

Citizenship and Social Worth: Indian Democracy in Search of Dignity

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Abstract

Since the Indian society is a highly inegalitarian one divided on caste color and gender lines, we have numbers of laws and constitutional provisions- both preventive and prescriptive- to fight the menace of inequality, injustice, structural domination and systemic exploitation. However the Indian constitutional democratic state has witnessed many ups and downs in the thorny path of social inclusion and claims of individual dignity. This paper attempts to bring two sets of debates on the success and failure of Indian democracy in establishing a just and human society based on individual dignity and social worth. The points which we attempt to discuss have not directly pitted against each other; rather we have arranged them according to our readings of intellectuals like Upendra Baxi, Gopal Guru, John Rawls, Ambedkar and Andre Beteille and so on. On one side of the argument, Upendra Baxi seems to conclude that despite constitutional provisions, laws and institutions, India has completely failed to generate an authentic practice of the idea of republican citizenship based on individual dignity and self respect. But on the other side, Gopal Guru concludes that

dignity is a kind of claim that needs to be confirmed and communicated. One seeks to communicate this claim through the language of rights, and a democratic set up can provide the background conditions for the realization of those rights. Looking at the ups and downs- or the so called episodic achievements- of Indian democracy Gopal Guru says, "If one were to take a subsidized view of the success of India's democracy one could grant the point that democracy did help the deprived to gain dignity" (Guru 2009:80). Towards the end, we have taken recourse to constitutional morality where we make an effort to show how the textualization of dignity-through constitutional provisions-tends to keep the civil society in tenterhooks. Ambedkar once in the constituent assembly said that 'constitutional morality is not natural rather it has to be cultivated. We must realize that our people are yet to learn it (CAD, 1989: VII, 38). John Rawls, while commenting on constitutionalism, holds that a democratic culture- where people endorse the constitutional essentials and principles-facilitates the constitutional laws to flourish. However, we think, one tends to agree with Andre Beteille who says that the stronger the presence of constitutional morality, the less need there is to put everything in written text. Hence the more Indian society becomes democratic, the more the claim of dignity gets confirmed and communicated. Moreover, Indian democracy has not failed completely; rather the process is going on.

Introduction

The idea of citizenship is as old as the idea of political community. This is because it is inextricably interwoven with the texture of the political community-may it be ancient Greek city-state or modern nation-state. Citizenship characterizes 'free and equal membership' of a political community. This very notion of 'free and equal' membership is too difficult to realize in an inegalitarian society where inequality is entrenched and unfreedom is cumulative. This difficulty, we believe, gets exacerbated not as much because of *exclusion outside* as much it happens due to *exclusion within* the community. A good example of the exclusion outside would be the preamble to the Indian constitution. For, the preamble when reads "WE, THE PEOPLE OF INDIA", excludes members of other political communities (nation states) in the world. This is what can be called the

exclusion outside and this has become a necessary condition for the demarcation of the membership by making a distinction between citizens and aliens. By 'exclusion within', what is meant is the exclusion of some sections of people from the socio-political main stream. This exclusion is a result of the process of structural domination and systemic exploitation in the past which are having their lingering impacts in the present. These sections, for example, are the women, Dalits and Blacks and so on. This type of exclusion has become an essential feature of almost all societies. For instance, even the classical Athenian citizenship was strictly confined to 'young Athenian free men'.

The idea of citizenship, however, has been revolving around the kingpin of exclusion and inclusion with relation to membership of the political community. As the very notion of 'free and equal' membership is too difficult to realize in an inegalitarian society, so is the process of inclusion. When the category of citizen is unable to accommodate or include all sections, the idea of 'free and equal' remains as a shadow without substance. Hence what matters, over all, in citizenship is not formal membership only but also of equal social worth, and hence not only formal rights but also that of individual dignity.

