

Special Address by Hon'ble Mr. Justice P.Sathasivam, Judge, Supreme Court of India

at the South Zone Regional Judicial Confernece

on

ROLE OF COURTS IN PROTECTION OF HUMAN RIGHTS

at

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Human Rights – Two simple words but when put together they constitute the very foundation of our existence. Human Rights are commonly understood as “inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being”.

India being a diverse country with its multicultural, multi-ethnic and multi-religious population, the protection of human rights is the *sine qua non* for peaceful existence. It is indeed impossible to give an inclusive definition of Human Rights owing to its vast nature, however, the legislators have tried their hands in defining Human Rights as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India” under the Human Rights Act, 1993.

It is implicit from the definition that Human rights are omnipresent in all legislations in our country and it is the duty of the Judges to read between the lines and enforce these rights for the betterment of the society. In precise, our judgments should be articulated in such a manner to accommodate human rights whenever it is required.

Active Role of Judiciary:

Of course, all legal rights are human rights but it is unfortunate that all human rights have not become legal rights as on date. This is because the law follows the action, as a consequence, it is not possible to codify all probable laws in anticipation for protection of human rights, and this is when the due procedure of law or the principle of natural justice plays an active role in protecting the rights of the people when there is no legislation available.

As I have mentioned earlier, the magnificence of human rights is that it is all pervading, the trick lies in the successful execution of the same. Fundamentally, the basic motive of all the three wings of the democratic government, namely, the executive, the legislative, and the Judiciary revolves around the protection of human rights. They strive together and separately to uphold the human rights of the people in the country.

The Judiciary with no doubt has played a vital role in protection of Human rights over the decades. Some of the most unpleasant violation of human rights like Sati, Child Marriage, Honor Killings, Slavery, Child labour etc., have been abolished wholly owing to widespread awareness and strict implementation measures taken by the Judiciary.

The status of human rights is fairly high under the Constitution of India which makes provision for fundamental rights and empowers Supreme Court of India and High Courts to enforce these rights. Equally important is the fact that India is a signatory to international conventions on economic, social, cultural, civil and political rights, with certain conditions. These rights are partly contained in Part III of the Constitution of India including the right to equality in Article 14, right to freedom of speech and expression in Article 19(1)(a), the right to protection of life and personal liberty in Article 21 and the right to religious freedom in Article 25 etc.

In Part IV of the Constitution, the Directive Principles of State Policy i.e. the duties of the State or the socio-economic rights, have been envisaged which are non justiciable in any court of law but complementary

to the fundamental rights in Part III. It directs the State to apply policies and principles in the governance of the country so as to enhance the prospects of social and economic justice. For instance, Article 43 directs the State to secure for workers a living wage, decent standard of life and social and cultural opportunities. On a different note, the society should be changed in a positive way by the State, enlighten and place every human being in a society where their individual rights can be protected as well as upheld.

The Indian judiciary with its widest interpretation in observance of Human Rights has contributed to the progress of the nation and to the goal of creating India as a vibrant State. The definition of Human Rights can be found under Section 2(d) of the Protection of Human Rights Act, 1993 as, "*The rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Court of India.*" So it is evident that Courts have a major role to play in enforcing the rights.

Barriers

Working towards the protection of human rights ought to be the paramount goal of any Court of the country. I sense some barriers which I believe are to be set aside.

- Avoidance of the legal system due to economic reasons or fear.
- Excessive number of laws.
- Expensive legal procedures.
- Inadequate Legal Aid Systems.
- Inadequate information about laws, the rights arising out of them and the prevailing practices.
- Failure of legal systems to provide remedies which are preventive, just, non-discriminatory and adequate.
- Lack of public participation in reform movements.

PIL is an excellent example to refer to at this moment. During our lifetime we've seen plethora of injustices being dealt with using the mechanism of PIL. I can vividly recollect a few for which the Supreme Court has been approached in the last few decades:

- lack of access to food,¹
- deaths due to starvation,²
- out-of-turn allotment of government accommodation,³
- prohibition of smoking in public places,⁴
- investigation of alleged bribe taking,⁵

¹ **PUCL v Union of India** (2001) (7) SCALE 484; **PUCL v Union of India** (2004) (5) SCALE 128.

² **Kishen Pattnayak v State of Orissa** (1989) Supl.(1) S.C.C. 258.

³ **Shiv Sagar Tiwari v Union of India** (1996) 6 S.C.C. 558.

⁴ **Murli Deora v Union of India & Ors.** (2001) 8 S.C.C. 765.

