

Showing its magnanimity, the Court declared:

“After giving this matter our thoughtful consideration and keeping in view the importance of the issue of resettlement and rehabilitation of the PAFs, which we have been monitoring for the last five years, we are not inclined to initiate proceedings against the petitioner, its leaders or Ms. *Arundhati Roy*. We are of the opinion, in the larger interest of the issues pending before us, that we need not pursue the matter any further. We, however, hope that what we have said above would serve the purpose and the petitioner and its leaders would hereafter desist from acting in a manner which has the tendency to interfere with the due administration of justice of which violates the injunctions issued by this Court from time to time”.

The third learned Judge also recorded his disapproval of the statement made by the respondent herein and other and felt that as the Court's shoulders are broad enough to shrug off their comments and because the focus should not shift from the resettlement and rehabilitation of the oustees, no action in contempt be taken against them.

However, after the judgment was pronounced in IA No.14 of 1999 on

15th October, 1999 (reported at 1999 (8) SCC 308), an incident is stated to have taken place on 30th December, 2000 regarding which Contempt Petition No.2 of 2001 was filed by *J.R. Parashar*, Advocate and others.

In the contempt proceedings that were started against *Arundhati Roy* the defence offered by the contemner was rejected. The Supreme Court observed, we are not impressed with any of the arguments of the learned Counsel for the respondent which could persuade us to drop the proceedings. It was further observed, the Constitution of India has guaranteed freedom of speech and expression to every citizen as a fundamental right. While guaranteeing such freedom, it has also provided under Article 129 that the Supreme Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. Similar power has been conferred on the High Court of the State under Article 215 under the Constitution, there is no separate guarantee of the freedom of the press and it is the same freedom of expression, which is conferred on all citizen under Article 19(1). Any expression of opinion would, therefore, be not immune from the liability for exceeding the limits, either under the law of defamation or contempt of Court or the other constitutional limitations under Article 19(2)

COLLECTIVE IMPLEMENTATION OF HUMAN RIGHTS OF PRISONER OF WAR

By

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All Human Rights derive from the dignity and worth inherent in the human person and that the human person is the central subject of Human Rights and Fundamental Freedoms.

In simple terms, whatever adds to the dignified and free existence of Human Beings should be regarded as Human Right. Evolution and crystallization of the concept

took a long time. Initially, there was confusion between the Natural Rights propounded by Political Philosophers in the bygone ages and the concept of Human Rights. The latter is an all encompassing one.

In recorded history and ancient scriptures, there have been references to the basic Human Rights, though they were not referred to by that name. Modern Historians credit the origin of the concept of MAGNA CARTA A.D. 1521. On close examination, it will be seen that Magna Carta was a petition urging the King to concede certain rights to particular sections of the people. Its contents neither had the universality of application nor direct relevance to common man's basic freedoms.

The term Human Rights was introduced in the United States' Declaration of Independence in 1776 and the U.S. Constitution embodied a Bill of Rights. The French Revolution gave birth to the Declaration of Rights of Man and Citizen in 1789. In 1929, the Institute of International Law, New York, U.S.A. prepared a Declaration of Human Rights and Duties. In 1945, the Inter-American Conference passed a resolution seeking the establishment of an International Forum for the furtherance of HUMAN RIGHTS OF MANKIND.

The unspeakable atrocities committed on political and ethnic minorities by the Axis Powers during World War II, shocked the a World Order for promoting respect for the observance of Human Rights and Fundamental Freedoms. The Charter of United Nations Organization in its preamble declared 'We the peoples of the United Nations determined . . . to reaffirm faith in the fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of the Nations large and small. The Charter also declared that the purpose of the United Nations is to achieve international co-operation in solving international problems of an economic, social,

cultural or humanitarian character and in promoting and encouraging respect of Human Rights and for fundamental freedoms for all without distinction as to race, sex language or religion. The United Nations also Adopted and Proclaimed the Universal Declaration of Human Rights by General Assembly resolution 217A(III) of 10 December, 1948 as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping its Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

The Human Rights have been universalized and internationalized and some inter-nation mechanisms to monitor their observance have been instituted, the State remains the protector and guarantor of these rights. That is so, not only because there could be no global authority, free from power politics, to guarantee just implementation of rights to all irrespective of one's race, colour, religion, nationality, *etc.*, but, more importantly, human rights are intrinsically bound up with socio-economic and cultural conditions which differ from country to country. As such human rights can be realized and enjoyed in the country where individual lives, and enforced under the laws and institutions of respective countries. Realization and protection of human rights, therefore, depends on the extent to which the Government of the country concerned is democratic and responsive to the needs and aspiration of the people. They depend on popular participation in all spheres of State's activity. Again, human rights belong to the people and it is the vigilance and capacity to resist the authority when abused by the people themselves, which would ensure observance and protection of human rights.