DIGNITY AND SOCIAL WORTH- the Crux of the Idea of Citizenship:

Universal citizenship and formal membership can never explore the felt sense of exclusion. Thus what it needs is the differential treatment which only can catch the substantive notions of humiliation, non-recognition and misrecognition and so on. We need to design formal procedures in such a way as to realize the supreme virtues like equality and social justice, thereby making the road smooth for 'equal and free' membership of a political community. John Rawls for that matter considers the bases of self respect as one of the five key social goods.¹ Dignity, according to Gopal Guru², emanates from the desire to acquire equal worth. It presupposes the necessity to lay down normative criterion around which social protocol could be organized. Thus dignity is a kind of claim that needs to be confirmed and communicated. One seeks to communicate this claim through the language of rights. Rights are morally necessary because without them we would have no ground to attribute to a person an absolute and

irreplaceable dignity. Dignity is an irreducible universal principle. The failure to confirm this universal principle also leads to the loss of self-respect, and hence inwardly directed. It is different from the conventional idea of honour. Honour anticipates both hierarchical structures and reverence to these structures, for example based on gender or caste discrimination. Honour, says Gopal Guru, feeds on the repulsive subordination of others.³

LAWS & INSTITUTIONS-the Formal and Necessary Language of Dignity

To achieve the sense of equal worth or dignity is very difficult in hierarchical and inegalitarian societies divided in caste, color and gender lines. Indian society is no less barbaric in these respects. Honour killings, even today, are the orders of the day in many parts of India – both rural and urban. Similarly, the recent incidents of floggings of Dalits by cow vigilantes in some parts of the country or the various atrocities on Dalits in general are testimony to the ‘unequalness of worth or dignity’ among citizens in India. In order to give strong challenge to such grave situations, what we require primarily is stricter legislations. Both constitutional provisions as well as statutory legislations seek to provide not only restrictive or preventive but also preventive cure to the existing social ailments on caste lines.

It is needless to say that the textual (C1) and interpretive (C2)⁴ aspects of Indian constitutionalism hunt for preventive measures to abolish untouchability and its practices in any form. In fact, in 1976, The Untouchability (Offences) Act, 1955 has been comprehensively amended and renamed as the Protection of Civil Rights Act, 1955 to enlarge the scope and make penal provisions more stringent. The term Untouchability, however, has not been defined either by the constitution or in the Act. However, in interpretive practice (C2) the Mysore High Court held that the subject matter of Article-17 is not untouchability in its literal and grammatical sense, *but the practice as it has developed historically in the country*. It refers to social disabilities imposed on certain sections of people by reason of their birth in certain castes.

Moreover, as dignity is a kind of claim that needs to be confirmed and communicated, one seeks to communicate this through the language of rights. Constitution (C1) provides various provisions⁵⁵ Numbers of provisions are provided. Some key features are:

Article-14: Right to Equality

Article-15: Prohibition of discrimination on the basis of caste for the prevention of disrespect towards certain sections of people. Not only formal legal negative rights but prescriptive provisions or positive rights are also made available for the betterment and upliftment of the oppressed section of the society. Special privileges-through reservation and quota in jobs and educational institutional institutions -are provided for the enhancement of their social status and self respect. A number of other legal provisions are available which seek to abolish practices derogatory to individual dignity. For example, Representation of Peoples' Act, 1950 disqualifies candidates to contest election on the grounds of caste atrocities.

Of other provisions, most prominent is the philosophy of FRATERNITY enshrined in the preamble to the constitution of India. It seeks to assure the dignity all individuals. This philosophy gets manifested through fundamental rights, particularly as provided in Article-21 i.e. Right to life and personal liberty. The embodiment of dignity in the right to life and personal liberty as well as the salience of individual dignity is frequently underlined in various judgements of the Supreme Court and High Courts. For instance, in the Meneka case⁶, the Supreme Court interpreted that *'Right to life' as embedded in Article-21 is not merely confined to animal existence or survival, but it includes within its ambit the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living.*

Thus, constitutional provisions and rule of law are badly necessary conditions for the promotion, restoration and generation of human dignity in a society which has not been that much democratic as to seek from everybody a sense of fellow feeling. Well furnished and rationally designed laws and constitutional provisions bear the beacon light for the desired goal of claim of dignity. We have incorporated legal provisions, but to what extent they reflect in practice remains a crucial concern.