⁵ **Vineet Narain v Union of India** (1996) 2 S.C.C. 199.

- employment of children in hazardous industries,⁶
- rights of children and bonded labours,⁷
- extent of the right to strike,⁸
- right to health,⁹
- right to education,¹⁰
- sexual harassment in the workplace,¹¹

However, PIL is a delicate instrument which ought to be used with utmost care. For PILs to become really effective, PIL should not be allowed to become a routine affair which is not taken seriously by the Bench and most importantly by the masses.

PIL is just one way of protecting human rights. It certainly isn't the only way. Various other legal systems and procedure have to work simultaneously to enable the attainment of the ultimate objective which is to ensure that everyone's human rights are safeguarded.

Some instances:

- The Supreme Court in **Hussainara Khatoon and others vs. Home Secretary State of Bihar AIR 1979 SC 1360** expressed anguish at the "travesty of justice" on account of under-trial prisoners spending extended time in custody due to unrealistically excessive conditions of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that "the procedure established by law" for depriving a person of life or personal liberty (Article 21) also should be "reasonable, fair and just".
- In **Prem Shankar Shukla vs. Delhi Administration (1980) 3 SCC 526** the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21). It observed that "to bind a man hand-and-foot', fetter his limbs with hoops of steel; shuffle him along in the streets, and to stand him for hours in the courts, is to torture him, defile his dignity, vulgarise society, and foul the soul of our constitutional culture". Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to "manacle a man is more than to mortify him, it is to dehumanize him, and therefore to violate his personhood....". The rule thus laid down was reiterated in the case of **Citizens for Democracy vs. State of Assam & Ors. (1995) 3 SCC 743**.
- In **Ichhu Devi Choraria vs. Union of India (1980) 4 SCC 531** the court declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned detention of suspects without trial observing

⁶ **M.C. Mehta v State of Tamil Nadu** AIR 1997 SC 699.

⁷ **Narendra Malava v State of Gujarat** 2004 (10) SCALE. 12; **PUCL v State of Tamil Nadu** 2004 (5) SCALE 690.

⁸ **CPM v Bharat Kumar** AIR 1998 SC 184; **T.K. Rangarajan v State of Tamil Nadu** AIR 2003 SC 3032.

⁹ **Parmanand Kataria v Union of India** AIR 1989 SC 2039; **Paschim Banga Khet Mzdoor Samity v State of West Bengal** (1996) 4 S.C.C. 37; **Kirloskar Bros Ltd v ESIC** (1996) 2 S.C.C. 682; **Air India Stat. Corp v United Labour Union** (1997) 9 S.C.C. 377.

¹⁰ **Mohini Jain v State of Karnataka** (1992) 3 S.C.C. 666; **Unni Krishnan v State of Andhra Pradesh** (1993) 1 S.C.C. 645.

¹¹ **Vishaka v State of Rajasthan** AIR 1997 SC 3011; **Apparel Export Promotion Council v A.K. Chopra** AIR 1999 SC 625.

that “the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil”.

- In Smt. ***Nilabati Behera @ Lalita Behera vs. State of Orissa & Ors.*** (1993) 2 SCC 746 the Supreme Court asserted the jurisdiction of the judiciary as “protector of civil liberties” under the obligation “to repair damage caused by officers of the State to fundamental rights of the citizens”, holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the “duty of care” which could not be denied to anyone. For this purpose, the court referred to Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which lays down that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.
- In ***Joginder Kumar vs. State of UP and Others*** (1994) 4 SCC 260 the court ruled that “the law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively.....”.
- In ***Delhi Domestic Working Women’s Forum vs. Union of India & Others*** (1995) 1 SCC 14 the Court asserted that “speedy trial is one of the essential requisites of law” and that expeditious investigations and trial only could give meaning to the guarantee of “equal protection of law” under Article 21 of the Constitution.
- In ***People’s Union for Civil Liberties [PUCL] vs. Union of India and another*** AIR 1997 SC 568 the dicta in Article 17 of the International Covenant on Civil and Political Rights, 1966 was treated as part of the domestic law prohibiting “arbitrary interference with privacy, family, home or correspondence” and stipulating that everyone has the right to protection of the law against such intrusions.
- In ***D.K. Basu vs. State of West Bengal***, AIR 1997 SC 610 the Court found custodial torture “a naked violation of human dignity” and ruled that law does not permit the use of third degree methods or torture on an accused person since “actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair”.
- In ***Vishaka & Ors. vs. State of Rajasthan & Ors.***, (1997) 6 SCC 241 Supreme Court said that “gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose.... in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly, guidelines and norms are hereby laid down for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution.”

