

of law. *Advocate role is inevitable in the administration of justice.* For classic example in absence of the advocate the parties themselves pleading of their own, recording of oral evidence, LW1 to 15 no of witnesses are examined on the same point, parties place irrelevant pleadings and evidence which will disturb everyday Court proceedings and also consumes too much time of the Court.

Our system of administration of justice is unthinkable without *the role of advocates being integral part of the same.* Advocate can identify importance of witnesses' relevancy of evidence and helping the judge to understand the facts, the advocates must convert the facts within the parameters of law to save the precious time of the Court. Advocates role not only advise to the parties but also to assist the Court in placing the pleadings relevancy of evidence within a minimum possible time to save the valuable Court time. Both the parties Counsels must required co-ordination no such adjournment shall seek during hearing of the suit so that the Court shall to quick disposal of the case.

Advocates must, defend a person accused of a crime, regardless of his personal opinion as to the guilt of the accused. Loyalty is to the law which requires that no person should be convicted without adequate evidence. If the prosecution cannot create a common perception in the mind of judge then it is so much easier for the defence to create a reasonable doubt in the mind of

judge. Similarly, plaintiff in civil cases must create a story that persuades the Court on the balance of probabilities.

The role of legal profession in strengthening and also promoting quality in the administration of justice. The advocates role must, keep himself equip thorough and update latest position and knowledge of law making serious efforts and should exercise his pleadings must be specific, relevancy of evidence, once ignore the facts in the pleadings in the institution of the suit the advocate/ parties cannot travel beyond those pleadings. So that be ensure that all the material evidence that needs to be placed before the Courts at the first instance. To be honestly and fairly during the arguments before the Court as result of which, the Court shall deliver right decision conclusively determine the rights of parties by way of quality judgments and precedent by and large for the welfare of society and also to protect the society. Judges impartially has been regarded as the essence of the administration of justice. The Supreme Court in the decision *All India Judges Association v. Union of India*, AIR 1992 SC 164, had observed that Advocate being a integral part of the in the Administration of justice.

It is therefore, for consideration the advocates role must, individually and collectively in strengthening and promoting and also best quality of justice in less expensive and within a shortest time in the administration of justice.

HUMAN RIGHTS VIOLATIONS : JUDICIAL INTERVENTION

By

—Dr. ALAPATI SRINIVAS*
P.P.V. SUHASINI DEVI**

Protection and respect for human rights democratic society, it is the responsibility of lies at the heart of the good governance. In a the State to protect and promote human

* B.Sc., M.A. (Pol.), M.A (JMC), M.B.A., M.L., Ph.D., P.G.D.C.L., Professor of Law, Rajiv Gandhi Institute of Law, Kakinada – 533005, (A.P.) Mobile : 9440844616.

** M.A. (Eco.), LL.M. (Merc Law) Advocate, High Court of A.P.

rights. All the State institutions have a duty to respect the human rights, prevent human rights violations and to take active and appropriate steps for the promotion of human rights.

Constitution of India provides Fundamental Rights under Part-III to every individual which guarantees the basic human rights. It pledges that the State will safeguard human rights and will protect citizens from the undue invasions on their liberty, security and privacy. Under Article 32 of the Constitution Supreme Court is the protector and guarantor of Fundamental Rights. Right to move the Supreme Court under Article 32 itself is a fundamental right available to an individual, whenever his fundamental right or basic human right is violated.

The Supreme Court has over the years explained and elaborated the scope of Fundamental Rights. They have strongly opposed the intrusions upon them by the agents of the State, by asserting that the rights and dignity of the individual must always be upheld. The Court has laid down certain directives for the proper enforcement of law. These directives deal with various aspects of the security agencies and police working at the cutting edge level, such as registration of a case; conduct of an investigation; carrying out of an arrest; treatment of an arrested person; grant of bail; questioning of a suspect and protection of the rights of women, poor and disadvantaged. They also have the force of law¹.

Right against Self-Incrimination

In *Nandini Satpathy v. P.L. Dani*², the Court held that an essential element of a fair trial is that the accused cannot be forced to give

evidence against her/him. Forcing suspects to sign statements admitting their guilt itself violates the constitutional guarantee against self incrimination under Article 20(3).

