

RECENT TRENDS IN CONSTITUTIONAL RIGHTS IN INDIA

HIROSHI SATŌ

INTRODUCTION

SINCE THE "Proclamation of Emergency" due to internal disturbance in June 1975, India is facing an unprecedented crisis of fundamental human rights under a mass arrest of political leaders and wide-ranging censorship. In September 1976, the government of India put before the Parliament a 44th Constitutional Amendment Bill which contained several articles further restricting the operation of present constitutional rights.

The present article proposes to examine recent trends in the changing situation of human rights in the early seventies, the preceding period to the present Emergency. The operation of fundamental rights under the present Emergency is not examined in full though reference will be made whenever it seems relevant.

I. FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION

The Constitution of India in Part III lays a set of fundamental rights. They consist of the right to equality (Article 14–18), the right to freedom (Article 19–20), the right against exploitation (Article 23–24), the right to freedom of religion (Article 25–28), cultural and educational rights (Article 29–30), the right to property (Article 31–31C), and the right to constitutional remedies (Article 32–35). The right to freedom then is composed of seven freedoms which are circumscribed with several restrictive clauses.

The scope and nature of the restriction to the right to freedom are of the varied characters, but all the provisos for restriction are the result of the endeavor by the framers of the Constitution to keep subtle balance between the state and the human rights. We are able to classify the types of restriction into four, i.e., (1) restriction due to public imperatives like "public welfare," "public interest," or "national security," (2) restriction due to statutes within the framework of Constitution, (3) restriction intended to protect rights of minorities or the weaker section of society, and (4) restriction due to National Emergency.

We must add also that the Indian Constitution lacks such widely recognized rights as the right to vote¹ and recall or freedom of thought or creed as distinguished from religious beliefs. It also distinguished socioeconomic rights from the fundamental rights and places the former in Part IV of "Directive Principles

¹ Adult suffrage is in a separate part on elections.

of State Policy," so as not to be enforced by the courts (Article 37). Articles on right to equality are enriched with the provision to prohibit discrimination on the ground of religious beliefs or castes. Untouchability is also prohibited in Article 17 which enables the Parliament to enact a law to punish offences.

In the following analysis we shall take up four important rights from the constitutional matrices for our purpose.

(1) Right to Constitutional Remedies

This is one of the provisions most cherished by the framers of Constitution themselves. Dr. Ambedkar once suggested to Constituent Assembly that this provision is the ultimate safeguard to civil liberties in independent India [3, p. 953]. True to his word, writ petition under Article 32 (in case of Supreme Court) and Article 226 (High Court) has been invoked whenever defending fundamental rights against encroachment by state action.

Analysis of the contents in writ petition cases will certainly show trends in operation of fundamental rights.

(2) Personal Liberty

Analysis of writ petition cases will reveal that personal liberty as well as the right to property is involved in writ cases most frequently. And again most of the personal liberty cases are for the writ of habeas corpus to challenge detention laws and orders. Working of detention laws (Preventive Detention Act and Maintenance of Internal Security Act) is examined in this section.

(3) "Workers' Rights"

The terminology of "workers' rights" seems irrelevant in the context of the Indian Constitution as it by no means declares the right to collective bargaining or to strike in the Part of Fundamental Rights as the Japanese Constitution does. It only grants the workers the right to form unions in Article 19(1)(c).

The theory of concomitant right espoused by workers is negated by the Supreme Court in a suit (*All India Bank Employees' Association v. The National Industrial Tribunal*, AIR 1962 SC 171). However, it is possible to examine the workers' statutory rights in relation to present government labor policy.

We shall examine recent changes in labor policy in this section.

(4) Right to Equality

It is still more difficult identifying present state in operation of right to equality as it is inseparable from the social process or social consciousness of citizens. We have to analyze more concrete and objective materials to identify the level of equality. For this purpose, trends in communal incidents reported by the Home Ministry and reported cases of so-called "Harijan atrocities" have limited utility.

II. TRENDS IN WRIT PETITION CASES

In the absence of comprehensive data on writ petitions, we depended on the *All India Reporter*² which contains a fairly large number of reported cases. These cases are selected for legal reference. And it would be inappropriate to use

² A well-known private law report in India.

