

Peace and Irresponsibility

Author(s): Kalpana Kannabiran, Volga and Vasanth Kannabiran

Source: *Economic and Political Weekly*, Vol. 40, No. 13 (Mar. 26 - Apr. 1, 2005), pp. 1310-1312

Published by: Economic and Political Weekly

Stable URL: <http://www.jstor.org/stable/4416390>

Accessed: 04-09-2017 06:20 UTC

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://about.jstor.org/terms>



JSTOR

Economic and Political Weekly is collaborating with JSTOR to digitize, preserve and extend access to *Economic and Political Weekly*

and incapable of giving rise to any legal consequences.

Perceptions

Fourth, it is an equally well-entrenched position of law that constitutional adjudication cannot be on the basis of perception of one party or even the honourable judges. It is submitted with respect that the controversial interim order was based on perception alone and thus was not in consonance with principle of constitutional interpretation. Fifth, Article 361 of the Constitution grants immunity to the president and governor for any act done by them. It is the settled position of law that the Constitution must be interpreted in a harmonious manner so that no provision of the Constitution is rendered otiose. The interim order of the Supreme Court has the effect of rendering Article 361 otiose as it cuts into the legitimate province of the assembly and governor.

Sixth, it is a well settled proposition of law evolved through catena of authorities of the Supreme Court, including its most significant judgment propounded through the bench of the largest strength in Keshwanand Bharti (1973) that the possibility of abuse of power cannot be the basis for invalidating that power. This proposition of law too was celebrated more in breach rather than compliance in the interim order dated March 9, 2005.

Seventh, it is plausible to argue that proceedings of the house cannot be made subject to judicial scrutiny on the basis of a mere prima facie conclusion. Before deciding the complexity of the issues through elaborate and in-depth arguments, the legitimate functioning of the house cannot be subjected to judicial invigilation merely on the basis of prima facie conclusion. It is one thing to say that the Court can quash the order of the governor or presiding officer of the house on the ground of mala fides and other permissible grounds, but it is an altogether different thing to say that the Court in the garb of interpretation can direct the speaker of the house to conduct affairs in a manner mandated by the Court. The latter course of action, it is submitted with respect, is plainly impermissible as it amounts to encroaching upon the legitimate domain of legislature in utter disregard to the principle of separation of powers.

Eighth, the constitutional interpretation cannot be done de hors (outside of) to the 'doctrine of political thicket'. Certain disputes due to their political complexion

and flavour are not amenable to what in US constitutional literature is called 'Manageable Judicial Standards'. The interim order of the Supreme Court amounts to entering into the domain of the political thicket by ignoring that the controversies are not amenable to manageable judicial standards.

Last, no organ in our Constitution is superior to the other. No doubt the final power to fix the ultimate meaning of the constitutional text lies with the Supreme Court but the Court does not have the last say in shaping of the Constitution. Parliament too has constituent power to amend the Constitution subject to the fetter of the basic structure of the doctrine. The 11-judge bench of the Supreme Court propounded as preposterous the law in the case of Golaknath (1967) that the word 'Law' in Article 13 includes even constitutional amendments. This interpretation was subjected to widespread criticism and disapproval forcing parliament to step into by passing 24th Amendment and thereby nullifying the wrong enunciation of law by the Supreme Court in Golaknath and the amendment made by the parliament was upheld by the Supreme Court in Keshwanand Bharti in which all the 13 judges were unanimous in declaring

that Golaknath judgment was bad law. The point is that the Supreme Court alone cannot have the final say in shaping of the Constitution. The final authority to re-write the Constitution vests with Parliament, subject to the limitation of the basic feature doctrine.

It is farthest from my conscious or unconscious mind to even suggest that what transpired in Jharkhand was healthy. In fact, the events were a subversion of constitutional convention with a fateful implication for constitutional democracy. But the solution does not lie in the Supreme Court directing the house to conduct its affair in a manner mandated by the Court in breach of the principle of separation of powers. The constitutional bench of the Supreme Court itself upheld the power of the speaker to disqualify a member under Tenth Schedule of the Constitution. The questionable and partisan action of the governor or speaker must be allowed to suffer a scrutiny by the general public and through the media rather than the Court embarking upon the misadventure of taking over the function of the house itself. This is nothing but usurpation of power in breach of the principle of separation of powers. [17]

Email: krvijay02@rediffmail.com

Peace and Irresponsibility

Recent actions by the Naxalite movement in Andhra Pradesh raise questions about the ethics and lack of accountability on the part of these groups. It is not merely in the bearing and use of arms that the Naxalite movement mirrors the state. Unfortunately there is a stark resemblance even in the indiscriminate and extremely moralistic identification of the enemy who must then be eliminated. The power of naming in this entire scenario vests with the police on the one side and the Naxalites on the other. Actions such as the recent killings by the Naxalites destroy public confidence and increase the faith of people in repressive measures and fascist solutions. The fear of terrorism is not easy to contain and when radical politics begins to use the weapon of terror that, in our view, signals the end of politics.

