



HUMAN RIGHTS & INDIAN JUDICIARY: IMPLICATIONS FROM STAN SWAMY'S DEATH

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INTRODUCTION

Human Rights are basic or fundamental rights a human being is having just because of the fact that s/he is a human being (Sepulveda et al, 2004). The Universal Declaration of Human Rights (UDHR) in its Articles 2, 3, 5 and 7 speak about the rightfulness of every human being to be treated and respected as a human being with dignity (<https://www.un.org/en/about-us/universal-declaration-of-human-rights>). Every nation and every judicial system follow these guidelines taking into consideration the fact that they are universal and inalienable, except in the rarest of rare cases (Finnis, 1980). Civil rights of any state guarantees its citizens fair trial and entry to political society (<https://www.britannica.com/topic/civil-rights>). Throughout human history we can have glimpses of human rights movements whenever and wherever there were denial of basic rights to human beings. There were fierce protests worldwide when there were human rights violations against women and children and other marginalized sectors of people (Prakash, 2021). Rohingya crisis in Myanmar, refugee issues in the West and the Black Life Matters movements in the US are recent examples.

India also has witnessed such large mass protest movements for Jammu and Kashmir and individual remonstrations as in the case of Irom Sharmila. Manipur was in news when the iron lady of the North East was on hunger strike for almost 16 years in the beginning of the 21st century. She was a one woman army when the whole of Manipur was affected badly by the AFSPA or the Armed Forces Special Powers Act (Varghese & Eipe, 2012). Recently there were protests here and there, though not many mass movements, when Gauri Lankesh and other activists were brutally killed in different parts of the country.

Fr Stanislaus Lourduswamy SJ, popularly known as Stan Swamy, was a Jesuit priest working among the adivasis and dalits of Jharkhand state. His main focus was on the under-trial prisoners and illiterate indigenous people (Ratnam, 2021). He was an activist living with the people of the locality and was voicing for their rights when the corporates tried for illegal land grabbing. He was arrested on 7 October 2020 as being accused in the Bhima Koregaon violence case. Swamy's activities against such tycoons were the reason, according to him, for his arrest

(<https://indianexpress.com/article/explained/who-was-stan-swamy-6717126/>). He was taken to jail and was not given decent food or medical care even though he was 84 years of age and was having Parkinson's disease (Saigal, 2021). He was shifted to hospital on 29 May 2021 after a long and tiring wait in the Taloja jail. He was tested positive for Covid-19 and died on 5 July 2021 at the Holy Family Hospital in Bandra (Benwal, 2021).

REVIEW OF LITERATURE

David et al (2012) in their study conducted in Zimbabwe concluded that most of the human right violations in the country are by the police force. The number of cases of atrocities by the police in Zimbabwe against all kinds of people is much above the international average. They also analyzed the ways in which the Zimbabwe Republic Police tries to sort out these issues as the phenomenon is a cause for national shame (David et al, 2012).

Patel (2010) found the beginning of the human rights movements in India in the Emergency period and its growth during the post emergency period. He also classified the two major trends as “civil liberties concerns and the rights based perspectives”. The main movements were related to the tribals, women, children, dalits, peasants and the differently abled. He identified a “love- hate relationship” the state and other agencies had towards all these protest movements.

Naranch (2014) analyzed the language used by women authors while speaking about their rights in general. The author described that “feminist authors used the language of rights to challenge the injustices women face when they are not seen as moral, political, or social equals to men”. Women's rights, for him, had been a powerful political language to achieve gendered political equality. For Merry (2006), intermediaries like community leaders, NGOs, and social activists play a crucial role in taking global idea into practice in local situations. Even though these middle men or women are information leaders they could also be manipulated easily by local communities.

Gudavarthy (2008) identified three stages in Indian Human Rights Movements. He classified the movements into the civil liberties phase of 1970s, democratic rights phase of 1980s, and the human rights phase of the 1990s. The paper concluded that even the radical social movements were causes for social unrest or human right violations in the civil society.

OBJECTIVES

1. To understand how the mainstream Malayalam news channels approach the Stan Swamy issue
2. To evaluate how experts respond to the issue
3. To analyze how the public opinion formed after the issue

METHODOLOGY

The researchers have conducted a content analysis of three news hour debates in leading Malayalam news channels based on their popularity measured by the number of views. The debates were for an hour each in all three channels. The channel debates analyzed were from Manorama (31,738 views), Asianet (24,981 views) and Media One (20,540 views). The content of the debate including the questions of the news anchor and answers by the experts along with the comments made by general public in the YouTube channels of these news channels were analyzed and thematically classified. The news hour debate in Asianet had 310 Likes, 52 Dislikes and 206 Comments, whereas that of Manorama had 333 likes, 88 Dislikes and 318 Comments. Media One had 343 Likes, 24 dislikes and 153 comments.

