

ve cong tac dang vien trong tinh hinh nay"
k of party members in the present situa-
14-20.

Ky Anh in *Nhan dan chu nhat*, Hanoi, Au-

long co the san xuat du an duoc khong?"
to eat?], *Nhan dan*, October 21, 1988, 3.
Agricultural Science.

New York: Meridian Books, 1975), 136-41.

7

India, Human Rights, and "Asian Values"

Sumit Ganguly

In the 1980s, a number of statesmen and states in Asia argued with some force that Western conceptions of human rights had little or no applicability in Asia. Instead they contended that Asians had a markedly differing conception of human rights, one that did not focus on the rights of the individual but on those of the community. One of the most forceful advocates of this position was Lee Kuan Yew, the founder of the modern city-state of Singapore.¹ His views found much resonance across other parts of southeast and east Asia as national leaders from Malaysia to the People's Republic of China (PRC) voiced similar arguments.

However, few politicians or commentators in India echoed these sentiments. Even when it came under the most blistering criticism for its violations of human rights in the insurgency-wracked states of Kashmir and the Punjab, few members of India's attentive public sought solace in such rhetoric.² Instead its leaders chose a markedly different set of strategies to deal with the charges leveled against the Indian state. At one level, they argued that these allegations were grossly exaggerated. At another, they conceded that some "excesses" were inevitable when conducting counterinsurgency operations. On occasion, they also argued that these were India's internal matters and foreign interference was entirely unwarranted. Most strikingly, however, the most common defense that they seized on was that India adhered to the rule of law and that the Indian judicial system was sufficiently robust to ensure that rampant and egregious violations of human rights did not take place. There was no appeal to any form of "Asian exceptionalism" to exculpate the acts of the Indian state or its agents. The propensity of the Indian state to blunt criticisms of its actions along these lines provides an important aperture to examine the question of human rights in India.

CONSTITUTIONAL GUARANTEES AND STATE PRACTICES

Despite a range of shortcomings and limitations, India can be considered a consolidated democracy.³ It routinely holds elections that are the envy of the entire developing world; it has a feisty and open press; civil society is rapidly expanding; and the Indian judiciary is known for its fierce independence. At another level, the Indian constitution also provides a range of guarantees pertaining to civil liberties, religious freedom, the free expression of ideas, and the rights of habeas corpus.⁴ Constitutional guarantees, however, as scholars are acutely aware, frequently do not reflect actual, day-to-day state practices. States with the most elaborate constitutional protections can and have shown flagrant disregard for those commitments.

In the Indian case the record is decidedly mixed. The routine adherence to the rule of law and protection of human rights is far from flawless. Yet only once during India's fifty-odd-year independent history has there been a formal, national abrogation of constitutional provisions protecting human rights. This happened during the "state of emergency" that Prime Minister Indira Gandhi declared in 1976 in a clumsy, awkward, and ultimately unsuccessful attempt to protect her political fortunes.⁵ Apart from this episode, India's record of upholding human rights has also taken a battering when conducting counterinsurgency operations in its troubled north-eastern states, in the Punjab and most recently in Kashmir. Additionally, the Indian state has also, on particular occasions, failed to protect the rights of religious minorities, lower castes, and the indigent. The most significant victims of human rights abuses have been Muslims, India's largest minority.

Explaining the Record

What explains an otherwise democratic polity's checkered record on human rights? The answers are complex and require some careful discussion. India's inability to routinely uphold human rights is in part a function of state weakness. The Indian state, though hardly bereft of powerful institutions, simply lacks the administrative and surveillance capacities to ensure the day-to-day implementation of certain codes of conduct and behavior.⁶ The sheer size of the country, the utter inadequacy of fiscal resources, and the enormity of the tasks of administration simply overwhelm the state apparatus. In a related vein, state authorities and some segments of India's attentive public seem to have a limited regard for the protection of human rights when the territorial integrity of the Indian state is at question. Consequently, both the state and segments of Indian society have evinced a peculiar willingness to countenance human rights violations when combating violent, secessionist insurgents. Fortunately, not all components of India's civil society have shown such tolerance for the violation of human rights.

