Law and Our Rights

Human Rights Under Trial

When under trial prisoners can languish for years in jail, the importance of a speedy trial in the context of human rights cannot be over emphasised, writes T Ananthachari

INDIA is perhaps the only country among the South Asian countries to set up a statutory Human Rights Commission. This is true of the SAARC. The framers of the Indian Constitution had the benefit of the proclamation of the Universal Declaration of Human rights by the General Assembly of the UN. Naturally and most appropriately these rights find their echo in the Constitution. India's is an open democracy which has given the pride of place to "Rule of Law" which is in many ways the bedrock of the Human Rights philosophy for the country. It is a multi-racial, multi-religious, multi-lingual, multi-regional and even multi-cultural society.

While, over the centuries the society has evolved through synthesis, in the recent times, there has been large scale dependence upon legislative measures to bring about change, socio-economic equality and also to change over from a medieval society to a modern and egalitarian one. It is largely through enforcement of laws that changes which touch the heart of the social and other rights, have been sought to be brought about. It is therefore, vital that law enforcement becomes a matter of paramount significance not only to sustain, protect and regard human rights but also for ensuring the more basic need of "Rule of Law". It is in this context that the role of not only the law enforcement agencies like the police but also the courts become crucial to the overall context of human rights.

Over the years a lot has been said about the police — and rightly too particularly their commissions and omissions in respecting and safeguarding human rights. But merely attaching the police end of the problem will produce only limited results. Unless the functioning of the judiciary, particularly at the levels below the High Court is toned up and made truly accountable, realisation of human rights even to a reasonable degree will be a far cry. The one issue which stands out among others and which is vitiating the whole process and objective of protection of human rights, relates to tardy and prolonged trials in the courts of law.

The need for and the importance of speedy trial cannot be over emphasised, particularly in the context of upholding human rights as well as the dictum of Rule of Law. Speedy trial is the essence of criminal justice. Though the right to speedy trial has not been specifically included as a Fundamental Right in the Indian Constitution, the Supreme Court of India held, as far back as in 1979 (AIR 1979 SC 1960) that "the right to speedy trial is implicit in the right to fair trial which has been held to be a part of the right to life and liberty guaranteed by Article 21 of the Constitution".

This was followed by yet another judgement of the Supreme Court in 1986 (AIR 1986 SC 1773) where in the Apex Court set a deadline for not only the investigation but also the trial of children. The anxiety of the Supreme Court to translate these well conceived principles into action and also their dismay at the failure of the justice system to do so, can be well understood from the observations of the Supreme Court in the case of Khadra Pandia Vs State (AIR 1982 SC 1167): "It is shame upon the adjudicatory system, which keeps a man in jail without trial".

At present the fundamental right to a speedy trial can be enforced only through writ proceedings in High Courts or the Supreme Court. The facility is not normally within the reach of the poor and the underprivileged, who constitute the majority of UTs under trial lodged in prisons. The Mulla Committee, which had gone into this matter, also found that the majority of the prison population was from a rural and agricultural background. Therefore, there is an urgent need to incorporate appropriate provisions for speedy trial through statutory law, which should be clear, easily ascertainable and enforceable through the judicial hierarchy, trial courts upwards. It may be mentioned that "Speedy Trial Act, 1974" of the US and "Crown Court Rules, 1982" of the UK (which has provision for trial not later than eight weeks after committal) were enacted to meet such needs.

In India Secs 167, 309 Cr. P.C. contain provisions to expedite disposal of cases, including investigation and trial. In particular, Sec 309 Cr. P.C. lays down that in every trial or enquiry the proceeding shall be held as expeditiously as possible. When the examination of the witnesses has begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. Even though there are provisions in the Section placing some restrictions on the power of adjournment, these are not adequate enough. In practice, these provisions are observed more in their breach.

The problem of delay in trial was highlighted by the report of the Mulla Committee on Prison Administration (1980-83) by the National Police Commission (1977-80) and more recently, by the NHRC. This matter has also been agitated through public interest litigation. (e.g. Hussainara Khattun's case). In this case, the Supreme Court directed the release of UTs who were languishing in jails for as many as 5.6 and 9 years. A few of them were in jails as UTs for over 10 years without the trial having begun. But even after this, there is no visible improvement. Delay commences at the investigation stage itself. In many cases charge sheets are filed by the police very late leading to a long chain reaction. The next bottle-neck occurs in the course of service of summons to witnesses after due to collaboration among the process server, police and the witnesses. It may be mentioned that this stage of judicial process lends itself to a lot of corrupt practices which need to be set right.