TABLE I
WRIT PETITION IN ALLAHABAD HIGH COURT

		Pending at the Beginning of the Year	Instituted	Disposed of	Pending at the End of the Year
1969	Writ petition	8,422	6,120	7,660	6,882
	Total cases	62,461	39,368	63,292	38,533
1970	Writ petition	6,882	8,100	7,534	7,448
	Total cases	63,296	40,843	39,797	64,342
1973	Writ petition	15,095	9,856	5,966	18,975
	Total cases	73,617	42,596	31,950	80,573

Source: State Government of Uttar Pradesh, *Report on the Administration of Justice in the State of Uttar Pradesh for the Year 1969*, p. 58, and 1970, p. 76. For the year 1973, data collected by N. Yasuda of the Institute of Developing Economies.

these cases for statistical operation as selection is not identified with sampling procedure. The result therefore will be approximative and preliminary. Result is shown in Tables II and III. As for Allahabad High Court we have figures for writ cases in 1969, 1970, and 1973 (Table I).

Table I shows that the number of writ petition filed is in increasing trend from 1969 to 1973 while the number of cases disposed of in each year remains almost constant. As a result, more cases remain pending at the end of each year.

As the presidential order to suspend constitutional remedies (writ petition) was not invoked in the case of 1971 Emergency due to India-Pakistan War, we see no bar at least up to June 1975 to the jurisdiction of High Courts to issue writ (cases for smugglers are a little different).

Table II gives the reported number of writ cases filed at the Supreme Court. As has been suggested earlier, a significant part of fundamental rights cases is instituted at the Supreme Court by means of writ petitions rather than by ordinary suits. All the reported cases are further classified according to the nature of disputes involved (Table III).

It is very much noteworthy that the four items from (a) to (d) from invariably the highest group of frequency, and we have a provisional conclusion that personal liberty, property right (land legislation both rural and urban), and tax and trade matters are the main issues of disputes involved in writ petitions. Personal liberty cases show a remarkable increase in the seventies as a result of enactment of new detention laws i.e., West Bengal Prevention of Violent Activities Act and Maintenance of Internal Security Act (MISA).

Although the analysis given here on the basis of reported cases in the *All India Reporter* has to be verified by more authentic statistical data, our finding is almost to the real picture of the fundamental rights suit in India, as the Congress Party in office has proposed to restrict writ jurisdiction exactly on these four items along with service and labor matters. The latest 44th Constitutional Amendment Bill is proposing to transfer land, tax, service, and labor matters to the jurisdiction of administrative tribunals under the appellate jurisdiction of the Supreme Court.

TABLE II
NUMBER OF REPORTED CASES INVOLVING WRIT PETITIONS AT THE SUPREME
COURT OF INDIA ON THE BASIS OF *ALL INDIA REPORTER*

	Total Reported Cases (1)	Writ Petition Cases (2)	Constitutional Cases	
			Fundamental Rights Cases (3)	Other Cases (4)
1950	21	5	0	3
1951	66	10	4	3
1952	67	13	3	8
1953	132	12	9	8
1954	175	21	19	19
1955	120	19	6	25
1956	128	17	7	23
1957	217	57	12	28
1958	204	29	4	38
1959	509	188	9	34
1960	295	39	9	41
1961	397	51	24	47
1962	332	51	15	31
1963	320	44	11	55
1964	408	30	14	53
1965	477	39	15	62
1966	467	28	9	61
1967	408	39	19	53
1968	335	27	12	47
1969	269	17	8	40
1970	473	34	16	89
1971	592	40	19	98
1972	602	83	19	94
1973	539	51	21	138
1974	558	90	24	99

Source: *All India Reporter, Supreme Court* (Bombay: All India Reporter).

MISA as amended four times since "Proclamation of Emergency" in June 1975 is already enlisted in the 9th schedule of the Constitution by the 39th Amendment. This led to narrow the scope of judicial review on detention order.

Writ jurisdiction as we have seen it no doubt laid legal bar to the social reform measures undertaken by Congress rule, but at the same time it has given a safeguard, however marginal, against abrogation of personal liberty by the executive authority.³ Criticism against the judiciary has to be viewed in this perspective.