The flawed invention of citizenship:

No doubt, we have, in India, formulated laws, rules and regulations to curb the caste discrimination and caste related social evils. Laws- both

constitutional and statutory- have sought to redress the past wrongs through prescriptive as well as preventive measures. Some argue that these laws, rules and regulations or even constitutional provisions don't get reflected in the practice of the civil society. The Indian state has failed to provide some sections a dignified life, despite the strict preventive and prescriptive laws as well.

Such an argument is found in Upendra Baxi's article "Outline of the 'theory of practice' of Indian constitutionalism."⁷ Baxi holds that the Indian constitutionalism (C3) is somewhat incoherent concerning the relationship between the idea of republic and the idea of citizenship. In the preamble one can find the idea of republic in the categories of justice, liberty, fraternity, dignity and equality. "The invention of republican citizenship, to Baxi, is indeed momentous. It defines arenas of struggle to de-symbolize ritual hierarchy, based on notions of purity and pollution. The social bases of a radical heterogeneous freedom movement, generating a mass of anterior expectations, create the necessary bases for the proclamation of the constitutional outlawry of the practices of untouchability (as a fundamental human right: Article 17), forms of agrestic serfdom (Article 23), and discrimination on the grounds of sex (article 14, 15)."⁸ However the structures and processes of governance remain least constitutionally obliged to respect individual or associational dignity of Indian citizens. In their dealings with governments, the bulk and generality of Indian citizens' stand reconstituted as subjects all over again.⁹ Baxi further says that the idea of fellow feeling or respect for fellow citizens constitute the very notion of republic. However, these rules, regulations, laws and constitutional provisions- in the Indian case - have failed to generate the above said fellow feeling. Baxi seems to hold this failure to be the end of the process. Thus he concludes that the legal and constitutional enforcement of fraternity has failed, when measured in association with the value of dignity. Hence, to Baxi, the Indian C1, C2 and C3 put together, have failed to create an authentic practice of the idea of republican citizenship.¹⁰ Baxi seems to be in a hurry. He wants the constitutional and legal provisions (employed for a short span of sixty years) to stamp out, as soon as possible, the maladies of the Indian society that have existed for thousands of years. No doubt, Indian state, at times, witnesses failure to communicate dignity. Baxi, however, assumes this to be

a complete failure and thus the end of the process. In result, he regards the formation of anterior expectations to be a flawed invention of citizenship.

Democracy in search of dignity:

Some others think that the Indian state though has employed laws and regulation but it is still in search of dignity. No doubt, Indian state has failed, episodically in many respects, to provide all sections a dignified life. But the rise and fall of Indian democracy to provide dignity is not the finitude or end of the process, rather the process is going on, and Indian democracy is still in search of dignity.

Such an argument finds a clear manifestation in one of the articles by Gopal Guru.¹¹ In this article he claims that confirmation to the principles of dignity demands confrontation with structures of domination and oppression. Since the inegalitarian character of the Indian society is strongly entrenched for thousands of years, it is obvious that one will face confrontation in many ways if s/he tries to confirm or communicate the claims of dignity. For example inter-caste marriages very often end with Honour killings in many parts of India today. Yes, in India we have citizenship laws, rules and regulations to fight the menace of caste oppression. Hence, democratic framework is expected to separate political institutions from hierarchical social institutions that undermine human dignity and equal social worth. In democracy, according to Gopal Guru, individuals can acquire generic identities to move into different spheres with different identities. This becomes possible through rationalized rotation of political institutions.¹² As mentioned before, one needs to claim dignity through the languages of rights. Rights in order to become rights require a precondition for their realization. And democracy provides the preconditions within which, says Gopal Guru, could be asserted and established and ultimately dignity could be assured.¹³

