

RESPONSIBILITIES OF THE LOWER JUDICIARY FOR THE PROTECTION OF HUMAN RIGHTS

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Abstract

This paper is based on two lectures delivered by author to judicial officers and law students. It is an attempt to create awareness among people as it introduces the problem of human rights violations and the response of the court with the same. The human rights jurisprudence as developed by various courts with provisions has also been explained. The concept of human right is nothing new to us as the idea of “Manav Dharma” could be found in mythological scripts and literature. Enforcement of human rights in India through various commissions have also been referred. The main theme of this article is to make lower judiciary more sensitive and responsible in the protection of human rights.

I Introduction

THE TOPIC of the day “Lower Judiciary and Human Rights” is an interesting topic and in a way slightly different topic when compared to “National Human Rights Commission”, “State Human Rights Commission” and their role in safeguarding or protecting “Human Rights”. “Human Rights violations” are complained of day in and day out, may be in some areas not too many, in certain parts of the country too many. Protection of “Human Rights” is a universally accepted concept governed by the International conventions, covenants, treaties, legislations governing the countries, domestic, central, state and the like. In “Indian Legal Field” there is an element of criticism that the mechanism is ineffective and toothless and hence the “Commissions” are unable to deliver the good results to the expected level. In the light of the same the “Indian Judiciary” in general and the “Subordinate Judiciary” in particular may have to shoulder the responsibility to fill up the gap in this regard. Recently the Chairperson of the “National Human Rights Commission, H.L.Dattu J in a public lecture has pitched for “more power” to the rights watch dog, saying the rights watch dog should” roar like a tiger.”¹ Constitution of criminal courts, public prosecutors, defence counsel, pre-trial proceedings, jurisdiction of criminal courts, cognizance, committals, trial before different criminal courts,

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¹ NHRC Should Roar like a Tiger: H.L.Dattu, *available at*: <http://paper.hindustantimes.com/epaper/viewer.aspx>. Reported on Oct. 22, 2016 at 13.

victim compensation, witness protection, schedule castes /schedule tribes Prevention of Atrocities Act,1989, Protection of Civil Rights Act,1955, Probation of Offenders Act,1958, suppression of immoral traffic, domestic violence, juvenile justice, personal law and human rights violation *etc.* may be a few relevant facts to be touched in this regard.

Article 21 of the Constitution of India dealing with protection of life and personal liberty which says “No person shall be deprived of his life or personal Liberty except according to procedure established by Law”. Incidentally, article 20² dealing with protection in respect of conviction for offences, Article 22 dealing with protection against arrest and detention in certain cases may be referred to. The broad scheme of the Constitution of India in this arena should also to be kept in mind while discussing this topic.

Different provisions of Code of Criminal Procedure, 1973, Indian Evidence Act, 1872 and the other criminal major Acts and minor Acts both central and states too may be usefully referred to. The topic being vast an attempt has been made to touch the essentials issues. “Human Rights Jurisprudence” is a part of “Criminal Jurisprudence”. It is needless to say several of the well-known general concepts do operate and apply to both the fields, a few of them may overlap and the remedial measures to be understood harmoniously to assist the aggrieved. “Human Rights Violations” may be general, concerned with schedule castes, scheduled tribes, backward classes, downtrodden, minorities, children, women, different sections of the society in different forms. Though the punitive measures are specified by making such acts as offences punishable under different legislations, we are unable to avoid, eradicate or at least minimise certain of the evils resulting from “Human Rights Violations”. These may be concerned with- arrest, detention, custody, custodial torture, sexual harassment, exploitation of all forms, under trial prisoners, prison conditions, speedy trial, solitary confinement, speedy justice,, search warrants , bails, handcuffing, fair trial, police atrocities, prison restrictions, legal aid, medical aid, inhuman treatment, fake encounters, political problems, reservations and the like.