III. PERSONAL LIBERTY

Since the enactment of the Preventive Detention Act (PDA) in February 1950 im-

³ Somnath Chatterjee, M.P. asserts in *People's Democracy*, September 5, 1975 that in 15 per cent of the habeas corpus cases, the applicant succeeded. As to the Advisory Boards in detention laws, they have released detenus in not more than 5 per cent of total cases.

TABLE III
NATURE OF WRIT PETITIONS AT THE SUPREME COURT

	(a) Personal Liberty (Including Freedom of Speech)	(b) Land Legisla- tion (Rural & Urban)	(c) Tax and Duty	(d) Trade (Regula- tion & License)	(e) Public Services	(f) Labor	(g) Minority and Protection Discrimi- nation	(h) Others
1950	4			1				
1951	34	31	1	3			1	
1952	23	22		2				2
1953	12	11			1		1	1
1954	5	1	3	5	2			7
1955	7	86	8	17		2	1	4
1956	5	4	3	25	1			4
1957	15	10	35	11	4	3		5
1958	3	1	20		1	9	12	11
1959	2	274		8				4
1960	2	13	2	16	2	3		4
1961	2	13	46	45	2			6
1962	4	18	20	120	2	2		16
1963		7	50	9	3	3	25	7
1964	3	7	37		2	1	1	7
1965	8	11	9		18		55	
1966	8	2	1	6	11			
1967	15	11	43	5	7	2	1	
1968	23	9	6	2	3		3	5
1969	9	2	4	5	4		1	6
1970	12	5	30	6	2	1	2	6
1971	22	28	3	13	13		7	25
1972	97	12	3	5	3			13
1973	29	21	1	24	3	1	3	6
1974	92	31	21	226	11	2	3	2

Source: See Table II.

mediately after the Constitution of India came into life, personal liberty has been an essential element in analyzing the fundamental rights situation in India. Only has the property right been of equal significance in this respect.

PDA from its inception aimed more at containing political activities of the communists and the communalist than at coping with criminal or economic offences. Being a time-bound temporary legislation, it has been given a vitality whenever it ceased to have effect. But, in December 1969, the PDA ceased to have effect because ruling Congress Party did not force the Parliament to revive the act. This was a result of compromise on the part of ruling Congress which had to depend on leftist support in order to secure majority in the Parliament after Congress split in 1969.

The MISA or the Maintenance of Internal Security Act, retaining nearly whole clauses from the parent act, has several additional clauses sharpening the edge of repression. And it was the first ordinance after the 1971 parliamentary election

in which ruling Congress recovered the former strength under the slogan of *garibi hatao* ("remove poverty").

Following are the clauses in MISA which were absent in the preceding PDA: (1) MISA is a permanent legislation whereas PDA was temporary. (2) Detention of foreigners is explicitly laid down. (3) Smugglers are to be detained one year without obtaining the opinion of Advisory Board (amended clause, September 1974). (4) In specified cases, detention is permissible as long as twenty-one months or the "Proclamation of Emergency" issued in December 1971 remains effective without obtaining the opinion of Advisory Board. This was an amendment effected in accordance with Defence of India Rules. This amended section, Section 17A, was seriously challenged in the Supreme Court by several detainees.

N. Gooptoo, pleading for detainees, characterized Section 17A as not so much "preventive" but "punitive" detention and concluded that so long as the government's policy to unnecessarily prolongate Emergency persists, this section will even validate indefinite detention.⁴ Section 17A was finally declared *ultra vires* in the Supreme Court in April 1973 a little before the so-called supersession of the appointment of Chief Justice.

Some twenty-five hundred people are said to be detained irrespective of this judgment, and a few released are redetained under another section of MISA.

Table IV gives figures for detained persons since 1950. Setting aside the period for 1968-71 whose data are absent, we can assume that the 1970s num-

TABLE IV
PERSONS DETAINED UNDER THE PDA AND MISA

Year	Number of Persons Detained	Year	Number of Persons Detained
1950	10,962	1963	99
1951	2,316	1964	113
1952	1,116	1965	658
1953	736	1966	1,153
1954	325	1967	3,184
1955	325	1968	n.a.
1956	200	1969	n.a.
1957	292	1970	n.a.
1958	177	1971	n.a.
1959	216	1972	3,137 (178)
1960	153	1973	3,693 (429)
1961	219	1974	3,985 (702)
1962	288	1975*	532 (230)

Sources: 1950-58 and 1960: D. H. Bayley, *Preventive Detention in India* (Calcutta: K. L. Mukhopadhyay, 1962), p. 24; 1959 and 1961-67: Government of India, Ministry of Home Affairs, *Statistical Information regarding the Working of Preventive Detention Act, 1950*; 1972-75: *Amrita Bazar Patrika*, March 8, 1975.