The aforesaid cases are only few examples from numerous judgments concerning human rights.

Playing a pro-active role in the matters involving environment, the judiciary in India has read the right to life enshrined in Article 21 as inclusive of right to clean environment. It has mandated to protect and improve the environment as found in a series of legislative enactments and held the State duty bound to ensure sustainable development where common natural resources were properties held by the Government in trusteeship for the free and unimpeded use of the general public as also for the future generation. The Court has consistently expressed concern about impact of pollution on ecology in present and in future and the

obligation of the State to anticipate, prevent and attach the causes of environmental degradation and the responsibility of the State to secure the health of the people, improve public health and protect and improve the environment.

Road ahead:

Yes, it is true that Judiciary has done a tremendous job in the past by actively involving in safeguarding the human rights in process of delivering justice. But the future is far more challenging with the new **social innovations like Surrogacy, Cyber Terrorism, etc..;** which does not have a concrete law as on date and the scope of violation of human rights are far more severe than anticipated; therefore it is only with due conviction and determination by the subordinate judicial officers these challenges can be overcome in an orderly manner.

Enabling provision:

The right to enforce the Human Rights provided in the Constitution of India is protected through enabling provisions. Article 226 of the Constitution empowers High Courts to issue directions, orders or writs in the nature of *Habeas Corpus*, *Quo Warranto*, *Mandamus*, *Certiorari*, *Prohibition* for the enforcement of fundamental rights as well as any other legal rights. Article 32, itself a Fundamental Right, invests the Supreme Court with the power of judicial review for the enforcement of fundamental rights with the power to issue directions, orders and writs as well.

It is worth mentioning that Dr. Ambedkar who in course of his speech referred to draft Article 25 corresponding to the present Article 32, in the Constituent Assembly, said, "*if I was asked to name any particular article in the Constitution as the most important-an article without which this Constitution would be nullity – I would not refer to any other article except this one. It is the very soul of the Constitution and very heart of it and I am glad that the House, has realized the importance*". During the debates in the Constituent Assembly Alladi Krishnaswami Aiyar also remarked, "*The future evolution of the Indian Constitution will thus depend to a large extent upon the work of the Supreme Court and the direction given to it by the Court, while its function may be one of interpreting the Constitution....it cannot in the discharge of its duties afford to ignore the social, economic and political tendencies of the time which furnish the necessary background*". And these predictions have come true. Any aggrieved person could have direct access to superior Courts for obtaining quick relief against the state for violation of any fundamental right. In addition to the above provisions, Article 142 enables the Supreme Court to make such orders as are necessary to do complete justice in the cause; Article 141 provides that the law declared by the Supreme Court shall be binding on all; and Article 144 obliges all authorities to act in the aid of the Supreme Court.

Versatile Role of Courts

The Indian judiciary with its widest interpretation in observance of Human Rights has contributed to the progress of the nation and to the goal of creating India as a vibrant State. The intervention by the courts for issues involving the economic, social and cultural rights definitely created a positive implication.

I can say with pride that some very important developments have occurred wholly due to the initial efforts taken by the Judiciary, like

- Many of the recent changes in law and policy relating to education in general, and primary education in particular, are owed to the decision in **Unnikrishnan P.J vs. State of A.P. and others (1993 4 SCC 111)**
- For instance, the decision in **Paschim Banga Khet Mazdoor Samity & Ors vs. State of West Bengal & Anr. (1996) 4 SCC 37** delineates the right to emergency medical care for accident victims as forming a core minimum of the right to health.
- The orders in **PUCL vs. Union of India 2003(10) SCALE 967** underscore the right of access for those below the poverty line to food supplies as forming the bare non-derogable minimum that is essential to preserve human dignity.

- PIL cases concerning environmental issues have enabled the Court to develop and apply the 'polluter pays principle', the precautionary principles, and the principle of restitution.

The role of court is diverse in nature, sometimes it is required to become the arbitrator too. The PIL case brought before the Supreme Court in 1994 by the Narmada Bachao Andolan (NBA), a mass-based organization representing those affected by the large-scale project involving the construction of over 3,000 large and small dams across the Narmada river flowing through Madhya Pradesh, Maharashtra and Gujarat, provided the site for a contest of what the Court perceived as competing public interests: the right of the inhabitants of the water-starved regions of Gujarat and Rajasthan to water for drinking and irrigation on the one hand and the rights to shelter and livelihood of over 41,000 families comprising tribals, small farmers, and fishing communities facing displacement on the other.

