Always Already Political? ‘Civil Liberties’ in India

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Abstract:
The question of ‘rights’ in India, as indeed elsewhere in various parts of the world, enters in close proximity with the activist sphere of politics; and, consequently, those studying and historicizing it are often close to what the political theorist James D. Ingram calls the ‘political approach to rights’. Our effort in this paper is to insert a more historically contingent perspective on this approach, one attuned to the shifts, mutations and negotiations formative of the contexts bearing on the language and practice of rights in India. Of course, the entire analysis is contextualized to some key moments in the practice of civil liberties in India. In the process, the paper tries to actively avoid constricting the space of our normative political languages; while also laying the basis for a more sustained historicization of ‘civil liberties’ in India. In particular, the paper alerts us to be attentive to the subterranean regulatory folds which served to constitute the inner and outer limits of protest across socio-political collectivities and ideologies active in the historical fields of action germane to civil liberty activism in twentieth-century India.

Keywords: Civil Liberties, Rights, Historicization; Political approach; Normative languages; Protest and civil disobedience.
I. An Initial Question

The origin of a ‘human rights movement’ in India is often traced to civil liberty unions initiated by Indian nationalists against the police powers of the colonial state. Recent work however explains how the decade of the 1970s was constitutive of the spread of the idea of ‘human rights’ around the world¹. In staging the history of human rights in India in the way alluded to above, one may well ask what became of the idea of civil liberties in India? In asking this question, we hope to sketch the challenges involved in historicizing an idea like human rights, as indeed civil liberties, in India. We wish to point out that recovering developments pertaining to civil liberties as a part of a ‘human rights movement’ – as urged by recent scholarship - is anachronistic. We seek to provide an alternative account of the incongruous foundational processes which have to be accounted for in understanding how the human rights discourse was activated in India. By demonstrating the interaction between long-

standing and contingent factors, we hope to thicken an otherwise straightforward thesis about the grafting of an international human rights regime in various settings in the 1970s.

In fact, we may not yet have a measure of what changes the 1970s inaugurated for post-emergency rights work in India. Our task in this foray is two-fold; outline firstly the contours of an older discourse of civil liberties in India and what sorts of things it made possible. Relatedly we ponder about what became of this discourse; is its work now accounted for by other devices? Secondly we dwell on the changes wrought in and through the 1970s decade in the light of these earlier established discourses to outline what was changing. We argue that the 1970s moment - thought to be constitutive of this domain - was heralding a departure from the structures of an older discourse on civil liberties. But then, what was it that was being refashioned? How did it transform and what was its particular intersect with a rapidly spreading human rights discourse of the recent past? These remain important questions, and our foray here will necessarily address only some of these questions.

But to take up the question of the foundations of rights is to invite the ire of the rights activist for whom the efficacy of human rights institutions appear more pressing, certainly more so than the tracking of normative vocabularies and their contextual evolution. Put differently, the imperatives of ethical action usually enter in close proximity to any questions we may ask about rights including foundational ones. Recently, however, the political theorist James D. Ingram labours in instituting a space for the study of the foundation and the evolution of rights

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2 To be sure, we think of our mandate to be within historical sociology than one in normative theory, deferring for later the space of evaluation demanded by the latter. Admittedly, we need to pay attention to transformations in normative languages since norms of protest were being fashioned in particular languages, its limits argued over, and these were subject to changes over time overseen by other contextual changes. However, we postpone that endeavour to understand the circumstances in which these other evaluative-descriptive terms involving rights supplement and overtake the language of ‘civil liberties’ in later years including human rights.
whilst also being sensitive to their usual recovery as primarily ethical devices. Ingram’s approach has methodological implications, when he isolates two sorts of pathways usually adopted in studying human rights: one, a philosophical approach, which is concerned with questions in the class of what rights are and what they are based on, which rights are fundamental, for what reason are they fundamental, and why have them.