* Until February 14, 1975.

⁴ See *People's Democracy*, April 22, 1973.

bers of detainees are in an increasing trend and that the situation is becoming almost comparable to 1950–51. The total number of detainees since 1950 is estimated near the level of thirty thousand. This is about twice the number of detainees after the “Proclamation of Emergency” in June 1975.

Although effectiveness of MISA to contain smuggling is not disputable, the actual number of smuggling cases is not so remarkable as shown in the parenthesis in Table IV.

We do not discuss in detail the problems of jail condition of detainees⁵ which is in close connection with personal liberty.

IV. “WORKERS’ RIGHTS”

In short, we have already made some preliminary remarks on the meanings of “workers’ rights.” Barring the right to form unions, which is defined in the Constitution as an element of fundamental rights, the right to collective bargaining and the right to strike are under the regulation of labor laws. We are here to discuss the recent trends in the change of labor policy in general and to find out what the present situation surrounding the workers’ rights is.

Against the background of a split Congress, the ruling Congress has been formally pursuing a policy of nationalization of some industries or enterprises in spite of often observed setbacks either official or unofficial. It is often observed that in the process of so-called nationalization, labor laws applicable before nationalization come to lose effect in relation to workers’ right to strike, etc. It is now becoming a common phenomenon to restrict the field of operation of existing labor laws in several ways. Nationalization in its present form is a part of this phenomenon.

Emergency since 1971 strengthens this trend. Defence of India Rules are often invoked with the view to check workers’ strike action. Up to April 1975, five hundred strikes were banned under the Defence of India Rules. Abuse of these rules in labor matters were reported as early as January 1972, one month after the “Declaration of Emergency.” In September 1972, Central Home Ministry warned the state executives not to apply the rules to trivial labor disputes. In February 1973, the State Government of Kerala banned an agricultural laborers’ strike on the occasion of harvesting paddy.

But the real factor lying behind this trend is more economic than legal. An uncompromising attitude against the rail-workers’ strike in May 1974 demanding equal treatment being given to the central government employees and succeeding “wage freeze” ordinance apparently intended to contain inflationary pressure testifies to the fact that Indian government cannot allow the existing framework of labor policy to work as it did before. It even has to scrap existing tripartite structure of wage determination. This is at the same time the process to shift the burden of the economic crisis to the workers’ shoulder.

The government’s wage policy in the vortex of economic crisis is unmistakably

⁵ See *Economic and Political Weekly*, September 21, 1974.

represented in the interim report of the Wage Policy Committee headed by S. Chakravarty, a member of the Planning Commission. The report itself is said to be kept behind the inquisitive eyes of the Opposition in the Parliament.⁶

The report on the national wage structure for the organized sector of industries recommended a unified wage structure with the help of nationally standardized indices for minimum wage, skilledness, etc. State intervention is to be strengthened in such a way that wage level for any industry has to be approved by the National Wage Board so that the national structure can be kept intact.

The report further named several industries which were required to exercise restraint in keeping the wage low.

Since the recent Emergency in 1975, the Indian government proposed to form an apex body for private sector employers and employees. This body is regarded as a substitute for the scrapped Indian Labor Conference, a tripartite body. It also started discussing national wage policy, though its connection with the Chakravarty formula is not evident.

As to workers' rights we also have to discuss the functioning of trade unionism in West Bengal.

Trade unions in West Bengal have been in the main current of the United Front movement in this state during the period of two United Front governments (1967-70). After the fall of the Second United Front Ministry, the central government tried diligently to restore law and order that reportedly suffered greatly under leftist rule. Trade unions especially those unions or federation of unions which were supposed to be influenced by Centre of Indian Trade Unions (strongly influenced by the Communist Party of India, Marxist) were attacked by local Congress and youth bodies. Up to March 1972, three hundred CITU-affiliated unions were occupied by these Congress bodies. Nearly one thousand trade union workers were driven out of their residence. In the 1972 state election, urban areas, or the CITU stronghold, were the main target of the alleged election rigging [1].