Instead an indigenous human rights movement has criticised the Indian state for its willingness to use force when faced with powerful and vicious opponents.

State weakness alone cannot explain the state's record. The state's inability to uphold human rights is extremely powerful, deep-seated, and systemic. The amalgam of institutional weaknesses and the lack of social forces best explains the state's lack of commitment to certain fundamental principles. Some have crept into elements of importance, though the state has explicit mandates to implement them frequently interpreting them frequently interpreting their proper intent.

A handful of examples should suffice. The practice of untouchability was formally abolished in the Indian constitution in 1950. Simultaneously, India became undoubtedly the world's largest and most populous program.⁸ Thanks to these constitutional provisions, caste discrimination on the basis of caste in India now wield formidable power. Despite significant socioeconomic progress on many fronts, untouchables still face discrimination and hostility in Indian political and social life. In the past, organized violence against untouchables was hardly unknown. The state's organized violence against the persistence of social prejudices corresponding to laws against discrimination and violence against lower castes. Furthermore, the state's affirmative programs has also generated a significant number of groups, who see their substantial interests being eroding. Critics of India's affirmative action language and rhetoric markedly similar to the United States to oppose affirmative action. The state's affirmative action will result in the hiring and promotion of individuals for specialized jobs.⁹

A more egregious example of state weakness is the use of state power to prevent discrimination and violence against Muslims. The reasons are extremely complex and have been discussed elsewhere.¹⁰ Why does India, a professedly democratic state, tolerate discrimination against a religious minority? The answer must be sought in the state's previously identified. Examples abound of the use of state power has prevented

STATES AND STATE PRACTICES

limitations, India can be considered a state that holds elections that are the envy of the world; a free and open press; civil society is vibrant; the judiciary is known for its fierce independence; the constitution also provides a range of rights including religious freedom, the free expression of opinion, and corpus.⁴ Constitutional guarantees, however, frequently do not reflect actual, day-to-day practice. Most elaborate constitutional protections are often in regard for those commitments.

The record is decidedly mixed. The routine adherence to human rights is far from flawless. Yet in its independent history there has been a strong constitutional provisions protecting human rights, "state of emergency" that Prime Minister Indira Gandhi a clumsy, awkward, and ultimately disastrous political fortunes.⁵ Apart from this, human rights has also taken a battering in its operations in its troubled north, especially in Kashmir. Additionally, the state has often failed to protect the rights of the most indigent. The most significant victims are Muslims, India's largest minority.

The state's political polity's checkered record on human rights and require some careful discussion. The state's human rights is in part a function of its state, though hardly bereft of powerful institutions and surveillance capacities to ensure compliance with codes of conduct and behavior.⁶ The state's inadequacy of fiscal resources, and the state's attention simply overwhelm the state agencies and some segments of India's attention in regard for the protection of human rights. The Indian state is at question. Concerns of Indian society have evinced a pattern of human rights violations when combating terrorism. Not all components of India's state are responsible for the violation of human rights.

Instead an indigenous human rights movement has, in recent years, chastised the Indian state for its willingness to disregard human rights issues when faced with powerful and vicious secessionist movements.⁷

State weakness alone cannot explain India's infelicitous human rights record. The state's inability to uphold human rights is also a function of extremely powerful, deep-seated, and searing social forces and cultural prejudices. The amalgam of institutional weaknesses coupled with the strength of social forces best explains the inability of the Indian state to fulfill its commitment to certain fundamental rights. Additionally, social prejudices have crept into elements of important state organs. Consequently, even though the state has explicit mandates, the individuals responsible for implementing them frequently interpret them in ways designed to undermine their proper intent.