The second approach he isolates as being political; this approach focuses not on foundational questions, but instead, its starting point is concerned with operationalizing human rights, and how to have them enforced through mechanisms and institutions. The political approach to human rights has now had the upper hand for a considerable time – as Ingram observes correctly – and the ‘extra-political provenance of justification’ of these rights remains a ‘thin philosophical core’ that is of relatively lesser concern to human rights defenders, and has also tended to be therefore underspecified. But foundational questions are crucial in understanding the many careers of an idea; we therefore present the journey of ‘civil liberties’ from colonial India.

II. Wading Through Civil liberties in India: Key Moments

The language of civil liberties in India was pressed into service specifically to be an anti-colonial shield aimed at blunting the emergency police powers that the colonial executive had assumed to counter revolutionary tendencies of the 1930s (by banning nationalist and Communist organizations, restricting the press, and confirming detention without supplying grounds or failing to produce detenus before the law, leading to further custodial violence). It

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incorporated a focus on the rights of those socio-political collectivities that required these citizen rights to forward their protests. To put it differently, in demanding civil liberties one was defending or protecting the right to assemble, to express, to one’s person and to associate – a protective encirclement of all these from any sort of incursion by the colonial executive. The career of civil liberties in India thus had a close relationship with forwarding the claims of protest.

Shortly after ‘civil liberty’ demands were regularly made in British-India by the Indian National Congress (INC), the latter formed provincial governments in various regions as an outcome of the provincial elections of 1937. This marks an important phase of meaning accretion and strain on the idea of ‘civil liberties’, for it was in this phase that the INC would be stretched by opposing pressures exerted on it by shades of the Left that were a part of it, as also an increasingly big industrialist lobby within the party. This is important to bear in mind considering the disputations and affirmations about ‘civil liberties’ that were about to follow. We grant these developments foundational status in reconstructing the contours of civil liberties in India.

In this context there were two distinctive features of the civil liberties discourse in India that had been largely agreed upon and settled right from the instituting juncture of the idea. It was important that those espousing its cause embraced a non-party imperative; they would protect various freedoms against executive ingress regardless of which political group such defence subserved. Secondly, its discourse also facilitated protest without displacing norms which in turn curbed violent protest. We now trace some developments in the latter feature, and therein focus on developments important to reconstructing the normative background for a human rights discourse in India.

5 Quentin Skinner alerts us of the dangers of ‘congratulating’ the past and the figures that stalk its pages in anticipating future discourses. One is indeed somewhat recasting the past here within the template of present ‘human rights’ concerns, but we hope to be alert to just how much was done and could be done with an idea
Indeed, while the discourse was inaugurated within this milieu, initially to counter these GoI measures, the idea of civil liberties was also being used within these constituencies of socio-political protest in specifically unanticipated ways. While facilitating protest, the idea also legislated forms of political protests across the ideological spectrum which had at times yielded violent modes of action. In the decade before Indian independence it played an important part in identifying the grounds for protest. Thus Gandhi drafted an AICC resolution on civil liberties to this effect stating

“Inasmuch as people including Congressmen have been found in the name of civil liberty to advocate murder, arson, looting and class war by violent means and several newspapers are carrying on a campaign of falsehood and violence calculated to incite the readers to violence and to lead to communal conflicts the Congress warns the public that civil liberty does not cover acts of or incitement to violence or promulgation of palpable falsehoods. In spite therefore of the Congress policy on civil liberty remaining unchanged the Congress will consistently with its tradition support measures that may be undertaken by the Congress Governments for the defence of life and property”.