V. RIGHT TO EQUALITY

As far as the right to equality for the socially weaker sections (Scheduled Castes composing 15 per cent of the total population of India, Scheduled Tribes, 12 per cent of the same) and religious minorities (especially the Muslims, 11 per cent of the total population) are concerned they are assured of religious, cultural, and educational rights. Scheduled Tribes and Scheduled Castes are further allotted proportional reservation for elected seats in the legislatures both in central and state as well as employment for public services.

Practice of untouchability is penalized under the Untouchabilities Offences Act enacted in accordance with the provision of Article 17 of the Constitution.

In a modern state, religion and social status are supposed to be alien from the functioning of state power. But the social status and religion of India which

⁶ *Mainstream*, August 3, 1974 published whole report.

function at the level of the society as distinguished from the state cannot remain isolated from the working of state (or political) power. In other words, the dichotomy of state and society is not relevant in the context of religion and society is not relevant in the context of religion and social status in India.

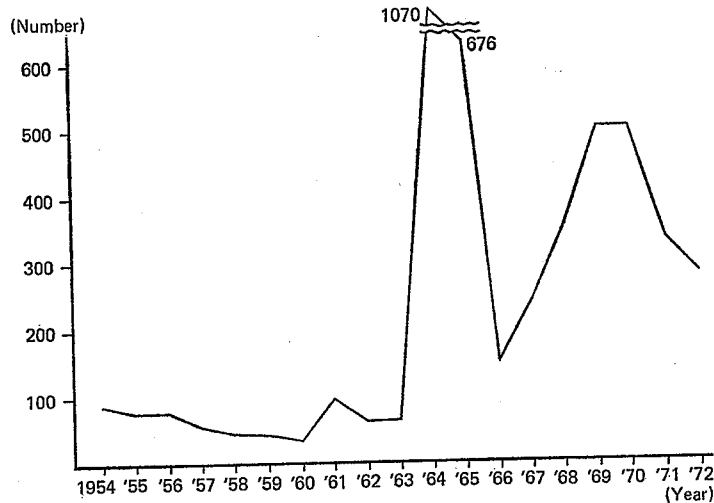
This is one of the reasons why “secularism” or “protection of the weaker section of society” has become a strong weapon to legitimate the assumption of political power in India.

It is due to this circumstance that we give close attention to religious or status conflicts in order to examine recent trends in the situation of constitutional right to equality. These conflicts are usually regarded as social problems in the sense that they are conflicts between individuals. But as is clear from the above discussion, these conflicts are only apparently social, and reflect faithfully the extent to which the constitutional right to equality is cherished by the society.

Figure 1 shows the trend in communal incidents. In 1964 a sudden spurt of incidents was observed. Also, 1969–70 was another troubled period in communal relations. After that period, incidence of communal conflicts has been decreasing. In contrast with the decreasing trend in communal incidents since 1970, so-called “Harijan atrocities” cases are rapidly increasing since that same period (Table V). As the same series of data for atrocity cases is unavailable for the period preceding 1969, Table VI gives us an increasing number of complaints lodged against discrimination.

These two tables undoubtedly reveal the intensification in conflicts between the untouchables and the caste Hindus. Before inquiring into the factors leading

Fig. 1. Communal Incidents in India



Sources: 1954–68: P.B. Gajendragadkar, *Secularism and the Constitution of India* (Bombay: University of Bombay, 1971), p. 176; 1969–70: S. Sarkar, *The Centre and the States* (Calcutta: Academic Publishers, 1972), p. 225; 1971–72; [2]; 173 cases reported in 1974 up to August.

Note: All figures are from the Home Ministry’s reports.

TABLE V
"HARIJAN ATROCITIES" CASES

1969	1970	1971	1972	1973	1974 (until June)
1,541	n.a.	2,127	2,384	2,669	2,758

Sources: For 1969: S. Raha, "The Untouchables Who Work and Produce," *Mainstream*, October 17, 1973; for 1971-72: [2]; for 1973-74: *New Age*, December 15, 1974.

