

ROLE OF COURTS IN PROTECTION OF HUMAN RIGHTS

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Concept of human rights:

The concept of respect for human rights of others can be found in the pristine thoughts of the Indian sages, sociologists and thinkers.....

ijfgr l fjl /kje ufga HkkbA
iji hMk l e ufga v/kekbZ AA

(Goswami Tulsidas)

The above laid entreaty of Goswami Tulidas exhorts human being to be compassionate and altruist. Above and all, it the judges, the vanguards of justice who have to all the more imbibe the teaching of Tulsidasji in their living and working.

There is no denying that all human beings are entitled to certain 'basic' and 'natural' rights meant for a dignified existence as a human being. A dignified living environment with freedom coterminous with that of others, to one and all is the central tenet of human rights.

Human rights are conceptualized to be certain rights that are inherent or occur naturally to individuals as human beings, having existed even in the 'state of nature' before the development of societies and emergence of the state. As widely recognized, the State cannot be accepted as the fundamental source of these rights. They inhere in individuals by virtue of their birth as a human itself. The State is accepted and understood merely as a recognizer, guarantor and protector of these rights. The State, as its concept exists today, cannot act to the detriment of the inherent rights of an individual, or for that matter, the collective conscience of individuals as a community or a society.

Alternatively the natural or human rights are recognized as legal rights, constitutional rights etc depending upon their assimilation in statutes

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or constitution of a nation, or, even fundamental rights as per terminology awarded to them in the statute or the constitution.

History is a witness to the fact that struggle for assertion of natural or human rights has been the incessant driving force underlying several revolutions in the world.

The bloody French revolution of 1789 witnessed a fierce struggle for rights of the bourgeois and the suppressed classes. Natural rights of humans were exalted to legal rights with the formulation of the “Declarations of the Rights of Man”. The American Revolution led to the American Bill of Rights in 1791 which recognized a number of natural rights. Likewise many political and social movements of the 19th and the 20th century were either fueled by the growing assertion of natural rights or in some way bore the undercurrents of natural rights.

LEGAL STATUS OF HUMAN RIGHTS IN INDIA

India has had a history of its own, in-so-far human rights of its inhabitants are concerned. Ruled by despotic rulers/kings and emperors, its public, probably was never aware of the concept of human rights. While European and other western countries got a taste of real time concept of human rights with the advent of Magna Carta era, the concept of human rights remained alien, or at the most, so intermittent that the people of India would have never bothered to think of their existence with certain rights by the virtue of their being born as humans. The intermittent periods were those isolated period of history when some benevolent individual had the reigns in their hand as the ruler/kings and emperors. The colonial rule in India gave much impetus to recognition of certain rights. The struggle for independence was marked with uprisings for individual and societal rights. There was mass awakening and recognition of rights that were inherent to human existence. The end of World War II was a turning point in the history of struggle for human rights worldwide and the world community rose to the occasion by endeavouring hard for recognition of human rights that would have universal application.

By virtue of being one of the signatories to the United Nation Declaration of Human Rights on December 10, 1948, India became one pioneering countries of the world to have made a commitment to respect

and protect the human rights declared and accepted by the United Nations Organizations. Induced by its people's struggle for freedom, India very promptly incorporated some of the widely accepted human rights as fundamental rights in the Indian Constitution.

The Constitution of India epitomizes the testament of the people of India to protect and promote the fundamental freedoms and rights of all human beings. The Constitution of India provides elaborate provisions for all classes of human rights. Part- III relating to the Fundamental Rights deals with the civil and political rights which are justifiable in nature; meaning thereby, that they are enforceable through a Court of Law. The economic, social and cultural rights are contained in Part IV of the Constitution which lays down Directive Principles of State Policy. The later are non-enforceable in a court of law, but, are fundamental to governance of country. However, the country has witnessed enforcement of these rights by the deliberations of Hon'ble Supreme Court of India.

Sphere Within Which A Court Of Law Can Act To Protect Human Rights:

The right to life, liberty, equality and dignity are the bedrocks of fundamental human rights that need to be fiercely guarded by the Court, whether it be the Hon'ble Supreme Court, the Hon'ble High Courts or the Subordinate Courts functioning at the grass-root level.