²Constitution of India , 1950, art. 20 reads: Protection in respect of conviction for offences- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

The “Hierarchy of Criminal Courts” and “Criminal Justice Delivery System” in the country and the functioning thereof need not be elaborated, article 235³ of the Constitution of India deals with Control over “Subordinate Courts”. Likewise certain provisions of the Constitution of India articles 32, 226, 227, 134 *etc.*, may also be referred to. Apart from the regular “Hierarchy of Criminal Courts”, Special Courts” under different enactments established have been discharging their duties. The “Constitutional” Remedies though are important in safeguarding “Human Rights”, the role of the “Subordinate Criminal Courts” in a way would be far more important.

II Human rights jurisprudence in India

In *Sunil Batra*⁴ it was observed that today human rights jurisprudence in India has a Constitutional Status. In *Kesavananda Bharatis* the principles of human rights, the impact of Universal Declaration of Human Rights and the constitutional obligations under the Indian Constitution, the implementation and enforcement had been well discussed. In *Maneka Gandhi*⁵ it was held that the ‘Procedure established by law’ would mean a law which is just and fair and not arbitrary or oppressive.

Custodial death, awarding compensation was dealt with in *D.K. Basu*⁷ may be usefully referred to in the context of human rights. The directions of the apex court to the Union of India to formulate ‘Guidelines in relation to Hand Cuffing’ need specific mention and in this regard *Prem Shankar Shukla*,⁸ *Venkateswaran*,⁹ *Charles Sobraj*,¹⁰ *Citizens for Democracy*¹¹ can be referred to. While in the context of legal aid *Hussainara*,¹² *Khatri*,¹³ *Sukhdas*,¹⁴ *Hoskot*¹⁵ can be looked

³*Id.*, art 253 reads: Control over subordinate courts- The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial services of a State and holding any post inferior to the post of district judge shall be vested in the high court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the high court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

⁴AIR 1978 SC1675.

⁵AIR 1973 SC 1416.

⁶AIR 1978 SC 597.

⁷AIR 1997SC610.

⁸AIR 1980 SC 1535.

⁹AIR 1983 SC 361.

¹⁰AIR 1978SC1514.

¹¹AIR 1996SC 2193.

¹²AIR 1979 SC 1377.

¹³AIR 1981 SC 928.

¹⁴AIR 1986 SC 991.

¹⁵AIR 1978 SC 1548.

into. In this regard Article 39A was also inserted to the Indian Constitution through Constitution (42nd Amendment) Act, 1976. The object of this provision is that no one be denied justice by reason of economic or other disabilities.¹⁶ Prior to this article 21 impliedly included right to free legal aid. Section 304(1)¹⁷ of Cr PC is also related to this legal aid concept though it is limited to sessions cases. Legal aid and assistance has been considered as an important issue by the judiciary in many pronouncements which lead the legislature to the formulation of the Legal Services Authorities Act, 1987¹⁸ which was aimed to provide free and competent legal services to the weaker sections of society to ensure that the opportunities for securing justice are not derived to any citizen by reason of economic or other disabilities. Section 6 of the National Legal Services Authority of India (NALSA) Act, 1987 provided for the constitution of state legal services authority and section 12 had given the criteria for giving the legal services.

Section 304 of Cr PC deals with legal aid to the accused at state expenses in certain cases. Section 358 of the Cr PC deals with compensation to persons groundlessly arrested. Section 357A dealing with victim compensation scheme, section 357B compensation to be in addition to fine under section 326 A or section 376D of Indian Penal Code, 1860 (IPC) and further section 357C dealing with treatment of victims, also may be usefully referred to in the context of “Human Rights”.

Sexual harassment has been held to be violative of human rights in *Vishakha*.¹⁹ In similar way fair trial in *Zahira Habidulla H. Shaik*²⁰ and fundamental rights of under trial prisoners in *Pappu Yadav*²¹ had been considered by the courts. Special facilities were provided to child offenders as safeguarding measures were directed in *Sheela Barse*²² and solitary confinement in *Sunil*

¹⁶ See *Air India Statutory Corporation*, AIR 1997 SC 645.

¹⁷Code of Criminal Procedure, 1973 s.304(1) reads: Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

¹⁸Act 39 of 1987.

¹⁹AIR 1997 SC 3011.

²⁰AIR 2004 SC 3114.

²¹AIR 2005 SC 921.