Gopal Guru, while analyzing the modernist democracy, holds that even the elitist nationalist leaders like Tilak were bound to accommodate the cause of dignity. He criticizes the logic of political competence and efficiency by espousing that some sections are late comers in the cultural modernity. Therefore the modernist democracy with its elitist logic will produce more and more exclusion. For this matter he stands for the right

to commit mistakes. Gopal Guru, however, has provided a paradoxical relationship between democracy and dignity by citing the fact that the state seeks identification parade (as he calls it) in order to empower (or champion the cause of) the Dalits. By identification parade, he means the process of identification of the sections (through certificate or otherwise) seeking benefit of reservations or quota. This according to him results in stigmatization. However, we would say, since there no other better alternative available, in order to attain the objectives of reservation policy, it is necessary in the Indian case to look backward for the rederssal of the past wrongs. He also analyses how the problem of free-ride and proxy representation in electoral democracy lead to self humiliation.

The entire argument of Gopal Guru holds that dignity is a kind of claim that needs to be confirmed and communicated. One seeks to communicate this claim through the language of rights, and a democratic set up can provide the background conditions for the realization of those rights. Looking at the ups and downs- or the so called episodic achievements- of Indian democracy Guru says, "If one were to take a subsidized view of the success of India's democracy one could grant the point that democracy did help the deprived to gain dignity."¹⁴ Hence his arguments hold the fact that the process is going on, and Indian democracy is still in search of dignity.

Conclusion

Ours is an inegalitarian society characterized by entrenched structural domination and systemic exploitation for thousands of years. Ours is also the society to have experienced constitutional democracy and rule of law for a very short period of history- i.e. only about sixty five years since the commencement of the constitution. Probably this is why the constitutional provisions and democratic institutions have not been fully able to uproot the unjust practices from the society. This failure is neither a complete failure nor a finitude nor the end of the process. It may be true to some extent if somebody holds the civil society at bellow has not been able to reflect the textualization of dignity which is at the above. But it would be totally wrong to say that the textualization of dignity in India has been a flawed invention of citizenship. The fact is that the process is going on. In fact, the constitutional provisions have kept the civil society in tenterhooks, and it cannot be denied

that the constitutional democracy in India is on its way to attain human dignity.

In such a situation what is much required is the ethics behind the rule of law or 'constitutional morality'. Democratic practices provide the background conditions for the generation of this morality. To put it in the words of John Rawls: "Our ... political power is justifiable [to others as free and equal] ... when it is exercised in accordance with a constitution the essentials of which all citizens may be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational"¹⁵ It is necessary to have a look on the 'essentials' and 'principle' mentioned. In Rawlsian analysis the ideas of justice and equality stand for the constitutional essentials, whereas the *difference principle* or the unequal distribution bears the notion of 'Principle'. When people, living in a democratic culture, rationally and reasonably endorse both the categories of 'essentials' and 'principles' in the constitution, it would not be difficult for the civil society at bellow to translate the morale behind the text. However constitutional morality is not a natural sentiment. B R Ambedkar, with regard to constitutional morality, once commented in the Constituent Assembly, "It has to be cultivated. We must realize that our people are yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic."¹⁶ The expansion of the democratic content of institutions and social life is very much necessary. In the absence of constitutional morality, textualization of dignity - no matter how carefully the constitution may be written- tends to become capricious. Nevertheless, at the cost of reiteration, it must be accepted that the process is going on. Hence, Indian democracy has neither totally failed, nor has Indian constitutionalism nurtured in a flawed invention of citizenship. Of course, intellectuals like Andre Beteille would argue one step ahead by saying that "The stronger the presence of constitutional morality, the less need there is to put everything down in black and white."¹⁷