Quite often than not, the judges of the subordinate Courts, unwilling to break a paradigm, shy away from their role as protectors of human rights. The generally accepted perspective is that subordinate courts have no role to play in protection of fundamental rights or human rights. A good number of judges of subordinate courts decline to digress from the paradigm, that only the Supreme Court and the High Courts are constitutional Courts and the role and authority to protect or safeguard the fundamental rights, or alternatively the human rights, is constricted to these constitutional Courts. The judges of subordinate Courts feel constrained about visualizing their constitutional status, and many a times they fail to develop the vision that they have a duty to fulfill towards the Constitution, which is to protect and preserve the constitutional, fundamental, human or legal rights of human beings.

Contrary to the said paradigm, the subordinate Courts have a pivotal role in enforcement of human rights. The subordinate judiciary is the first access point to the common person, in the hierarchy of judicial setup. This is also the first point as far as judiciary is concerned, where it can be tested, whether the natural or human rights of people are being addressed and preserved. By keeping a discerning eye at the various stages during which a person appears before a court, the presiding judge can ensure the enforcement of the human rights of the person appearing before him.

Protection in Criminal Proceedings

The Code of Criminal Procedure, 1973, for short the Code or the Cr.P.C, confers wide powers on the police to arrest, with or without warrant, interrogate and search, seize property, record statements of witnesses or the accused etc. The police exercise all such powers during the course of investigation of crimes or during its general function of maintenance of law and order.

In presence of myriad powers to the police, it becomes imperative that a mechanism for safeguarding the human rights, recognized by the Constitution or the Code, need to be functional at the grassroots level. This mechanism is provided through the subordinate Courts. The judges manning these subordinate Court need to be on constant vigil about the protection of the rights of the individuals who have to face the police in whatever role assigned to them or alleged against them. The Courts need to satisfy themselves that the legal mandate of the provisions relating to arrest are being followed in spirit and word by the police. This is the beginning where the Court set themselves on the path of protecting the human rights of people. The Courts not only have to ensure the mandate of the law contained in the Code, but they need to go further and ensure that police practices are in strict compliance with the directions of Higher Courts in respects of human rights. For eg; when a person is arrested without warrant, the police may handcuff the accused only if it is satisfied on the basis of guidelines issued by Supreme Court that it is necessary to do so, and he may do so only till the accused is taken to the police station. Any use of fetters thereafter can only be under the orders of the Magistrate (**Citizen for Democracy v. State of Assam, (1995) 3 SCC, 743.**)

It is significant that express provision like S. 162, prohibits, statements given to the police during investigation from being admitted as evidence. The Courts are under duty to adhere to this legal mandate. In addition the Code contains S. 164, that provides elaborate method for judicial recording of confession. The conditions required to be met before recording a confession under Section 164 provide adequate safeguards against the aberration of extorting confession. The judges of sub-ordinate Courts, particularly at the magisterial level, are entasked with enforcing these safeguards. In the post investigation stage confessions are to be recorded in terms of Sec. 281 of the Code. The Courts must remember that unless they have ensured a confession to be true and voluntary, they have failed in their duty to protect the human right of the accused seeking to make a confession.

All the above mentioned sections envisage safe guards to ensure protection and preservation of human right of person arrested or accused of an offence and the subordinate Courts are duty bound to ensure compliance with the mandate of law contained in the said sections.

Protection through Remand Procedure

Article 21 of the Constitution of India confers the fundamental right to personal liberty, which can be curtailed only by a procedure established by law. Procedure established by law shall ensure that the basic human rights of the concerned person are not violated. In case an investigation into an offence alleged to be committed by an accused is likely to extend beyond twenty-four hours, the police is mandated to request the Magistrate for grant of remand of such accused in police or judicial custody in terms of S.167 of the Code. The Magistrate is empowered under Section 167 Cr.P.C. to order the detention either in police/judicial custody for a period not exceeding fifteen days at a time (in case of police custody, only for initial fifteen days). This section envisages a constitutional role for a judge of subordinate Court in terms of Article 21 of the Constitution. The Magistrate has to ensure that the right of the accused person to personal liberty is respected absolutely and the accused is not deprived of his liberty without due process of law. Section 167 sets up the first stage for encounter of the accused with the judicial setup and this is the crucial stage where a judge can ensure about the rights of the

accused having been addressed by the police and by the Court itself. By now, the person arrested is expected to have had the first hand experience of his human rights entailed in various section of the Cr.P.C. being addressed by a Court of law, e.g.; being informed of ground of his arrest and of right to bail (Section 50), information about his arrest and place of detention having been given to a nominated person (Section 50A), medical examination on his request (Section 54), having been brought before a magistrate without undue delay (Section 56) and having been produced before a Magistrate within twenty four hours of his/her arrest (Section 57).

