

HUMAN RIGHTS, RULE OF LAW AND ROLE OF LAWYERS

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I am delighted to deliver this Lecture. A memorial lecture, besides serving the purpose of remembering the person and his great contribution to the society with a view to draw inspiration from his life, should also contribute few thoughts for the development of the society. I knew P.G.C. Chengappa at the Bar and I was impressed by his decency, culture, amiability and uprightness. Besides being a good Advocate he was a fine human being who endeared himself to all those who came to his contact. He was the Founder President of Lahari Advocates Forum, Director, Lahari Law Academy and Trustee of Lahari Foundation. He joined the Bar in 1962, served as Government Pleader and as Additional Government Advocate in High Court, and was in the panels of few other organizations. His devotion to duty, commitment and presentation in the Court of Law as Advocate were appreciated. He was a good organizer which fact was revealed when he organized an Endowment Lecture as the General Secretary of the Bangalore Bar Association in 1973, by the eminent Advocate Mr. Nani Palkiwala. That attracted an audience of over ten thousand people. He organized several other events and was elected as office bearer of Bar Association in different capacities. It is interesting to note that he was the first to start the “Black Coat” a newspaper meant for the legal fraternity. He believed that an individual should not consider himself bigger than the institution he represents or works for. He stood for upholding the dignity and best traditions of both the Bar and the Bench. For him means/methods were more important than the end itself. It is befitting that Lahari Advocates Forum has organized this Lecture remembering and recollecting the contributions of late “P.G.C.”

It is nice to know that Lahari was started by likeminded group of Advocates 20 years ago with the laudable object to promote cultural and literary pursuits among the members of the legal fraternity. I understand it is conducting and coordinating several positive and useful activities. Through its Trust, financial assistance is provided to the Advocates and their family members who need medical support. This Forum to its credit has completed 20 years of publication of “Communiqué” and “Samvada” an in-house monthly news letter in English and Kannada. Meeting on every Friday at 4.30 p.m., at City Civil Court premises to express views and exchange professional experiences in the programme “Chinthana Manthana” is a quality utility and by now I am told it has completed 80 programmes discussing on various Law subjects of interest.

The subject of this Lecture is “Human Rights, Rule of Law and Role of Lawyers”

Human Rights

Human Rights have a long process of evolution. Basically, human rights are integral part of human life and it is the possession of these rights that distinguish human beings from other species. At all times and in all ages, right from the beginning there was oppression of human beings by human beings leading to struggles and revolutions for restoration and protection of human rights. In history and ancient scriptures, references to the basic human rights can be easily noticed. The Rigveda, one of the oldest documents of human civilization declares that all human beings are equal and they are all brothers. The Atharvaveda proclaims that all human beings have equal right over food and water. The Vedas were the primordial source of ‘Dharma’ a compendious term for all human rights and duties. The observation of ‘Dharma’ was regarded as essential for securing peace and happiness to individuals as well as society. All such works were intended for securing happiness to all. “Sarve Jana Sukino Bhavanthee” was the ethos of our motherland.

Modern Historians give credit to MAGNA CARTA A.D. 1215. The term Human Rights was introduced in the United States’ Declaration of Independence in 1776 and thereafter it

became part of the Bill of Rights in US Constitution. Consequent to the French Revolution, Declaration of Rights of Man and Citizen emerged in 1789. In 1929, the Institute of International Law, New York, USA, prepared a Declaration of Human Rights and Duties. The Inter-American Conference passed a resolution in 1945 seeking the establishment of an International Forum for the furtherance of Human Rights of Mankind.

“Human Rights are inscribed in the hearts of people; they were long before they drafted their first proclamation” - Mary Robinson. In Paris on 10th December, 1948, the UN adopted the Universal Declaration of Human Rights (UDHR). The declaration came at the time when the world was recovering from a long period of bloody and horrific conflicts. The Declaration proclaims that all human beings are born free and equal in dignity and rights. All human rights derive from the dignity and respect inherent in the human person by virtue of his birth as a human being. In history and ancient scriptures, references to the basic human rights can easily be noticed though they were not referred to specifically as such. It is interesting to know that *“the International Human Rights Movement was born in and out of the Second World War.”* It is ironic that Adolf Hitler, who was responsible for the terror and violence, gave rise to the awakening of the conscience of mankind, opposing repetition of such barbaric and inhumane crimes.