A handful of examples should suffice. The retrograde and execrable practice of untouchability was formally banned under the aegis of the Indian constitution in 1950. Simultaneously, India embarked on what is undoubtedly the world's largest and most ambitious affirmative action program.⁸ Thanks to these constitutional and institutional commitments to end discrimination on the basis of caste status, once-oppressed lower castes in India now wield formidable electoral clout and have also made significant socioeconomic progress. Despite measurable progress on many fronts, untouchables still face widespread discrimination, prejudice, and hostility in Indian political and social life. More to the point, even today, organized violence against vulnerable untouchable communities is hardly unknown. The state's organizational inefficacy coupled with the persistence of social prejudices corrodes the neutral enforcement of existing laws against discrimination and worse still permits organized violence against lower castes. Furthermore, the success of India's affirmative action programs has also generated a significant backlash from upper-caste groups, who see their substantial and long-standing privileges steadily eroding. Critics of India's affirmative action programs frequently resort to language and rhetoric markedly similar to those employed in the United States to oppose affirmative action. Many critics suggest that affirmative action will result in the hiring and promotion of inadequately trained individuals for specialized jobs.⁹

A more egregious example of state failure lies in the realm of discrimination and violence against Muslims. The sources of hostility against Muslims are extremely complex and have been discussed in considerable detail elsewhere.¹⁰ Why does India, a professedly secular and undeniably democratic state, tolerate discrimination and violence against its most significant minority? The answer must be sought in the two factors that have been previously identified. Examples abound in India, where even the most limited use of state power has prevented attacks on Muslim communities. The

opposite, of course, is equally and tragically true. When the state fails to act against societal forces and worse still, becomes complicit with them, the results can be truly grotesque. The most outrageous example thereof in India's postindependence history was the pogrom that took place against significant segments of the Muslim population of the western Indian state of Gujarat in February 2002.¹¹

Even though India's vigorous and feisty free press has revealed the complicity of the state government in the acts of terror that were visited on Muslim communities, only a handful of the perpetrators have actually been produced in a court of law. It still remains to be seen if these individuals will actually be convicted.

Human Rights under Conditions of Duress

What is the record of the Indian state when dealing with human rights under conditions of duress? In its fifty-odd-year history as an independent state, India has had to cope with a spate of secessionist insurgency movements. The ability and willingness of the state to protect the human rights of suspected insurgents and terrorists under these conditions has been sorely lacking. When fighting Naga and Mizo rebels in its north-eastern periphery, Sikh insurgents in the state of Punjab and Kashmiri, and insurgents in the state of Jammu and Kashmir, a variety of national regimes have paid scant attention to human rights violations. There is little or no evidence that any regime has ever sanctioned the use of indiscriminate force, torture, or extrajudicial killings when dealing with insurgents and terrorists in any part of the country. Nevertheless, most regimes have also been willing to grant wide latitude to Indian security forces in their conduct of counterinsurgency operations especially against secessionist rebels. Extrajudicial killings, while not an explicit state policy, have not been condemned or curbed.

Worse still, on occasion, the Indian state has passed legislation designed to provide legal cover to its security forces from possible criminal prosecution in the conduct of counterinsurgency operations. Two examples merit discussion. The first only applies to the troubled and disputed state of Jammu and Kashmir, where Indian security forces have been involved in suppressing a protracted, extended, and seemingly unending ethno-religious insurgency since 1989.¹² This is the Armed Forces (Jammu and Kashmir) Special Powers Act of 1990. Among other features, this act permits Indian security forces to use extensive coercive powers (including the right to kill) when acting in good faith in the conduct of counterinsurgency operations. To illustrate this it is worth quoting from the relevant provision in the act, which states that:

Any commissioned officer, warrant officer or other person of equivalent rank in the armed forces of the State may use force, even to the extent of causing the death of any person who is acting in contravention of any law in force in the disturbed area. . .

The law also goes on to state that:

No prosecution, suit or other legal proceedings shall be instituted against any person for anything done or purported to be done by this Act.

In effect, as long as state authorities are acting in good faith the individual is free from the death of innocent civilians. As a result, human rights organizations have cogently argued the possibility of widespread abuse because of the lack of accountability.

The other piece of legislation that is a significant executive abuse is the Prevention of Terrorism Act (POTA). This legislation emerged as a result of a series of terrorist incidents across India in the late 1990s and the seeming inability of the Indian government to pass the Armed Forces Special Powers Act, which applies to Jammu and Kashmir, POTA's reach is nationwide. It is a piece of legislation that lends themselves to the erosion of the guaranteed under the Indian constitution of the right of habeas corpus to arrestees under POTA.

As the act states:

Notwithstanding anything contained in any law for the time being in force, no person shall be punished under this ACT shall, if he is arrested on his own bond unless the Court gives the order for his release after being heard.