FINDINGS & ANALYSIS

“The death in custody of Catholic priest Stan Swamy, a renowned human rights and social justice advocate for over four decades, will forever remain a stain on India’s human rights record” (Lawlor, 2021). This was the remark made by the United Nations representative after Fr Stan Swamy’s death.

The news hour debates of all the three leading Malayalam news channels were discussing about the denial of basic human rights to Fr Stan Swamy which led to his death in custody. The experts and the news anchors discussed a lot of issues related to human rights and how the government and related agencies intervene and interfere in delaying and denying human rights and justice to people in custody. Stan Swamy is an example of the cruelty of the state and state supported investigation agencies. The major themes of analysis are given below:

1. **Purposeful silencing of those who speak against the government:** There is a determined attempt to silence the voices and activities not in favor of those in power, even though the words or deeds are not directly towards them. The authorities or those who are close to them get a chance to exploit the less privileged ones. Stan Swamy is not the first in the list. Pansara, Kalburgi, Gauri Lankesh and many more who spoke against the state are no more. The state and its agencies make sure that the public get a feeling that the fate of those who question the Men in Power will be the same.
2. **Continuous denial of human rights:** Our nation is in danger in the case of protection of basic human rights. In India today, we can see a chain of human right violations against the marginalized and those who speak for them. Indian Constitution gives every citizen of India the basic right to have a respectable living. But from the day of his arrest based on seemingly false accusations to the day of his sad death, the 84 year old Swamy had to go through a series of cruel denials of basic human rights to have a decent life even when he was so weak with Parkinson’s disease.

3. **Judiciary is in ventilator:** Indian democracy is appreciated for the three major pillars of Legislature, Executive, and Judiciary. Even when people lose their hope in the first two they expected the third pillar to support the system. It was so in the past decades after independence. But in the recent past people started losing their hope in judiciary as the judges have become so corrupted and easily influenced. Those with power and money started changing the court verdicts. The question before the court is whether they should stand with the Government or with the people. They know that courts must be with the people. Judiciary started being influenced by the mass psychology too. If the majority says that somebody is a terrorist or naxalite, judiciary supports it with official proclamation of judgment.

4. **Wisdom Vs Intelligence in Judiciary:** Another issue is the sensitivity judiciary is supposed to have. “Why don’t judiciaries see issues with heart?” was the question asked by Advocate M.R. Abhilash in the debate. We need people with wisdom in judiciary not people with mere intelligence/brilliance. Judiciary will be an autocracy if there is no room for wisdom. Judges have to understand the difference between law and justice. Justice Krishna Iyer was of the opinion that bail is a right of the accused (Dhavan, 2011).

5. **The tragic paradox:** Swamy was working for the human rights activities and at the end he died denied of basic human rights. Even a human right activist is denied of fundamental rights. “Court denies bail to an 84 year old tested covid positive and at the same time Arnab Goswamy gets an easy bail. His pleas for getting proper food and healthcare were denied when the governments were spending crores to feed many cruel culprits. What is very easy for Goswamy cannot be dreamed of by Stan Swamy, because the first one is a staunch supporter of the government and the second one stood for common people” says Dr A Sampath, former MP.

6. **Insecurity of the higher class:** “Dalit activism is an insecurity for the high caste Hindus” says Rahul Eswar, an Indian activist, and “that’s why Madhani, Kappan, Munavar Farookhi, Dr Kafeel Khan are still in jail”. Brahmins, according to him “have high end connection with the executive and judiciary and they can influence everybody in power”. So whatever, the dalits of India do will be skeptically observed by the high class people. Hinduthva is not to be associated with Nationality. BJP and RSS cannot agree to anybody who supports Adivasis and Dalits because of their untouchability. People in the comments section ask how India can be named democratic when those who work for common people are killed and goons like Pragya Singh are made ministers.

7. **Undeclared Emergency:** Today there is an undeclared emergency in India where people have to be very careful not to be taken into custody. Anybody can be termed an urban naxal or a maoist just because you stand for the marginalized. Court had taken 20 days for allowing him a simple straw, 10 days to change him from jail to hospital. Government /Judiciary/Media are not concerned about these and other denial of human rights in India. We need to rethink about how democratically we need to work together against the denial of human rights.

8. **De-motivating by denying basic rights:** Corporate land grab is a serious issue in many parts of the country. This happens when people are unaware of their rights because of illiteracy and oppression. “Arresting somebody who conscientized those people is not a philosophical or ideological issue, but a psychological one to demotivate all others who are in the same process. You have to call evil by its name. Our courts surely have caste based discrimination and the cruelest manifestation of this is the fanatics in the brahminical hardline” reported Rahul Eswar.