Arrest and Human Rights

In *Joginder Kumar v. State of U.P. and others*³, the Court held that the Arrests should not be made, unless they are absolutely necessary and there is no other way except arresting the accused to ensure her/his presence before the criminal justice system or to prevent her/him from committing more crimes or tampering with evidence or intimidating witnesses. Unnecessary and unjustified arrests lead to harassment and loss of faith in the system.

Illegal arrest and Custodial Violence

In *D.K. Basu v. State of West Bengal*⁴, D.K. Basu, Executive Chairman of Legal Aid Services, West Bengal – wrote a letter to the Chief Justice of India, saying that torture and deaths in police custody are widespread and efforts are often made by the authorities to hush up the matter and goes unpunished. Some newspaper reports published in the Telegraph, Statesman and Indian Express newspapers were also attached to support the contention of the letter petition.

The Supreme Court treated this letter as a writ petition. While the writ was under consideration, the Court received another report about a death in the police custody in the State of Uttar Pradesh. This prompted the Court to issue notices to all the State Governments and the Law Commission of India to submit suggestions on how to

1. Article 141 of the Constitution states that the law declared by the Supreme Court is binding on all Courts in India. In *P.L.O. Corp. v. Labour Court*, 1990 SCC 632, it has been held that this article recognizes the role and power of the Supreme Court to alter the law and in the course of performing this function, interpret legislation in such a manner that it may be harmonized with social changes. (An officer who willfully or inadvertently ignores Supreme Court directives can be tried in Court under relevant provisions of the Indian Penal Code and under the Contempt of Courts Act, 1971).

2. *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025.

3. *Joginder Kumar v. State of U.P. and others*, 1994 SCC 260.

4. *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

combat this problem which is prevalent through out the Country.

Finally the Court⁵, held that the custodial torture is a naked violation of human dignity. The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect the citizens and enforce the law. The Court accepted that the police have a difficult task in the light of the deteriorating law and order situation; political turmoil; student unrest; terrorist and underworld activities. They agreed that the police have a legitimate right to arrest a criminal and to interrogate her/him in the course of investigation. However, the law does not permit the use of third degree methods or torture on an accused person. Actions of the State must be right, just and fair. And torture for extracting any kind of confession would neither be right nor just nor fair. To prevent such a serious malady of human rights violations, the Court⁶, issued the following directions to the state as well as the Police, which will be complied with till the legal provisions are made. They are :

1. Use of third degree methods or any other forms of torture to extract information are not permitted.
2. Police personnel carrying out arrest and interrogation must bear accurate, visible and clear identification/name tags with their designation.
3. Particulars of all personnel handling interrogation of an arrested person must be recorded in a register.
4. A memo of arrest stating the time and place of arrest must be prepared by the police officer carrying out an arrest. It should be attested by at least one witness who is either a family member of the arrested person or a respectable person from the locality

where the arrest is made. The memo should also be counter-signed by the arrested person.

5. The arrested or detained person is entitled to inform a friend, relative or any other person interested in her/his welfare about the arrest and place of detention as soon practicable. The arrested person must be made aware of this right as soon as she is arrested or detained.
6. The arrested person may be allowed to meet her/his lawyer during interrogation but not throughout the interrogation.
7. The time, place of arrest and venue of custody of the arrested person must be notified by telegraph to next friend or relative of the arrested person within 8-12 hours of arrest in case such person lives outside the district or town. The information should be given through the District Legal Aid Organization and police station of the area concerned.
8. An entry must be made in the diary at the place of detention in regard to the arrest. The name of the friend/relative of the arrested person who has been informed and the names of the police personnel in whose custody, the arrested person is being kept should be entered in the register.
9. The arrested person should be examined by a medical doctor at the time of arrest is s/he so requests. All bodily injuries on the arrested person should be recorded in the inspection memo, which should be signed by both the arrested person and the police officer making the arrest. A copy of the memo should be provided to the arrested person.
10. The arrested person should be subject to a medical examination every 48

5. Ibid

6. Ibid

hours by a trained doctor who has been approved by the State Health Department.