The second especially disturbing feature of POTA is the limits that it places on free speech. Anyone who is arrested under POTA for using language in support of terrorist acts. Again, to quote

A person commits an offense if he aids or abets or provides encouraging support for a terrorist organization.

logically true. When the state fails to act, becomes complicit with them, the most outrageous example thereof in India is the pogrom that took place against the population of the western Indian state of

feisty free press has revealed the com-acts of terror that were visited on Muslims. The perpetrators have actually been proven to be seen if these individuals will

of Duress

state when dealing with human rights in its fifty-odd-year history as an independent state with a spate of secessionist insurgency and the inability of the state to protect the human rights of its citizens. The use of force against terrorists under these conditions has been seen in the case of Naga and Mizo rebels in its north-eastern states of Punjab and Kashmir, and in Jammu and Kashmir, a variety of national human rights violations. There is little doubt that the state has ever sanctioned the use of indiscriminate killings when dealing with internal security. Nevertheless, most states do not grant wide latitude to Indian security forces in counterinsurgency operations especially against terrorists, while not an explicit state policy, it is a fact.

The Indian state has passed legislation designed to give Indian security forces from possible criminal liability in counterinsurgency operations. Two examples of this legislation apply to the troubled and disputed regions of Jammu and Kashmir. The Indian security forces have been in-creased, extended, and seemingly unending. In 1989,¹² This is the Armed Forces (Jammu and Kashmir) Special Powers Act of 1990. Among other features, this act grants extensive coercive powers (including the power to use force) to the Indian security forces. In the conduct of counterinsurgency operations, it is worth quoting from the relevant section that:

Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces, in a disturbed area, . . . fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area. . .

The law also goes on to state that:

No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

In effect, as long as state authorities deem that the individual was acting in good faith the individual is free from prosecution even in the event of the death of innocent civilians. As many domestic and international human rights organizations have cogently argued, this act opens up the possibility of widespread abuse because of its sweeping provisions and its lack of accountability.

The other piece of legislation that is also fraught with the possibility of significant executive abuse is the Prevention of Terrorism Act of 2002 (POTA). This legislation emerged as a consequence of the dramatic rise in terrorist incidents across India in the last decade of the twentieth century and the seeming inability of the Indian state to contain them. Unlike the Armed Forces Special Powers Act, which is confined to the state of Jammu and Kashmir, POTA's reach is nationwide. There are two elements to this legislation that lend themselves to the undermining of basic civil rights guaranteed under the Indian constitution. The first feature relates to the denial of the right of habeas corpus to any individual arrested under the aegis of POTA.

As the act states:

Notwithstanding anything contained in the Code, no person accused of an offense punishable under this ACT shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard.

The second especially disturbing feature of the legislation involves the limits that it places on free speech. Among other matters, an individual can be arrested under POTA for using language that can be construed as supporting terrorist acts. Again, to quote from the act:

A person commits an offense if he addresses a meeting for the purpose of encouraging support for a terrorist organization or to further its activities.

Quite understandably, these sweeping provisions of POTA came under considerable criticism from both indigenous and foreign human rights organizations. Despite these criticisms it seemed unlikely that any government in New Delhi would repeal the act. The exigencies of prosecuting counterinsurgency operations, the widespread public perception that terrorism constitutes a significant threat to the body politic, and the willingness of key Indian politicians to amplify these anxieties made it exceedingly difficult to challenge this law that significantly impinged on the civil rights of India's populace in general and political activists in particular. Even in the face of considerable international and domestic criticism, the Indian state would not repeal this law. The perceived exigency of defending India's sovereignty and territorial integrity was so great that political parties of varying hues would regularly close ranks on this vexed issue—until things finally changed in 2004.¹³

AN AMBIVALENT STATE

It is tempting to argue that the flagrant abuse of human rights in India, especially under conditions of duress, make a mockery of India's democratic claims. Indeed some academics have proffered this tendentious and specious argument.¹⁴ The attractions of such an argument, however, must be resisted, because the empirical record is more complex and suggests that a degree of institutional vitality still animates Indian democracy.