6 “Gandhi’s Draft Resolution on Civil Liberty,” in Basudev Chatterji, ed., Towards Freedom: Documents on the Movement for Independence in India 1938, 3 vols., vol. 1 (New Delhi: Indian Council for Historical Research [ICHR] and Oxford University Press, 1999), pp. 102-03. This resolution was tabled at the Delhi AICC session on 26 September 1938, and has to be understood as being consistent with a wider purge Gandhi was suggesting to the Congress in order to rid it of violence. The immediate background to this resolution was that the CPI had objected to the Congress-Landlord pacts regarding the Tenancy Reform Bills tabled by the Bihar and United Provinces ministries. Sumit Sarkar even reports that the INC’s denunciation of ‘class war’ in the civil liberty resolution was made specifically in light of heightened Kisan Sabha (agricultural workers associations) agitations. The INC in this period had an ‘increasingly hostile attitude towards Kisan Sabha militancy’ with Congressmen banned from attending their meetings and the Congress ministries employing police pickets and Section 144, with Kisan Sabha’s slogans advocating the Danda (‘stick’) attracting Congress ire as going against the creed of non-violence; see Sumit Sarkar, Modern India: 1885-1947 (Delhi: Macmillan, 1983), p. 365.
It disqualified violent protests of communist and communal formations in the colonial period and thus came to be formulated as a sort of normative device that not only constituted the outer limits of political articulation - in the sense of sanctifying the very possibility of various forms of articulation to express themselves and ensuring that they are protected - it also importantly authorized and mediated the contours of political articulations in India from the inside. It was therefore useful to those who wished to modulate protest as well as to those who demanded to further it. The latter, that is, those who wished to further socio-political protest, asked that civil liberties be guaranteed and extended, whereas the former (those concerned with modulating protest) disqualified demands for extension on the grounds that the immunities sought for conducting protest lay beyond legal limits and/or perpetrated violence.

In thus laying the basis, what was sought to be configured and defined was the boundaries of protest and this occurred in the language of civil liberties. While Nehru and Gandhi sounded out these limits of protest, Lohia in his 1937 pamphlet emphasized those claims of protest that were facilitative of social transformation⁷ thereby setting in place a tension between the inner and outer bounds of civil liberties. Its meaning and utility was being contested and/or confirmed as the INC and the various shades of the Left within its fold and outside competed with each other’s way of going about their politics in the language of civil liberties. Evidently, the logical relations between civil liberties and other organizing concepts (such as civil disobedience, protest and licence, and ‘criminal liberty’) were being shaped by normative arguments concerning struggles that originated in the colonial period. Across the ideological spectrum in British India, the idea was a useful in separating out protests and struggles deemed illegal, communal, and seditious on the one hand, as also for setting limits to and tempering

⁷ See his *The Struggle for Civil Liberties* (Allahabad: Foreign Department, All India Congress Committee, 1936), pp. 34-35 for his view on how defence of civil liberties was important for nationalist and socialist struggles around the impoverished world in checking a colonial state which supported the ‘class policy of finance capital and landed aristocracy’.
protest and violence within ordinary legal limits on the other. Parties and protagonists used it to disqualify each other’s activities and perspectives and forward alternative norms of protest and civil disobedience.

The upshot, therefore, in capturing these differing emphases of civil liberties and arguing about its misuse (in the colonial period particularly) amongst opposed segments of the Indian political landscape was that the very nature of protest and the terms of justifiable disobedience were being constituted and reconstituted. Given the opposed segments and their appropriations/translations, the contours of civil liberties was being outlined by those striving hard to manoeuvre this language to fit their projects into what was already normative in their own time and/or to rationalize projects that seemed to ill-fit with pre-existing normative definitions (in the process modifying the terms of the latter). Indeed, the power to manipulate this language so as to validate the normativity of particular political projects was important to have, since it determined the norms of doing politics, including the very norms of protest.

Furthermore, these arguments and subsequent agreements about the contours of civil liberties were carried over into future engagements. The CPI, banned in large parts of the 1930s and late 1940s, unsuccessfully attempted at expanding the civil liberties speech act by trying to encapsulate working class protest; and these attempts took place as early as the late 1930s and again in the late 1940s. Despite these efforts at modifying the terms of prevalent (or inherited) practice, the distinctive features of the enunciation of civil liberties continued to sustain.