11. Copies of all documents relating to the arrest including the memo of arrest should be sent to the Area Magistrate for her/his record.
12. A police control room should be provided at all district and state headquarters where information regarding arrests should be prominently displayed. The police officer making the arrest must inform the police control room within 12 hours of the arrest.
13. Departmental action and contempt of Court proceedings should be initiated against those who fail to follow above-mentioned directives.

Human Rights to Women in Custody and Rape Victims

In *Sheela Barse v. State of Maharashtra*⁷, it was held that the women in custody are particularly vulnerable to physical and sexual abuse. Courts take a very serious view of the complaints regarding custodial rape or harassment.

In another case in *Delhi Domestic Working Women's Forum v. Union of India and others*⁸, it was held that the rape cases require extra sensitivity from the police. Care must be taken to see that the victim is not made to feel small or uncomfortable and her statement has to be recorded by a woman. Unnecessary references and passing of derogatory remarks that the victim contributed to the crime is not permitted. A rape is a rape no matter what the reputation or profession of the victim is. The law favours protection of the victim. It lays down that inquiry and trial of rape cases

should be held in-camera and that her identity should not be disclosed to the media.

Using of Handcuffs : Inhuman and Barbaric

In a landmark case in *Prem Shankar Shukla v. Delhi Administration*⁹, the Court held that the using of handcuffs is inhuman and barbaric. In this case *Prem Shankar Shukla*, an under trial prisoner at Tihar Jail, sent a telegram to the Supreme Court that he and some other prisoners were being forcibly handcuffed when they were escorted from prison to the Courts. *Shukla* pleaded that routine handcuffing and chaining of prisoners was continuing despite the Supreme Court directives in *Sunil Batra's* case¹⁰, that fetters/handcuffs should only be used if a person exhibits a credible tendency for violence or escape.

Use of handcuffs, chains or ropes to bind prisoners is amount to inhuman treatment. The rule regarding handcuffs is that they should never be used as a matter of routine. Their use is permitted only in exceptional cases and that too with judicial permission, on the grounds that the person poses a clear and present danger and there are genuine reasons to believe that s/he will attempt escape¹¹.

Bail/Surety and Human Rights Protection

In *Hussainara Khatoon and others v. Home Secretary State of Bihar*¹², the Supreme Court admitted a writ petition to look into the administration of justice in Bihar after the Indian Express published a series of news items about appalling conditions in Bihar jails. The paper reported that a large number of people, including women and children had

7. *Sheela Barse v. State of Maharashtra*, 1983 SCC 96.

8. *Delhi Domestic Working Women's Forum v. Union of India and others*, 1995 SCC 14.

9. *Prem Shankar Shukla v. Delhi Administration*, 1980 SCC 526.

10. *Sunil Batra v. Delhi Administration*

11. *Supra* – 9

12. *In Hussainara Khatoon and others v. Home Secretary State of Bihar*, AIR 1979 SC 1360.

been in prison for years without trial. Even though some of them were charged with minor offences carrying punishment for a few months or couple of years at best, these people had been in jail awaiting trial for periods ranging from three to ten years.

If the offence is bailable, the police are duty bound to release the arrested person. In addition, the amount of bail should be decided keeping in mind the paying capacity of the accused. Far too many people spend time in prison simply because the bail amount is fixed too high and they are unable to arrange for the surety. Police officers and magistrates have a duty to see that the bail conditions are not so harsh, if it is so, that the very purpose behind giving bail is itself defeated. The High Court and the Sessions Courts are empowered to reduce the bail amount fixed by the police or the Magistrate¹³.

In *Motiram and others v. State of M.P.*¹⁴, *Motiram*, a mason appealed to the Supreme Court that despite being granted bail by the Court, he was unable to secure his release because the Chief Judicial Magistrate fixed an exorbitant sum of Rs.10,000/- as the surety amount. *Motiram* said that the Magistrate rejected the surety ship offered by his brother simply because his brother resided in another district and his assets were located there. *Motiram* wanted the Supreme Court to either reduce the surety amount or order his release on a personal bond.

The Supreme Court has strongly condemned the practice of asking migrants or tourists to arrange for financially sound sureties from the same district to stand bail for them. It is unreasonable and leads to unnecessary and undue harassment. Many a time, poor people go to jail despite being granted bail because no one come forward

to stand as surety for them. If it can be found out that the accused is connected to the community through family or other emotional ties, which will prevent her/him from fleeing, bail should be given simply on a personal undertaking to abide by bail conditions¹⁵.