Human Rights can be generally understood as those rights which are inherent in human beings without which they cannot live as human beings. These are the rights which every human being is entitled to enjoy and to have them protected. Twentieth century is considered as the century for “Democracy and Human Rights.” Generally main features of Human Rights are:-

1. Basic and inherent with which a person is born.
2. Equal, universal, inalienable.
3. Contempt or disregard of them lead to barbarous acts devoid of consciousness of human being.
4. Recognizing and respecting every human being in political, social, cultural and economic spheres.

5. Indivisible, inter-related and inter –dependent.

Human Rights demand treating others as we expect others to treat us. They are natural rights come by birth as human beings. No effort need be made to acquire them. Section 2(d) of the Protection of Human Rights Act, 1993 defines “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 of India”*.

The Universal Declaration of Human Rights 1948, declares, *“all human beings are born free and equal in rights and dignity”*. Human rights broadly constitute two cartograms of rights; (1) rights which are essential for the dignified human existence, viz. The right to have basic human needs like food, clothing, shelter and medical care; and (ii) rights which are essential for the adequate development of human personality such as the right to education, the right to freedom of culture, the right to freedom of speech and expression, and the right to free movement. It is nice to remember and recognize that human dignity is the spine of Human Rights.

The United Nations Charter is a landmark document which proclaimed that the people of United Nations *“re-affirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women”* and in *“universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”* 10th December, 1948 was a remarkable day in the modern history of mankind. That is the day on which the United Nations made Declaration of Human Rights. This declaration was not either a sudden or miraculous event. It was the effect of a cumulative and continuing movement of human conscience and changes in thinking that went on over a long period. The Proclamation of Universal Declaration of Human Rights (UDHR) on December 10, 1948 is not mere a declaration it represents the collective wisdom of the World Community to work together towards a world without injustice, indignity and ignorance; a world without cruelty and hunger.

Martin Luther King said *“Injustice anywhere is a threat to justice everywhere.”* It is more so when the whole world has become a global village due to tremendous advancement in science and technology and transport and communication. Mahatma Gandhiji also said peace all over world can be established not on gun power but on pure justice.

Unless the synthesis of political and civil rights with economic, social and cultural rights is properly evolved, there will always remain in the society, a sizeable deprived section. The gap and disparity between the fortunate, less fortunate and unfortunate inevitably lead to disturbance, tensions, conflicts, violence and commission of offences. This will impair peace, stability and progress of the country activating forces opposed to the preservation of human rights. It is a matter of common knowledge that wars produce hunger. But people seem to be less alive to the fact that hunger can lead to war. It is undebatable that hunger and peace cannot co-exist. In other words, while hunger rules, peace cannot prevail. All democratic institutions have onerous and greater responsibility and duty to respond to the challenges, to maintain the abiding faith and continuing confidence of the society, which the society has reposed in them, because they essentially exist for the society.

Article (i) of the preamble of the Universal Declaration of Human Rights states that *“All human beings are born free and equal in dignity, they endowed with reason and conscience should act towards one another in a spirit of brotherhood.”* Human rights by their very nature constitute the minimum that is necessary for an individual to live in civil and political society as a free individual with dignity and respect; to realize his full potential; and also as a member of the society. Denial of these rights would create handicap to the individual from developing his talents and from making his maximum contribution. Human rights is a growing and dynamic branch of national and international law.

The Universal Declaration of Human Rights was proclaimed in a little over three years after the United Nations Charter. This Declaration was a statement of intent or principle, and not a treaty or a legal agreement between the countries or the binding legal documents, yet it was a document of great influence. It is relevant to mention here as to the evolution of the contemporary concept of human rights. Contemporary evolving concept is stated in terms of

three generations of human rights. **First generation** of human rights are mainly concerned with the civil and political right of the individual, in other words, the ‘liberty oriented’ rights. These were meant to impose with “*negative obligations on the Governments to desist from interfering with the exercise of individual liberties.*” These rights were among the major concerns of all liberal and democratic movements since the 19th century. The **Second generation** of human rights can be said to be ‘security oriented’ and provide for social, economic and cultural security. These rights are positive in nature as they make it the duty of the State to ensure for the realization of these rights. The United Nations Declaration of Human Rights indicates the consensus of principles which form the basis of the first and second generation rights. The **Third generation** of human rights relatively is of recent origin. It has come into existence in response to various new concerns over which the international consensus has emerged in recent years. These include the environmental, cultural and developmental rights. They relate to the rights of groups of people rather than individuals. The developing countries have played a significant role in bringing about international consensus on these rights. The most important example of these rights is the Declaration on the Right to Develop, adopted by the United Nations General Assembly in 1986.

