

今日人类学民族学论丛

Anthropology and Ethnology Today Series

国际人类学民族学联合会第十六届大会文集

Book Series of the 16th World Congress of IUAES

黄忠彩 总编

Editor-in-Chief Huang Zhongcai

人权研究

Human Rights

[印] B. 乔度里◎主编

Edited by **Buddhadeb Chaudhuri**



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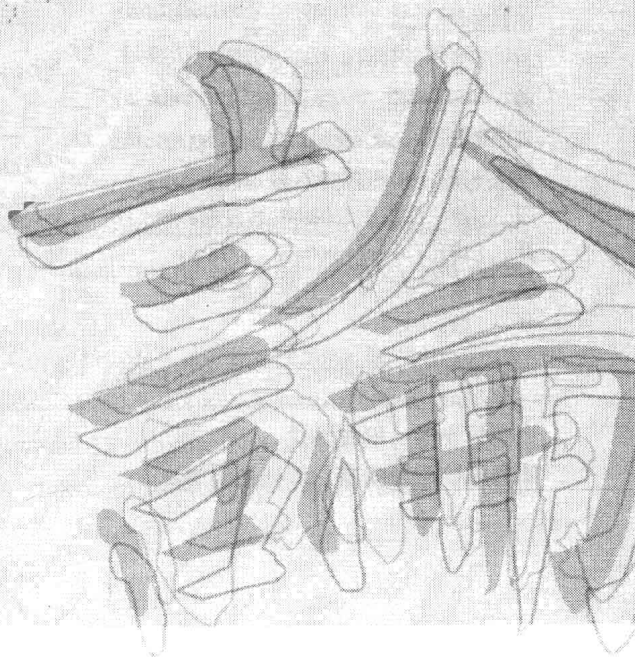
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Preface

China won the right to host the 16th IUAES World Congress in July, 2003. After six years preparation, the Congress will be held in Kunming, China during July 27-31, 2009.

The International Union of Anthropological and Ethnological Sciences (IUAES) was established on August 23, 1948, when it merged, in fact, with the International Congress of Anthropological and Ethnological Sciences (ICAES), which was founded in 1934. The latter was the product of various Congresses of Anthropological Sciences, starting in 1865.

The IUAES is one of the member organizations of the International Social Science Council (ISSC) and also of the International Council for Philosophy and Humanistic Studies (ICPHS). The IUAES is also a member of the International Council of Scientific Unions (ICSU). Its aim is to enhance exchange and communication among scholars of all regions of the world, in a collective effort to expand human knowledge. In this way, it hopes to contribute to a better understanding of human society, and to a sustainable future based on harmony between nature and culture. The IUAES once noted a draft statement on the future of world anthropology in "Current Anthropology" (1979): "The scope of anthropology in terms of areas of human interest includes such critical issues of the contemporary world as problems of environmental management, pressure for the progressive reduction of disparities and the restructuring of the world order, the future of the nation-state, ethnic pluralism and the future of national society, and the harmonization of the roles and functions of institutions with the basic and derived biological and psychic drives of man." The IUAES itself consists of national and institutional organizations in more than 50 countries in all parts of the world, and also includes some hundreds of individual members. The research effort and involvement of the IUAES is principally arranged by its scientific commissions, of which, currently, there are twenty-seven, and each of which concentrates on some areas of anthropological interest. They included ethnic relations, aging and the aged, women, children, youth, migration, epidemiology and Aids, tourism, primatology, linguistics, and so on.

The theme of the 16th IUAES World Congress in Kunming, China is "Humanity, Development, and Cultural Diversity". The Anthropologists and Ethnologists around the world will present over 4000 papers, which covered 33 sub-disciplines or research fields as follows: Aging and the Aged Studies, Aids, Archaeological Anthropology, Children, Youth

and Childhood Studies, Communication Anthropology, Development and Economic Anthropology, Educational Anthropology, Enterprise Anthropology, Ecological/Environmental Anthropology, Ethnic Culture Studies, Ethnic Relations and Ethnic Identities, Food and Nutrition Anthropology, Gender and Woman Studies, Globalization Anthropology, Historical Anthropology, Human Ecology, Human Rights Studies, Indigenous Knowledge and Sustainable Development Studies, Legal Anthropology and Legal Pluralism, Linguistic Anthropology, Medical Anthropology and Epidemiology, Migration Anthropology, Museum and Cultural Heritage, Nomadic Peoples Studies, Physical Anthropology and Molecular Anthropology, Psycho-anthropology, Religious Studies, Sport Anthropology, Theoretical Anthropology, Tourism Anthropology, Urban Anthropology, Urgent Anthropological Research, and Yunnan Studies.