The legal requirement of having to give copies of relevant document to the accused needs to be streamlined. However, maximum delay takes place when evidence is to be recorded. In some cases it has taken more than eight years to examine witnesses and record evidence. This delay can be attributed to procedural complications and absenteeism in one form or another by official witnesses, lawyers and public witnesses. Defence and prosecution lawyers make their own contribution to the prolongation of trials. The situation has further deteriorated after the separation of prosecution from the police.

There are also lapses in producing UTs in courts on the dates of hearing. On their part, the courts are also not without blame. I have already mentioned this in some detail in connection with conducting trial on a day to day basis. The National Police Commission has pointed out that "the Law Commission devoted its Fourteenth Report on the reform of Judicial Administration but nothing has come of it." They further observed that "Law reform means repeal of obsolete laws and revision of laws to make them more enforceable and to make such charges as may make them so. In addition to swift disposal of cases alternatives to imprisonment in jails have also to be found."

Delay in trials, that too for many years at a time, has led to denial of some of the basic rights to which every person is entitled. In fact, very often the question which arises is whether the trial should at all proceed in a case where an under-trial prisoner has already spent a sufficiently long period in jail, which is equivalent to a substantial portion the term of punishment prescribed for the offence?

There is yet another aspect. The US Supreme Court in *STRUNK Vs US* held that the restraint on the defendant's liberty as well as his uncertainty and anxiety over this guilt or innocence, made the dismissal of the charge appropriate. When K F Rustamji brought to light in 1978 the fact of children of UT women growing to adult-hood in prison (obviously for no fault of their's) there was allround indignation .It was hoped that such things would be mere matters of the past. But things have not changed much since then.

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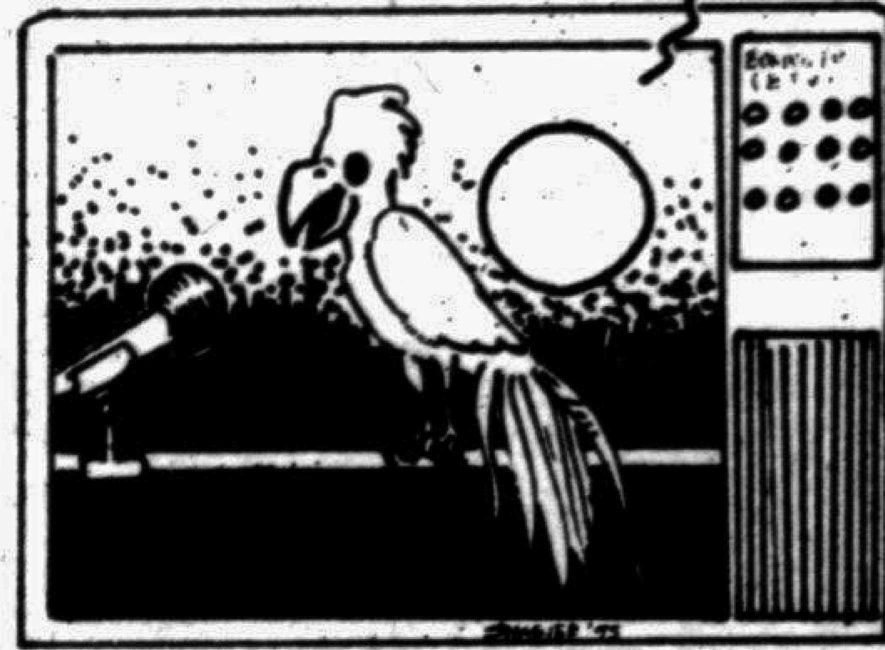
Is Press Freedom Not Suited to Asia?



Malaysia and India are tackling the government-controlled media. Is there a lesson for us? Joe Fernandez and Prakash Chandra report

AS Malaysia prepared for its recent national elections, the role of the media once again came under public scrutiny.