There is another dimension to the situation and a critical one, too. While people and the concerned National Governments bear the overall responsibility, it is also a reality that no country today, particularly, the developing ones like India, are “masters” of their domestic affairs. What happens in the outside world and international system impinges on human conditions and therefore human rights within the domestic jurisdiction of a State.

The other reality is the external factors operating at global level are managed by a coterie of industrialized powers of the North the Group of Seven now Eight. Their control is so deeply entrenched, both historically and institutionally, as to beyond the influence of Governments and people of developing countries constitute the South or the Third World.

In brief, in the contemporary world, global factors operate to the advantage of the industrially advanced nations at the cost of developing countries. There is more to the situation. The world stands on the 21st century, it is engulfed by a phenomenon that has come to be called “Globalization” - the world rapidly being turned into an integrated whole via international trade, internationalization of production and financial markets and the internationalization of consumer-culture, promoted by an increasingly networked global telecommunication systems. As a prefatory that led to the current pace of change and intensity of challenges on human rights of prisoner of war.

MIDDLE EAST WARS:

It was the mother of all crises. As war clouds gathered across the Middle East at the beginning of the year. Humanitarian agencies mobilized their own legions in anticipation of an impending catastrophe, which threatened to swamp the entire region.

In the wake of the first Gulf War in 1991, an estimated two million people had

fled their homes. Determined this time not be overwhelmed by another human tidal wave as they had been in that earlier conflict and then in Africa’s Great Lakes in the mid 1990’s and in Kosova at the end of the decade, aid agencies positioned battalions of workers, tents and emergency supplies across the Middle East... and waited. In the event, of course, it was a refugee crisis that never happened. As American and Coalition armored columns rolled up *Saddam Hussein’s* army with-in a matter of weeks, the bulk of Iraq’s population sat tight in their towns and villages and only a few thousand sought safety outside the country’s borders. With the shooting war seemingly over and crisis avoided, attention turned.. briefly ... to positive projects to help hundreds of thousands of Iraqis who had been internally exiled from their homes by the old regime and to coax back some of the millions of civilians who had fled the country entirely and settled abroad.

Perhaps a turning point in one of the worlds oldest humanitarian crises had at last been reached and millions of displaced civilians would soon be streaming back to their long abandoned homes.

That reverie was almost immediately shattered. On the bright, clear morning of August 19, an Orange flatbed truck inched down an access road and parked adjacent to the United Nations headquarters building in the Iraqi Capital of Baghdad. Moments later, more than 2,000 pounds of high explosive packed into the vehicle erupted in billowing flames and thick smoke dealing death and destruction. Huge section of the main building at the Canal Hotel HQ was demolished. Twenty-Two people including Sergio Vieira de Mello, the head of the U.N. mission in Iraq, were killed and 150 people wounded. War ravaged the land for more than a quarter century. Kings and presidents, mullahs and militias and the world’s superpowers came and went. The Country’s

schools, hospitals, roads, factories and farms were destroyed. One of the worst droughts of the century compounded the agony of a devastated nation. At one time or another, virtually all of the country's people were uprooted from their towns and villages. At the height of a seemingly unending exodus, more than six million civilians sought refuge in neighbouring states. The international community was alternately solicitous and then forgetful of the world's biggest ongoing humanitarian disaster. Billions of dollars flooded in, helping to keep afloat, barely, some of the world's poorest and most vulnerable people. When the Taliban rulers were overthrown and a new interim Government installed in December 2001, a new dawn finally beckoned for Afghanistan. In the next few months more than two million people flooded back to begin rebuilding their lives, by the end of 2003 more than three million people had returned to their homes.

Gemeva Convention Relative to the Treatment of Prisoners of War

(Convention III of 12, August, 1949)

The status of prisoner of war is governed jointly by Article 4 of the Third Convention and by Articles 43 and 44 of the Protocol. The general principle is the following; any member of the armed forces of a Party to a conflict is a combatant and any competent captured by the adverse party is a prisoner of war.

This general rule is supplemented by three types of provisions which specify the conditions in which armed forces are recognized as such, to extent the qualification of prisoners of war to categories of persons not conferred by the general rule, and finally to deprive, in a specific case, a captured combatant of his qualification as a combatant and hence of his status of prisoner of war.

