



ANALYSING THREE ISSUES IN HUMAN RIGHTS LAW

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Introduction

The Protection of Human Rights Act was enacted in the year 1993, which provided National Human Rights Commission, State Human Rights Commissions in the States and Human Rights Courts in the districts. The human rights law does not have power to deal with the human rights violations committed by the individuals, other than public servants. There is no appeal proceeding against the recommendations of the State Human Rights Commissions and no sufficient arrangement to provide free legal assistance to the victims of human rights violations in India.

It is time to examine the human rights violations by the individuals, the right of appeal against the recommendations of the State Human Rights Commissions and free legal aid in human rights institutions. These are the three important issues in the human rights law in India. It is time to examine these lacunas and initiate the steps to eliminate the same for the better promotion and protection of human rights.

Individuals

The verdict of the Madurai Bench, High Court of Madras in the case "Dr.Vignesh versus J.Meena" is very notable one in relating with the violations of the human rights by the individuals.

This criminal revision case is filed under Sections 397 read with 401 of Criminal Procedure Code against the order dated 05.07.2005, passed by the Human Rights Court (Principal District Court), Dindigul. The criminal revision petitioner has challenged the order by the Human Rights Court Dindigul.

The respondent herein as complainant has filed a private complaint under Sections 190 & 200 of the Code of Criminal Procedure, on the file of the Human Rights Court, Dindigul, wherein the present revision petitioner has been arrayed as the second accused. It is stated in the complaint that prior to two years the complainant has married the deceased Jayakumar. On 08.07.2004 at about 09.00 P.M. The said Jayakumar has met with an accident and sustained fatal injuries and subsequently, he has been taken to the Government Hospital, Dindigul.

The first accused, who is a government doctor, has referred the deceased to one Pandiyammal Scan Centre and accordingly, the same has been done. The first accused has demanded Rs.15,000/- for doing operation. The second accused, who is a private doctor, has also demanded the same. The complainant has not been able to meet the demands of the accused 1 & 2 and for the same reason, the accused 1 & 2 have not given treatment to the deceased and due to their failure the deceased had passed away. Therefore, both the accused had committed offences under Sections 304(II) and 304(A) of Indian Penal Code.

The complaint has been taken on file in Criminal Miscellaneous Petition No.2275 of 2004. The Human Rights Court after considering the contents of the complaint and other connected records has found that a prima facie case is made out against the accused under Section 304(A) of Indian Penal Code read with Section 2(d) of the Protection of Human Rights Act, 1993.

For analysing the rival submissions made by either counsel, the Court has to look into the decision of this Court reported in (2005)3 M.L.J. 406 (Santhosh Hospitals Private Limited represented by its Administrative officer, S.Chakravarthi versus State Human Rights Commission, Tamil Nadu represented by its Registrar, Chennai and others) wherein at paragraph 24 it is stated like thus;

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" a perusal of the provisions of the Act and the forms annexed to the Regulations clearly indicate that the Human Rights Act deals with violation of Human Rights by a public servant and not others. The petitioner is surely not a public servant and hence the Human Rights Act will not apply to him at all."

In the instant case, the second accused/revision petitioner is a private Doctor and he is not a Government servant. Even though it has been contended on the side of the respondent that he is a Government servant no clinching document has been forthcoming. Therefore, in view of the decision referred to earlier, it is pellucid that the revision petitioner/second accused would not come within the contour of the Protection of Human Rights Act, 1993. It has already been stated that against the revision petitioner/second accused the case in question has been taken on file under Section 2(D) of the said Act. Therefore,



as per the dictum given in the decision referred to earlier, the order of the Court below with regard to the revision petitioner/second accused in respect of the Protection of Human Rights Act, is not legally sustainable and the same deserves to be dismissedⁱ.

Therefore, it is very clear that human rights violations by the public servants are coming under the Protection of Human Rights Act. But, human rights violations by the individuals are coming under the purview of the same Act. It may be noted that there is no coverage of human rights violations by the individuals in the human rights law.

A perusal of Section 18 of the Human Rights Act shows that the Commission can take action in the matter where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant.

This position becomes further clear on a perusal of Form-A of the State Human Rights Commission, Tamil Nadu (Procedure) Regulations, 1997. Clause 9 of which states: - "Name, designation and address of public servant, who violated Human Rights or by whose negligence the violation was not prevented (Enter here all the names and addresses if more than one is complained against)"

Similarly in Form-I of the National Human Rights Commission (Procedure) Regulations, 1997, it is stated in clause-8: - " Name, designation and address of the public servant by whom alleged violation of human right was committed/abetted or who was negligent in prevention of such violation"ⁱⁱ.

Therefore, it is well settled principle that the legal proceedings are not possible against the human rights violations by the individuals in the human rights commissions or courts as per the existing law. But, human rights violations by the individuals are also offence. It is very essential to amend the Prevention of human Rights Act,1993 to provide a solution to file complaint against the human rights violations by the individuals also before the human rights forums.

Right to Appeal

In law, an appeal is the process in which cases are reviewed, where parties request a formal change to an official decision. Appeals function both as a process for error correction as well as a process of clarifying and interpreting law.

Although appellate courts have existed for thousands of years, common law countries did not incorporate an affirmative right to appeal into their jurisprudence until the nineteenth centuryⁱⁱⁱ. The notion of a right to appeal is a relatively recent development. In *Sadhana Lodh versus National Insurance Company's case*, Supreme Court of India stated that the right of appeal is a statutory right.

The Indian civil and criminal procedure codes provided the appeal system against orders of the lower courts. In appeal against the orders in the writ petition are available. The appeal against the order of the district human rights courts is also challengeable before the High Courts. The appeal against the recommendations of the National Human Rights Commission and State Human Rights Commissions has to be filed before the Supreme Court and High Courts respectively.