The Election Commission urged "fair and equal media and advertisement coverage for all political parties," eliciting a predictable response from government.

Malaysian Prime Minister Mahathir Mohamad, who has been re-elected, said: "It is up to the press to cover what they like. The government did not direct the press."

But Dr Mahathir was quick to add: "The state-controlled media belonged to the state and who controlled the media runs it his own way."

The influence and extent of the media's reach, especially print, cannot be underestimated. Survey Research Malaysia (SRM) figures for 1994 showed that of the country's 18 million odd population, 58.5 per cent of adults read daily newspapers alone.

Apologists for the ruling Barisan Nasional (BN) coalition and the government often argued that "press freedom is a western concept and tradition" and, hence, not suited within and Asian context like in Malaysia.

The Federal Constitution itself qualifies press freedom. Parts of Article 10 provide that every citizen has the right to freedom of speech but Parliament may by law impose "... such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality..."

Veteran Malaysian journalist and Ramon Magsaysay Award recipient A Samad Ismail joined the public debate when he said recently: "Especially for the media, freedom had to be won with patience, ingenuity and imagination. The parameters of freedom must be probed and tested daily for it to become tolerably flexible and reasonably flexible for the profession."

Mr Samad speaks from bitter experience. He was detained in the 1970s for several years without trial under the draconian Internal Security Act (ISA).

One issue being debated in Malaysia is whether or not a self-regulatory body should replace the 28-odd pieces of legislation governing the country's print and electronic media.

"A self-regulatory body would only add another manacle unless it replaced a majority of the legislations," said National Union of Journalists-Malaysia (NUJ) secretary-general Oon Ee Seng. "What makes some of the laws take on a muzzling aspect is the unavailability of appeal in court."

Generally, most journalists in Malaysia feel that it is better to restore the setup before 1987 because current laws are too restrictive.

At a recent international seminar at the Asia-Pacific Development Centre in Kuala Lumpur, several participants felt the Printing Presses and Publications Act had made publishers "overly sensitive to what might offend the government". The result: self-censorship.

For instance, source censorship, they noted, arose because the laws require the press to apply for an annual publishing and printing permit. As a result, fear of losing the annual permit, discourages "probing" questions or any investigative journalism.

Also, the major media groups in Malaysia are owned by companies linked to various political parties in the ruling BN coalition. As a result, politicians in power and government-spawned corporate figures are "glamourized". They emerge as "role models" and "heroes".

Meanwhile in India, the Supreme Court issued a landmark decision ordering the Information and Broadcasting Ministry to establish an independent, autonomous authority to rescue the electronic media from government monopoly and bureaucratic control.

The High Court said the Ministry and the state-controlled Doordarshan Media network have no right to deny any organization the facilities to uplink the signals generated by them to foreign satellite for telecast abroad.

But the Court issued the reminder that airwaves or frequencies are considered public property so that "their use must be controlled and regulated by a public authority in the interest of the public and to prevent the invasion of their rights".

The Ministry has been dragging its feet on the hot issue of giving autonomy to television and radio.

It was argued that if radio and TV were given complete freedom, these channels could be seized by foreign propaganda agencies from the Gulf countries or elsewhere.

Actually, the government fears that the state-controlled Doordarshan would lose its monopoly. Some 150 million households now own TV sets while about 100 million have radios as well.

Media analysts considered the Supreme Court ruling as a signal of the end of the Doordarshan monopoly over air waves by ushering in competition. Some of them feel that the Court's initiative is a recognition of the fast-emerging strength of the TV industry in India.

Competition has so far been limited to private broadcasters as Doordarshan suffered from the government's strange protectionism. As a result, national broadcasts are associated mostly with poor technical quality and lack of professionalism.

TV company bigwigs and media analysts were unanimous in claiming that the high court ruling was one of the best things that had happened to the electronic media in India. — *Depthnews Asia.*

South Asian Women Discuss Communalism

A three day South Asian Regional Consultation organised by Ain O Salish Kendro was held in Dhaka from June 8-10. The Consultation brought together women rights activists and lawyers from India, Pakistan, Nepal, Sri Lanka, Philippines and Bangladesh to discuss issues such as religion- based politics and violence against women.

