

# State, Law and Famine

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## Famine or Transnational Genocide?

At the very outset I must stress that what I have to say relates not so much to State and famine but to attempting to understand famine, the causes of famine, the difficulties in coping with famine, and with the kinds of chronic, intolerable, sub-human living conditions that are imposed upon a large majority of people in the Third World. In doing so, one has to examine the role of the State as well as the kinds of global influences that produce such conditions and, to a large extent, limit the ability of States to respond effectively to such problems.

Let me start by laying one of my biases before you—the way I view the term ‘famine.’ ‘Famine’ according to me, is much too polite a euphemism for describing broad sets of deprivation that prevail on a sustained day-to-day basis in many developing countries. We are faced, all too often, with situations of chronic hunger, malnutrition and starvation. We are faced with a chronic crisis—a worsening crisis which is perceived as reaching a breaking point when the labelling process of applying the term “famine” occurs. But there can be, and often is, much manipulation of this labelling process from outside of the victim community. Famine can easily become an excuse for the strengthening of bureaucratic machinery. Famine relief can have demobilizing effects and serve as a containment mechanism which provides temporary palliatives but leaves structural causes of famine untouched and therefore fails to provide safeguards against future revictimization. Famine can also be used to evade accountability, shifting blame away from man to the elemental forces of nature.

In my view, all too often, famine is a euphemism for the planned, foreseeable, often deliberate genocide of certain powerless and disadvantaged populations within society. Astonishingly, this planned genocide is not usually conducted as a covert operation involving clandestine activity. But very often, the forces and actors that bring about famine conditions operate in an open, lawless, unaccountable fashion in a *transnational* world. It is important to emphasize the transnational aspect in view of the unrealistic demands we often tend to make of the State and the bureaucratic machinery in Third World countries to deal with problems that essentially originate from outside their boundaries. Therefore, one tends to reject various demographic explanations of famine. One also tends to reject various technological explanations of famine which see famine as a result of failure to update technologies relating to food production and food distribution. One also tends to reject explanations that are rooted in the need to conquer

nature, conquer the environment and harness the wild elemental forces of nature. I would like to focus attention instead on *inhuman wrongs* and on the inhuman sufferings that are inflicted on the poor in famine-type situations. I would like to focus attention on the *harmdoers*. I would like to call attention to the fact that very often the kind of combination of poverty, powerlessness, exclusion, deprivation, hunger and starvation that leads to famine-type conditions is really a product of development policies pursued by state actors, often at the instigation of international and transnational actors. I would like to focus attention on state policies that are often rapacious and ruthlessly exploitative of ecology in order to support the high-consumption lifestyles of an elite few and to support profit-making at utterly obscene levels. These kinds of development policies often result in prodigal and profligate mismanagement of renewable and non-renewable resources in order to achieve a model of parasitic development for a few. But the development of a few is often achieved at the subjugation, impoverishment and exploitation of the many.

So, coming from these perspectives, the problem, as I see it, is not a problem of growth and distribution alone. It is a problem of redistribution of food, of employment opportunities, of wealth, and most fundamentally, of power. There is also the crucial need (and I think this is where the law has some role to play) to grapple and hold the wielders of power more effectively accountable for the kinds of acts that have resulted in the human sufferings and the human harms that are usually present when one talks of famine conditions. These acts often masquerade as agricultural development policies, programs and projects which usually have stated objectives which seem laudable. But often the unstated objective behind such development policies is one of feeding several *transnational hungers*. In developing countries, human impoverishment and degradation or depletion of natural resources (which exacerbates such impoverishment) often results from the feeding of several transnational (usually developed-country) hungers:

1. Hunger for developing country *natural resources*. Historically, this hunger was for the primary commodities and primary products of developing countries. Today the hunger is also for developing country lands on which transnational agri-business plantations are producing cheaply (for global markets) bananas and pineapples in the Philippines, strawberries in Mexico, horticultural products in Kenya, oil palm in Malaysia. More recently there is a new hunger for developing country lands as pollution havens for ultrahazardous industry and even as dump sites for toxic wastes! Ruling elites in developing countries are willing accomplices in the feeding of such international hungers bargaining away long-term pauperization of the human and natural environment for short-term profits and wealth.

2. Hunger for developing country *labour*. This hunger is both for cheap unskilled labour (in export processing zones or on agribusiness plantations) and for skilled labour (creating a perpetual brain drain). All this takes place in the name of a so-called international division of labour. But the link between feeding international hungers for developing country labour and the pauperization of the human environment and degradation of the physical environment in developing countries is rarely made.