²²AIR 1986SC 1773

Batra,²³Communal violence Compensation in the context of 315 trials and several acquittals had been well discussed in *Archbishop Raphael Cheenath S.V.D.*²⁴

III Human Rights in India

The Human Rights concept is well known in India even from the ancient times, popularly styled as “Manava Dharma”, Human values well reflected in Rig Veda, Manu Smrithi, Kautilya’s section Artha-Sastra and several others religious texts. The fundamental rights and the directive principles of state policy do emphasize the “Human Rights” in Indian Constitution. The importance of “Human Rights” had been well recognized universally and several of the basic principles are uniform all over the world. The different developments of the “Human Rights Regime” all over the world are very interesting and thought provoking. The evolution and journey thereof would be ever living, ever growing, ever developing. The civilised world, whatever may be, the polity of a nation has close nexus to the field of “Human Rights” and this is such a wide branch which engulfs in itself almost all walks of human life. There are some “Constitutional Remedies”, a “National Commission”, some “State Commissions” and “Human Rights Courts”, despites these remedies to redress the grievances of the affected or aggrieved parties, the onerous role to be played by the “subordinate judiciary” which will be nearer to the people cannot be ignored and if the “Magistrates”, “Criminal Courts” exercise their powers or discharge their duties effectively in this realm, accordingly, many such grievances can be solved at that level.

The rights of different types of prisoners, police officer’s, jail authorities, the legislations and the rules governing them, many being observed more in breach than in compliance in actual practice, is an important area of “Human Rights violation” where the role of “subordinate judiciary” is very crucial. It may be in relation to prison conditions, ill treatment, torture and inhuman acts of the jail authorities, police and article 21 violation in particular in relation to arrest, bail, “compensatory Jurisprudence” in this arena also may be referred to. The “Constitutional Courts” may exercise certain extraordinary powers but in my opinion a magistrate consciously discharging his or her duties may really do wonders in “Human Rights protection” within the

²³AIR 1978 SC 1675.

²⁴ Writ Petition (Civil) No. 404 of 2008, decided on Aug. 2, 2016.

parameters of law in discharge of their duties or obligations in this regard. Making specific reference to the third degree methods and wide spread in human torture of the suspects – criminals – public by the “Investigating Agencies” and though the “Magistrates” may have to act within the four corners of law, when these are brought to the notice of the courts, they have to keep in mind that the “Human Rights” of those should be protected.²⁵ The guidelines in the landmark judgment in *D.K. Basu* to be kept in mind.

IV Conclusion

The topic being a vast one and due to time constraint I just touched the areas of some importance in this context without elaboration for your appreciation and you may bestow your attention while discharging your duties in the light of the same. Substantive, procedural law, governing human rights, directly or indirectly, precedents governing the field, solitary confinement, hand cuffing, bar fetters, under trial prisoners, child trafficking, women trafficking, economic offences, sexual offences, hard prison labour, prison victims, discretion in punishments, compensation – in relation to missing kith and kin custodial violence by law enforcing authorities, illegal arrests, custodial deaths, death and police atrocities, death and jail authorities, sexual offences, right to legal aid, plea bargaining, fair trial and speedy trial, right to bail, right to against torture, right against self-incrimination, right to life and liberty, double jeopardy etc are core areas where the role of lower judiciary could be decisive in protection of human rights.

Suffice to conclude by just emphasizing that the law if carefully examined empowers to safeguard and protect “Human Rights” and many “Magistrates”, Presumably one is afraid, at least in certain cases to face the criticism of ‘judicial activism’ or exceeding the powers. Be it a “Magistrate” or “Chief Justice of India”, just remember while discharging the duties, you are independent more so in discharge of judicial duties. Maintain your judicial independence subject to the limitations of administrative control of the higher ups. This is in the interest of the Institutional Independence in the context of protection of valuable “Human Rights” of the “public” at large.

²⁵In this regard *Raghubir Singh*, AIR 1980 SC 1087, *Ram Sagar Yadav*, AIR 1985 SC 416, *Kishore Singh* AIR 1981SC 625, *Gouri Shankar Sharma*, AIR 1990 SC 709, *D.K. Basu*, AIR 1997 SC 610 may be referred to.