Section 19 of the Consumer Protection Act, 1986 provides to file an appeal against the order of the State Consumer Disputes Redressal Commission before the National Consumer Disputes Redressal Commission. The National Commission have original and appellate jurisdiction. Section 19 of the Right to Information Act, 2005, provides the appeal procedures on the application for the information. This Act provides three tier systems to provide the information to the general public. The Protection of human Rights Act, 1993, also have three tier system without relations between one and another.

Protection of human Rights Act has to provide a provision to appeal against the order of the State Commission before the National Commission. The National Commission must have original and appellate jurisdiction. This will provide a chance for the victims to fight against the state intervention in the State Commissions.

The section 10 of the Protection of human Rights Act says that the national commission shall meet at such time and place as the Chairperson may think fit^{iv}. The regulation 4 of the National Human Rights Commission (Procedure) Regulations, 1994 says that the commission shall ordinarily hold its meetings and sittings in its office located in Delhi. However, in its discretion hold its meetings and sittings at any other place in India if it considers it necessary and expedient^v.



The regional benches of the National Human Rights Commission have to be established to hear the appeals against the State Commission, which will be convenient for the victims of human rights violations. It may be noted that here, benches of high courts are established in many States and there is a demand to establish regional benches of Supreme Court also.

Free Legal Aid

Political philosopher Montesquieu said that “In the state of nature...all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law.” The protection of law to poor, illiterate and weak is important to ensure equal justice. Legal aid is one of the means to ensure that the opportunities for securing justice are not denied to any person by reason of poverty, illiteracy, etc.

Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. Legal aid has a close relationship with the welfare state, and the provision of legal aid by a state is influenced by attitudes towards welfare^{vi}.

Article 39A of the India Constitution declared that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities^{vii}.

The Code of criminal Procedure and the Code of Civil Procedure also contain provisions in relation to the free legal aid. Section 304 of the Criminal Procedure Code provides that where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader; the Court shall assign a pleader for his defense at the expense of the State. Section 304 makes it clear that the State is under an obligation to provide legal assistance to a person charged with offence triable before the Court of Session. It enables the State Government to direct that these provisions shall apply in relation to any class of trials before other courts in the State.

Order 33 of the Civil Procedure Code provides in respect of the suit by indigent person. On the application to sue as indigent person is being granted the plaintiff shall not be liable to pay court fee and in case he is not represented by a pleader, the Court may, if the circumstances of the case so requires, assign a pleader to him. This benefit has now been extended to the dependant also.

Legal Services Authorities Act was passed in the parliament in the year 1987 to provide free legal aid to the needy people. Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to the eligible persons. It has not specifically mentioned the victims of human rights violations in this list. An amendment to include the same is not made after the birth of human rights law in the year 1993.

The major drawback of legal aid movement in India is the lack of legal awareness. People are not aware of rights and protection available under the law. It needs to be realized that the promotion of awareness regarding legal aid is not the exclusive duty of the Legal fraternity. It is equally the concern and responsibility of the society at large. Constitutional commitment for legal aid can only be cherished if society comes forward to care for its vulnerable population^{viii}.

The State Legal Services Authorities are functioning in the each States and district legal service committees are established in each and every district court. Likewise, taluk legal services committees are situated in the taluk courts. But, there are no legal services committees in the National Human Rights Commission and State Human Rights Commissions. The victims of human rights violations have not received any assistance from the district legal services committee in relating with the cases before the district human rights courts. This is the pathetic situation for the victims of human rights violations.

Free legal assistance and aid is very essential for the victims of human rights violations. The legal services committees have to be established in the human rights institutions in India.

Conclusion

To eradicate the defects in relating with the human rights violations by the individuals, appeal against the recommendations of the State Human Rights Commission and free legal aid to the victims of human rights violations in the Prevention of Human Rights Act,1993, the following measures are essential.



- a. A provision to take action against the violations of human rights by the individual is essential in the Prevention of human Rights Act, 1993.
- b. The right to appeal against the recommendations of the State Human Right Commission before the National Human Rights Commission is very important. The existing human rights law has failed to provide the same. It has to be amended suitably.
- c. The regional benches of National Human Rights Commission have to be established to hear the appeals against the recommendations of the State Human Rights Commissions.
- d. Free legal aid to the victims of human rights violations has to be provided with easy access. The necessary steps have to be taken by the National Legal Services Authority for the same.

It is duty of the parliament to make needful amendments in the existing human rights law for better protection and promotion of human rights.

Reference

- I. Judgement in Criminal Miscellaneous Petition (MD).No.5352 of 2005 Madurai Bench, High Court of Madras, dated 01 January 2007.
- II. Judgement Writ Petition Number 22394 of 2004, High Court of Madras, dated 08 July 2005.
- III. Stan Keillor, *Should Minnesota Recognize A State Constitutional Right to A Criminal Appeal?*, Hameline Law Review, Volume 36, 2013, p. 399.
- IV. *The Protection of Human Rights Act*, Gazette of India, Extra, Part II, Sec 1, 10th Jan.1996.
- V. Notification No. A - 11031, National Human Rights Commission, New Delhi, Feb.17, 1994.
- VI. https://en.wikipedia.org/wiki/Legal_aid
- VII. S.K.Pal, *Constitution of India*, Current Publications, Mumbai, 2015, P.46.
- VIII. Ms. Pooja P. Vardhan, *Right to Legal Aid; A Constitutional Commitment*, Special Service and Features, Press Information Bureau, Government of India, 07 April, 2015.