One of the best examples thereof is the existence and functioning of the National Human Rights Commission (NHRC). The NHRC was created in 1993 largely in response to strident international criticisms of India's human rights record in the insurgency-racked states of Jammu and Kashmir. At the time of its creation, most academics and policy analysts dismissed it as what the Indian state perceived to be a sop to Cerberus. Justice Krishna Iyer, a distinguished retired judge of the Indian Supreme Court and an ardent advocate of human rights in India, was especially biting in his criticism. Referring to the NHRC he suggested that it was:

An optical illusion, cosmetic coloration, opium for the people at home and brown sugar for countries abroad, a legislative camouflage, a verbal wonder which conceals more than it reveals. An ineffectual angel which beats its golden wings in the void in vain.¹⁵

However, the record of the NHRC over the last decade has belied this harsh and uncharitable characterization. Since its inception, the organization, chaired by a serving or retired justice of the Indian Supreme Court, has acquired remarkable autonomy and has sought to extend its reach. It has also become the focal point of the hopes of many human rights activists in

India. Among other matters, the NHRC has conducted a thorough examination of prison conditions in Gujarat, including the use of bonded labor. Most recently, it has shamed the government of Gujarat for its abject failure to prosecute the rioters who rioted that swept a significant portion of the state.

However, two legitimate criticisms of the NHRC have, in spite of its vigor in promoting human rights, limited its scope to expand the ambit of its operations, it has been criticized. It is mostly a hortatory and investigative body, and its enforcement though it can refer cases to the courts, its matter is justifiable. At another level, it has been criticized for not to probe human rights violations that are riddled with insurgency. Though it has been doing so, it appears that the NHRC is not involved in security affairs. The reasons for the NHRC's limitations in this realm are straightforward. It runs the risk of being perceived as a body that is sympathetic to the concerns of the state, and is consequently sensitive to the threats that threaten its territorial integrity. This argument on other occasions has garnered much popular support.

These limitations notwithstanding, the NHRC has been placing questions of human rights violations before the courts, which has caused much embarrassment to public officials who have been derelict in the conduct of their duties, and excessive zeal in the performance of their duties.

The other development that also has limited the scope of public interest litigation in India.¹⁷ Two justices, P. N. Bhagwati and Iyer, can be credited with the development. In a now-famous case in 1981, the two justices held that the court as petitions would constitute public interest litigation if it deemed that matter to be of this form of "epistolary jurisdiction" and that it was for the poor, the dispossessed, and the marginalized who had adequate legal representation. If an individual had the means to enforce of an existing law, the court would have cognizance of the matter even if it was not a public interest grievance.¹⁸ Public interest litigation in India, which has disrupted, forced state and national government to improve the rights of prisoners under the most deplorable conditions present in many parts of the country.

Despite these striking achievements, the NHRC has not been without its critics. Members of

...ing provisions of POTA came under
...igenous and foreign human rights or-
...s it seemed unlikely that any govern-
...he act. The exigencies of prosecuting
...widespread public perception that ter-
...at to the body politic, and the willing-
...lify these anxieties made it exceedingly
...gnificantly impinged on the civil rights
...political activists in particular. Even in
...nal and domestic criticism, the Indian
...perceived exigency of defending India's
...as so great that political parties of vary-
...s on this vexed issue—until things fi-

VALENT STATE

...ant abuse of human rights in India, es-
...make a mockery of India's democratic
...ve proffered this tendentious and spe-
...f such an argument, however, must be
...d is more complex and suggests that a
...imates Indian democracy.

...is the existence and functioning of the
...on (NHRC). The NHRC was created in
...international criticisms of India's hu-
...wracked states of Jammu and Kashmir.
...demics and policy analysts dismissed it
...to be a sop to Cerberus. Justice Krishna
...of the Indian Supreme Court and an ar-
...ndia, was especially biting in his criti-
...gested that it was:

...on, opium for the people at home and
...legislative camouflage, a verbal wonder
...s. An ineffectual angel which beats its

...C over the last decade has belied this
...tion. Since its inception, the organiza-
...justice of the Indian Supreme Court, has
...l has sought to extend its reach. It has
...opes of many human rights activists in

India. Among other matters, the NHRC has extended its writ to include the examination of prison conditions in India and the persistence of illegal bonded labor. Most recently, it has sharply upbraided the state government of Gujarat for its abject failure to protect the rights of Muslims during the riots that swept a significant portion of the state in February 2002.

