Book Review. Journal of the National Human Rights Commission, India

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of soft power and multilateralism to the unilateralist military approaches employed by the Bush administration. Yet like the President, he espouses a Wilsonian idealism for international leadership by the US as a savior nation.

There is a non-interventionist “Jeffersonian” alternative to Wilsonian idealism. Anthony Lewis concludes his preface to Tainted Legacy with the Jeffersonian assertion that America should “teach by example.” John Quincy Adams similarly wanted the US to provide a model others might replicate of their own free will rather than to impose on others American or universal norms. Perhaps US power and global expansion are now so great that failure to combat evil abroad would amount to moral abdication. Schulz realistically assumes that America will continue to wield great power. If heeded, his well-balanced message to policymakers and human rights activists might help avoid further ruin.

Howard Tolley, Jr.

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In 1993, the Parliament of India passed the Protection of Human Rights Act. The main purpose of the Act was to create the National Human Rights Commission (NHRC)—a proclaimed independent governmental body statutorily charged with ensuring that every individual’s constitutional rights are protected by the Indian state. As a means of accomplishing its mission, the Act empowered the NHRC to depose witnesses, conduct discovery, evaluate evidence, issue reports and recommendations, and ask the central government and/or the judiciary to enforce its opinions. There are currently three members of the NHRC, three ex-officio representatives, a Secretary General, and a Director General. The NHRC is chaired by former

1. The NHRC was established by Parliament through the Protection of Human Rights Act, 1993.
3. Id. at ch. 3.
4. Id. at ch. 2.
Chief Justice of the Indian Supreme Court, A.S. Anand.\(^5\)

In contrast to Parliament or the state’s bureaucracy, the NHRC carries an air of legitimacy among the public and it has, at times, criticized the central government and various state governments for not doing more to protect human rights.\(^6\)

Perhaps the most well known report from the NHRC involves the 2002 Gujarat riots.\(^7\) In early 2002 vicious riots broke out in the western state of Gujarat; most of the thousands of victims killed or brutalized were Muslims at the hands of Hindu nationalist-fanatics, although certainly those within the state’s Hindu community also suffered loses as well.\(^8\)

In the months after the riots, the state and central governments launched investigations; the NHRC too conducted its own investigation, as did numerous domestic and international nongovernmental associations.\(^9\)

As part of its findings, the NHRC condemned the police for not adequately protecting Muslim communities that came under attack.\(^10\) It also criticized the state government for politicizing the riots and fanning communal tensions.\(^11\) And when several Hindus accused of murdering a group of Muslims at the Best Bakery Shop were acquitted after key eyewitnesses during the trial recanted what they originally saw,\(^12\) the NHRC intervened and asked the Supreme Court to investigate whether the defendants should be re-tried outside of Gujarat and whether those charged had intimidated the witnesses.\(^13\)

The investigation is still pending.\(^14\)

The work of the NHRC, however, has been multi-dimensional. In 2002, the then-Chairman of the NHRC, Justice J.S. Verma, launched an academic project seeking to bring together those who, through writing, would promote the protection of human rights in India.\(^15\) Justice Verma’s efforts resulted in the publication of the inaugural Journal of the National Human Rights Commission, India, a scholarly publication whose contributors make up some of the country’s most renowned rights-based activists. This

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5. See NHRC’s official website available at www.nhrc.nic.in.
6. Id.
7. Id.
9. See NHRC’s website, supra note 5. Some of the NGOs that have done in-depth investigations on the riots include, Amnesty International, Human Rights Watch, the People’s Union for Civil Liberties, to name a few.
11. The word “communal” in India refers to religious or sectarian. Id. See Human Rights Watch, Compounding Injustice, supra note 8.
significant volume is divided into three sections, each of which will be the subject of this review essay.

Section One is entitled “Human Rights: New Dimensions.” Justice Verma himself is the first contributor, and he argues that as the world has economically globalized, so too must there be a “globalization of human rights.” Citing the UN Charter’s Universal Declaration of Human Rights, the 1995 and 1996 Human Development Reports, as well as the views of prominent academics, diplomats, and political figures (e.g., Amartya Sen, Kofi Annan, Mahbub al Haq, and Elie Wiesel), Verma contends that the disparities that exist between the peoples and nations of the world have reached a critical breaking point, thus mandating that all countries work together to promote human rights for every individual. He points to several specific policy areas—lack of health care, illiteracy, gender discrimination, environmental degradation, and poverty—as issues where wealthier states have a moral obligation to help poorer states deal with these crises. But Verma is quick to emphasize that poorer states, too, have a responsibility of their own; for example, he lauds India’s creation of the NHRC and notes that this institution has been at the forefront in protecting individual liberties and rights.

Fali S. Nariman, the famous Indian Supreme Court lawyer, in his essay picks up on this idea that India indeed has formal mechanisms for ensuring the realization of human rights. Nariman focuses on the various provisions of India’s constitution and discusses how this document—particularly the non-justiciable, Directive Principles of Part IV—powerfully seeks to ensure that all Indians are treated with dignity and provided with “rights enforceable against . . . [arbitrary action by the] State and State agencies.” Nariman also praises the Indian Supreme Court as an institution that has generally read the constitution in a very liberal, rights-oriented manner. But Nariman’s essay does not paint a completely rosy assessment. He expresses dismay over how much of the Indian public has not embraced the principles of universal human rights—especially for minority communities. And he faults government politicians for not fostering a genuine rights-based culture within Indian society.