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8 See Chatterji, *Towards Freedom*, pp. 88-116 for a fascinating history of how the grounds of civil liberties were being fashioned within the INC’s warring Left and Right segments.

9 Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols., vol. 1: The Renaissance (Cambridge: Cambridge University Press, 1978), pp. xii-xiii. Noting that political historians (and sociologists, we might add) “tend to assign a somewhat marginal role to political ideas and principles in seeking to explain political behaviour,” Skinner attributes this to the fact that they “continue to think of their main task as that of interpreting a canon of classic texts”. He urges the study of “ideologies”, which according to him could “illustrate one crucial way in which the explanation of political behaviour depends upon the study of political ideas and principles, and cannot meaningfully be conducted without reference to them” (ibid., pp. xi-xii).
through carefully posited counter-arguments and affirmations. This balance between forwarding civil liberties claims and qualifying the limits of violent protest was held in place throughout the Constituent Assembly Debates (CAD), as also in the early years of Indian independence. Consider Jayaprakash Narayan (JP) in inaugurating a civil liberty conference early in 1950 saying

“there was a school of thought which believed in violence and indulged in acts of violence. People had to beware this school. For they must remember that those who indulged in acts of violence struck at the very roots of civil liberties. No group could demand liberty to loot and murder and commit acts of arson. There were certain groups who were vociferous in demanding civil liberty but undermined it immediately by senseless acts of violence”¹⁰.

JP was addressing communists as well as active members of the Hindu Mahasabha - groups that were on the warpath at this juncture - who were part of this civil liberties formation. Violent protest was thus denied civil liberty protection all through the 1950s to the 1960s, which also appears to be accepted by rights organizations that were then active as also the primary protest constituencies whose struggles the former were defending. Such equilibrium of protest norms continued to obtain at least until the mid-1960s, which is when a moment of transition occurs. In the context of the mass incarceration of the Communist cadres in the war years of the 1960s, more and more working class themes were taken up on the civil liberty

¹⁰ Editorial Collective, “Civil Liberties Conference: Mr. Jaya Prakash Narayan’s Inaugural Address,” *The Indian Civil Liberties Bulletin*, vol. 1, no. 8 & 9 (1950): p. 104. Nehru had earlier joined issue with civil liberty organizations that he alleged were started at the behest of the militant CPI; see his speech reproduced as a pamphlet by the Ministry of Home Affairs, *Communist Violence in India* (Delhi: Government of India, 1949), p. 6. Speech dated 28 February 1949. Civil liberty organizations offered swift rebuttals, but agreed on the instituting limits of civil liberties that Nehru and JP were pointing out; see Editorial Collective, “Comments: ‘Too Busy with Criticisms of Governments’,” *The Indian Civil Liberties Bulletin*, vol. 1, no. 4 (1950): pp. 42-43. For arguments that retained these founding limits of civil liberties that were echoed during constitution making in India, see Constituent Assembly Debates: Official Report, 5th edn., 12 vols., vol. 11 (New Delhi: Lok Sabha Secretariat, 2009), pp. 681-82; 733-34; 803; 819; 851, and 968.
platform. However the distinctive features of the idea identified at the outset -- namely its non-party orientation and its qualified protest norms -- continue to be important in this extended phase even as Communists were increasingly visible in this domain. Some of the personnel from earlier civil liberty formations also continue to obtain in this conjuncture, thereby possibly helping to sustain and maintain this (at times strained) continuity. There was nevertheless some shift in the understanding from before; Lohia, for instance, maintained in the context of the mass arrest of CPI (M) leaders in the mid-1960s that those who did not believe in democracy had to be afforded the protections inherent in a democratic order\textsuperscript{11}.