While authorizing the detention of an accused in judicial/police custody, the Magistrate should ensure that the mandate of the aforesaid sections and Article 22(2) of the Constitution has been given due respect and compliance by the police and the other due procedures of law have been adhered to. Exercise of sound judicial discretion while dealing with an accused at the stage of Section 167 of the Code is nothing but an empathetic act of ensuring the human rights of the accused person while complying with legal provisions at the same time.

Protection through Bail Proceedings

Every arrested person has a right to seek bail. If the arrest is for a bailable offence, the accused has an absolute right to be released on bail under Section 436 of the Code, subject to satisfaction of bail conditions. On the other hand Section. 437, which relates to non-bailable offences, permits release on bail subject to stringent statutory conditions. However, as the right to be released on bail is considered an important incident of presumption of innocence of the accused, it is vital for the judges to view the issue of bail in this light. Section 436A recognizes the right of every under-trial to be released on bond, with or without sureties, for certain offences, if he has remained under detention for a half of the maximum period for which the accused could be sentenced.

The purpose behind the incorporation of the aforesaid new provisions in the Cr.P.C. is obviously to protect the human rights of the arrested and the accused persons as directed by the Hon'ble Supreme Court from time to time. The sub-ordinate courts particularly the magisterial

courts have been assigned the task of ensuring the observance of the aforesaid new provisions in the Cr.P.C., and consequently ensuring protection of human rights of arrested persons.

Protection through Discharge Proceedings

Wide powers are conferred on the judiciary to truncate criminal proceedings through discharge of an accused under provisions such as Ss. 227, 239, 245, 258 etc of the Code. It may be emphasized that mechanical framing of charge by the Court may amount to violation of human rights of an innocent person and therefore it is very important that, while conducting the proceedings of framing charge against an accused person, the Court should endeavour to take into account the material presented by way of charge sheet and the other documents on which the prosecution will rely upon in the trial. A similar power to terminate the proceedings of investigation against a person can be inferred from contents of Sec 167 of the Code which confers powers on a Judicial Magistrate to authorize detention beyond a period of 24 hours only, if “there are grounds for believing that the accusation or information is well founded”. A judge of the subordinate Court is required to shed inhibitions about fingers being raised at him for discharging an accused. As is expected from a Judge, he must never fall for clamour, whether from inside or outside, and must abide by his duty of protecting the law and rights of the people. That is what his or her existence is for and nothing beyond it.

Protection through Plea-bargaining

The Criminal Law (Amendment) Act, 2005 for the first time, accorded recognition to the concept of plea-bargaining within the Indian Criminal Justice System. Plea-bargaining can be understood as a mean simplifying the rigors of the formalistic trial system and expediting disposal of cases. This system envisages a balance between the need of the society to seek punishment for crimes and an opportunity to the accused to exercise remorse or repentance. Diligent implementation of plea-bargaining involves an active role for the Court in protecting the human rights of the accused as well as the well-being of the society.

Protection Through Exercise Of Judicial Discretion During Sentencing

Every criminal trial must come to a conclusion with a judgment, either of acquittal or conviction. All cases of conviction have to be appropriately addressed with sentencing of the convict as per the requirements of the statute. However, before passing the order of sentence, a judge is required, in terms of Ss. 360 and 361 of the Code, to give due consideration to the reformatory principles in matters of sentencing. Furthermore, Sections 235(2) and 248(2), of the Code bestow an additional obligation on the Courts to hear the accused on the question of sentence. In warrant cases the judge is empowered to pass the appropriate sentence only, after providing hearing to the convict on sentencing. These legal rights of the accused/convict are nothing but human rights recognized by law and need to be properly addressed by the judges of subordinate Courts. Even after post conviction detention in the prison, a convict is entitled to several rights inside the jail. Since an inmate goes into the prison by virtue of a judicial order, his living condition and human rights inside the prison are of concern to the Courts and have to be zealously guarded.

However it is not merely the human rights of an accused or convict that should of concern to the Courts. While pro-actively addressing the human rights of accused, the Court need to consistently pay attention to the human right of the individuals in the society and the society itself. Through the various provisions of the Cr.P.C. the law also envisages protection of the rights of victims of crime, false imprisonment and malicious prosecution. The Courts have to be very responsive to compensatory principles which provide for compensation to victims of crime, false imprisonment or malicious prosecution as conceptualized by Sections 357, 357A, 358 and 359 of the Code of Criminal Procedure.