Notes

Beteille, Andre (2008), Constitutional Morality, Economic and Political Weekly, October 4. P- 35-42

Baxi, Upendra (2008), 'Preliminary Notes on Transformative Constitutionalism'

in BISA Conference: Courting Justice, Delhi, April 27-28

Baxi, Upendra (2008) 'Outlines of a Theory of Practice of Indian Constitutionalism' in Rajeev Bhargava(Ed), *Politics and Ethics of the Indian Constitution*, New Delhi: Oxford University Press

Constituent assembly Debates (1989), Official Reports, Lok Sabha Secretariat, New Delhi

Guru, Gopal (2009), 'Democracy in search of Dignity' in Ujjwal Kumar Singh (Ed), *Human Rights and Peace; Ideas, Laws, Institutions and Movements*, New Delhi: SAGE Publications
 Guru, Gopal (2009), *Humiliation; Claims and Contexts*, New Delhi: Oxford University Press
 Marshall, T H (1950), *Citizenship and Social Class*, Cambridge: Cambridge University Press
 That is to say, once constitutional morality is generated, it would hardly need strict codification or textualization of dignity. However, until this is generated, laws- both constitutional as well as statutory- hold justification to be in operation. Therefore, we would like to conclude that the textualization or codification of rule of law has not displayed a character of flawed invention of citizenship, rather it has kept the civil society in tenterhooks, and this is what Indian democracy is seeking to confirm and communicate while searching for social worth or dignity.

References

- 1 "All social primary goods - liberty and opportunity, income and wealth, and the social bases of self-respect - are to be distributed equally unless an unequal distribution of any, or all, of these goods is to the advantage of the least favored". (John Rawls, 1971:303)
- 2 Guru, Gopal (2009), 'Democracy in search of Dignity in Ujjwal Kumar Singh (Ed), *Human Rights and Peace; Ideas, Laws, Institutions and Movements*, New Delhi: SAGE Publications, p-75
- 3 Ibid: 75
- 4 Upendra Baxi categorizes constitutionalism into three parts viz. C1, C2, C3. Constitutionalism (C1) stands for the written text of the constitution, Constitutionalism (C2) stands for the interpretive practices of the written text. Constitutionalism (C3) underlies the normative and ideological thought formation. For details see: Baxi, Upendra (2008), 'Preliminary notes on transformative constitutionalism' in BISA Conference: Courting Justice, Delhi,

April 27-28 Article-17: Abolition of Untouchability

- 6 Meneka Gandhi vs. Union of India, AIR 1978 SC 597
- 7 Baxi, in this regard, has devoted only one section of the article, though not the entire article. The section is titled as 'The formation of anterior expectations; the flawed invention of citizenship' (Page-103-106) in Baxi, Upendra (2008) 'Outlines of a Theory of Practice of Indian Constitutionalism' in Rajeev Bhargava (Ed), Politics and Ethics of the Indian Constitution, New Delhi: Oxford University Press
- 8 *Ibid-104*
- 9 *Ibid-105*
- 10 *Ibid p-106*
- 11 Guru, Gopal (2009), 'Democracy in search of Dignity' in Ujjwal Kumar Singh (Ed), Human Rights and Peace; Ideas, Laws, Institutions and Movements, New Delhi: SAGE Publications
- 12 *Ibid-76*
- 13 *Ibid-76*
- 14 *Ibid., p.80*
- 15 John Rawls (1996), Political Liberalism, New York: Columbia University Press, xx.
- 16 Constituent Assembly Debates 1989: vii, 38 Michelman Frank I (2003) 'Rawls on Constitutionalism and constitutional Law' in Samuel Freeman (Ed.) the Cambridge Companion to RAWLS, Cambridge: Cambridge University Press Rawls John (1996), Political Liberalism, New York: Columbia University Press Rawls John (1971), A Theory of Justice, Cambridge, MA: Harvard University Press