

On the Significance of Dharampal's Work for Understanding the Concepts of Rule of Law and Legitimacy in Indian Tradition

Satish K. Jain¹

Dharampal's monumental work on the eighteenth and nineteenth century Indian history has been instrumental in bringing to light facets of Indian polity and society even the memory of which the contemporary India does not possess, although of the greatest importance for comprehending their true character; as well as bringing into sharp focus the great distortions from which the mainstream history and historiography of the period suffer. It is therefore not surprising that he occupies an iconic status among many who are familiar with his work.

Through his work titled 'Civil Disobedience in Indian Tradition'² he brings to light the fact of a great nonviolent mass movement at Benares, Patna, Sarun, Moorshedabad and Bhaugulpore during 1810-11 against the imposition of new taxes on houses and shops. The material that he put together in this volume concerning this mass movement is of great significance from several perspectives.

Notwithstanding that there are passages in Hind Swaraj³ implying that civil disobedience had been part of Indian tradition, the general understanding prior to Dharampal's discovery in the matter was that while the idea of civil disobedience originated from the works of Thoreau and others, it was first put into action on a mass scale in the freedom movement led by Gandhi. But Dharampal's discovery conclusively demonstrates that the civil disobedience on a mass scale was practiced in India as early as the first decades of the nineteenth century.

¹Centre for Economic Studies and Planning, Jawaharlal Nehru University, New Delhi.

Email: skjain@mail.jnu.ac.in, satish.k.jain@gmail.com

²Dharampal, *Civil Disobedience in Indian Tradition*, Sarva Seva Sangh Prakashan, Varanasi, 1971, Volume 2 of Dharampal's *Collected Writings*, published by Other India Press, Mapusa, Goa (Hereinafter referred to as 'Civil Disobedience'). References to page numbers are those of the online version of the Other India Press publication.

³'The fact is that, in India, the nation at large has generally used passive resistance in all departments of life. We cease to co-operate with our rulers when they displease us. This is passive resistance.

I remember an instance when, in a small principality, the villagers were offended by some command issued by the prince. The former immediately began vacating the village. The prince became nervous, apologized to his subjects and withdrew his command. Many such instances can be found in India.' p. 58, Mohandas K. Gandhi, *Indian Home Rule or Hind Swaraj*, Navajivan Publishing House, Ahmedabad, Translation of *Hind Swaraj*, published in the Gujarat columns of *Indian Opinion*, 11th and 18th December, 1909. Online version Published by Yann FORGET on 20th July 2003.

One characteristic of the British rule which comes out very clearly from the documents in the volume is its extraordinary rapacity and oppressiveness. The petition of the inhabitants of Benares, which was rejected by the court of appeal and circuit, partly because its 'style and contents' were 'disrespectful', bitterly complains of oppressive imposts, taxes, duties and fees.⁴ So does the petition by the Moorshedabad inhabitants.⁵ At a much later period, reporting on a peasant movement in Canara in 1830-31, the district assistant collector wrote: 'The tahsildar told them that the jumma bundy was light and their crops good. They said they complained of neither of these, but of the Government generally; that they were oppressed by the court, stamp regulation, salt and tobacco monopolies, and that they must be taken off.'⁶

But the most important point that emerges from the documents relates to the twin ideas of rule of law and the governmental legitimacy. The report from the Benares Collector to Calcutta contains the following of great significance:

'At present open violence does not seem their aim, they seem rather to vaunt their security in being unarmed in that a military force would not use deadly weapons against such inoffensive foes. And in this confidence they collect and increase knowing that the civil power cannot disperse them, and thinking that the military will not.'⁷

For analyzing the significance of the above it would be helpful if the change in the understanding of law and legitimacy which has come about in the aftermath of the Se-

⁴The petition has these revealing clauses:

(vi) Instead of the welfare and happiness of your poor petitioners having been promoted, we have sustained repeated injuries, in being debarred from all advantages and means of profit and in being subject to excessive imposts which have progressively increased.

(vii) It is difficult to find means of subsistence and the stamp duties, court fees, transit and town duties which have increased tenfold, afflict and affect everyone rich and poor and this tax like salt scattered on a wound, is a cause of pain and depression to everyone both Hindoo and Mussulman; let it be taken into consideration that as a consequence of these imposts the price of provisions has within these ten years increased sixteenfold. In such case how is it possible for us who have no means of earning a livelihood to subsist?

p. 20, Civil Disobedience.

⁵By the blessing of God, the English Gentlemen know, that no king of the earth had oppressed his subjects, and the Almighty preserves his creatures from harm...For some years it has been our unhappy fate to suffer both from affliction and oppressions. First from the prevalence of sickness for several successive years, the city has been depopulated, so much so, that not one half of the inhabitants remain...The oppression of the Town Duties and Customs is so great, that property of the value of 100 Rs. cannot be purchased for 200, the rate of duty is increased two-fold and even fourfold, and if any one wish to remove property from the city to its environs, he cannot do it without the payment of a fresh duty...Fourth, order has been passed for levying a tax on houses and shops, which is a new oppression...the order of the Government has in truth struck us like a destructive blast.

p. 33, Civil Disobedience.

⁶p. 14, Civil Disobedience.