TABLE VI
NATURE OF COMPLAINTS LODGED AT COMMISSIONER'S OFFICE

	1955	1956	1957	1958	1964	1969	1970
Service matters	120	123	89	222	685	1,486	1,341
Harrassment by individuals	180	84	347	136	284	380	246
Harrassment by officers							
Untouchability	90	195	53	117	82		
Land & agricultural matters	65	71	72	202	583	195	239
Housing problems	20	19	46	120		170	151
Drinking water	10	17	9	18	10	—	—
Education	—	—	—	—	—	210	155
Miscellanies	—	—	—	127	—	81	62
Total	485	559	616	942	509	2,522	2,194

Source: [4].

to intensifying the conflict, we have to explain the conflicting trend in communal incidents vis-à-vis "Harijan atrocities."

H. Gani pointed out that the increased official vigilance, prompt action, investigation and prosecution of persons instigating communal troubles, and the threat to punish the lax and guilty officials played part in repressing communal violence [2]. The central government in 1970-72 maintained a strict attitude in repressing communal troubles in several ways. It stopped supplying government advertisement to local papers which instigated communalism, opened summary court to try instigators, and amended penal code to ban communal bodies.

In this respect we also have to remind ourselves that most of the communal incidents took place in urban areas where minorities as well as majority communities are more established than in rural areas. It is also notable that a fairly large number of Muslim people were under detention after the Emergency in 1971. All these factors contributed to the increase in communal troubles.

While the communal incidents seem to be mainly an urban phenomenon, atrocity cases against Harijans take place in rural parts. Untouchables in rural areas are less established than the urban Muslims and are vulnerable to attacks from caste Hindus.

Then what are the reasons conducive to the rapid growth in the number of cases in "Harijan atrocities"? The report of the Commissioner for Scheduled Castes and Scheduled Tribes (appointed by the president of India under Article 338 of the Constitution) for the year 1970-71 pointed out that due to "spread

of education amongst them the Scheduled Caste persons are becoming conscious of their rights and have in fact started assert them openly. On the other hand, there is still a large section amongst caste Hindus who are not yet in a mood to allow Scheduled Castes to enjoy civic rights freely... It is therefore necessary that on one hand the economic condition of the Scheduled Castes persons should be improved so as to make them free from their dependence on caste Hindus, and on the other hand a massive cultural effort should be initiated by the Government along with people's participation..." [5, p. 58].

Besides the spread of education, demand for higher wages under the condition of increased productivity in agriculture and fast-growing inflation in recent years is another factor leading to clashes between Harijan agricultural workers and landowning Hindus.

It is, however, superficial to believe that all the atrocity cases are reported or atrocities were not so serious in preceding periods. What needs to be stressed here is that due to several socioeconomic factors like the spread of education or pauperization of agricultural workers, untouchable peoples are becoming more conscious of equality, and that growing consciousness helped to expose to the public atrocity cases to which they have been more submissive.

A police official in Tanjore District in Tamilnadu is reported to have disclosed a real picture. "If we take this law [Untouchabilities Offences Act] seriously, half of the population of Tamilnadu will have to be arrested. In any case, the police have better things to do than to go about poking their nose into the *private affairs* of people" (emphasis added) [2].

Two significant conclusions are being expressed by police officials. One is that the reported cases of untouchability practice are only a fraction of the real figure and another is that the police official is reluctant in taking initiative on the wrong premise that the practice of untouchability is a person's private affair.

Based on the above observation, we can assume that increase in the number of reported cases of "Harijan atrocities" is nothing but reflection of growing consciousness of Harijans concerning their right to equality.

In supplementing our analysis, regional distribution of communal incidents and atrocities cases are examined in Tables VII, VIII, and IX. Northern India

TABLE VII
STATE-WIDE CASES OF "HARIJAN" MURDERS (1967-69)

1. U.P.	332	10. Bihar	29
2. M.P.	231	11. Haryana	23
3. Mysore (Karnataka)	113	12. Kerala	17
4. Tamilnadu	99	13. West Bengal	12
5. Punjab	76	14. Himachal P.	7
6. Maharashtra	63	15. Delhi	4
7. Orissa	49	16. Chandigarh	2
8. Gujarat	34		
9. Andhra P.	31	Total	1,112

Source: [4, Appendix XXX].

