

OPENING CEREMONY ADDRESS

by

The Hon Justice M Rama Jois

In his highly enlightening inaugural speech Hon Justice Bhagwati has stressed the great importance of basic human rights and the duties of judges in enforcing them. He said that concept and purpose of all human rights are to be found in the words 'right to happiness' and 'right to enjoyment of resources' of all individuals.

These concepts have been part of our fundamental philosophy from times past which is evidenced by the declaration made in the Vedas. The relevant declarations are:

Rigveda - Mandala-5, Sukta-60, Mantra-5:

Ajyestaso akanishtasa ete
sam bhrataro va vridhuhu sowbhagaya.

No one is superior (ajyestasaha) or inferior (akanishtasaha). All the brothers (ete bhrataraha). All should strive for the interest of all and should progress collectively (sowbhagaya sam va vridhulu).

Atharvaveda - Samjnana Sukta:

Samani prapa saha vaha annabhagaha
Samane yoktre saha vaha yunajmi
Araha nabhimiva abhitaha.

All have equal rights in articles of food and water. The yoke of the chariot of life is placed equally on the shoulders of all. All should live together with harmony supporting one another like the spokes of a wheel of the chariot connecting its rim and the hub.

These Vedic provisions forcefully declare equality among human beings. The last of them impresses that just as no spoke of a wheel is superior to the other, no individual can claim to be, or regarded as, superior to others. Equality of all human beings and the duty of each individual to strive for the happiness of every other individual as also the equal right over food, water and other natural resources, are found incorporated in those declarations. Finally it is declared that just as no spoke of a wheel is superior to the other, no individual can claim to be superior to or having more rights than others. It is true that in spite of such a basic philosophy enshrined in the Vedic texts, in actual practice our society has denied basic human rights to certain sections of society. That was a breach of human rights, so emphatically declared in the Vedas. However, those rights have been resurrected and are found incorporated in Articles 14, 17, 19 and 21 of the Constitution of India.

One of the basic duties of the King, as incorporated in Rajadharma (Constitutional Law) of ancient India was to protect every individual in every respect and ensure his happiness. Kautilya in the Artha Sastra laid down thus:

In the happiness of his subjects lies the happiness of the Ruler; in their welfare, his welfare; whatever pleases him the Ruler shall not consider as good but whatever pleases his subjects, the Ruler shall consider as good.

Manu IX-311 laid down thus:

Yatha sarvani bhutani dhara dharayate Samam
Tatha sarvani bhutani bibrataha parthivam vratam

The King should support all his subjects without any discrimination in the same manner as the earth supports all human beings.

Kamandaka (V 82-83) declared that the King should protect individuals against arbitrary action of his officers.

There is a glowing instance quoted in Rajatarangini as to how a King of Kashmir Chandrapida (680 to 688 AD) protected the right of residence of a poor individual against the action of his own high officers. The officers of the King had planned to construct a temple on a site. On a part of the site there was a hut belonging to a Cobbler. The officers ordered the Cobbler to remove the hut. He refused stating that it was his residence and he had no other shelter. When the matter was reported to the King, he ordered suo moto thus:

Rajatarangini IV-59

Nityamyatam Vinirmanam Yadvanyatra Vidheeyatam
Parabhummyapaharena sukrutam kah kalankayet

Stop the construction of the temple or build it somewhere else. Don't tarnish the pious act of construction of a temple by depriving the poor man of his dwelling.

Such was the respect shown for the basic need and right to shelter and happiness of an individual by a King who constituted the highest judiciary under the ancient Indian Constitutional Law (Rajadharma).

Under the Constitution, the duty to safeguard and protect the basic human rights of the individual incorporated in the Constitution and the Laws, is vested in the Supreme Court and the High Courts. On this aspect, in The State of Madras v V G Row (AIR 1952 SC 196 at 199) Patanjali Sastri, Chief Justice of India, said thus:

"If, then, the Courts in this country face up to such important and none too easy tasks, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the "fundamental rights", as to which this Court has been assigned the role of a sentinel on the 'qui vive'."

The role assigned to the Judges of the Supreme Court and the High Courts Under Articles 32 and 226 respectively, is that of a sentinel for protecting the sacred and basic human rights, which are incorporated in the form of fundamental rights in Part III of the Constitution.

There are innumerable cases in which the Supreme Court of India and the High Courts have protected and enforced basic human rights. I am quoting a few of them:

I Sunil Batra v Delhi Administration - AIR 1980 SC 1579

(V R Krishna Iyer, R S Pathak and O Chinnappa Reddy, JJ)
(Judgment delivered by Krishna Iyer, J)

This was a case in which the Supreme Court held that keeping of under-trial prisoners with the convicts was a violation of human rights. The relevant portion of the judgment reads:

"The essence of the matter is that in our era of human rights consciousness the habeas writ has functional plurality and the constitutional regard for human decency and dignity is tested by its capability.