In Virendra Dayal’s essay, the author traces the history of the NHRC, examining the institution’s statutory basis and evaluating its work after ten years of
existence.23 Dayal notes how many observers were skeptical when the NHRC first emerged.24 These early nay-sayers doubted whether a state-based body could truly act independently from the central government—especially if the latter needed to be criticized. Yet according to Dayal, the NHRC has made important strides in protecting the human rights of Indians. The Commission has worked hard to reduce police brutality, poverty, violence against women and children, and discrimination against minorities.25 In addition, it has sought to promote good governance (i.e. stamping out corruption) as well as substantive legislation that meets the demands of those historically unrepresented. For these reasons, Dayal argues that India is a much stronger democracy because of the NHRC.26

The second portion of the volume focuses on the theme: “struggles for human dignity.” Four distinguished rights-activists are featured in this section. First, Indira Jaising, the famous Supreme Court lawyer and women’s rights champion, argues that domestic violence ought to be considered a “violation of human rights.”27 Jaising calls for an overhaul of current state policies on domestic violence and suggests that until the needs of abused women are seriously addressed by those in power, equality in India will only exist in theory and not in practice.28 Next, B.D. Sharma passionately discusses the status of tribal communities in modern India.29 In this very detailed chapter, Sharma, like Jaising, contends that on paper the rights of minority groups—like the diverse tribals of the country—are explicitly protected under Indian law. And while in urbanized areas of India the lives of tribals have improved since Independence, according to Sharma, in the vast hinterlands where millions of tribals reside, these people still lack basic economic, political, and legal opportunities to which they are constitutionally entitled.30 For Sharma, the historical “inaction on the part of [bureaucratic] administration and also the political executive”31 largely accounts for why this deprived population continues to be neglected.

G. Haragopal’s piece on untouchables, or dalits, is a nice follow-up to Sharma’s work.32 Haragopal, a political scientist by trade, presents a nuanced defense of the constitutionally-based, affirmative action-type preferences currently enjoyed by dalits.33 About 25 percent of India’s population are dalits.34 Given that this group has endured centuries’ worth of discrimination, Haragopal argues the only way “the highly stratified

24. Id at 40–41.
25. Id at 55–71.
26. Id at 71.
28. Id.
30. Id.
31. Id at 128.
33. Id.
34. Id at 159.
hierarchical social order” of India can be changed is by remaining firmly committed to erasing the prejudicial remnants of the past. Anuradha Mohit’s subsequent chapter on the “rights of the disabled” appropriately complements Haragopal’s paper. Mohit looks at the current status of those with mental and/or physical disabilities and contends that for too long Indian society has shamefully ostracized these individuals. Fortunately, according to Mohit, during the past decade the government has taken strides to remedy this situation legislatively. She calls on the Indian government, however, to do more: to recognize that disabled individuals justifiably qualify as a protected class under various international human rights protocols. By seeking remedies under both domestic and international law, disabled individuals, Mohit believes, have the best chance of ensuring that their rights are recognized.

The final section of this NHRC volume addresses current human rights issues in the news. Dipankar Gupta has a short piece describing the “series of strong, impartial and prompt action[s]” taken by the Commission to improve the situation in the State of Gujarat following the deadly riots of 2003. Kamini Jaiswal also has a brief note discussing an on-going debate in India over how much information the public should be entitled to regarding the functioning and conduct of government officials. (She supports recent Supreme Court case law that promotes full disclosure.) And the NHRC itself publishes its recommendations and opinions on the Gujarat crisis, as well as its view on a pending bill in Parliament focusing on the issue Jaiswal raises in her essay—the public’s right to know and the public’s right to have access to information involving government activity. The volume then ends with a positive review by Mohan Gopal of Professor Upendra Baxi’s recent book critiquing the modern-day human rights movement and the discourse that accompanies it.

The NHRC should be proud of its inaugural publication. Several of us who have studied India for years have noted that notwithstanding a group of insightful and productive legal scholars within the country, much of Indian scholarship on the law leaves much to be desired. The Commission’s initiative here thus is an encouraging sign of the changes occurring within the Indian legal academy. Moreover, this volume will likely spur others to engage in new and innovative research regarding the issue of human rights in India. In particular, I hope more Indian scholars will follow the lead of Anuradha Mohit’s research. Mohit, recall, addressed the rights of the disabled, but her contribution is especially inter-

35. Id. at 133.
37. Id.
38. Id.
esting because much of her argument is supported by empirical data on the subject. Indian legal scholars traditionally have been trained in doctrine rather than in empirical legal research; Mohit’s refreshing approach hopefully will inspire other human rights activists in India to consider the role of empiricism when making their arguments.

Finally, I would be remiss if I did not acknowledge that despite Virendra Dayal’s contention, there are those who continue to question whether the NHRC, because of its governmental association, really can be an independent, watchdog-like institution. Elsewhere, others and I have raised this concern, particularly regarding the Commission’s refusal to criticize the recently passed, Hindu-nationalist-backed anti-terrorism legislation that severely curtails the rights and liberties of Indian citizens. However, this is an issue that I will leave for another day. And furthermore, it should not dilute the fact that this publication by the Commission is an important contribution to the literature that all those working on human rights in India should read.

Jayanth K. Krishnan

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The founders of the British Metropolitan Police, Rowan and Mayne, articulated a series of principles which described the relationship of the police to the public they policed almost 200 years ago. These principles are the foundational characteristics of policing in democratic societies. Three of these principles form the underlying premise of the book Policing Post-Communist Societies: Police-Public Violence, Democratic Policing and Human Rights by Drs. Niels Uildirks and Piet Van Reenen:

1. Legitimacy: To recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public approval.

2. Accountability: To recognize at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interest of community welfare and existence. This notes that police authority in a democratic society is derived from