**KALPANA KANNABIRAN, VOLGA,
VASANTH KANNABIRAN**

The possibility of peace in Andhra Pradesh has rolled back completely in the state. The peace processes and dialogue that were a source of immense hope in the past eight months among

all sections of the people have ground to a halt. From a growing concern about the lack of transparency and the practices of impunity on the part of the state, there is now a serious concern about the ethics and lack of accountability on the part of the Naxalite groups. We had, in an earlier essay, raised these concerns when we

argued that carrying of arms gives the licence to kill and cause grave injury – whether to state or political groups, and vests arbitrary powers in the individuals or groups that bear them. Little did we realise when we made that observation, that our words would prove so troublingly prophetic. To mince words at this juncture would be unethical. The actions by the Naxalite groups in Vempenta¹ and Chilakaluripeta² villages in the state grossly violate every principle of revolutionary politics. However, we would like to examine the reasons why these violations have far more serious implications than appear at first sight.

With the Vempenta incident, what stands out is the sheer mindless brutality of the attack. To justify the attack on the grounds that it was retaliation for a massacre of dalits six years ago is ridiculous to put it mildly. But even so, old questions resurface again and again. Can you use the master's tools to dismantle the master's house? There is a deeply moral question that must be addressed. If the same degree of brutality – not just towards the representatives of the state but towards the civilian population is going to characterise radical politics, it is better to deal with a repressive state that can be brought to account through democratic processes at least theoretically than deal with a politics where there is no theoretical possibility to enforce accountability. But on a more immediate level, what was the consequence of the Vempenta incident? The dalits in the village had to flee in fear of retaliation.

Disproportionate Costs

If one were to argue that there are costs that must be paid in the struggle for the betterment of the human condition, the costs that dalits and adivasis bear is disproportionate to any improvement in their condition. In the agency (tribal) areas of Andhra Pradesh, it is adivasis who bear the cost of state violence and repression, irrespective of whether or not they believe in the goals of the Naxalite movement. Now, apart from forcing dalits into homelessness by callous action that passes as politics, there is a steady number of dalit and tribal people (identified with the 'ruling classes') who are being killed by Naxalites. The response of a leadership that sees them only from the standpoint of their class location and does not consider them as dalit/adivasis is demonstrative of

the unreason that accompanies arbitrariness in politics.

What are the indices of betterment in the human condition? At the level of popular understanding getting a formal education, securing steady employment (and government employment is the most secure in terms of ensuring family survival, as many dalits and adivasis in government employment will tell us), and working towards building up resources and capacity in subsequent generations is a hard struggle that a small proportion of people in these groups have managed to achieve against all odds. To suddenly declare that these people are class enemies and will not be spared in the war against the state – not just that they might be killed accidentally in confrontations, but that they will also be specially targeted and killed, that their families will not be spared, either brings us to the point of zero hope.

When we wrote our earlier piece on women's rights and Naxalite groups in November 2004, we did raise several questions with respect to the ways in which gender was articulated in radical left politics. Of the several things we said there, one of our concerns was on the glorification of motherhood. Our point is driven home painfully in this violence and counter violence that we are now mute witness to. The short film on mothers of Naxalites killed in encounters, released around the time of the peace talks last year,

'Smarana', opens with noted poet Varavara Rao reciting a poem on mothers of the revolution in which he says

Not having understood her birthing pains,
today how can we grasp that mother's
rage?

In an informal account of a constable's conversation with a mother of a Naxalite that was reported to us, the constable apparently chided the mother for the kind of son she had borne, to which the mother retorted that she only gave birth. What did she know when he was born what he would become?³ Not all the mothers in the film 'Smarana' understood or agreed with the paths their children had chosen, nor were they all alike in social location. The only unifying factor was that their children had died similar deaths – a fact some were proud of but others merely resigned to.

Poverty of Revolutionary Paradigms

To construct the mother of the revolutionary in the image of the mother goddess speaks to the poverty of existing revolutionary paradigms with respect to women, but especially to mothers. Our observation here is borne out by what happened in the recent incident at Chilakaluripeta. The 60-year old woman who was killed had in fact locked her son (a sub-inspector) and some others into a room and was blocking

KRISHNA RAJ SCHOLARSHIP FUND

An Appeal for Donations

The Sameeksha Trust seeks contributions to the Krishna Raj Scholarship Fund that has been established to honour the memory of the editor who shepherded the *EPW* for 35 years.

Krishna Raj always took a keen interest in the work of young scholars and encouraged them in a number of ways. It will therefore be a fitting tribute to the memory of Krishna Raj that a scholarship fund in his name be established to assist the research efforts of PhD students in the social sciences.

The Sameeksha Trust invites donations to the corpus of the Krishna Raj Scholarship Fund. These donations will be entitled to tax exemption under section 80G of the Income Tax Act.