Twentieth century had witnessed unprecedented human losses, devastations and destruction in the two world wars. At the end of World War II the United Nations was established in 1945 to fulfill the long cherished aspirations of the world community for world peace, prosperity and happiness of all human beings inhabiting in any part of the world irrespective of race, religion, region, caste, creed, colour and community.

Human Rights Perspective in Indian Constitution

The Universal Declaration of Human Rights by the United Nations on 10th December, 1948 gave global focus and thrust to the Human Rights. This Declaration guarantees rights to life, liberty, property, equality before law, privacy, fair trial, safeguards against torture, slavery and other degraded practices, protection of family and minorities, free expression, opinion, association, assembly, movement, religion, conscience and culture. These rights have been

accepted by most of the countries and they are reflected in the constitutions of many countries. Most political and social systems accept these rights as basic minimum of civilized existence. When the Constituent Assembly adopted the recommendations and drafted the Constitution of India, the Declaration of Human Rights, 1948 had already been made hoping that ultimately nations will embody these Human Rights in the constitutional documents.

It is a matter of great pride and satisfaction that this great nation of ours, accepting and recognizing the principles of UDHR, made them an integral part of its Constitutional obligations. This shows firm commitment and great concern of our country to Human Rights. The resolution of people is set out in the Preamble to the Constitution to constitute India into a sovereign, socialist, secular, democratic republic and to secure to its citizens justice, liberty, equality and fraternity. The resolution embodied in the Preamble assures the dignity of the individual which is the basic principle underlying the UDHR and in order to give effect to this assurance, provisions are made in Part-III and Part-IV of our Constitution as Fundamental Rights and Directive Principles of State Policy. The rights conferred by Part-III are fundamental and they are enforceable by courts. The Directive Principles laid down in Part-IV are not so enforceable but they are none-the-less fundamental in the governance of the country. The UDHR speaks of two sets of rights - (1) civil and political and (2) economic and social rights. Broadly speaking, the traditional civil and political rights were enshrined as Fundamental Rights under our Constitution, while the economic and social rights were set forth as Directive Principles. Thus in Part-III and Part-IV, the Indian Constitution sets out Declaration of Human Rights elaborately consistent with unity of the nation and the interest of the general public. A comparative study of UDHR on the one hand and the Fundamental Rights enunciated in Part-III and Directive Principles stated in Part-IV of the Constitution shows many similarities in content and form. Though the framers of the Constitution of India would have been influenced by British legal concepts and American constitutional traditions, the impact of UDHR is quite visible being contemporaneous. In the making of the Constitution of a country, the historical background and prevailing conditions in the society invariably have impact.

Supreme Court on Human Rights

The Government of India has, by enacting appropriate laws including Protection of Human Rights Act, 1993 and also by affirmative executive actions, striven to promote Human Rights regime giving due respect to human dignity and recognition to Human Rights. The Supreme Court of India has by numerous landmark judgments contributed a lot by interpreting enactments, Constitutional provisions and at times explaining and expanding the position of Human Rights for their better protection and promotion. Articles 14 and 21, the two Constitutional provisions, came to be considered by Supreme Court to give human dignity translating the Declaration of Human Rights into reality. These two Articles guaranteeing the Right to Equality and the Right to Life and Personal Liberty have received deeper and meaningful consideration at the hands of the Supreme Court.

In *Ahmedabad Municipal Corporation vs. Nawab Khan Gulam Khan & Ors.* {AIR 1997 SC 152}, the Supreme Court having regard to Article 19(1)(c) read with Article 21 of the Constitution of India and Article 25(1) of the UDHR declared that everyone has a right to standard of living adequate for health and well-being. While doing so, the court referred to Article 11(1) of the International Covenants on Economic, Social and Cultural Rights.

In *Chameli Singh vs. State of Uttar Pradesh and Ors.* {AIR 1996 SC 1051}, the Supreme Court expressed the view that Right to Shelter is a Fundamental Right available to every citizen and that Article 21 encompasses within its limit the Right to shelter, observing thus:

“In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social, and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is

home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc., so as to have easy access to his daily avocation.”

Similar view was reiterated in *P.G. Gupta vs. State of Gujarat* {(1995) Supp.2 SCC 182} making reference to Article 19(1)(e) of the constitution and Article 21 of the UDHR.

In *Prabhakar Nair vs State of Tamil Nadu & Ors.* (AIR 1987 SC 2117) the Supreme Court held that shelter is a fundamental right. New National housing policy must attract new buildings, make available new spaces and nationalize the rent structure and the rent provisions. Right to Shelter has been emphasized by the Supreme Court in *M/s Shantistar Builders vs. Narayana Khimalal Totame & Ors.* (AIR 1990 SC 630). Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect-physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation may be ensured.