The Naxalbari armed struggle altogether radicalized the rights discourse in India, even potentially dispensing with the violence bar on protests as established in the instituting juncture. In becoming something like a sheet-anchor to armed struggle - often propagating it from its platforms - the civil liberty shackles restraining violence were detached and the agreed upon inner limits of socio-political protest were partially suspended. The invoking of rights in the wake of the Naxalbari armed struggle undergoes a transformation, with the language of ‘democratic rights’ enunciated more often alongside claims for a more militant approach to solving people’s grievances. There is a concurrent disavowal of civil liberties in Marxist-Leninist literature from this period for being a ‘bourgeois sham’; this was deemed as illusory as emancipation from parliamentary democracy\textsuperscript{12}.

This new militant rights discourse arraigned itself against what it perceived to be an exclusively legal approach to civil liberties, insisting that the latter cannot be reduced to mere legal aid.

\textsuperscript{11} Lohia’s speech reported in “Opposition Parties to hold talks on Kerala Situation: All-India Convention,” \textit{The Times of India}, 24 March 1965.

Indeed the turn to the language of ‘democratic rights’ reflected the rights platform taking up strong political positions on the nature of society and polity - defining India as being both semi-feudal and semi-colonial - and rights organizations were meant to function as a ‘sheet-anchor’ to revolution with parts of it quite actively also propagating armed struggle particularly in Andhra Pradesh. Thus while in an earlier phase ‘civil liberty’ was meant only to shield legally-bound protest as a permissible public act, in the Naxalbari stage it was meant to broadcast and propagate Left-wing politics and soon thereafter the politics of armed struggle.

Coinciding with the Naxalbari-inspired militancy of the rights language and practice, the 1970s was also witness to protracted battles between the government in power and a broad arc of political forces across the ideological spectrum. This protest-coalition meant to strengthen democracy in India was strung together by JP who was convinced that the ruling dispensation under Mrs. Gandhi was revealing increasingly authoritarian tendencies in the garb of accelerating social transformation. The 1975-1977 internal Emergency marked a watershed moment in curtailing the freedoms and liberties of parties and people opposed to Mrs. Gandhi and the Congress, as also the populace at large. These groups converged with the aim of the JP movement to refurbish Indian democracy\textsuperscript{13}. It is therefore useful to think of JP’s intervention in stitching together all shades of anti-Congress forces into a forum for strengthening democratic institutions, which in turn channelled its multiparty energies into the civil liberty platform.

\textsuperscript{13} The CPI (M) agreed to align with the JP constellation against Mrs. Gandhi only on a civil liberty platform since right-wing elements were a part of the constellation; see “The Common Interest,” \textit{People’s Democracy}, 25 May 1975; cited in Jyoti Basu et al., eds., \textit{Documents of the Communist Movement in India}, 26 vols., vol. 17: 1975-77 (Calcutta: National Book Agency, 1998), pp. 49-50; see also “CPI (M) Leaders Meet Jaya Prakash Narayan,” \textit{People’s Democracy}, 13 April 1975 in ibid., p. 28. The JP-led movement had designated 6 April 1975 as a ‘Lifting of the Emergency’ day, which CPI (M) supported by publishing an editorial titled ‘Rally for Civil Liberties’ in their \textit{People’s Democracy} journal; see “Rally for Civil Liberties,” \textit{People’s Democracy}, 30 March 1975 in Basu et al., ibid., pp. 26-27.
This moment marked a proliferation of rights organizations around the country, but something had changed with the commingling of the JP streams and the Naxalite streams of rights activism. To cite an instance, rights organizations investigating communal violence in the immediate post-emergency period were no longer recalling the qualifying limits to civil liberties that had shackled communal and communist modes of action from about the 1930s to about the late 1960s. In this post-emergency moment rights organizations allegations against the government - that it was in collusion with organizations that fanned communal enmity since members of the Jan Sangh were a part of the ruling Janata Party - was meant to primarily expand the registers of state culpability. Consequently, activists did not issue criticism of naxalite violence in this period and were also reticent in doing so with the different nationality struggles that were coeval from the early 1980s. There was in this period principled non-condemnation of the protests of exploited groups even beyond the violence limit\(^\text{14}\), and this was certainly an escalation from the established limits of the discourse that violent protest formed the limit for demanding civil liberty protection.