However, two legitimate criticisms can be leveled against the NHRC. Despite its vigor in promoting human rights in India and its willingness to expand the ambit of its operations, it has an important structural limitation. It is mostly a hortatory and investigative body. It has no real powers of enforcement though it can refer cases to a civil magistrate if it deems that the matter is justifiable. At another level, the commission has been loath to probe human rights violations that have occurred in areas of the country that are ridden with insurgency. Though not expressly forbidden from doing so, it appears that the NHRC is unwilling to enter the thicket of national security affairs. The reasons for the NHRC's unwillingness to probe into this realm are straightforward. It runs the serious risk as being labeled as an entity that is sympathetic to the concerns of India's enemies and not sufficiently sensitive to the threats that they pose to the country's territorial integrity. This argument on other occasions had already been deployed and has garnered much popular support.

These limitations notwithstanding, the NHRC does deserve credit for placing questions of human rights violations under public scrutiny.¹⁶ It has caused much embarrassment to public officials at state and national levels who have been derelict in the conduct of their duties or have demonstrated excessive zeal in the performance thereof.

The other development that also bears discussion is the growth of public interest litigation in India.¹⁷ Two justices of the Indian Supreme Court, P. N. Bhagwati and Iyer, can be credited for this form of judicial innovation. In a now-famous case in 1981, the two judges contended that letters sent to the court as petitions would constitute sufficient grounds for the court's intervention if it deemed that matter was indeed justifiable. They argued that this form of "epistolary jurisdiction" was appropriate in India where the poor, the dispossessed, and the marginalized did not have access to adequate legal representation. If an individual could alert the court of the failure of the enforcement of an existing body of laws the court would take due cognizance of the matter even if the complainant was not directly aggrieved.¹⁸ Public interest litigation in India has exposed governmental corruption, forced state and national governments to enforce existing legislation, has enjoined state governments across the country to examine and improve the rights of prisoners under trial, and has also helped improve the bedlam conditions present in many of India's state-run mental institutions.

Despite these striking achievements, this judicial innovation has not been without its critics. Members of parliament have argued that this form

of judicial activism encroaches on legislative prerogatives. Other observers of the high court have contended that this form of litigation is open to abuse. These criticisms notwithstanding it is clear that public interest litigation is now a crucial feature of India's judicial landscape.

CIVIL SOCIETY AND HUMAN RIGHTS

It would be inappropriate to convey the impression that the protection of human rights in India is mostly state-centric. Contrary to some discussions civil society in India is robust and expanding.¹⁹ A range of private organizations interested in the promotion of human rights practices exist in India. It is beyond the scope of this brief essay to deal with them in an exhaustive fashion. Instead a brief discussion of these groups appears apposite. Some of these entities are of long standing. Others emerged as a direct consequence of the rampant abuses of human rights during Prime Minister Gandhi's infamous state of emergency in the late 1970s. Two of the most prominent organizations are the People's Union for Civil Liberties and the People's Union for Democratic Rights.

The provenance of these organizations is less important than their effectiveness. Obviously they possess no formal authority to prosecute violations of human rights. That said, they have served at least two vitally important functions. Their efforts have helped to create greater public awareness of human rights abuses and have thereby contributed to the mobilization of public opinion. Specifically, they have brought to light a range of human rights abuses in the country ranging from custodial deaths, the use of torture to extract confessions, and the resort to arbitrary and extrajudicial executions during the conduct of counterinsurgency operations. More quotidian human rights abuses, such as the persistence of bonded labor or the partisan behavior of local police when dealing with religious riots, have not escaped their attention either. Taking advantage of the advent of public interest litigation, these groups have used the judicial process to compel state and national authorities to take action when grave lapses have taken place. In April 2004, for example, the Supreme Court, responding to a public interest case, ordered a set of cases relating to the pogrom against Muslims in that state be moved elsewhere. The court accepted the arguments of the petitioners that the interests of justice could not be served given the politically fraught character of the cases.

