

ADDRESS TO BE DELIVERED BY  
THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO  
ON 25.2.2012 AT 9.30 AM  
AT THE JUDICIAL ACADEMY, CHENNAI  
ON 'THE ROLE OF COURTS IN PROTECTION OF HUMAN RIGHTS'

My Lords The Honourable Mr.Justice S.B.Sinha and  
The Honourable Mr.Justice P.Sathasivam,  
respected delegates,  
ladies and gentlemen,  
A very Good Morning everybody.

At the outset, I thank My Lord, the Honourable Mr.Justice P.Sathasivam for giving me this opportunity to participate in this session for discussion on the 'Role of Courts in Protection of Human Rights'.

The Indian Constitution was framed by the architects of the Constitution, under the able Chairmanship of Dr.B.R.Ambedkar, considering almost all the rights conferred and declared by the International Convention of Universal Declaration of Human Rights 1948, International Convention on Civil and Political Rights and International Convention on Economic Rights. Though there are various judicial forums dealing with the violations and offences against the human beings after the Universal Declaration of Human Rights to which India is a signatory, a legislation was passed on Human Rights under the protection of Human Rights Act, 1943, which provided various measures to deal with the Human Rights case.

The Constitution of India guarantees human rights of the individuals by enumerating specific provisions. The Constitution empowers the Indian

Judiciary in wide terms to protect human rights. Article 32 empowers the Supreme Court to issue various writs for the enforcement of fundamental rights. A similar power is conferred on the High Courts under Article 226. In addition to the above provisions, Article 142 enables the Supreme Court to make such orders as are necessary to do complete justice in the cause; Article 141 provides that the law declared by the Supreme Court shall be binding on all and Article 144 obliges all authorities to act under the aegis of the Supreme Court.

The Indian Judiciary, with its widest interpretation in observance of Human Rights, has contributed to the progress of the nation and to the goal of creating India as a vibrant State. Even when there was no written Constitution (and there is none in UK even today), our Courts have recognised Human Rights and protected those rights. Even when a particular field is covered by a statute, it is the Judge who interprets the provisions of that statute. In the process of interpreting the statutory law, the Judge attempts to find out the intention of the legislature and, in this context, it is his final word as to what the legislature intends and thus what the law is. After all, legal practice is a pervasive interpretation. It is, therefore, now widely accepted, that, in this whole process, the judge or the judiciary makes the law as well.

Article 14 of the Indian Constitution provides "Equality before law" – The State shall not deny any person equality before the law or the equal protection of the laws within the territory of India. Articles 15 to 18 are the expansion of this equality clause. If one takes simplistic view of this provision, it would be that there should not be any discrimination between two persons. The Supreme Court in **MANEKA GANDHI vs. UNION OF INDIA** [AIR 1978 SC 597], propounded that anything which is not 'reasonable, just and fair' is not treated to be equal and is, therefore, violative of Article 14. Thus, the arbitrary State action is struck down as violative of Article 14. The touchstone for judging executive action of the Government is that such an action be informed with reason and should be free from arbitrariness. This is the very essence of the Rule of Law and it is bare minimal requirement. This test has been applied in series of cases in enforcing the Equality clause. Another most important declaration of the Supreme Court in **KESHVANAND BHARTI vs. KERALA** [AIR 1973 SC 1461], is that the Right to Equality is a basic feature of the Constitution, which means that neither Parliament nor any State Legislature can transgress the principle of equality. Thus, even a constitutional amendment offending the Right to Equality can be declared invalid. The expression

'equal protection of laws' in Article 14 is now being read as a positive obligation on the State to ensure equal protection by implementing necessary social and economic changes so that every one can enjoy equal protection of laws and nobody is denied such protection. Adopting this tool, the Apex Court, in **INDRA SAWHNEY vs. UNION OF INDIA & OTHERS** [2000 (1) SCC 168], held that if the State leaves the existing inequalities untouched by its laws, it fails in its duties of providing equal protection to all persons. The right to corruption-free governance has also been recognised as a human right. In **VINEET NARAIN vs. UNION OF INDIA** [AIR 1996 SC 3386], the Supreme Court treated corruption as a violation, *inter alia* of the people's right to equality under Article 14 and enforced probity in public life and accountability of public.

It is recognised in the Indian Constitution that absolute equality is not possible. The Constitution itself allows for positive discrimination in favour of certain groups such as women and children and socially and educationally backward classes of citizens or Scheduled Castes and Scheduled Tribes. However, despite these guarantees given to the weaker sections of the society, discrimination takes a dismaying variety of forms including discrimination on grounds of gender, religion, caste, class,

ethnicity, disability or a complex, multilayered combination of several categories. The Indian Judiciary has given some special emphasis on these social issues by not only interpreting the constitutional provisions in order to ensure rights of these classes in a meaningful manner but also to ensure that the discrimination of these categories is minimised if not ruled out completely.

In **PEOPLE'S UNION FOR DEMOCRATIC RIGHTS vs. UNION OF INDIA [(1982) 3 SCC 235]**, the Honourable Apex Court has held that:

"The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realisation must come to them that social justice is the signature tune of our Constitution and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realisation of the constitutional goals."

In **DELHI JAL BOARD vs. NATIONAL CAMPAIGN FOR DIGNITY & RIGHTS OF SEWERAGE AND ALLIED WORKERS**

[(2011) 8 SCC 568], at page 589, the Honourable Apex Court has held that "superior courts will be failing in their constitutional duty if they decline to entertain petitions filed by genuine social groups, NGOs and social workers for espousing the cause of those who are deprived of the basic rights available to every human being, what to say of fundamental rights guaranteed under the Constitution. It is the duty of the judicial constituent of the State like its political and executive constituents to protect the rights of every citizen and every individual and ensure that everyone is able to live with dignity."

In **M.S.GREWAL vs. DEEP CHAND SOOD [(2001) 8 SCC 151]**, the Honourable Apex Court has held that 'the law courts exist for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people.'

But the scope of human rights are bigger than fundamental right. Since the court can protect the violation of rights by State or its agencies, the human rights are available against the world. Every human being possess a right that his human right should not be violated by any other individual. Therefore it is for us to create a system where human rights of each and every individual can be protected. For this we must understand our correlative human duty. It is a very old moral which everyone of us

gents of the State, thereby upholding the rights and dignity of individual. The scope of right to life has been enlarged so as to read within its compass the right to live with dignity, right to healthy environment, right to humane conditions of work, right to education, right to shelter and social security, right to know, right to adequate nutrition and clothing and so on . But for the judicial activism in our country, all this would not have happened.

As has been held by His Lordship The Honourable Mr. Justice S.B.Sinha in **N.KANNADASAN vs. AJOY KHOSE [(2009) 7 SCC 1]**, 'the judiciary holds the centre stage in promoting and strengthening democracy, human rights and the rule of law.'

Therefore, the endeavour of the Courts should be to promote and protect the human rights.

As a matter of fact, it is to be mentioned that as per Section 30 of the Protection of Human Rights Act, 1993, in all the Districts in Tamil Nadu, one Sessions Court, mostly Principal Sessions Court of the District, has been designated as Human Rights Court and as of now 22 cases alone are pending in these Courts.

With this and thanking one and all, I resume my seat.

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