As the organizer of the 16th IUAES World Congress, the Chinese Union of Anthropological and Ethnological Sciences (CUAES) decided to edit and publish “Anthropology and Ethnology Today Series”—the paper collection series of the above sub-disciplines or research fields, for example, Physical Anthropology, Molecular Anthropology, Migration Anthropology, Museum and Cultural Heritage, Nomadic Peoples Studies, Linguistic Anthropology, Medical Anthropology, and Ethnic Culture Studies. We hope that the scholars from different parts of the world can share with all the achievements in the book series of this congress.

**Zhou Mingfu, Executive Vice-president
Chinese Union of Anthropological and Ethnological Sciences**

**Huang Zhongcai, Secretary-general
Chinese Union of Anthropological and Ethnological Sciences**

July 14, 2009

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Anthropology and Human Rights

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Human rights are often examined only within the scope of law. It is true that legal provisions are essential to claim any right, including human rights, but perhaps mere legal provisions are not enough to understand, protect and promote human rights in most societies. Even though the general framework, philosophy and perception of human rights should be universal, the crucial point is whether we can really understand the scope and dimensions of human rights without considering the concerned society and culture, and whether society, culture and economy can be neutral? These questions bring out the issue of holistic understanding of human rights where anthropology with its holistic approach can contribute significantly in understanding the causes and factors of human rights violations and strengthening the forces of struggle for promoting and protecting human rights at different levels.

Societal context

It may not be out of context to share some of my experiences and observations as an anthropologist which have really influenced the thinking and planning for an academic program on human rights in India.

Let me narrate some of my experiences and observations as an anthropologist.

Case 1. This refers to an incident of a person in South India. It was hot summer months and he was very thirsty and tired during mid-day due to oppressive heat. He wanted to drink water from a well. He was not only denied water, but severely beaten. His fault was that he belonged to low social status, very low caste, a Dalit, and the water of the well was used by the high castes.

Case 2. This case refers to a remote rural village in Bengal where feudal relations are quite strong. The affluent landowners used to keep farm servants attached to the family. Loan is given to such farm servant family under *duni* system where one is expected to return Rs.160 against a loan of Rs.10 after one year. Considering this high interest, a loaner is generally unable to repay the loan and has to work under the land-owner/money-lender just like a bonded labor during his/her lifetime. I once noted an incident when a father took loan for his son's marriage and the newly married couple along with their parents became bonded laborers to that family. Incidentally it was reported that the same thing happened at the time of marriage of the present father. It may be added here that bonded labor system is abolished by law, but because of poverty, it is still continuing in many places.

Case 3. In Uttar Pradesh hill areas, among the tribals, there is a custom of bride price which the groom's family pay to the bride's family. As per their cultural tradition, the higher the amount (it may be cattle or money), the higher is the status. So in most cases, even by taking huge loan, people pay more. But due to their poverty, they are often unable to repay the loan with their limited resources after the marriage. As a result, the general practice in the area is to send the newly married bride to the nearby towns to work as a prostitute to earn money to repay the loan.

Case 4: The next case refers to gender discrimination. It is very common in India particularly in rural areas. There is a disparity of sex ratio even at primary education level. Thus, if the number of boy students and girl students is compared, one would find a big difference. The girl students are much less represented than the boy students. This is also true in the context of health facilities and in many other matters. A boy child is much better treated than a girl child in many families. The family is often noted to be more caring towards a boy child and better food is offered. The low status of women is also reflected in the gradual decline of sex ratio in many parts of India. This is definitely a major issue of concern from even human rights perspective.