CONCLUSION

India's record on human rights is far from flawless. This record matters immensely because the country justifiably takes pride in its democratic insti-

tutions and practices. Yet its deeply flawed record suggests that Indian democracy still has a long way to go. It can rest on its laurels. The existence of a robust civil society, a largely independent judiciary, and a free press still provides no guarantee from the state that civil liberties. The existence of these institutions is indeed admirable. Yet they only ensure that rights are routinely honored in the best of times.

That said, it is still possible to take steps to prevent the state from jumping on the bandwagon of its human rights failures. The constitution's provisions for protecting and upholding the rights of individuals and groups provide a mechanism for holding the state to high moral standards of conduct and offering a forum for the redress of human rights under the guise of a public interest case.

NO

1. On this point, see Fareed Zakaria, "The Rise and Fall of the Kuan Yew," *Foreign Affairs* 73, no. 2 (March 1994).

2. For two representative examples, see Sumit Ganguly, *Abuses in Punjab* (New York: Asia Watch, 1998) and *Crisis in Kashmir: A Pattern of Impunity* (New York: Asia Watch, 1998).

3. On this point see Atul Kohli, ed., *The State in India* (Cambridge University Press, 2001).

4. For an excellent discussion of the state's role in India it provides, see Granville Austin, *Working of the Constitution* (Oxford University Press, 1999).

5. Henry Hart, ed. *Indira Gandhi's India* (New York: Westview Press, 1976).

6. On the administrative capacity of the state, see Seymour M. Migdal, *Strong Societies and Weak States* (Princeton: Princeton University Press, 1986).

7. One such organization is the South Asian Human Rights Centre in New Delhi.

8. Devanesan Nesiiah, *Discrimination in the United States, India, and Malaysia* (New York: Oxford University Press, 1998).

9. One of the best treatments of the issue is Sumit Ganguly, *Reservation with Reason?: The Policy of Reservation in India* (New Delhi: Oxford University Press, 1998).

10. For an important treatment of the issue, see Sumit Ganguly, *Hindu-Muslim Conflict in India* (Seattle: University of Washington Press, 1998).

11. For a discussion of the proximate causes of the crisis, see Sumit Ganguly, "The Crisis of Indian Democracy," *Foreign Affairs* 73, no. 11-25.

slative prerogatives. Other observers at this form of litigation is open to it is clear that public interest litigation is a part of the judicial landscape.

HUMAN RIGHTS

The impression that the protection of human rights is primarily a judicial function. Contrary to some discussions of human rights, a range of private organizations and human rights practices exist in India. The role of these groups appears apposite. Some of these groups emerged as a direct consequence of human rights during Prime Minister Indira Gandhi's tenure in the late 1970s. Two of the most prominent are the National Human Rights Commission and the National Union for Civil Liberties and the

Commission's less important than their effectiveness. Informal authority to prosecute violations of human rights have served at least two vitally important functions. They have helped to create greater public awareness and have thereby contributed to the mobilization of public opinion. They have brought to light a range of human rights violations ranging from custodial deaths, the use of force and the resort to arbitrary and extrajudicial killings, counterinsurgency operations. More important is the persistence of bonded labor or indentured labor, men dealing with religious riots, have taken advantage of the advent of public interest litigation. They have used the judicial process to compel government action when grave lapses have taken place. The Supreme Court, responding to a public interest litigation relating to the pogrom against Muslims in Gujarat. The court accepted the arguments of the petitioners. The court could not be served given the po-

CONCLUSION

is not flawless. This record matters immensely. India takes pride in its democratic insti-

tutions and practices. Yet its deeply flawed record on human rights suggests that Indian democracy still has a considerable distance to travel before it can rest on its laurels. The existence of autonomous public and private bodies, a largely independent judiciary, and the persistence of an active press still provides no guarantee from the abuse of a range of personal rights and civil liberties. The existence of these instruments for the redress of wrongs is indeed admirable. Yet they only offer limited comfort to those whose rights are routinely honored in the breach.