9. **UAPA as a tool to punish the innocent:** Death of Fr Stan Swamy is a “state sponsored institutional murder” because they wanted somebody to run off, doubts media professional, N P Chekkutty. State and its agencies make use of constitutional provisions to illegally withheld Swamy’s bail plea. NIA or the government can easily keep this UAPA tag on anybody if they find that s/he may be a threat to the government in the future. Even Washington Post and other Western media made it clear with evidences how Indian Government used Trojan malwares to keep fake mails in Swamy’s account.

10. **The undercurrent between the business tycoons and Government:** Adivasis, who are real owners of the land, are cheated by the corporate mine mafia. Swamy was against this illegal eviction of adivasis from their land. This was the real issue that made Swamy a peck in their eyes, not the Bhima Koregaon conspiracy. Swamy never visited Koregaon nor was he associated with any of the other accused in the case. The authorities were sure that in order to chain him, they needed strong evidence. “Islamism, Naxalism, Conversionism, Brahminical Hardline are the four leading issues in India. Brahmins have to have an enemy for them. They find somebody very easily” opines Mr Eswar. The public were of the opinion that “You can convert adivasis, nobody cares; but you cannot educate Adivasis, the corporate will come against you. The Modi led BJP government will do this to anybody, even if you now support them”.

11. **Illogical Mindset of NIA:** Swamy was not a culprit, he was just an accused. NIA never questioned him during his 9 months in jail. A common wo/man cannot digest the intention behind NIA in doing this. Regular parameters for bail were not considered in Swamy’s case as they were irrelevant as he is very old to do any of these. Lagging each and every minute thing in Stan Swamy’s case was their illogical modus operandi.

NIA and other agencies are (mis)used by the government to hunt down all those who are against them. “NIA was skeptical about Swamy’s disease. There is a wider canvas and wider story and swamy was cornered mercilessly. There was a broader design by the Government not to give him bail and NIA was made instrumental in this conspiracy” said K S Sabarinathan, former MLA and social worker.

12. **Fake Patriotism:** “Any comment against the PM/Government is considered ‘treason’ by those supporting them. If somebody is against Modi Government s/he cannot have basic human rights and they are treated as Maoists. Maoism is a fundamental political ideology and is an Asian variant of communism. Having materials on Maoism in somebody’s laptop doesn’t mean s/he is a Maoist. If people are classified into traitors or patriots based

on their political alliance, nobody can live peacefully and BJP doesn't have the right to classify people. The strategy followed by BJP led government is to 'arrest first and make evidences later' states Adv. M R Abhilash.

13. **Silence of the Church:** "The silence of Indian Catholic Church on Fr Swamy's arrest was pathetic. Church leaders were not serious about this issue. They couldn't make it as a national issue. Many doubted whether the Church was not supporting Stan Swamy" said Mr Sebastian Paul, media professional and advocate. Public was so powerful in their comments against the Church for the sinful silence it kept in this issue. Many were of the opinion that the church is only concerned about not losing their properties, not about protecting innocent human beings. Swamy asked just for an interim bail just to have good food with the help of somebody. He is a saint, but church leaders couldn't make a voice for him. No church leaders tried even to meet him in jail.

14. **The claim of "State Sponsored Terrorism" is illogical:** Those who supported BJP and the government came up with the argument that there is nothing called State Sponsored Terrorism and we cannot blame Modi for anything and everything. "Stan Swamy wanted to live in Ranchi alone not anywhere else. He was admitted to a Super Specialty hospital. He died there after a heart attack. There are lots of evidences against Swamy including his laptop" says Narayanam Namboothiri. The question they pause is whether to acquit somebody of a case just because of his/her age. Mr Jayasooryan, BJP spokesperson, argues that "Maharashtra government is responsible for Swamy's treatment, not NIA.

BJP workers including Dr Shyamaprasad Mukherjee faced the same situation when Congress was in power. We cannot say that all the intellectuals are real patriots. It is only in our country that traitors are adored and worshipped".

CONCLUSION

"Democracy and the protection of human rights generally go together, but not in India" (Beer & Mitchell, 2006). What we need today is a society which stands for those who speak for the voiceless. Only then such institutional crimes will come to an end. "Mandela Rule was signed even by India which speaks about the rights of jailed citizens. Does the state have the right to interfere in basic human rights? How can the state deny basic rights of a citizen without any clear evidence? Victims become accused and that is the cruel contradiction in India today" says Dr A Sampath. Neither the church nor the political parties did anything for Swamy before his death. When fascists teach that hatred is the sacred path, Stan Swamy taught the lesson of compassion; and time alone will teach what the fruits of intolerance are.

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