- (a) To be recognized as such, the armed forces of a party to a conflict must be

organized and placed under a command responsible to that party for the conduct of its subordinates, even if that party is represented by a Government or other authority not recognized by the adverse party. In addition, these armed forces must be subject to an internal disciplinary system, which, inter alia, enforces compliance with the Rules of International Law applicable in armed conflicts. In particular, this compliance requires combatants of distinguish themselves from civilians, except in particular circumstances by a uniform or other distinctive sign, visible and recognizable at a distance, while they are engaged in an attack or in a military operation preparatory to an attack. Violation by a combatant of the rules applicable in armed conflict is punishable but if this combatant at least carries his arms openly during the engagement, he is not deprived of his right to the status of prisoner of war in case of capture. If the Party to which these armed forces belong omits or deliberately refuses to enforce compliance with these rules, it can result in all members of these forces losing their status of combatant and prisoner of war.

- (b) The status or treatment of prisoner of war is extended to various categories of persons who do not come under the definition of combatants as given below, or who are not combatants. The following are thus also entitled to the status of prisoner of war.
 - those taking part in a levy enmasse, that is, when the inhabitants of a non-occupied territory spontaneously take up arms on the approach of the enemy to combat invasion without having had time to organize themselves as laid down under point (a) above, if they carry their arms openly and respect the laws and customs of war;

- persons authorized to follow the armed forces without being directly part of them;
- Crews of the merchants marine and civil aviation;
- members of military personnel serving in civil defense organizations.

The following area entitled only to the treatment of prisoner of war;

- persons arrested in occupied territory because they belong to the armed forces of the occupied country;
 - military internees in a neutral country;
 - members of non-combatant medical and religious personnel who are part of the armed forces.
- (c) In exceptional cases, when required by the nature of the hostilities, a combatant can be released from the obligation to distinguish himself from the civilian population by wearing a uniform or distinctive sign recognizable at a distance during military operations. However, in such situation, these combatants must distinguish themselves by carrying arms openly during the engagement and during such time, as they are visible to the adversary while engaged in a military deployment proceeding the launching of an attack in which they are to participate. Even failing to comply with the obligation of carrying arms openly can deprive a combatant of his status, but no of the guarantees relating to it, in the case of his being prosecuted for carrying arms illegally either with or without other offences.

FUNDAMENTAL GUARANTEE:

Insofar as they affected by a situation of armed conflict, persons who are in the power of a party to the conflict and who do not

benefits from more favourable treatment by virtue of the conventions and the protocol shall be treated humanely in all circumstances and shall benefit from the fundamental guarantees without any discrimination based on 'any pretext whatsoever. Among the fundamental guarantees, it is specified that the person, the honour, the convictions and religious practices of all such persons must be respected. The following acts in particular are prohibited under any pretext whatever, whether committed by civil or military agents;

- (a) violence of the life, health and physical or mental well-being of persons, particularly;
 - murder;
 - torture of all kinds, whether physical or mental;
 - corporal punishment;
 - mutilation;
- (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
- (c) the taking of hostages;
- (d) collective punishments;
- (e) threats to commit any of the foregoing acts.

Finally, the guarantees of judicial procedure also form part of the fundamental guarantees accorded to all persons affected by an armed conflict.

And in the case of the Iraqi conflict the Americans forces brutality violates the convention to the treatment of prisoners of war and there are hundreds of unreleased photographs and short digital videos depict US soldiers using a wide variety of abusive techniques at Iraq's Abu Ghraib prison and appearing to enjoy the mistreatment. The images were obtained from previously secret sworn statement by detainees and describe in

raw detail abuse that goes well beyond what has been made public. Video clips broadcast in the US and Britain showed a prisoner being struck across the face and another in handcuffs are being dragged across the floor. The post said one video clip showed five hooded and naked detainees standing against the wall in the darkness, each masturbating, with two hooded detainees crouched at their feet. Another segment showed a prisoner handcuffed to the outside of a door, slamming his head into the great metal. In one photo, a soldier is seen cocking his fist as he holds a hooded detainee in a headlock amid a pile of several detainees. Later he is seen kneeling atop the pile, flexing his muscles, a broad smile on his face. An image on newspaper's Web site depicted a soldier wielding a baton as a naked detainee covered in a brown substance stood in a hallway with his arms outstretched and ankles cuffed together. In the nature of things, armies have to desensitize their soldiers, but nothing would have prepared Iraqi troops for the treatment they received at the hands of uniformed American Females. Throughout the Arab world, there has been ignominy and rage. It was a cultural atrocity.

It is never easy to be an occupying power. However just the cause, however necessary the invasion, resentments are easily aroused. The conquered young men will be especially quick to impute the worst of motives to the occupiers. Even those who are willing to acknowledge that *Saddam's* regime was unspeakable can quickly develop a hostile attitude towards those who displaced it, and will not take much persuading that the Americans are no better than *Saddam*. If the US forces had set out to create adverse propaganda and enrage AL-Jazeera's audience, they could not have done better than they did in Abu Ghraib prison.

