



TRADITION OF RIGHTS
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Mahendra Pal Singh, born on 15 July 1940 in Meerut, India, received his B.A., LL.B. from Agra University and his LL.M., LL.D. from Lucknow University in India and his LL.M from Columbia University, New York. He is Professor of Law at the University of Delhi, India. He was in 1981–82 and again in 1985 Alexander von Humboldt Fellow at Heidelberg, in 1987–88 visiting professor at the South Asia Institute, Heidelberg and in 1991–92 visiting professor at the Faculty of Law, University of Heidelberg. In 1999–2000 and 2001, he was a Fellow at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg and visiting professor at the University of Hong Kong and the City University of Hong Kong in 1993, 94, 95, 98 and 2000 and at Kansai University, Osaka in 2002. His publications include over four scores of papers in various legal journals and edited works and ten books including *German Administrative Law in Common Law Perspective*, 2nd ed. Berlin, New York, 2001. *Freedom of Trade and Commerce in India*. New Delhi, 1985. *Comparative Constitutional Law: Festschrift in Honour of Professor P. K. Tripathi*. Lucknow, 1989. *V. N. Shukla's Constitution of India*, 9th ed. Lucknow, 2001 and *Legal Dimensions of Market Economy*. Delhi, 1997. His major interests are comparative public law and human rights. – Address: Faculty of Law, University of Delhi, Delhi 110007, India. E-mail: mpsingh2@vsnl.com or mpjitholi@rediffmail.com.

From the works of some of the former Fellows, I learnt that they came to Wiko with one project and ended up with another. Until I came to Wiko, I could not imagine that it could happen to me, too. In the totality of academic freedom and ambience at Wiko, it is so natural that I would have been at a loss had it not happened to me. Having come with a

specific project, which I had submitted to Wiko, I diligently started grappling with it in the hope that by the end of my stay I would have some sort of manuscript ready for publication as a monograph. While I was still struggling to work out something which either the others had not said or had not said the way I would like to say, I got an invitation from a law school in India to contribute something on ancient Indian jurisprudence or law for the maiden issue of its thematic journal. In view of my preoccupation with my project, I thought an excursion into ancient Indian jurisprudence or law would distract me from my goal. Simultaneously, I also felt the need to associate myself with the initiative the law school was taking. Finally I found a compromise in agreeing to write something on human rights in ancient India, since my project at Wiko was concerned with human rights and the protection of minorities in India. The law school readily accepted my compromise formula.

As I started searching the relevant literature and looking into it, I began to discover ideas and materials which were either entirely new or had not been sufficiently examined. But the question was: how do I relate the past to the present? I found the answer that traditions have a great role in the making and functioning of current notions, norms and institutions. The idea of human rights could be realised in India only if she had traditions that favoured and supported that idea. In their absence, it was hard to push the idea through. But in view of the long, chequered, diverse and in many ways incomplete history of India and of the relevant nomenclature, it was not easy to determine the Indian tradition of human rights. The notion of human rights, being comparatively recent, could not be expected to be located in the ancient Indian literature and vocabulary. Fortunately, however, India has a strong written tradition in an unbroken chain from the time of the Vedas – estimated to extend from between 6000 to 1000 BCE – until the beginning of British rule towards the end of the eighteenth century. This tradition grew along the notion of *dharma*, which was an ever-evolving notion around the core that it was something that maintains the universe. What maintained the universe was not based on any divine revelation or settled forever, but was an ever-developing exercise based on human reason and rationality. This exercise was the dominant theme of the Indian tradition, which gave it immense tolerance to admit any number of arguments and views in support of what could sustain the universe and ensure good life to all human beings. The notion of *dharma*, so evolved and understood, opened the door for me to correlate the idea of human rights to the Indian tradition. It also showed the possibility of a better justification and framework for human rights. Because the notion of *dharma* could differ with time, place and situation in life, it did not insist upon

uniformity of standards for all and forever. The ultimate goal of human dignity could be achieved in different ways in different situations. In some situations it could require non-interference from the state, while in others it could require the state to intervene. While in the developed societies, where the individual has gathered enough resources for his welfare and is in a position to compete with others on a somewhat level field, in developing and underdeveloped societies where most people are without resources and unable to enter into fair competition, the state may be required to intervene to create a level field. While the developed West may and does have difficulty accepting this argument for its conception of human rights, the rest of the world can sustain the notion of human rights only on the basis of this argument. The notion of *dharma* is capable of accommodating both sides of this argument, inasmuch as it does not insist upon the universal application of any notions.

Examining the notion of *dharma*, the position of the individual and the relationship between rights and duties in the Indian tradition in the light of current notions of human rights, I found that the Indian tradition supported those notions. India's active support for human rights internationally and their incorporation in its policy and legal system fully confirm this finding. The concrete reality of human rights in India, however, is not as bright as the country's support for them. Obviously, my research leads to the conclusion that this is not because of any adverse tradition. Therefore, I had to search for the causes of the gap between the theory and the practice. The search is not yet over, but my tentative findings are that, in view of the difference in the history, traditions and current social and economic conditions between India and the West, India needs to develop a new or modified version of human rights and strategies for their realisation. Human rights in India do not need to defend themselves against the state as much as they need state support for their realisation. Therefore, the state must take the necessary effective measures for their realisation.