In its decision in 2000, the Court was unanimous that the Sardar Sarovar Project (SSP) did not require re-examination either on the ground of its cost-effectiveness or in regard to the aspect of seismic activity. The area of justifiability was confined to the rehabilitation of those displaced by this Project. By a majority of two to one, the Court struck out the plea that the SSP had violated the fundamental rights of the tribals because it expected that: 'At the rehabilitation sites they will have more, and better, amenities than those enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of society will lead to betterment and progress'.

The Court acknowledged that in deciding to construct the dam 'conflicting rights had to be considered. If for one set of people namely those of Gujarat, there was only one solution, namely construction of a dam, the same would have an adverse effect on another set of people whose houses and agriculture would be submerged in water'.

However, 'when a decision is taken by the Government after due consideration and full application of mind, the court is not to sit in appeal over such decision'. Even while it was aware that displacement of the tribal population 'would undoubtedly disconnect them from the past, culture, custom and traditions', the Court explained it away on the utilitarian logic that such displacement 'becomes necessary to harvest a river for the larger good'.

Henceforth, it is no doubt that in 21st century the courts ranging from the subordinate courts to the highest court of the country requires the judges to play an active role in resolving the issue. The adversarial legal system is changing more towards the inquisitorial legal system, due to the complexity of the issues involved.

For example, in a hypothetical situation, if the issue of cyber terrorism is brought before the court of law, is it possible for the Judges to decide the matter like any other regular criminal cases. The reply would definitely be in negative, owing to the reason it might result in gross violation of rights. I stated this example to demonstrate that law is not mathematics; rather a logical conclusion arrived in the light of the substantive law.

Hence, it requires immense knowledge and active participation of the judges for the justice to be delivered.

Vanguard Role of District judiciary:

The District judiciary renders an active role in dispense of justice, they have a massive duty to protect the constitutional rights of the citizens. Barring few limitations, the District Judicial Officers are in charge of all matters including application and interpretation of constitutional provisions like Articles 14, 19, 21 etc.

It is after the appreciation of work done by the District judicial officers, that the legislators enacted the Human rights Act, 1993. One of the main objectives of the Human Rights Act, 1993 is to establish the Human Rights Courts at every district level. Section 30 of the Act enables the State Government to specify for each district, a Court of Sessions to be a Human Rights Court after the due concurrence with the Chief Justice of the respective High Courts.

The motive behind the provision is to provide speedy trial of offences arising out of violation of human rights. The creation of Human Rights Courts at the district level has a great potential to protect and realize human rights at the grassroots level.

On 9th September 2011, the West Bengal government was the first to set up Human Rights' Courts in all 19 districts of the State to ensure speedy disposal of cases concerning human rights. These courts functions from the district headquarters and it is under the District Sessions Judge. Separate public prosecutors are being appointed in each District Human Rights Court, as provided by the section 31 of the Protection of Human Rights Act, 1993.

More and more Session Courts must be specified as the Human Rights Courts for achieving the full benefits from the act.

Final Remarks:

In the present era, the human rights refers to more than mere existence with dignity. The International Institute of Human Rights in Strasbourg divides the human rights into three generations. First-generation human rights are fundamentally civil and political in nature, as well as strongly individualistic in nature; the Second-generation human rights are basically economic, social and cultural in nature, they guarantee different members of the citizenry with equal conditions and treatment; the Third-generation human rights refers to the right to self-determination and right to development.

As a consequence with the expansion of scope of human rights, the ambit of safeguarding the rights also increases, as a result, the judiciary should toil more to prevent the violation of human rights. Judiciary is the only organ which can translate these rights into reality; which is not possible without the help of the judicial officers of the respective courts.

The Indian judiciary is playing a role incomparable in the history of judiciaries of the world. It must, therefore, prove itself worthy of the trust and confidence which the public reposes in it. The judiciary must not limit its activity to the traditional role of deciding dispute between two parties, but must also contribute to the progress of the nation and creation of a social order where all citizens are provided with the basic economic necessities of a civilized life, viz. employment, housing, medical care, education etc. as this alone will win for it the respect of the people of the country.

I from the bottom of my heart congratulate the Academy's effort to organise such regional conferences which certainly creates a forum for the judicial officers to develop a national dialogue of emerging challenges and also to contribute towards the excellence of the judicial system. With conviction, I can say that with such conferences and training programmes organised more frequently; it will facilitate in achieving our challenges at ease.