⁷p. 41, Civil Disobedience.

cond World War is considered first. Notwithstanding the complexity and sophistication of legal theories in the pre-Second World War period the central constitutive idea for law remained that of commands by the sovereign or some other individual or body with the characteristics of sovereignty. With such a conception of law, one cannot construct a category of acts which will be regarded as crimes independently of what law is. On the other hand, if individuals, who are guilty of, say, mass murders or horrible tortures, are to be punished regardless of the the legal regime under which they were operating then it is clear that a separate category of acts is required which will be crimes regardless of the legal regime. Indeed, once such a prior category of crimes has been constructed and has obtained more or less general approval, then it will be the regime which will lose its legitimacy in case it commits any crime belonging to this category or if it fails to have in place laws which will affirm the norms implicit in the prior category. In contemporary times acts like genocides are termed as ‘crimes against humanity’ and are considered crimes regardless of the legal position that might obtain in the particular country where such acts are committed. Thus the contemporary understanding of law is somewhere in between that of the St. Augustine position that ‘an unjust law is no law at all’ and the position that ‘law is whatever the law-giving authority says it is’; with respect to the acts belonging to the the prior category the Augustine position holds and with respect to the remainder the law as a set of commands position holds.

The kind of confidence that the people of Benares had in their belief that no military will fire on nonviolent unarmed people could only have been based on there being a norm of more or less universal character regarding killing of unarmed nonviolent protesters a crime of most abhorrent kind. In other words, acts of violence against unarmed nonviolent passive resisters must have belonged to that prior category of acts which are crimes regardless of anything. In this connection the following point is rather important. In the contemporary world killing of unarmed nonviolent protesters is generally viewed with repugnance. But, notwithstanding it, it would be a mistake to regard such killings as acts belonging to the prior category. Although in the last few decades there have been several instances of large-scale violence on unarmed nonviolent protesters they in most instances have not resulted in any loss of legitimacy on the part of the regimes perpetrating such violence. Thus, notwithstanding the conceptual breakthrough in the aftermath of the Second World War, the space governed by the maxim that unjust laws or no laws remains comparatively small. In contradistinction to the contemporary situation, it appears to be the case that the principle of unjust laws being no laws played a significantly larger role in the pre-British India. There are several indications to this effect in the documents compiled by Dharampal. The following is particularly significant:

‘I believe the objection which they entertain against the measure in question, is pointed exclusively at the nature and principle of the tax, and not in the least at the rate of

assessment by which it will be realised. The inhabitants of this city appear to consider it as an innovation, which, according to the laws and usages of the country, they imagine no government has the right to introduce; and that unless they protest against it, the tax will speedily be increased, and the principle of it extended so as to affect everything which they will call their own. Under the circumstances, I fear, they will not easily reconcile themselves to the measure.’⁸

Dharampal has rightly surmised the existence of commonality of values between the rulers and the ruled before the establishment of the British rule. Only the existence of such a commonality can explain statements like ‘in the ordinary state of things in India, the princes stood in awe of their subjects.’⁹ and ‘we should obey laws whether good or bad is a newfangled notion. There was no such thing in former days. The people disregarded those laws they did not like.’¹⁰

From the documents one gets a glimpse of the violence and the draconian measures with which the movement that was completely nonviolent and had the support of almost the entire populace was suppressed. Dharampal is right in concluding that ‘British rulers of the late eighteenth and the nineteenth century were by and large, not only the agents of a most callous and inhuman state system, but individually and collectively subscribed to and practised such callousness and inhumanity.’

There is another interesting facet of the British legal system that emerges from these documents. Every well formulated law has two parts; one part requires to do something or to refrain from something, and the other part specifies the punishment to be meted out in case of failure to fulfil the requirement of the first part. The State would be in violation of its own law if (i) it punishes a person who has violated the first part more severely than what is contained in the second part; or (ii) if punishes only some persons who have violated the first part but does not punish all. The British authorities violated their own law pertaining to tax on houses and shops which was the reason for the passive resistance by the inhabitants of Benares and other cities. ‘In January 1812, it was reported that the European residents of Bhagalpur declined to pay the house tax. As it was felt by Government that they were in no respect ‘implicated in the circumstances which rendered the continuance of the house tax necessary at that station’, the collector was instructed not to enforce payment of the house tax from the Europeans residing in that district. Still earlier, the European residents from the suburbs of Calcutta had also refused payment of the tax and the advocate-general opined that he was doubtful if it could be enforced on

⁸Excerpt from letter dated February 7, 1811, from W.W Bird, Acting Magistrate, Benares, to G. Dowdeswell, Secretary to Government, Judicial Department, Fort William. p. 93, Civil Disobedience.

⁹James Mill in Evidence to House of Commons Committee, in House of Commons Papers, 1831-32, Vol. XIV, quoted by Dharampal on p. 12, Civil Disobedience.

¹⁰Gandhi in Hind Swaraj, quoted by Dharampal on p. 12, Civil Disobedience.

them through distraint of property.¹¹ On the other hand, there were varied punishments for Indians, having no connection with the punishments described in the law for failure to pay taxes, including floggings.

There is need to take the work initiated by Dharampal forward. In order to obtain a correct understanding of the what the British rule did to the Indian society there is need to know what Indian society was like just before the British conquest as well as the nature of the British rule. Most importantly, the role that the systemic and sustained violence played in the multifarious disruptions that the Indian society suffered during the British rule needs to both documented and understood.

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¹¹p. 38, Civil Disobedience.