TABLE VIII
STATE-WIDE DISTRIBUTION OF "HARIJAN ATROCITIES" CASES

	1969	1971	1972	1974 (until June)
U.P.	212	1,811	1,925	1,698
Gujarat	413	174	217	
M.P.	446	n.a.	n.a.	Total for Hindi-speaking states 216
Maharashtra	131	47	131	Total for non-Hindi state 591 including 169 for Kerala and 2 for West Bengal
Bihar	n.a.	65	71	
Orissa	65	n.a.	n.a.	
Mysore (Karnataka)	93	n.a.	n.a.	

Source: See Table V.

TABLE IX
NUMBER OF COMMUNAL INCIDENTS IN SEVERAL STATES (1964-72)

	1964	1965	1966	1967	1968	1969	1970	1971	1972
Bihar	379	53	32	110	98	99	79	65	31
Maharashtra	16	495	33	15	39	n.a.	164	35	n.a.
Orissa	310	7	6	6	n.a.	n.a.	n.a.	n.a.	n.a.
U.P.	4	15	11	20	82	n.a.	48	43	n.a.
Gujarat	11	7	2	1	4	213		69*	
West Bengal	317	20	10	15	13	n.a.	n.a.	n.a.	n.a.

Source: See Figure 1.

* Total for 1970-72.

in relation to Southern India is more afflicted with both kinds of social malaise. Among the northern states, Uttar Pradesh, Gujarat, and Maharashtra are the states with highest incidence in both cases. In the case of "Harijan atrocities," Madhya Pradesh ranks high. It is well known that northern states with the exception of West Bengal are traditional Congress (ruling and opposition) strongholds. During the 1971-72 elections, ruling Congress had sweeping victories over all these states with slogans of "secularism" and "interest in weaker sections of society." Regional distribution of communal incidents and "Harijan atrocities" will partially prove the secret of Indira Gandhi's success in these states.

Though effectiveness of these political slogans were verified on the last occasion, its enduring effect is doubtful if the slogans are not materialized and equality consciousness lacks support by improvement in day-to-day life. Gujarat clearly presented the limit of effectiveness of these slogans by election in June 1975.⁷

The 1975 Emergency in fact was a last moment effort on the part of the ruling Congress to retrieve credibility in the policy of "welfare of weaker sections." It is reported after the present Emergency that nearly 50 per cent of the lands distributed since June 1975 were handed over to Scheduled Castes and Scheduled

⁷ Janata Front (alliance of four opposition parties) bagged fifteen out of thirty-seven reserved seats for Scheduled Castes and successfully fought in major Muslim constituencies (*Amrita Bazar Patrika*, June 17, 1975). For Hindu-Muslim unity in 1974 Gujarat agitation, see [5, p. 241].

Tribes.⁸ A few successful cases of freeing bonded labor can also be added in this list.

CONCLUSION

Our analysis is by no means exhaustive in respect of the fundamental rights situation in India during the 1970s. Nevertheless concurrent trends in four examined rights are observable. Prolonged Emergency since 1971 and economic crisis in 1973-74 contributed to curtailing constitutional rights by the state. We might even assert that drastic changes after the 1975 Emergency are only results of the economic and political process just preceding it. The present Emergency strengthened and fastened the process already started.

Fundamental rights do not function in a vacuum. They presuppose historically given state structure. Changes in the sphere of fundamental rights are bound to have concurrent changes in the sphere of state structure. In this respect, we observe a trend to concentrate more power in the hand of the executive wing of the government, a trend expected at the time of crisis. (November 1976)

⁸ *Commerce*, August 14, 1976 reports progress in land distribution till July 9, 1976. Of 3.5 lakhs of beneficiaries, 1.6 are Scheduled Castes and Scheduled Tribes people.

REFERENCES

1. BASU, J. *Subversion of Parliamentary Democracy in West Bengal* (Calcutta, CPI-M Publication, 1972).
2. GANI, H. A. "Scheduled Castes and Communal Problems," *Mainstream*, March 2, 1974.
3. Government of India. *Constituent Assembly Debates*, Vol. 7.
4. ————. *Report of the Commissioner for Scheduled Castes and Scheduled Tribes, 1970-71* (New Delhi, 1973).
5. NAYAR, K. *India after Nehru* (Delhi: Vikas, 1975).