Even as these changes were being wrought to the structure of the civil liberty space, proceeding alongside was a seemingly unconnected development which contributed to the mutation in the language of civil liberty with the passage of the Protection of Civil Rights Act, 1955 (PCRA) in November 1976 meant to defend the scheduled castes and tribes\(^\text{15}\). This official usage

\(^{14}\) See for instance Rajni Kothari, “Civil Rights and the State,” \textit{PUCL Bulletin}, vol. 2, no. 6 (1982): p. 23. Kothari was addressing the Tamil Nadu state conference of the PUCL in May 1982, where he defended “those who are forced to resort to violence against violence”. Kothari elaborates with an example of a circumstance where “a landlord goes on killing the landless, routinely rapes their women, burns their homes without thinking twice and this goes on all the time and no action is taken against him. When the people themselves resort to violence or those who organize them do so when this happens what position can be taken? It is a controversial situation. The purists will say we should condemn such violence at all costs. My own position is that whereas I will not defend them, I will not condemn them either.” To be sure, there was also active encouragement of the violence of the marginalized, and Kothari’s ‘principled non-condemnation’ was probably a pacifist rendition of such hard-line positions.

\(^{15}\) Towards the end of Mrs. Gandhi’s internal emergency regime, the GoI modified the 1955 Untouchability (Offences) Act in November 1976 and called it the Protection of Civil Rights Act, 1955; see S.R. Sankaran,
appears to have caught on, for shortly after the revocation of the emergency the Janata Party in its election manifesto promised to establish ‘a Civil Rights Commission, an independent and autonomous body, competent to ensure that the minorities, scheduled castes and tribes and other backward classes do not suffer from discrimination or inequality’. Soon enough, rights organization reportage too began deploying the phrase ‘civil rights’ from this point onwards. The language of ‘civil rights’ which overtook civil liberties in the first instance broadly coincides with rights organizations taking cognizance of several sectors of those who were being newly recognized publicly as marginalized in Indian society. This transition, however, did not submerge the existing vocabulary of rights; it did supplant it while also widening the interests of rights organizations.

Perhaps the global expansion of ‘human rights’ in this moment of the 1970s was translating in India as ‘civil rights’, combining both established civil liberty issues and an expanded set of themes corresponding to ‘human rights’. The question of gender and caste-based rights violations - the latter somewhat perfunctorily addressed, it must be admitted, despite the mobilization around the Marathwada riots, the passage of the PCRA, and the establishment of commissions - were taken up alongside the question of communalism in this period. These themes often intermingled with classical themes pertaining to custodial violence, police firing on protests, and altered somewhat the core of what constituted classical civil liberty issues since they inaugurated newer questions. This language of ‘civil rights’ acquired for itself a position as the premier descriptor of rights activity in India, and recent writings, with a few

“Social Exclusion and Criminal Law,” in Challenging the Rule(S) of Law: Colonialism, Criminology and Human Rights in India, eds. Kalpana Kannabiran and Ranbir Singh (New Delhi: Sage Publications, 2008), p. 127. This development probably had a part to play in establishing the usage of ‘civil rights’ in the Indian setting.

notable exceptions, continue to refer to the rights movement in India as a ‘civil rights movement’\(^\text{17}\).