The Supreme Court interpreting the provisions of Articles 39(c), (f), 41 and 47 of the Constitution gave directions to the State Government regarding fulfilment of legislative intendment of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986. The court observed that the tender age of the children should not be abused and they should have enough opportunities and facilities to develop in a healthy manner. The Court took note that India was a party to the International Covenant on the Right of Child, 1989. Gabriel Mistral, the Nobel Laureate said “*We are guilty of many errors and faults, but our worst crime is abandoning the*

children, neglecting the foundation of life. Many of the things we need can wait. The child cannot; right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer 'tomorrow'. His name is today.'

In *Ramamurthy vs. State of Karnataka* (AIR 1997 SC 1739), the Supreme Court expressed its serious concern for delaying trial and confining of under trial prisoners in jail for longer period and issued directions for jail reforms and production of under trial children on remand date properly. Further directions were issued for jail reforms prohibiting the torture and ill-treatment of the prisoners.

The Supreme Court in *Charles Shobraj vs. Superintendent, Central Jail, Tihar*, (AIR 1978 SC 1414); *Sunil Batra vs Delhi Administration* (AIR 1980 SC1579); *State of Maharashtra vs. Prabhakar Pandurang Sanzgiri & anr.* (AIR 1966 SC 424) has recognized rights of the prisoners to ask for observance of Human Rights. While dealing with the question of the right of reading and writing books of the prisoners in jails, the Supreme Court gave advantage of Article 21 to them. In *Suresh Chandra vs. State of Gujarat* (AIR 1976 SC 1139), the Apex Court provided for penological innovation in the form of parole and recommended for its liberal use. In *D. Bhuvan Mohan Patnai & Ors, vs. State of Andhra Pradesh* (AIR 1974 SC 2092), the Apex Court stated that resort to oppressive measures to curb political people should not be permitted. In *Prem Shankar Shukla vs. Delhi Administration* (AIR 1980 SC 1535) and *Kadra Pehadiya vs. State of Bihar* (AIR 1981 SC 939), the Supreme Court issued direction prohibiting the putting of under trial prisoners in leg-irons. In *Madhav Hayawadanaraooskot vs. State of Maharashtra* (AIR 1978 SC 1548), the Apex Court held that jail manual must be updated to include the mandate of the Constitution for the reason that all the obligations are necessarily implied as Article 21 guarantees.

In *Mohini Jain vs. State of Karnataka* (AIR 1992 SC 1858), the Supreme Court held that the Right to Education is concomitant to Fundamental Rights enshrined in Part-III of the

Constitution. In *J.P. Unni Krishnan vs. State of Andhra Pradesh* (AIR 1993 SC 2178) interpreting Article 21 of the Constitution, Supreme Court held that every child under the age of 14 years has a Right of basic education. Similar view was expressed in *Bandua Mukti Morcha vs. Union of India & Ors.* (AIR 1997 SC 2218). Similarly, the Supreme Court has pointed out the obligation on the part of the State to provide free legal aid to those who cannot engage counsel and bear the expensive litigations in *Suk Das vs. Union Territory of Arunachal Pradesh* (AIR 1986 SC 991). In *Pt. Parmanand Katara vs. Union of India & Ors.* (AIR 1989 SC 2039), the Hon'ble Supreme Court held that the doctor should not insist for Medico-legal Report and he must provide the medical aid. The Court further directed that immediate medical aid to injured persons be provided and held that it was professional obligation of all the doctors, whether they are in Government Hospital or in private practice and the statutory procedural requirement of observance of police formalities should not come in the way for providing medical aid.

In *Vishaka & Ors. vs. State of Rajasthan & Ors.* (AIR 1997 SC 3011), sexual harassment of working women in the place of employment was found to be against human dignity and violative of Article 21 of the Constitution of India and guidelines were provided for preventing this menace. In *Bodhisattwa Goutam vs. Miss Subhra Chakraborty* (AIR 1996 SC 922) the Honourable Supreme Court held that rape is a crime against a basic human right and violates the Right to Life enshrined in Article 21 of the Constitution and provided certain guidelines for awarding compensation to the prosecutrix in such a case. In *Nilabati Behera vs. State of Orissa* (AIR 1993 SC 1960), the Supreme Court held that for contravention of Human Rights and Fundamental Rights by the State and its agencies, the Court must award compulsory compensation and rejected the defence of sovereign immunity. The Court held that custodial death amounts to violation of the Fundamental Right to life.