Case 5: This refers to various development initiatives taken in the areas mainly inhabited by the indigenous communities. It has been noted that in many cases because of these initiatives the local indigenous people are displaced from their homeland and their economy is also affected as they are displaced. They are economically and socially affected

but they are not the beneficiaries of these programs. Again, it has also been noted that due to commercial interest, commercial trees like eucalyptus are planted under afforestation program in many forest areas. As people, particularly the indigenous people, even today primarily depend on forest for fuel, they are forced to use the leaves and twigs of such new plants as fuel. It has been noted in many areas that after using eucalyptus twigs and leaves as fuel, many people, particularly the women, who are involved in cooking, are facing eye problems. Thus a health hazard has been created due to afforestation program. Again, it has also been noted that the indigenous people primarily depend on forest for their herbal medicine or for nutrition. But due to commercial afforestation, as emphasis is given on commercial trees, the indigenous people are deprived of their traditional medicine and forest based food items. This no doubt is affecting their health status. These are the emerging areas of concern from the perspectives of human rights and may be very specific in certain ecological settings. But these crucial issues concerning health, nutrition and consequent survival of human being can not be ignored.

Case 6: Religion provides an identity and often leads to communal tension and conflict in different parts of India. It is true that one should not blame religion for communal tension and consequent human rights violation. Nevertheless, it is also a fact that as religion is a traditional social cleavage and provides identity, it may lead to ethnicity and a potent factor for human rights violation if vested interest groups use it negatively to divide people on the basis of religion.

Case 7: This refers to certain demographic features of indigenous population in India. If we critically analyse the growth rate of indigenous people in India, an interesting contradiction is noted. One may find very high growth rate among certain communities much higher than the national average. Again, negative growth rate is also noted in the context of certain communities threatening the survival of the concerned community. This is more common in the context of the small communities. Even though births in a family in such communities are often reported in national dailies, the reasons for decline in population or negative growth rate were never seriously examined. Is it due to any genetical disorder? But since survival of a community is affected, this is an issue which can be examined from human rights perspective.

If we analyze the above cases, it would become apparent that the existing socio-cultural system and economic conditions are mainly responsible for the violation of human rights. Thus, as per Constitution of India, all should have equal access over natural resources and there should not be any variation on the basis of caste or creed or sex. But a person belonging to very low caste (Dalit) was not only denied water from the well

provided by the government, he was even severely beaten. Thus mere legal provisions cannot prevent human rights violation because of the given social system. It has also been noted how women are forced to prostitution due to traditional custom of the concerned culture, or people are forced to stay as bonded labor due to poverty. Again, women are discriminated due to existing status of women in the concerned culture leading to general demographic imbalance. It has also been noted how the dominant development paradigm is responsible for displacement of indigenous people, affecting their access and control over natural resources and responsible for health hazards. These are the emerging areas of human rights which no human rights scholar or activist can ignore. It is true that such events and situations may not be there in all the countries, particularly in the west, but that does not mean that such aspects should not be considered under the domain of human rights. It again brings the importance of understanding the concerned society and culture and economy within the ambit of human rights.

Anthropological approach to human rights

As an anthropologist, I was not only interested to study the people but also was equally concerned about their development and welfare. In fact, I was interested to make a bridge between academic knowledge and development, theory and practice. In that process, I was also involved in development and welfare of the people through government initiatives and non-governmental efforts. Through my participation in the activities of different NGOs in South Asia and South East Asia, I had the opportunity to understand the problems of the people at the micro level in countries of South Asia and South East Asia. In this region, there are a few NGOs working in the field of human rights and there are many working on broader areas of development and welfare of the people to improve the quality of life of the people and in this process contributed in the protection and promotion of human rights. Many of them suggested to me, since I was also associated with the university system, regarding the introduction of a course on human rights at the university level. I realized that it could not be a conventional subject and the conventional approach is not appropriate for the introduction of such a subject. Along with theoretical inputs, considerable emphasis should be given on empirical situations and experiences. Again, the job or activity related to human rights may relate documentation or recording or mobilization against the powerful forces like the state, vested interest groups, political parties or the affluent dominant section of the society. So it would be a very challenging job.

Modification in the course structure and teaching methods are also implied if the course is introduced as an academic discipline. One must have good knowledge about the

legal provisions and at the same time aware of the socio-cultural and economic systems and realities. At the same time, one must get some training about research methodology to collect and document cases of violation, protection and promotion of human rights and also to get good understanding of the human society. Generally in the university system there is some restriction about the background of the person who can deliver lectures in the class. It is expected that one must have Post Graduate degree, if not even higher degrees, to deliver lectures. But I realized that a human rights activist may be a very appropriate person to deliver lecture and share certain experiences but may not have any formal higher degree. Inviting such persons to deliver regular lectures is rather difficult in any conventional-traditional university like the Calcutta University. But it is really heartening that the university agreed to my suggestions and a Post Graduate Program on Human Rights was introduced in 2002.