Nevertheless these issues were taken up in a strong state culpability framework because the inherited civil liberties framework demanded this exclusive focus. But state complicity could not be continuously nailed with such exclusivity, more so when various bases of non-state violence were concurrently increasing in frequency in the early 1980s. Besides, through the 1980s and 1990s, various groups which exercised the armed option began to be questioned about their commitment to these newly inaugurated post-emergency norms and values. Amnesty International and Human Rights Watch - international organizations that had produced several reports about Indian security forces - also joined Indian organizations in issuing criticism of armed opposition groups in Punjab and Kashmir. We also see this happening with Balagopal’s interventions in Andhra Pradesh questioning the primacy accorded to the Maoist program for social transformation, ahead of several other ways of identifying such an objective. Indicative further of changing circumstances, calling in security personnel to quell civil strife - a theme usually derided in rights activist work - was grudgingly

being encouraged by radical rights organizations in the face of growing public communalism of the 1980s and early 1990s.

In fact, the limits to protest espoused by liberal and nationalist ideologists in the 1930s and 1940s - challenging as they did both Communist and communal violence - arguably comes to have a much wider acceptability in the 1990s than could have been mustered before in the interim years; and, what is more, the inner limit of protest appears to be drawn even more finely with reference to the right of association with communal organizations than had been so in the instituting juncture. In some ways, yet, the lines being drawn about the limits of protest were much thicker in the 1990s, subsuming as it now did the grounds of the gender and caste critiques and their role in de-legitimating the trajectory of the Naxalite undertaking especially in Andhra Pradesh, as also the post-Babri demolition calls for strengthening the executive at the national level.

Clearly, the disqualifications of protest that were being issued about both communal and Communist violence in the late 1930s as indeed in the tumult of the years leading up to the

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transfer of power had returned with an even wider currency and acceptability in the 1990s
(although, yes, the terms of this acceptability cannot be said to have been complete). All this
entails that there has been a transformation in the norms of protest now found to be
acceptable in the public sphere. More importantly perhaps the line being drawn about the
acceptable limits of protest has come to involve norms that were in a foundational form only
espoused by the liberals and nationalist ideologists in the instituting juncture, but now
subsumed radical democratic rights organizations and its activists as well.20

III. By Way of Conclusion

In conclusion, what does such a recalling do to our initial question? Undoubtedly, while there
was a global push for ‘human rights’ in the 1970s, it is important to state that the rights
discourse in post-Emergency India was largely in the language of ‘civil rights’. Samuel Moyn’s
idea that more recent human rights of the 1970s imply an evacuation of the space of
citizenship within national contexts replaced by an internationalism appears to need
confirmation in comparative settings. As we indicate for the Indian context, the bases of
citizenship in the more modern period of the 1970s and beyond expand with more and more
issues being taken up within the rights activist fold. ‘Civil rights’ was thus used to refer to this
broader range of phenomena whilst calling further attention on those custodial themes earlier
defended in the language of civil liberties. Contrary to the straight lines usually and somewhat
chronologically drawn from ‘civil liberties’ to ‘human rights’ – and as also urged by recent
scholarship – we find that the rights discourse traverses a variegated terrain without ever
completely losing sight of its founding anchors although the language transitions to ‘human
rights’.

20 See instances of demanding that the state use its security apparatus to deal with communal mobilizations in
Sumanta Banerjee, “‘Sangh Parivar’ and Democratic Rights,” ibid, vol. 28, no. 34 (1993); K. Satyanarayana,
At the outset of this effort, we alluded to the preponderance of the political approach to rights dominating the academic and activist discourse on rights in India. To be sure, the burden of explanation in the political approach to rights has been borne entirely by ‘context’, whether socio-economic or socio-political, often disregarding the fact that the social sphere of normative arguments about rights can also produce their own conditions of possibility, whilst also enabling finer normativities to shape political conduct and practice to reproduce themselves in the public sphere. As we saw in this account, ‘human rights’ concerns in India have evolved through the language and practice of an older civil liberties discourse in India. The more recent denouement within the story of rights in India relies on a more deep-rooted qualifying feature of the language and practice of the older civil liberties discourse. Any history of a human rights movement we wish to recuperate for India will have to be attentive to developments in the language and practice of the latter.