3. Hunger for developing country *markets* stems from their use, both as a dumping ground for surplus production as well as to sustain levels of economic growth in industrialized countries. The feeding of this international hunger also takes a heavy toll on the human and natural environment of developing countries.

4. Hunger for ways (including development projects) to *recycle* developed country *capital surpluses* that can result in the export of debt and inflation to the developing countries with very real costs in terms of human suffering.

5. Hunger for superpower *spheres of influence* has led to the unfortunate militarization of the developing world with, once again, heavy costs to the human and natural environment.

These international hungers are not without their national counterparts of course. For example, the growing incidence of bonded labour and slavery-like practices are the product of models of development which are primarily oriented to serving the needs of minorities of urban-industrial population. There is, thus, a vested interest in keeping a large sector of the population unorganized and depoliticized, so that the poor can be availed of as a source of perennial, cheap and docile labour. Similarly, policies of rural development have tended to make only such inputs into the rural economy as are necessary to ensure outputs needed by the urban-industrial sector. Development, for most countries, has been geared toward perpetuating a colonial-type exploitation by a small urban-industrial elite (and its client class of dependent rural elite) of the primary producers who comprise the vast majority of the population of landless labourers, small and marginal farmers, rural artisans and tribals in the forest economy.

#### **"Perverse Development": The Role of the State**

In examining the role of the state, we must be careful to recognize the limitations that Third World States face in the exercise of power. They often do not have the scientific and technological expertise to monitor effectively and regulate the hazardous activities of transnationals. Moreover, they are often willing accomplices of such transnationals. The experience in several developing countries (including the tragedy in Bhopal), with powerful transnational corporations, shows that the line between private power and the State

cannot be clearly demarcated. Often, local government officials in developing countries are little more than lackeys for a giant transnational.

A different kind of transnational actor—the international development agencies, also exacerbate the problem of ‘perverse development’. There are numerous development projects in which the process of development has meant little more than the imposition of dependency and debt. Through development projects, certain commodities, especially equipment and machinery, are sold at highly inflated prices. Certain ‘experts’ earn very nice salaries compared with the economic conditions of the real experts on the ground. One is talking here of folk knowledge and the expertise of local communities. Similarly, there have been many development projects which dump surpluses (e.g., of dairy products from the European Community) or chemicals and other banned toxic products. Development projects are often viewed as a way to recycle capital surpluses in a manner that will avoid the creation of inflation: inflation in the donor countries primarily. Developing country governments also, often, hunger after large-scale prestige development projects and are often quite oblivious to the social, ecological and human costs of such development projects. The main criticism that the Brundtland Report makes of development projects (as they are currently conceptualized and administered) is that they are often designed to impoverish, marginalize and eliminate certain people, especially powerless people and indigenous people in many countries all over the world. They are often designed to degrade environment, because environment is expendable within the context of the development project.

Despite mounting evidence of their failure, several agricultural development policies continue to hold sway. These include:

1. The promotion of cash crops and export crops over subsistence food crops.
2. The creation of large-scale transnational agribusiness plantations for the production of export crops.
3. The adoption of chemically-dependent, high-yielding technologies of agriculture which have serious long-term consequences in terms of soil exhaustion and genetic erosion.
4. The uncontrolled expansion of cattle ranching (e.g., in Costa Rica and Botswana) leading to serious problems of over-grazing.
5. The adoption of modern, mechanized methods of food processing and packaging which produces luxury food items for the rich but at a cost of tremendous waste and displacement of the production of low-income foods.

6. The adoption of pricing policies (relating to both food crops and inputs needed to produce them) which subsidize the urban consumer at the expense of the rural producer.

7. The introduction of 'junk foods' aggressively marketed usually by large transnationals.

Such 'perverse development' has often produced and reproduced conditions of impoverishment and powerlessness which have fostered systemic disregard for (and frequent violations of) the human rights of the vast majority of the poor. It is essential, therefore, that those responsible for producing such in-human and degrading development be held strictly accountable to the standards of international human rights law because 'perverse development' is usually tantamount to the expropriation of the very survival resources of the poor and treats certain natural and human resources as expendable. Let me briefly elaborate on these twin processes of expendability and expropriation inherent in "perverse development".

The need for bringing large areas of land into cultivation of export crops makes subsistence farming and household self-provisioning expendable. The need for large dams to irrigate large-scale cultivation means the flooding of huge areas of land often at the cost of loss of biological diversity. Subsistence farmers, tribal communities, forest people, become expendable. They fall victim to the juggernaut of development. Similarly, such development projects often necessitate the expropriation of the survival resources (e.g., fodder, fuel wood) of the rural poor and subsistence communities. The erosion of their survival base leads to the kind of crisis of deaths by starvation to which the label 'famine' gets attached.

