



In an insurgent spirit

The Speaking Constitution: A Sisyphean Life in Law

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Translated from the Telugu by Kalpana Kannabiran

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V G E E T H A

This is an account of a life committed to legal labour for over five decades. Not quite a memoir, it is, as KG Kannabiran, advocate and civil rights activist notes, an account of all that shaped his life, thought and work:

“My life in this Telugu land, my dialogues with left-wing armed movements,...my services to bring justice to people in struggle, my insistence on standing with victims of human rights violations in every corner of the country...” (p1)

The book comprises 18 chapters. In Chapter 1, Kannabiran dwells on his early years, as a student in the city of Madras, and his legal education. Tinged with self-deprecating humour, these pages allow the reader a fleeting glimpse of his genial temperament, and his partiality for literature and cricket. We also are made privy to his progress into civil rights lawyering, in and through his work with trade unions and labour and land issues. Chapters 2, 3, 5, 6, 7, 8, 9 and 18 engage with the so-called war against the Naxalites that was set in motion by the government of the composite state of Andhra Pradesh, and the resultant derogation of rights that followed: especially the right to life and liberty, and to free association and expression. The period referenced in these chapters begins from the 1970s and extends into the early 2000s. Chapter 4 reprises the astounding lawyering that he undertook, fighting for the rights of those detained and arrested during the Emergency. The rest of the book is devoted to rights and claims – advanced in the Andhra context – of Dalits and Adivasis to constitutional remedies; the death penalty which Kannabiran likens to premediated murder; the dastardly murder of Shankar Guha Niyogi, trade unionist and people’s leader in Chhattisgarh and the trial that followed; an anguished note on how the justice system failed Afzal Guru, accused in the Parliament attack case, and essays to do with the tangled web of religion, politics and the law.

The chapters on Naxalism, the encounter deaths and state violence in Andhra Pradesh foreground two main concerns: that the state’s war against Naxalites rendered political thought and activity a crime, and to counter this from a civil rights perspective, it was important to uphold the right to politics. In the famous Nagi Reddy Conspiracy case, Kannabiran affirmed this right in a rather dramatic fashion. He told the judge, while handing him a copy of the *Communist Manifesto*: “There is a sense of urgency in a communist, but it is not meant literally. A revolution takes a long time to come. But a revolutionary will always say it’s

an immediate programme.” (p 53) He then read parts of the *Manifesto* aloud in court and went on to argue that an expression of faith in revolution cannot be viewed as an invitation to violence or sedition. Politics has to be allowed its leeway and place.

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This was the spirit that sustained his civil liberties work, especially during the Emergency, a time that saw the best of judges either remain silent, or struggle with the severely limited space allotted to legal pronouncements. Kannabiran refused to despair and filed petition upon petition in the courts to contest unlawful detention and the suspension and abrogation of constitutional guarantees. Determined though he was to uphold constitutional values, Kannabiran was unsure then and thereafter, of what the courts and judges could and would do, in any given instance. This is evident in his critical appraisal of judicial pronouncements and court procedure: his note on the Supreme Court’s acquittal of those who had commissioned the murder of Shankar Guha Niyogi, which he held to be unfortunate, and had come about because the Supreme Court had not

engaged enough with the trial court’s judgement; his thoughtful essay on how lawyers as well as the courts had not worked enough with the Fifth Schedule of the Constitution, which guaranteed Adivasi rights over land and resources, and had thus failed to realise the promises that inhered in it; and finally his account of how the criminal justice system remained locked within a casteist mindset, when it came to prosecuting the murders of Dalits in Karamchedu and Tsundur.

Kannabiran’s greatest ire though was reserved for the police, and the

impunity of the Indian state did not prevent him from cooperating with its institutions, whether tribunals or Commissions of enquiry set up to investigate matters as diverse as encounter deaths, custodial rape and murder of minorities. He deemed every such occasion as fit for advancing a dramaturgy of rights, for an iteration of ideas and norms enshrined in the Constitution, and for illuminating the defects of our social and economic systems.

This book names lawyers who prosecuted rights cases, citizens who came forward to offer their testimony with regard to the so-called encounter deaths that distressed them, the innumerable men of the revolutionary Left who paid for their politics with their lives, mean-spirited and death-dealing police personnel, unimaginative judges and amoral political leaders. Through such naming Kannabiran, who wrote these essays for Telugu readers in 2009, recalled lives, events and ideas, which time and political rascality look to erase from public memory. This remembering has produced both an archive and a history, especially of the quotidian legal labour that civil rights activism requires: the assembling of documentary and other evidence, to prove innocence or deny culpability; establishing the credibility or otherwise of ‘facts’ to do with say illegal detention, or with criminal conspiracy; and the identifying of witnesses who are honest, fearless and reliable, and will speak truth to power.

Kannabiran makes it clear that each of these tasks needs to be undertaken with ethical responsibility. With regard to witnesses, for example, it is not so much a question of ‘tutoring’ them right, but urging them to tell the truth as they know it. With regard to establishing the factual details of an encounter, it is not enough to point to the deliberate derailment of legal procedure by the police, but also foreground the calculated amorality that informs it. In a general sense, legal labour, he made clear, has to translate into practical ethics that sought to read and re-read Constitutional norms in order to expand their meaning. For his part, as his daughter Kalpana notes in her Introduction, he engaged expansively and in an insurgent spirit with the “meanings of life, liberty, protections, and freedom under the Constitution” (p xx) and envisioned civil liberties work as an exercise in democratic solidarity. This, he sought to forge through his friendships, his openness to working with diverse individuals for a common cause, and his reliance on dialogue and rational argument, not only in the courts, but outside them too.

In an exchange with his peers in the civil liberties movement he noted that it was important to not let political ideologies or emotions determine a line of action when it came to the defense of liberties. It was natural that a civil rights group might prefer a president or secretary that spoke to the political concerns of its members. But should members therefore be asked to vote on a certain line of action, rather than discuss it and arrive at a resolution? “Opinions neither win nor lose by being voted on. The debate has to be incessant and cannot be settled with a vote” (p 48). A Sisyphean life in law, we realise, constantly gestures towards the new, the yet to be. ■