Some of these findings I was able to publish or submit for publication during the course of my stay at Wiko. They include:

"Tracing the Human Rights to Ancient Indian Tradition: its Relevance to the Understanding and Application of the International Bill of Rights." *Indian Journal of Juridical Sciences* 137, 1 (2003).

"The Statics and the Dynamics of the Fundamental Rights and the Directive Principles: a Human Rights Perspective." *Supreme Court Cases* 5, 1, Journal, 2003.

“Human Rights in the Indian Perspective.” *Kansai University Review of Law and Politics* 25 (2004). Faculty of Law, Kansai University, Osaka.

“Human Rights in the Indian Tradition: Alternatives in the Understanding and Realization of the Human Rights Regime.” *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (Heidelberg Journal of International Law) 63 (2003).

Not exactly on the same theme but related to it, I also reviewed the following two books: Menski, Werner. *Comparative Law in a Global Context: the Legal Systems of Asia and Africa*.

London: Platinium, 2000. In *International Quarterly for Asian Studies* 34 (2003): 1–2.

Menski, Werner. *Modern Indian Family Law*. Richmond: Curzon, 2000. In *International Quarterly for Asian Studies* 34 (2003): 3–4.

With the support of Wiko and Professors Helmut Goerlich, University of Leipzig, and Michael von Hauff, University of Kaiserslautern, I was also able to organise a two-day conference at Wiko on Human Rights and Basic Needs: Theory and Practice in India, in which a dozen scholars from different countries and disciplines presented papers on different aspects of the theme of the conference. A few Fellows from Wiko and some other scholars from Berlin and nearby places also participated. After revision by their authors, the conference papers are being published as a book.

Wiko also gave me the opportunity to work in the company of and to interact with scholars from diverse disciplines for the first time. Though of course every Fellow was master of his or her own discipline and thoroughly immersed in it, the interaction on issues of common interest was always highly rewarding and educational. Even general discussions at the lunch or dinner table could reveal truths and ideas that would otherwise have remained unknown to me. Above all, the Tuesday colloquiums and special lectures and presentations on Wednesday or other evenings gave immense insights into matters, some of which would have always remained beyond my reach in their substance, form and style of presentation. In these lectures and discussions, convergence between social and natural sciences was always clearly visible.

A few of us also met once a fortnight under the banner of “Globalization Group” to discuss various issues concerning or arising out of globalisation. The Group had several fruitful discussions led by Fellows as well as by guest speakers.

At Wiko I also got the opportunity to meet several former Fellows and scholars from near and far-off places. Some of them also gave me the opportunity to visit their institutions

and speak to them, their colleagues and students. These visits, particularly to the Humboldt University and the Free University, Berlin and the Max Planck Institute of Social Anthropology, Halle were highly rewarding. Courtesy of my former students, I also got the opportunity to share my views at a few institutions in England.

During my stay at Wiko, the annual meeting of the Alexander von Humboldt Foundation also took place in Berlin, which gave me the opportunity to meet some of the former Fellows and the staff of the Foundation.

Unlike at most other academic institutions, socialising is an integral part of the academic activity at Wiko. Apart from daily lunch and Thursday dinner, which guests and family members could also join, on several other occasions all Fellows and their families, many former Fellows, other scholars and Wiko staff also met. Among these occasions, the reception of the Fellows at the beginning of the session in October and the farewell dinner in July were the most memorable. Equally memorable were the boat trips at the beginning and end of the session. Since most of the Fellows stay in the same building at Koenigsallee 20, socialising among them is natural even otherwise. Fellow Raghavendra Gadagkar and his wife Geetha stayed in the flat above ours and we often met for Indian meals in the evenings. We continued these meetings even after they moved to the other part of the building. Not only did we enjoy these meetings immensely, they have also made us friends forever. Among other Fellows, our socialising with Walter and Susi Laqueur, Grażyna Skąpska, Hilda Sabato, Abdul Sheriff and Cornelia Vismann, her husband Balthasar Haußmann and their daughter Melina is most memorable. We are still in touch with some of them. My wife and I were also fortunate to have and make some friends and acquaintances in Berlin outside of Wiko. Among others, a few friends from other parts of Germany, several former students and our daughter Swati and son-in-law Surya also visited us during our stay at Wiko.

All this and much more was made possible by the founding principle of Wiko – to provide to the Fellows every possible opportunity without any responsibility – and by its efficient and caring staff which ensures the operation of that principle in every respect. Its learned and most considerate Rector, Professor Dr. Grimm, from whom I drew special benefit because of our common discipline, the Secretary Dr. Nettelbeck, Dr. Meyer-Kalkus, Ms. von Arnim, language teacher Ms. von Kügelgen, the library director Ms. Bottomly and her colleagues, Ms. Klöhn and her colleagues in the restaurant, the computer staff and everyone else was remarkable in efficiency, co-operation and care. I wish

that I could stay for a much longer period at Wiko and could visit it again. But I also wish that others also get the opportunity to have such a memorable and fruitful experience.

Let us hope the society replicates the example of Wiko.