It is also important to acknowledge the role of technology as an instrumentality for bringing about much of this. It is true that new agricultural technologies (including biotechnology) are capable of providing major breakthroughs in relation to food production. But these technologies often come with their own problems as we learned all too late from the 'green revolution'. Moreover, technology often becomes an instrumentality for maintaining certain global linkages and dependencies. But, despite all these problems, policy makers in developing countries have been much too glib in turning to technological solutions for problems of a deeply structural nature.

In many developing countries the State, by adopting policies of 'perverse development', has been responsible for bringing about:

- (a) the dismantling of traditional food production and food security systems;
- (b) the destruction of traditional mechanisms and strategies for the survival of subsistence communities; and
- (c) the destruction of traditional food cultures.

The result has been hunger, malnourishment and starvation for the many poor in times of glut and plenty for the few rich.

Regarding the dismantling of traditional food production and food security systems, let me give just two examples from my own discipline of law. There were two essential jurisprudential concepts that characterized traditional food production and food security systems. These were the concept of "stewardship" and the concept of "public commons". Increasingly, in the name of modernization of agriculture, stewardship is being replaced by a concept of land rights in country after country. Tribal communities, whose indigenous law often was based upon the concept that people do not own the land—it is the land which owns people, are increasingly being forced into a modern legal approach in which they seek to obtain land titles under a system which is totally inappropriate to themselves as a social and cultural entity. Similarly, as far as the commons are concerned, large areas of land are being expropriated by the State. This is usually being done in the name of ecology and environmental protection. But what is often happening is a process of privatization to assist the timber industry. This has been particularly true in India, if one examines recent State policies towards the communal forest. The State has really taken away the resources of the community and privatized them without even bothering to pay compensation.

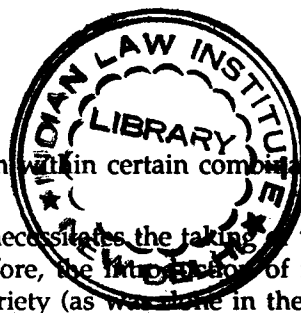
Another important element in all this has been the destruction of traditional food cultures. Once again, if one is looking at a deepening hunger crisis, one must draw a link to the modernization of food processing, packaging and food promotion, and the tremendous profits that can be made out of the marketing of low-nutritional, but high-cost food. This has been achieved by displacing land which is under cultivation for subsistence food crops that would meet the food and nutritional needs of low-income groups.

### State Management or Mismanagement of Hunger

Much of the developmental decision taking described above takes place under a *management model* by what Upendra Baxi has described as "the managers of the people." Several basic, but usually unstated, assumptions of that management model need to be exposed and rejected:

1. High-technology research and development must be shrouded in secrecy to maintain an internationally competitive edge. This means that major new technological interventions are allowed to enter the rural and agricultural spheres with very little public assessment of their impacts.

2. People are incapable of making complex decisions regarding technology choices and development policies and therefore these



decisions are made for them within certain combinations of ministries of government.

3. Societal development necessitates the taking of "acceptable risks". This may well mean, therefore, the introduction of mono-cropping or over-reliance on a single variety (as was done in the green revolution) creating serious vulnerabilities in the event of a disastrous crop failure or blight. The risks may be acceptable to the decision-takers. But those upon whom the harmful consequences of the risks will fall never have any say or participation in the matter.

4. A related assumption is that an otherwise unacceptable high risk becomes acceptable if the probability of it occurring is low. But here, once again, assessment of the risk-probability is made at the bureaucratic and technocratic level. But the burden of bearing the consequences of miscalculation of such probability falls very heavily upon quite a different, and relatively powerless, group.

The above assumptions must be rejected since they have only succeeded in promoting mismanagement of food and hunger problems and have led to numerous man-made famines.