The second session of day two focused on how women could resist violence through the law. The panelists were Fazlul Haq and Sigma Huda from Bangladesh, Sunila Abeyeskere from Sri Lanka, Madhu Mehra from India, Rajasthree Shrestha from Nepal and Maha Malik from Pakistan.

The purpose of the session was to identify the laws which promote and protect fundamentalism, laws which fundamentalists exploit and laws which threaten women into self-censorship. The aim was also to identify needed reforms and strategies for resistance.

The manner in which religious identity was asserted through formalisation of religious values in the legal system and political erosion of secular/democratic structures was analysed. These methods involve exploitation of tradition and customary law against women, and the use of traditional mediation structures to enforce religious laws.

The strategies for resistance discussed at the consultation included the need to enforce existing laws favorable to women or more favorable than traditional practices. The need to change existing laws and the need to identify areas in need of laws was also emphasised.

Non-legal strategies recommended were lobbying human rights groups to get international press coverage and to use a religious approach (ie. draw up model *kabin namas* or marriage contracts, for women to follow).

How women could resist violence through the media and through political strategies was also discussed. The need for networking and creating grass roots support for legislation was stressed. It was also recommended that women should lobby for laws on issues not previously addressed such as rape in conflict situations and lobby for gender-sensitive training in universities and a uniform civil code.

Religion-based politics was discussed on day one, and short papers were presented by Maleka Begum of Bangladesh and Dr. Fareeha Zafar of Pakistan.

Maleka Begum observed that even though secularism was embodied in the Constitution after the Liberation War, nevertheless women's lives continued to be determined by religious personal laws. She said that the opposition faced by women today by fundamentalists and communal forces have their roots from fifty years ago.

The discussion in the second session on communal politics was led by Sohini Ghose of India and Rajasthree Shrestha of India. The need for a uniform family code was one of the points emphasised in the ensuing exchange of views. It was also stressed that the term fundamentalist covers Christian, Jews, and Hindus as well and not just Muslims as commonly portrayed by the Western media.

--LH from ASK reports

Lawscape

Human Rights Concerns Guide Security Assistance Decisions

"Human rights and democracy concerns must be front and centre in any decision we make regarding security assistance and arms transfers," said John Shattuck, Assistant Secretary of State for Democracy, Human Rights, and Labour.

Testifying before the Senate Subcommittee on Foreign Operations May 23, Shattuck said the US had denied export licenses for munitions and crime control commodities to Afghanistan, Algeria, Angola, Burma, Burundi, Cameroon, Chad, China, Equatorial Guinea, Gabon, Guatemala, Indonesia, Iran, Lebanon, Liberia, Mauritania, Peru, Rwanda, Serbia, Sierra Leone, Sri Lanka, Somalia, Sudan, Syria, Togo, Turkey, Vietnam, Yemen, and Zaire because of human rights concerns over the past two years.

Shattuck also said that the US has an obligation "to see to it that American technology and assistance not be used for acts which we cannot condone, even when they are being done by friends," and he cited recent events in Indonesia and Turkey as examples.

"The criteria that we use in assessing a country's human rights record are the criteria in our annual country reports," Shattuck said. "But we do not take the position that a country must be engaged in a 'consistent patten of gross violations' to warrant denial of security assistance."

"Our underlying intent must always be to craft a mix of policies and programmes, in security matters and other areas, that advance our interests as the leader of the global community, and reflect our deep commitment to human rights and democratic values — as indeed, our interests are ultimately inextricable from our commitment to open societies and respect for human rights," he said. — *USIS*

Countries Urged to Stop Piracy of Airwaves

WASHINGTON, June 1 (USIS) — Although several international agreements exist to stop piracy of the public airwaves, individual countries bear the responsibility to halt the illegal activity if it occurs in their jurisdiction, according to an economist with the Federal Communications Commission.

Speaking May 30 on WorldNet, the US Information Agency's satellite television program broadcast to Caracas and Quito, Jonathan Lavy said that while there are "two or three international conventions on copyright law that many countries belong to..... ultimately the responsibility for enforcing the law has to rest with the national government of the country involved."