The ramifications of failure are worse in the Arab world because the Arabs are so much weaker. Many of them believe that

they have had to endure long centuries of oppression. Photographs of American Female soldiers jeering at the genitals of naked Iraqi captives will inflame all that to a white heat. 'Female soldier' ought to be an oxymoron. The difficulty arises when prosperity and easy living detaches a society from the realities of life in its armed forces. There is bound to be a glib assumption that the one attribute, which need distinguish the average soldier from the average citizen, is a higher level of physical fitness, and that there is no reason why woman should not serve in combat. Thus far, those viscerally opposed to women as fighting soldiers have failed to make their case. It is a problematic one because it is premised on lavatories, which seems vulgar, and on emotional archetypes, which sounds out of date. Of necessity, the front line of combat involves intimates squalor. To expose women to such privations only renders life more squalid for everyone. When *Charles Guthrie* was Chief of the Defence Staff, he told a parliamentary committee that he was much more worried about women in the frontline than about homosexuals. There is also much to be said for a feminine corrective to the masculine instinct for conflict. The female reluctance to embrace the horrors of war can help to preserve peace. This could not be achieved by a feminized military. Which might have the reverse consequence, as denatured women degrade their sex. In prisons, female inmates often lose all self-respect and behave worse than their male equivalents. There may be parallels with an army unit consisting of Private Jezebel, Corporal Clytemnestra and major lady *Machebeth*. After Vietnam, a demoralized American army was unable to resist the pressure of political correctness; hence women in the frontline. Yet by feminizing their forces, the Americans may also have brutalized them. Those photographs would have been far less shocking if the US troops had been made.

The US troops provides brazenly treatment to the prisoner at Abu Ghraib prison and

the UN should condemn the same collectively and exuberantly implement action of the Geneva Convention to the treatment of prisoners of war in Iraq. Today the world is becoming much smaller. All countries are becoming each other's neighbours and in this changing situation, the universality of human rights is no longer a theoretical concept. People in one country are aware of what is happening in other countries. Now the concept of sovereignty is being questioned. It is not that the concept of sovereign is going to vanish, but these concepts/ideas have their own momentum and they have

their own limitations and so in that sense, today universality has a much more concrete and real meaning. The international community should do what can to proceed faster in the field of human rights of prisoner of war and must accept the responsibility to see that the rights of prisoner must be protects and promote. The world continues to be iniquitous, it does not underpin this concept of human rights. The fact that there is no just world makes it much more difficult for the prisoner of war to ensure human rights even within the boundaries of prison.

**A NOTE ON THE DECISION OF HON'BLE SRI B.S.A. SWAMY, J.,
IN ADHIKARALA JAGADEESWARA RAO V. GOPALAKRISHNA
TRANSPORT, VISAKHAPATNAM ETC., REPORTED IN 2005 (1) ALD 111**

By

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[1] The decision in the above case arose out of The Motor Vehicles Act, 1988. The claimant in the M.V. Tribunal, not having been satisfied with the compensation granted by the Tribunal, appealed to the High Court seeking further amount as compensation. During the course of the hearing of the matter, a new contention was advanced by the Counsel for the Insurance Company. As it appears from the judgment, the said contention was not urged before the Tribunal below and no cross-appeal or cross-objections are filed separately raising that particular contention. Therefore, the Hon'ble Judge framed seven points by way of issues and directed the concerned Counsel to advance arguments of those aspects. For our present purpose, reference to points Nos.1 and II is relevant. The 1st point is whether without filing an appeal the respondents can get the finding of the Tribunal displaced in an appeal filed by the opposite party by virtue

of Order 41 Rule 33 CPC and the 2nd point is whether in an appeal filed by the opposite party the respondent is prohibited from canvassing the correctness of the Award (Judgment of the Lower Court).

[2] That means, whether a respondent in an appeal in whose favour there is a decree, can canvass the correctness of a finding of a lower Court to the extent it is against him without himself filing an appeal or cross objection against such findings in the judgment.

[3] In the above judgment His Lordship, Hon'ble Sri *B.S.A. Swamy* J., after discussing this aspect ultimately observed in Para 18 of His Judgment that the view of the Hon'ble Supreme Court in the case of Delhi Electricity Supply undertaking case 1999 (2) U.J. 1536 (SC) = AIR 2000 SC 431 = 2000 SAR 29, is more reasoned that the earlier decisions of the Supreme Court in A.I.R. 1987 S.C. 725