Protection through Legal Aid

The Parliament of India has passed the **Legal Services Authority Act, 1987** to give effect to the provisions of Art. 39-A of the Constitution to provide free legal aid to the poor and the needy. The District Legal Services Authorities (DLSA) constituted under the aforesaid Act have been specially required to provide assistance to the poor litigants, convicts,

undertrials and the litigants belonging to the poor sections of the society in the form of free legal services. A judge must frequently draw his or her attention to the plight of the litigant appearing before the Court. A judge's observation of the disadvantaged litigant's position is imperative for addressing the human right of the latter. To deliver justice, the first and the foremost thing that a judge must ensure is that the person appearing as an accused or litigant is being represented by a lawyer in order to meet the intricacies of law. On accessing the need of such person the judge must act to address the right of legal aid of such person in terms of Sections 303, 304 of the Cr.P.C. or Article 39A of the Constitution of India. The Judge should not confine to forwarding the application of the accused or directing the litigant to the DLSA but must follow up the case of such needy person in a suitable manner. It is only then that it can be accepted that the judge has put effort for protecting one of the human rights of the person appearing before it.

Visualizing the actual scope:

The scope of a Court to protect human rights is of wide amplitude. It is not confined merely to case of accused person. It is also not confined to a court exercising criminal jurisdiction, but to every Court of law. A Court must endeavour to ensure protection of rights of every person appearing before it, be it an accused person, a witness, a complainant, a plaintiff, a defendant or whatever form of litigant. The role of Courts in protecting the human right of an accused has been discussed above. Similarly a witness appearing before a Court has his or her own right to be protected. The witness needs to be given due respect as he or she is present in the Court to assist the Court in adjudication. The dignity and morale of the witness should not be allowed to be shred to tatters by anybody whether it is the Court staff, the opposite party or a bully lawyer. A witness must be protected from harassment of being summoned to Court again and again without his or her testimony being recorded. The Court need to stop being a mute spectator of bullying or harassment of a witness and must put its foot down to protect the rights of the witness. In the same vein, the Court must protect and address the basic human rights of every person appearing before the Court. Painting a broader picture, we must endeavour to ensure proper sitting arrangement, hygienic toilets/

sanitation, safe drinking water, adequate protection and amenities to meet vagaries of nature etc. Not to be turned a blind eye and be given a cold shoulder, is the important right of protection from exploitation by corrupt practices which are at times rampant in the Court premise.

An important step in securing the human rights of litigant would be creation of dedicated helpline desks in the Court premises. These helpline desks would be entasked with responsibility of aiding the litigants/ witnesses in various fields like tracing transferred cases, tracing date fixed in the cases, etc.

The Court must realize that “Farthest from the lions is what the lambs fancy”. A person appearing before a Court is hardly there of his or her own choice. Compulsions drive a person to a Court. Infringement of a right is the basic premise of such a compulsion. Like a patient aggrieved by a disease, takes shelter of a doctor to seek remedy for it, so does a litigant seeks the shelter of a Court in search of remedy for infringement of his human right.

Various legislations and the judicial pronouncements of the Hon'ble Supreme Court make it amply clear that the judiciary has to play a major role in the protection of human rights of the people. Invariably, it is the subordinate judiciary that can respond, first and rapidly, to the call of infringement of a person's human right at the hands of another private person or the state authorities like police, jail or other agencies of the executive.

It would be pertinent to recall the episode of Ramayana when everybody in King Sugreev army who had set out in search of Devi Sita, felt feeble and deprived to reach out to Devi Sita encapsulated in Lanka across the sea. It was then that, Jamuvanta a courtier of King Sugreev invoked the full potential of Lord Hanumana as thus:

dgbz jhNifr l uqgupekuk rk pi l kf/k jfg cyokuk
iouru; cy iou l ekuk cf/k] food] foKku fu/kkukAA
dou l ks dkt dfBu tx ekfg tks ufg gkr rkr rø ikfg
jke dkt yfx rø vorkjk l q r; gg c; Å io7kdkjAA

The feats that Lord Hanumana performed thereafter are history. Similarly, the judges of the subordinate Court need to realize their potential and rise to the occasion as did Lord Hanumana. It is time for the Courts at the subordinate level to change the paradigm, shun inhibitions and realize their role in protecting the human rights of the people. It is not a matter of choice for us to think about the human rights of the people appearing before us and the society at large. On the contrary, we, as judges manning the Courts, are duty bound to not only think, but act in respect of human rights and provide the remedy to the aggrieved person and the society. It is only then, that we can take pride in being part of an institution responsible for preserving the rule of law protecting the human rights and in consequence preserving the justice.