In the United States, Levy said, stopping copyright infringement is handled as a matter of "civil litigation where relief for an injured party may be monetary compensation or an injunction from a court prohibiting further illegal behaviour."

In other countries, he added, "I would hope that parties injured by theft or intellectual misuse would be able to effectively enforce the law by getting relief from a court."

Levy acknowledged that individuals in Latin America and elsewhere see a chance to make big profits from pirating the signal of popular US programming.

Until recently, Levy said, those who did such piracy "made no apologies" for doing it since US programming was not available any other way.

But now, he added, US programming on cable or satellite is specifically designed for Latin America and various other regions of the world. Such programming is now legally available for those who are willing to pay for the broadcast rights.

Levy noted that in the United States the four major television networks still garner much larger audiences than the more narrowly focused cable television. But, he noted cable is narrowing the gap, with its share of the national audience at seven to eight percent.

Faced with increased competition from cable, Levy said, three of the four major networks have started their own cable television programming. — Eric Green, USIA

Legislation Would Deny Citizenship to Illegal Alien Children

by Jim Fuller

CONGRESSMEN have proposed legislation that would deny automatic citizenship to children born in the United States to parents who are not citizens or permanent resident aliens.

Republican congressman Brian Bilbray of California told a House of Representatives subcommittee May 24 that automatic citizen status makes these children and their noncitizen parents eligible for federal and state public benefits.

"Taxpayers must then pay for the child, and unofficially through fraud and abuse, pay benefits to the parents of the child," he said.

Bilbray's proposed bill, entitled "The Citizenship Reform Act of 1995", would deny automatic US citizenship to children born to illegal alien parents. Bilbray noted that nearly 96,000 babies were born to undocumented women covered by the state's medical benefits program in 1992 alone.

"This amounted to an 85 percent increase over three years, and cost the taxpayers of California more than $230 million in medical bills in 1992," he said. "Births to undocumented immigrants represented 40 percent of the 237,000 publicly funded births in the state."

Bilbray pointed out that in addition to medical benefits, children born to undocumented aliens also qualify for welfare cash grants and food stamps.

"A single illegal alien bearing a child in San Diego County is entitled to roughly $400 a month in cash grants, if the mother continues to reside in the United States," he said. "This is a huge financial burden that the federal and state governments can no longer continue to incur."

Bilbray called for a reinterpretation of the Fourteenth Amendment of the Constitution, which is currently interpreted to confer citizenship upon all persons who are born in the United States, regardless of whether their parents are in this country legally or not.

Bilbray said a reinterpretation is reasonable due to the theoretical ambivalence on the part of the framers of the Fourteenth Amendment on citizenship, the inconsistencies on citizenship law throughout US history, and the policy considerations that exist today.

"The historical intent of the Fourteenth Amendment was to address the issue of slavery, and was not meant to provide the children of illegal aliens the automatic right of citizenship simply because they are born on US soil," he said.

"Under the laws of Great Britain from which we derived our common law of citizenship, it does not extend it to the native-born children of either illegal aliens or temporary resident aliens," he added. "The same is true of other western European countries."

Republican Congressman Lamar Smith of Texas, chairman of the House Immigration Subcommittee, also calls for an end to automatic citizenship in comprehensive immigration reform legislation he expects to introduce in June.

"A 1992 Los Angeles County study found that two-thirds of all births in country hospitals were to illegal aliens," he said. "The Fourteenth Amendment to the Constitution has been interpreted to mean that these children are citizens. They and their immediate families are eligible to plug into generous public benefits programs."

Smith's proposed legislation also calls for an immigration policy that would admit only those immigrants who can contribute to the US economy.

"Reasonable numbers of immigrants with a high level of skill, education or ability in a particular field benefit America economically," Smith said. "But many experts believe that low-skilled immigrants directly displace American workers. The impact of this displacement is especially acute in urban minority communities."

Republican Congressman Ron Packard of California told the subcommittee that he has proposed a bill that would cut off all social programs and benefits for illegal immigrants. The legislation is similar to the provisions of Proposition 187 passed overwhelmingly by voters in the state of California last year. That measure would bar illegal immigrants from receiving publicly funded social services and non-emergency health care services they now qualify for. — *USIA*