Before starting the Post Graduate Program on Human Rights in the Calcutta University, I organized a number of seminars and workshops on disadvantaged people, women and children, environment and development, health issues, religion-ethnicity-communalism and human rights and on related issues. Finally a small workshop was organized inviting persons from human rights organizations, human rights commissions, social activists and academicians to formulate a broad course structure incorporating the emerging situations and challenges of human rights. It was a small group but represented different countries of South and South East Asia and varied background. Finally a course structure was prepared and submitted to the University of Calcutta and it was approved as an International Post Graduate Program in the Calcutta University with effect from 2002 session. In 2006, the Ph.D Program in Human Rights was also introduced.

It may be mentioned here that the establishment of Commission on Human Rights under IUAES around this time significantly helped in the development of the first academic programme on Human Rights in the university system in South Asia. One was complimentary to the other.

The UN and Minorities — Minorities in the UN

I

The UN and Minorities

Background

Minority consciousness is new to the Asian region, mostly emerging in a context of post-decolonisation. Many of the current minority conflicts in the region are, in fact, a result of “divide and rule” colonial practices which create fear and hatred among different ethnic groups which does not exist before.

Nation building in the region has been done in a variety of ways, involving varying degrees of forced assimilation and of denial of ethnic identity. In Thailand the strong rhetoric of one Thai people has been used to secure its boundaries and build national identity. Its neighbor Laos, strongly encourages the “unity of the multiethnic people”, if only in theory.

Development of minority rights in the region has largely been by way of groups aligning themselves with the international indigenous or minority movements. But in several countries, Bangladesh and the Philippines for example, development conflicts and developmental aggression or inequities have fueled the national indigenous movement.

Cross cutting issues about minorities and the pillars and core concerns of minority rights are: non discrimination and equality; self determination and self-identification/definition; culture and patriarchy; culture and masculinity; children’s right to culturally appropriate education; language rights; and balancing collective rights and individual rights.

There is a sense of the deeply entrenched and difficult situations arising from lack of citizenship and statelessness, migration (legal or illegal), forced displacement, ethnic stereotyping and ethnic scapegoating and xenophobia.

Prioritizing Issues and Action

Issues relating to minorities and minority rights vary from country to country in Asia and variables appears to be the degree of cultural diversity in a country and changing perceptions of and attitudes towards such cultural diversity. The list of issues however, is long (as is illustrated in the Annex to this paper). But in general, the situation of ethnic minorities (strikingly similar to that faced by indigenous people) may be described as follows:

- Non-recognition of the diversity of ethnic, racial, religious and other identities within states in the region by national governments;
- Laws and policies that discriminate against persons belonging to ethnic, national, religious or linguistic minorities, combined with the imposition of exclusivist national identities by states, often based on the ethnicity and identity of the ethnic majority;
- Statelessness of ethnic minorities, despite residence for generations within present-day state territory, causing the denial of essential rights and services;
- Disadvantaged situations — poverty, non-participation, exclusion, marginalization — generally being experienced by minorities and indigenous peoples;
- Lack of effective participation and representation in all stages of decision-making, as both an effect and cause of their already disadvantaged positions;
- The lack of integration of women and children's concerns within existing national and international law and institutions that seek to address minority and indigenous issues;
- The need for effective state compliance and domestic application of international human rights standards on minorities and indigenous peoples.

Four key and recurrent issues can be identified in several of the Asian countries:

- *Political Participation.* Political participation is not necessarily achieved through having political representation in government. Minority politicians may be included in the political process, but they may not represent minority interests. The culture and history of the minority groups (i.e. national boundaries, colonial ties) have an impact and influence on their current political standing.
- *Economic participation and Land Rights.* Regarding striking a balance between individual and collective rights, land is a clear example of individual rights prevailing over collective rights. Private property is leading to confiscation of collective land. Conflict over scarce resources is also often labeled as ethnic conflict, when in reality the conflicts stem from land and natural resource issues.
- *Culture and Religion.* It is not wrong to be different. However, it is wrong to be

treated differently because you are different. Among minority groups there often tends to be a pursuit of a common humanity as well as a unity in diversity.

- *Women, Gender and Masculinity.* The allocation of gender roles within ethnic minorities often needs to be addressed. Men have the right to drive women up the wall, but women have no right to climb over the walls that cultural practices sometimes represent.