Prisons are built with stones of law and so it behoves the court to insist that, in the eye of law, prisoners are persons, not animals, and punish the deviant 'guardians' of the prison system where they go berserk and defile the dignity of the human inmate. Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials 'dressed in a little, brief authority,' when Part III is invoked by a convict. For when a prisoner is traumatized, the Constitution suffers a shock. And when the Court takes cognizance of such violence and violation, it does, like the hound of Heaven, 'But with unhurrying chase. And unperturbed pace, deliberate speed and Majestic instancy' follow the official offender and frown down the outlaw adventure.

To aggravate the malady, we have the fact that a substantial number of the prisoners are under-trial who have to face their cases in court and are presumably innocent until convicted. By being sent to Tihar Jail they are, by contamination, made criminals - a custodial perversity which violates the test of fairness in Article 21. How cruel would it be if one went to a hospital for a check-up and by being kept along with contagious cases came home with a new disease. We sound the tocsin that prison reform is now a constitutional compulsion and its neglect may lead to drastic court action."

II Hussainara khaton v State of Bihar - AIR 1979 SC 1369

(P N Bhagwati and D A Desai, JJ)
(Judgment delivered by Bhagwati, J)

In this case, the Supreme Court held that where under-trial prisoners have been in jail for periods longer than the maximum term for which they would have been sentenced, if convicted, their detention in jail is totally unjustified and in violation of the fundamental right to

personal liberty under Article 21 of the Constitution and that their detention in jail being illegal they should be released forthwith.

III Sant Bir v State of Bihar - AIR 1982 SC 1470

(P N Bhagwati and A N Sen, JJ)
(Judgment delivered by Bhagwati, J)

This was a case in which a person was kept in jail as a criminal lunatic, for sixteen years even after a medical report that he was fit for discharge. The relevant portion of the judgment reads:

"The petitioner, in the instant case, was sentenced to life imprisonment on 28 February 1949. Since the mental condition of the petitioner was not stable, on 20 November 1951 the petitioner was transferred to another jail for confinement as a criminal lunatic. The medical history sheet and the medical report showed that the petitioner was fully recovered and was free from any symptoms since 23 December 1966 and was fit for discharge. This medical report was sent by the Jail Superintendent to the State Government and it was stated that the petitioner was fit for discharge "in the care of his guardian or surety" and the necessary orders should be passed in that behalf. The State Government instead of directing release of the petitioner directed the Jail Superintendent to keep the petitioner in safe custody as a criminal lunatic for three years.

The story narrated by us above makes very sad and distressing reading. Have we lost all respect for the dignity of the individual and the worth of the human person so nobly enshrined in our Constitution that we are prepared to forget a person once he is sent to jail and we do not care to enquire whether he is continued to be detained in the jail according to law or not. It should be a matter of shame for the society as well as the administration to detain a person in jail for over 16 years without authority of law. We would therefore direct that the petitioner should be released from jail and set at liberty forthwith. The State Government will provide to the petitioner at the time of release necessary funds for the purpose of meeting the expenses of his journey to his native place, also maintenance for a period of one week."

In a recent case, the Karnataka High Court (Mr Justice M P Chandrakantaraj Urs) directed the Government to pay compensation of Rs.5000.00 to each of the large number of families who had lost their child/children on account of an epidemic disease which gripped the village concerned, on account of the failure of duty on the part of the Government in taking steps to prevent the spread of the disease.

I should also mention frequent instances of violations of human rights as incorporated in law, by the Police who are entrusted with the duty to enforce the Law. In spite of a specific provision in the Constitution requiring the production of a person arrested by the Police before the jurisdictional Magistrate within 24 hours, which requirement is also incorporated in the Code of Criminal Procedure, there are several instances which show that it is only obeyed in its breach. It is only after a complaint is made through a habeas corpus petition about unlawful

detention for several days, the person concerned would be produced before the court recording that he was arrested only the previous day. This is a matter worthy to be considered in the judicial colloquium.

To put it in a nutshell, it is true that the Constitution of India confers rights on individuals, but they would be mere paper rights unless the Government departments discharge their duties and secure those rights for individuals. When that duty is not discharged by the Government departments or the rights are encroached upon or deprived by them, it becomes the duty of the Judges to enforce them without fear or favour. "Sukraniti" of ancient India declared that Judges must exercise their power impartially and fearlessly. Of course, the Judges should act within the framework of the Constitution and the Laws and within the jurisdiction conferred on them.

With these words, I conclude my address.

Thank you all.