#### **Fighting Back: Law, Participation, Empowerment and Accountability**

There are sufficient studies already in existence that identify the main actors involved in the kind of development tragedies I have been describing. But attempting to deal with those actors remains a serious problem. There has been a fragmentation process (conscious or unconscious), both among intellectuals and social activists. This is keenly reflected among professionals. The technocrats bring one perspective to development, the bureaucrats, another. Development policy suffers from being overly economic. Yet an alternative breed of development professional seems unable to proceed beyond critique to the formulation of alternatives. The social activists too often fail to take a holistic view of the problems. Thus, environmentalists, until recently, have tended to fail to draw the link between environmental devastation and human degradation. The human rights lawyers have tended to focus more on remedies and relief rather than on prevention or cure. The problems require a highly sophisticated interdisciplinary approach and yet it is tragic how little one discipline knows about the other. How little, for example, lawyers know about biosystems and biological diversity. Yet they are involved in framing and propagating plant patenting laws that might have enormous detrimental consequences upon plant genetic resources: a vital resource in the struggle against hunger.

Moreover, we seem strangely unable to learn from disasters and past mistakes. Before winding up, I would like to mention something which has struck me very vividly as a result of struggling over the past three-and-a-half years to understand the tremendous tragedy that took

place in Bhopal. We have been talking, thus far, about chronic hunger and starvation that end up in famine crisis. We have been talking about the management of crises and the administration of famine relief. It is interesting to view Bhopal as a case study of crisis management and administration of relief. We can learn much from Bhopal, not only about crisis management but also about crisis prevention. Bhopal-type disasters, if I might be permitted to speak bluntly, are a product of three types of blackmail: *job blackmail*, *community blackmail*, and *victim blackmail*. Workers know that they are working in extremely hazardous operations and yet enough economic pressure is brought to bear on them so that they have no choice but to risk suicide, daily. Is the situation so different with agricultural development policies that depend for their implementation upon the ready availability of large masses of landless, bonded rural labour? Moreover, such labour must be kept powerless and unorganized, otherwise they would not tolerate their own exploitation. The second type of blackmail present in the Bhopal situation is *community blackmail*. Communities often know how hazardous and harmful particular development projects are. But they are unable to prevent risks being imposed upon them. The issue gets more publicity in the case of industrial projects. But the situation is often the same in agricultural projects. Entire communities are finding their ground water poisoned by the chemical residues of pesticides. In the Philippines, for example, communities are well aware of the ecological costs of large-scale agribusiness plantations producing bananas, pineapple or oil palm. Yet, they are powerless to do anything to avert the crises that will inexorably result. The third type of blackmail is also very crucial, namely, *victim blackmail*. It is now three-and-a-half years since the Bhopal disaster and yet the victims are being held to ransom. They are being told, in effect, "either accept an intolerably low settlement or we will wage a war of attrition and fight you until you will no longer be alive to fight us." Settlement enables the evasion of accountability and of punitive sanctions. Something very similar is happening with the way in which we are dealing with relief to famine victims. Famine relief programs often tend to keep the victims disempowered and force them into accepting a pittance. Famine victims seem never able to demand accountability from their victimizers. Moreover, both in Bhopal and in most famine situations, there is deliberate damage concealment. In almost every type of famine situation, the authorities try to down play the extent of human sufferings and the damage caused. There are important structural reasons why this is so. Both in the case of Bhopal and in the case of the type of agricultural development projects I have been describing, there is a willing abrogation of sovereignty by governmental authorities to external forces. This is accompanied by the creation of enclaves of utter lack of accountability. Enclaves which have to be placed beyond the law because what is going on within them would be utterly



unacceptable if submitted to the ordinary law of the land. In both instances, there is disproportionate imposition of risks and harms. There is disproportionate sharing of benefits that flow from such projects.

In sum, what is at stake here is the struggle to establish that intolerable, inhuman wrongs are being perpetrated and those responsible (be they actors of the State or actors outside of the State) must be held responsible and accountable. I think there are three key areas for struggle. The first struggle is to hold harmdoers responsible and accountable for causation that was within their control. A second struggle is the struggle towards the empowerment of victims—those whose disempowerment was necessary for the implementation of the development project. A third, more difficult but vitally important struggle is the struggle towards the disempowerment of the harmdoers. Powerful forces, be they transnational enterprises or international development agencies, are coming forward with schemes, projects, plans in which the harmful consequences are not only a foreseeable but calculated part of the design. There is a vital need to attack and resist the imposition of harm-causing policies by those who are in a more powerful position to do so.

It will clearly be a difficult struggle and I think the next speaker, Upendra Baxi, will be the one who begins to try and tell us how the State can deal with these issues. But I thought I must wander beyond the confines of the State because, to my mind, the kinds of problems and issues being raised are not the kind that can be dealt with purely by attempting to strengthen our State, bureaucratic and technocratic sectors.

We need to move beyond crises management, emergency response and damage limitation; through accountability and the imposition of sanctions and punishments; towards crises-aversion and crises-prevention.

