; (b) the Chairman of the commission should wield the power and authority of a Federal Ombudsman; (c) the induction of Ministers in the Federal Cabinet and Provincial Cabinets of Punjab and Sindh governments, if not in the other two as well.

In Europe there were the inquisitions and religious wars, not to speak of the territorial wars. However, the blood and thunder, the cruelties and the hateful sprees of aggression have not been confined to the white races, nor to Europe and the Americans. In Asia and Africa history has recorded as many instances if not more of murder, mayhem and massacre. In Latin America, Asia and Africa subtle to gross forms of discrimination and deadly antagonisms, like that between the Tutsis and the Hutus, are rampant. In Asia we can name conquerors even more bloodthirsty than the Europeans. Ghengis Khan the Mongol conqueror and the White Huns or Ephthalites like Toramana and his son Mihiragula, are a few examples.

Leaving aside the rapacious conquests of the past as aberration bred by ignorance, today in the new millennium too, apart from some sporadic forays into global poverty eradication, and anti-Aids campaigns, and fitful gestures at social justice here and there, the overall picture of the deprived and disinherited, particularly amongst the minorities all over

the world, ranges from pitiable to horrendous. Today, apart from the cast disparities in wealth and privilege between the proverbial haves and have nots, and the grossest discrimination against women from bride burnings in supposed accidents while cooking in the kitchen, to honour killings, karokari and Vana, there exist persecution at worst and irresponsibility at best, in the treatment of religious and ethnic minorities.

In Bhutan there is the problem of the ethnic Nepalis. In Nepal, the resurgent Maoists had started increasing their militancy, though now both sides are negotiating for a settlement. In northeast India the various ethnic hill-peoples are asking for more political autonomy and economic justice, in Burma, apart from the Karen and Shan aspirations there is the standoff between the democratic forces under Daw Suu Kyi and the military government. The Kashmir conflict rages on, occasionally threatening a full-fledged war between the nuclear states of India and Pakistan, whose armies are still facing each other with fingers on the triggers, though there have recently been a withdrawal of some of the Indian forces, and Pakistan's declaration of a similar response.

The long held dispute between Argentina and Chile on the Beagle channel was resolved by Papal arbitration, and the border dispute between Peru and Ecuador are close to a similar non-violent, negotiated settlement. Norwegian efforts have brought about a ceasefire and a probable settlement in Sri Lanka. In the same manner, that is through third party arbitration, mediation or facilitation for dialogue we can try to resolve other territorial disputes, between States. Tripartite dialogue and negotiations of Kashmir in which the Kashmiris are included, would be a step forward.

In Bangladesh, a peace accord was signed between the government and the Shanti Bahini in December 1997, as a result of which the Jumma, mainly Chakma freedom fighters, laid down their arms. Despite a lapse of five years in the troubled Chittagong Hill Tracts the promised Regional Council has been formed but has not started functioning. Many of the thousands of uprooted hill people have neither got back their lands nor proper compensation. The government sponsored and inducted settlers from the plains districts have not been rehabilitated outside the Tracts, despite the European Community's offer to finance the operation. Some of the promised amendments too have not been introduced in parliament. Documented gross human rights violations have not been inquired into, or when inquiries were held the inquiry reports have not been published. Needless to say not a single person has been tried for human rights violations, including murder, nor any relief provided to the maimed or to the next of kin of the victims.

Apart from the injustices to the Jummas in the Hill Tracts, there is the festering case of the 'Biharis'. It appears that neither Bangladesh nor Pakistan, nor the international committee, is sufficiently interested in rehabilitating these unfortunate people either in Bangladesh or Pakistan or in some other countries. As a consequence thousands live wretched lives in deplorable conditions in refugee camps in the Bangladesh capital, Dhaka. And this has been their fate since 1971.

In 'Double standard on HR issue,' Tommy Koh, the Statesman of Singapore writes, 'Because the Universal Declaration of Human Right was formulated against the background of the unspeakable horrors that Europeans, especially Jews, suffered during the World War II, the driving inspiration behind it was to protect the individual against the state. In the past 50 years, the declaration has given birth to a large family of international human rights laws, institutions, procedures and norms. To commemorate the 50<sup>th</sup> anniversary of the declaration, the Asia-Europe Foundation and the German weekly newspaper *Der Zeit* recently co-organized a colloquium in Hamburg. It brought together 40 Asian and European statesmen, scholars and activists in the field of human rights.'

It is not only obvious but urgent that minorities be protected. They need more than professions of good intentions by governments. Particularly at international moots, where they are all professed champions of human rights and protectors of the minorities in their charge. Religious and ethnic minorities definitely and on a priority basis require the establishing of an independent, fully autonomous Anti discrimination Authority under the auspices of the UN or as an organ of the UNHCR, under Mary Robinson or someone like her. The ADA must have adequate authority to monitor, inspect, and take punitive actions wherever discrimination or human rights violations occur. They should also have their subsidiary establishments wherever they consider necessary. The ADA should submit an annual report to the Secretary General who should present it to the General Assembly every September.

These measures are not going to eradicate discrimination or human rights violations immediately but they would help reduce them. The problem and the challenge lies in finding an acceptable balance, an equilibrium, between a state's right to disallow 'interference' in its internal affairs on the one hand, and a minority community citizen's right to be protected against omissions and commissions by the state or its functionaries or groups of citizens.

In the 1960s, I had asked, in the floor of the East Pakistan assembly, that on the lines of the French *Droits* administration and the Scandinavian Ombudsman, the institution of Ombudsman should be

introduced in Pakistan, initially at the provincial level. Considerably later, we have ombudsman in Pakistan today. To protect citizens' rights further this office should be strengthened and be made more accessible, even at the *tehsil* and union level.

To empower a supranational body, states will have to give up a small part of their jealously guarded 'sovereignty' but nations everywhere have already made some concession in this regard or else the United Nations and its various organs including the Hague Court for war crimes in Bosnia could not have been set up, nor the European Union, the European Parliament, the Euro Etc., and of course the newly created International Criminal Court. The High Commissioner for Human Rights certainly needs greater empowerment and resources as Mary Robinson had pointed out so clearly and emphatically.

Can a modern day dictator perpetrate another holocaust within the state boundaries? If the scale of murder and mayhem is not widely publicized, can and do human rights violations take place in different and divers parts of the 'global village' the answer is an unequivocal YES. We cannot allow the state or a given society to have absolute authority to ride roughshod over human rights and commit violations against its own citizens, be it though state machinery or group or individuals. This then is the bottom line.

So than what are we waiting for? How many more of the interminable resolutions at national and international for a would we require before a potent, capable, internationally supported and universally recognized body is established and empowered to take punitive as well as preventive measures against infringement of Human Rights as defined in the Universal Declaration? Only then can we hope to minimize persecution and cruel and inhuman violations. Only then can we have a fair and human interaction between the wielders of authority in a state and its minority citizens, and in some societies its women. Is that too much to expect in this new millennium? Or do we have to wait for the year 3000 to arrive?