The UN human rights system and Minorities

Minority rights are about liberation and combating deeply rooted discrimination. Gay McDougal, the UN Independent Expert on Minority Issues (IEMI), has identified 4 pillars of minority rights:

- 1) Protection of minority existence and survival: physical protection from violence, hate crimes and prevention of genocide.

- 2) Protection of rights to enjoy collective cultural identity and reject forced assimilation: language customs, culture, right to remain who you are no matter how you assert yourself.

- 3) Enforcement of the right to non-discrimination: analyzing the structural and systemic racism that are at the centre of discrimination.

- 4) Protection for minorities to make decisions: political participation in processes of the state as a whole.

McDougal further identifies the 2 main issues underling her work as IEMI: the intersection between endemic poverty and discrimination and the lack of effective and meaningful participation in decision-making.

There are specific UN treaties and instruments, mechanisms and procedures that focus on the rights, both collective and individual, of minorities and indigenous peoples. But their rights are also mainstreamed throughout the UN system as well. Below we examine all the UN charter-based and treaty-based instruments and mechanisms specifically addressing issues relating to minority rights.

UN Human Rights Instruments

Emphasizing the human rights of minorities converts needs and interests into enforceable rights which can be invoked to address the concerns that minorities have. The UN has an impressive track record in establishing and further developing the human rights of minorities and indigenous peoples.

Sixty years ago, *the Universal Declaration of Human Rights* made nondiscrimination a fundamental value and universal principle of the UN's human rights system. This formed

the basis for the articulation of the rights of minorities and indigenous peoples through a number of binding human rights treaties. Nondiscrimination today is embodied in every one of the UN human rights treaties (see for example Article 30 of *the International Convention on the Rights of the Child*).

I. The UN Human Rights Treaty System

Article 27 of *the International Covenant on Civil and Political Rights* (ICCPR) first articulated the rights of minorities:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

Moreover Article 1 of ICCPR as well as Article 1 of *the International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognize the right of self determination of “peoples”.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) condemns such practices as racial segregation, theories of superiority, racial violence and organizations that promote racial hatred, among others. States shall guarantee the rights of all people regardless of race and cooperate with the UN to create an environment free from racial discrimination as well as provide effective remedy against racial discrimination.

The Convention on the Elimination of All Forms of Racial Discrimination is one of the most relevant treaties, as it speaks on equality and the special measures States must take to ensure discrimination does not occur, among other areas relevant to minorities.

There is an “early warning” function of CERD, which is directed at preventing existing problems from escalating into conflicts, or preventing the resumption of conflict. There are a number of criteria to meet in order to be eligible for this mechanism.

The “urgent procedures” mechanism can be used to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention (also subject to specific criteria).

CERD established the Committee on the Elimination of Racial Discrimination consisting of 18 state appointed experts. The Committee is an independent body and examines states reports on CERD and NGO shadow reports, using these to make recommendations on improving the situation of eliminating racial discrimination.

Each State party to CERD is required to report to the Committee (Article 9), which

provides NGOs an opportunity to offer shadow reports to the Committee (NGO analyses of information regarding to every provision of the Convention. It should be concise and address key issues and priority issues.)

The Convention on the Prevention and Punishment of the Crime of Genocide is another milestone. Minorities and indigenous peoples are the most frequent victims of genocide. In situations of genocide and mass atrocity they are the most frequent victims. *The Convention on the Prevention and Punishment of the Crime of Genocide* defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

II. UN Human Rights Declarations

Other human rights instruments dealing with the rights of minorities and indigenous peoples take the form of UN Declarations such as *The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*.

The preamble sets out the objective of the Declaration which is to contribute to political and social stability and increased cooperation among States by recognising and protecting the existence of minorities. The nine articles of the Declaration serve to protect and promote cultural rights including language, religion and association.

In particular the Declaration serves to instruct states to create the conditions where minorities can live without discrimination. States shall promote linguistic and cultural education as well as participation in State initiatives. States are to cooperate with minorities and minority groups for the promotion and implementation of the Declaration.

The UN Minority Rights Declaration contains guiding principles, separates the rights of claim holders and obligations of duty bearers, duties of states, responsibility of the UN.

Rights under *the UN Declaration on Minorities* include: the rights to enjoy own culture, profess and practice own religion, use own language, participate effectively in the life of the country, establish and maintain own associations, and have free and peaceful cross-frontier contacts with other members of the group.

State duties under *the UN Declaration on Minorities* include: the duties to protect the