Human Rights Violations and Victim Compensation

In *Nilabati Behera v. State of Orissa*¹⁶, *Nilabati Behera*, distressed mother, wrote a letter to the Supreme Court asking that she be monetarily compensated for the death of her 22 year old son in police custody. She said that her son, *Suman Behera* was beaten to death at a police post after being detained in connection with a theft.

The Supreme Court immediately admitted a writ petition on her behalf and took up the matter. Rejecting the police version that *Suman Behera* was killed by a running train after he escaped from police custody; the Court asserted that the post-mortem report clearly showed that he died as a result of being beaten up. The Court further stated that the mother *Nilabati Behera* had a right to claim compensation for the wrongful acts of the policeman who caused her son's death.

While it is mandatory to conduct a magisterial inquiry into every case of custodial death, the State also has a duty not only to register criminal cases, but also to pay monetary compensation where human rights are violated by its officers¹⁷. Courts regularly give directions to the Government to monetarily compensate victims or their families for incidents of custodial death, rape, violence or assaults on dignity.

13. Ibid

14. *Motiram and others v. State of M.P.*, AIR 1978 SC 1594.

15. Ibid

16. *Nilabati Behera v. State of Orissa*, 1993 SCC 746.

17. *State of Maharashtra v. Ravikant S. Patil*, 1991 SCC 373, the Supreme Court upheld the award of compensation by the High Court for the violation of fundamental right to Life and Personal Liberty of an Under trial prisoner, who was handcuffed and taken through the streets in a procession by the police.

Right to Privacy as a Human Right

In *People's Union for Civil Liberties v. Union of India and another*¹⁸, the Supreme Court declared that the right to privacy is a sacred and cherished human right. There must be strong, cogent and legally justifiable reasons for the law enforcement agencies to interfere with this right. Even then also proper procedure must be followed. An intrusion into a person's home, professional or family life in the name of investigation or domiciliary visits without a proper basis is not permitted¹⁹.

Conclusion

Even in the light of these observations, guidelines and directions of the Courts from time to time, human rights violations are unabated. Therefore there should be proactive role of the National Human Rights Commission (NHRC) and the State Human Rights Commissions (SHRC) to deal with human rights violations and safeguard the interest of the victims which includes recommending appropriate compensation to the victims in appropriate cases.

Under the National Human Rights Commission Act 1993, that all the District Courts (Principal Court) are designated as human rights Courts and they are empowered to deal with human rights violations. Therefore what is required is, some one must ignite the jurisdiction of the Court, who may be the victim himself.

There is also the need to create human rights culture among the people in general and the institutions of the state in particular. Proper training and sensitization of the personnel in the law enforcement agencies is very much required not only in a time bound manner but also as a continuous measure.

Therefore there should be an integrated and coordinated effort and the involvement of state actors and non-state actors which include the Courts, the Human Rights Commissions, the NGOs, Educational Institutions and the great bulk of Lawyers and Academicians. Ultimately it depends upon the eternal vigilance of the people and the civil society which will safeguard the human rights of the people effectively.

DEED OF GENERAL POWER OF ATTORNEY SIMPLICITER OR COUPLED WITH INTEREST – PERMISSIBILITY OF CANCELLATION OF SUCH DEEDS BY EXECUTANTS

Note about the decision under Andhra Pradesh Registration Rules, 1908 reported in 2009 (6) ALT Page 220, on the above subject rendered by his Lordship Sri Justice L. Narasimha Reddy on 15.4.2009

By

—A.S. RAMACHANDRA MURTHY,
Advocate, Ramaraopeta, Kakinada

While dealing with the permissibility of a deed of Cancellation of deed of Power of Attorney coupled with interest, His Lordship held that such General Power of Attorney

coupled with interest cannot be cancelled unilaterally, and that the registration of the deed of cancellation cannot be in violation of Rule 26(i)(k) of the Registration Rules in

18. *People's Union for Civil Liberties v. Union of India and another*, AIR 1997 SC 568.

19. *Kharak Singh v. State of Uttar Pradesh and others*, (1964) 1 SCR 332.