Cheques should be made out in the name of 'Sameeksha Trust'. They should be sent to the Krishna Raj Scholarship Fund, *Economic and Political Weekly*, Hitkari House, 284 Shahid Bhagatsingh Road, Mumbai 400 001.

the entrance, when she was shot. The son managed to escape. When questioned about the ethics of this kind of indiscriminate massacre of innocent people, a spokesman justified the act by saying that she deserved to be killed for giving birth to a 'rakshasa'. The birthing pains, the glorious mother who sacrifices her life, the simple humane woman who did all she could to shield those dear to her are subsumed within the revolutionary quest for a Ramarajyam where the only true/good mothers are those that reproduce the creed. Will Varavara Rao now repeat

I have not seen that mother
But her pointing finger accuses me?

Witness what is happening on the other side. The police establishment is now talking of setting up an exclusively tribal force to be positioned in agency areas to deal with the 'Naxalite menace'. Who is thinking about the human rights of dalits and adivasis in all this? Where earlier they paid indirect costs by living in areas where these confrontations were most bitter, now, ironically after the peace process, they are beginning to pay direct costs – being sought out and killed on the one side; being used as cannon fodder on the other.

It is not merely in the bearing and use of arms that the Naxalite movement mirrors the state. Unfortunately there is a stark resemblance even in the indiscriminate and extremely moralistic identification of the enemy who must then be eliminated. The power of naming in this entire scenario vests with the police on the one side and the Naxalites on the other. Concerned citizens and institutions of justice are rendered voiceless. The defence and public recognition of human rights of political activists has been a slow and gradual struggle. Actions such as this destroy public confidence and increase the faith of people in repressive measures and fascist solutions. The fear of terrorism is not easy to contain and when radical politics begins to use the weapon of terror that in our view signals the end of politics.

This brings us to our final point. The movement for human rights in this state started with the defence of the civil and political rights of Naxalites. As people with an active interest in entrenching human rights standards in the societies in which we live, we defend the right to practice politics and condemn every action by the state that seeks to abridge that political space. However, in the last 25 years, we have experienced the limitations of

viewing human rights as restricted to civil and political rights alone. There are larger violations that are routinely practised by civilian populations in dominant positions against entire classes that are vulnerable. Any defence of human rights must defend not just the civil and political rights of extremely literate, articulate, educated, but politically vulnerable groups; it must more importantly, defend the fundamental rights to life, livelihood and survival, the right against assault and violence, of the largely non-literate, impoverished, politically, socially and economically vulnerable groups. It becomes a matter of grave concern when the groups whose right to practice politics has been defended at enormous cost begin to act irresponsibly towards those who have not yet enjoyed

basic freedoms, destroying their very right to survival.

We urge a public debate on these issues. **EW**

Email: k.kannabiran@rediffmail.com

Notes

- 1 On February 28, 2005, Maoists axed eight people to death in Vempenta village, Pamulapadu mandal, Kurnool district. This was justified by them as being a retaliation to the similar massacre of dalits in the same village on June 16, 1998.
- 2 On March 10, 2005, Maoists killed seven people in Chilakaluripeta in an attack on the police station and police quarters. One of these killed was a dalit circle inspector. A 60-year old woman who blocked their entry into the house was also killed.
- 3 K G Kannabiran, personal communication.

State Repression in Kashipur

The state government of Orissa has once again unleashed repression on the anti-mining movement of Kashipur by defying all democratic norms. Six people were injured during protests against the police at Karol in December 2004, which was widely seen as an attempt to suppress resistance against the proposed bauxite mine and alumina plant. The forces deployed in the area regularly visit the weekly markets to beat and threaten people, check vehicles and search local activists.

DEBARANJAN SARANGI, RABISHANKAR PRADHAN, SAROJ MOHANTY

During the struggle of the last 12 years, one of the many questions that the Kashipur movement in Orissa has successfully raised is that of 'development', such as who should control natural resources, the onslaught of state and market on tribal society and culture and recently on the unjust behaviour of the state towards the people. On December 16, 2000, at Maikanch, police brutally gunned down three unarmed people and injured many more. Undeterred, people continue to struggle. Once again, the state has unleashed repression on the movement by defying all democratic norms. And, this is only for the benefit of two corporate houses involved in bauxite mining and processing. One is Hindalco of India and the other is Alcan of Canada. Both these companies are in a joint venture called Utkal Alumina

International (UAIL) and want to set up a bauxite mine and alumina plant in the southern part of Orissa.

Background

After the police firing at Maikanch on December 16, 2000, the government of Orissa set up an enquiry commission under justice P K Mishra. In January 2004, the Mishra Commission submitted its report which criticised the role of the police and district administration. The commission blamed the then superintendent of police, Rayagada, Jaswant Jethua (now posted in Mayurbhanj), deputy superintendent of police K N Pattanaik, Prabhasankar Nayak, officer in charge of Kashipur police station, Subash Swain, police officer, Golak Nath Badjena, BDO, Kashipur for their roles in the firing. On the other hand, the commission, going beyond its terms of reference, had emphasised the need for