That said, it is still possible to take some solace in India's staunch reluctance to jump on the bandwagon of Asian values as an integument to cover its human rights failures. The constitutional and legal commitment to protecting and upholding the rights of individuals is hardly trivial. These safeguards provide a mechanism for holding the Indian state to certain minimal standards of conduct and offer possible barriers to the sweeping abuse of human rights under the guise of Asian exceptionalism.

NOTES

1. On this point, see Fareed Zakaria, "Culture Is Destiny: An Interview with Lee Kuan Yew," *Foreign Affairs* 73, no. 2 (Mar/Apr 1994): 109-27.
2. For two representative examples, see Asia Watch, *Dead Silence: The Legacy of Abuses in Punjab* (New York: Asia Watch, 1994) and Asia Watch, *The Human Rights Crisis in Kashmir: A Pattern of Impunity* (New York: Asia Watch, 1993).
3. On this point see Atul Kohli, ed., *The Success of India's Democracy* (Cambridge: Cambridge University Press, 2001).
4. For an excellent discussion of the Indian constitution and the guarantees that it provides, see Granville Austin, *Working a Democratic Constitution* (New Delhi: Oxford University Press, 1999).
5. Henry Hart, ed. *Indira Gandhi's India: A Political System Re-appraised* (Boulder: Westview Press, 1976).
6. On the administrative capacity of states, see Samuel Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968); also see Joel Migdal, *Strong Societies and Weak States* (Princeton: Princeton University Press, 1988).
7. One such organization is the South Asia Human Rights Documentation Centre in New Delhi.
8. Devanesan Nesiiah, *Discrimination with Reason?: The Policy of Reservations in the United States, India, and Malaysia* (New Delhi: Oxford University Press, 1997).
9. One of the best treatments of this subject is Devanesan Nesiiah, *Discrimination with Reason?: The Policy of Reservations in the United States, India and Malaysia* (New Delhi: Oxford University Press, 1997).
10. For an important treatment of this subject, see Paul Brass, *The Production of Hindu-Muslim Conflict in India* (Seattle: University of Washington Press, 2003).
11. For a discussion of the proximate and long-term causes of this episode, see Sumit Ganguly, "The Crisis of Indian Secularism," *Journal of Democracy* 14, no. 4: 11-25.

12. Sumit Ganguly, *The Crisis in Kashmir: Portents of War, Hopes of Peace* (Cambridge: Cambridge University Press, 1999).

13. In a remarkable turnaround, which speaks to the continuing resilience of Indian democracy, the act was repealed in September 2004 after the Congress Party-led United Progressive Alliance, a coalition government, had assumed office.

14. See, for example, Ayesha Jalal, *Democracy and Authoritarianism in South Asia* (Cambridge: Cambridge University Press, 1995).

15. Justice V.R. Krishna Iyer, as quoted in Chiranjivi J. Nirmla, ed., *Human Rights in India: Historical, Social and Political Perspectives* (New Delhi: Oxford University Press, 2000), 216.

16. One useful indicator is the publication of the *Journal of the National Human Rights Commission* inaugurated in 2002. The articles in this journal have a no-holds-barred quality, even though they are couched in temperate language.

17. P. P. Craig and S. L. Deshpande, "Rights, Autonomy and Process: Public Interest Litigation in India," *Oxford Journal of Legal Studies* 9, no. 3 (Autumn 1989): 356-73.

18. Arvind Verma, "Taking Justice Outside the Courts: Judicial Activism in India," *The Howard Journal* 40, no. 2 (May 2001): 148-65.

19. See, for example, Pradeep Chhibber, *Democracy Without Associations* (Ann Arbor: University of Michigan Press, 1999).

8

What Absence Human Rights

Florence Bernault

Why is the human rights situation in this question have typically fall nature concerned with statistics g man rights abuses, while offering scribed as submitted to increasing violence. A second literature re that human rights have a place common trend of this *defensive* sal validity of Western ideas of h account for nor be compatible and human value.

These perspectives convey th end up stumbling over the evi the absence, or exteriority, of hu ing assumption that the contin by virtue of its political depravi nore the complex historical cir human rights on the continent. the 1960s the representatives of political tools to exert control privileges to the whites. During developed less as philosophical torical relationships between ments) and reluctant civilians century, these relations shed lig