Article 9(5) of the International Covenant on Civil and Political Rights, 1966, indicates that an enforceable right to compensation is not alien to the concept of guaranteed rights as it provides for award of compensation to the victims who have been unlawfully arrested or detained and to get such compensation is their enforceable right. Respect for Human Rights is

the greatest inspiration for integration of humankind, both internally and internationally. These are the days of modernization, liberalization, privatization and globalization. All these must have element of humanization. Humanize the globe so that human rights violations are less. Though they may not be totally eliminated but can be certainly minimized. *'All human rights for all'* should not merely remain as declaration on paper but it must be the spirit of living in day-to-day life. Treat others as you expect others to treat you, will really serve the purpose of human rights. Recognition of the inherent rights of all human beings as well as equal entitlement of each individual to all human rights forms the core of human rights doctrine.

The record of legislature and judiciary in the country in promoting Human Rights has been quite impressive. The problem of Human Rights is not only a legal problem. It has effect upon society, economy and even culture. However, the battle for prevention of violation of Human Rights is to be fought with sincerity and commitment. All the institutions and individuals concerned should have unshaken faith in the observance of Human Rights. They all must strive for better protection and promotion of Human Rights to make the lives of human beings worthy of living with dignity and grace.

Rule of Law-Role of Lawyers

We are committed to democracy. The proper functioning of democracy depends upon the Rule of Law, being the basis of our institutions. A Government of law is the great organ through which sovereign power of the people moves. No free nation can ignore or forget the importance of law and judiciary. The Rule of Law has been a success and is ever progressing in this country, the lawyers and judges are to be credited for their contribution. It is needless to state that the supremacy of the Rule of Law is absolutely essential for the working of democracy. Rule of Law is fundamental to maintain social order. Obedience and respect for law should be commended and commanded through the force of law and not by the law of force; because law of force leads to destruction of Rule of Law, and Force and Law protect it. Preference of citizens

for law and order within the State reflects the Rule of Law. Rule of law is a dynamic concept and it takes within itself as an integral part, the recognition and protection of civil and political rights of an individual in a free society and also establishment of social, economic, educational and cultural conditions under which he is able to achieve his full dignity and genuine aspirations.

The profession of law is a great profession. Its continued existence is necessary for the administration of justice as well as for the proper functioning of a democratic republic. Good lawyers have been a boon not only to their clients but also for the whole country. The standard and quality of democracy practiced in a country is judged and measured by the independent and impartial judiciary and fearless and efficient legal system. Indian freedom movement witnessed lawyers' sacrifices for the cause of the country. Perhaps, no other section of the educated class, besides the section of lawyers, had to its credit greater struggle for the cause of masses. Mahatma Gandhi, Motilal Nehru, Dr. Rajendra Prasad, Jawaharlal Nehru and Sardar Patel are only a few out of long list of lawyers and legal luminaries who left the courts and went to jails.

Lawyers should not forget that they have glorious traditions behind them left by the previous generations. They have to maintain those traditions of love and service to the country. Chief Justice of India, Shri M.C. Mahajan felt that *"a strong Bar and a strong Judiciary were sine-qua-non for the maintenance of Rule of Law. If the Bar becomes mere money making machine, then it will be failing in its duty towards the nation."* Lawyers do come in contact with people of all kind and status. As influential citizens they can influence and do a great deal to build up a sound and progressive society. They have the great responsibility to protect, preserve and promote democratic values and democratic institutions in the country, by striving to uphold the Rule of Law. Love of our nation must be our burning desire. Lawyers should remember, service is the key note of the profession, and should not consider it as a mere means of livelihood. The profession of law is a public institution and lawyers discharge public duty in so far as they assist in the administration of justice. Lawyers should not be content merely with conducting their own cases and earning money. Today if they want to occupy a place in society as earlier they should enlarge their mental outlook, realize their duties to society and make their

contribution to the social and economic welfare of society while promoting, protecting and preserving Rule of Law consistent with the Constitution of India.

For the continued existence and sustenance of a truly democratic State, the administration of Justice should be in the hands of not only competent but also impartial, independent and conscientious persons so that justice is rendered and Rule of Law is upheld, which is imperative to a free society. To maintain and make meaningful the ideals enshrined in our Constitution, promising to secure to all its citizens justice, equality, liberty and fraternity, eternal vigilance is necessary. Let the Constitution of India not remain merely a document of admiration but let us see that it works as a dynamic and vibrant instrument for real social transformation.

I thank the Lahari Advocates Forum for giving me this opportunity which I consider a privilege to share my few thoughts and also meet all of you at a time at one place, remembering and recollecting my days in the Bar and on the Bench in the High Court.