



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

HUMAN RIGHT VIOLATIONS BY HUMAN RIGHT COURTS

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Human beings are endowed with a sense of justice embedded in the conscience of every person . But the innate spirit of competition and the urge for surmounting and dominating other human beings as well as his surroundings as well as the nature is also innate in man. The human history is the evolvement of human civilization by peaceful co-existence. It is also the history of wars and conquests. The treatment of concept of Human Rights has two aspects namely that of the ancient schools of Eastern hemisphere and that of modern schools of the Western Hemisphere.

The dawn of civilization in the *Vedas* which are the seat of wisdom of the human race in its pristine form became the core foundation of *Dharma*. *Dharma* is the embodiment of all what is Good what is Right and what is Just. The *Mahabharata* contains a discussion of this topic. On being questioned by Yudhishtira about the meaning and scope of *Dharma* ,Bhishma states: It is most difficult to define *Dharma*. *Dharma* has been explained to be that which helps the upliftment of living beings. Therefore that which ensures welfare of living beings is surely *Dharma*. The learned *Rishis* have declared that which sustains is *Dharma*. [*Mahabharata Shanti Parva 109-9-11*].

Taittiriya Samhita states : *Dharma* constitutes the foundation of all affairs in the world. People respect one who adheres to *Dharma*. *Dharma* insulates man against sinful thoughts and actions. Everything in this world is founded on *Dharma*. *Dharma* ,therefore is considered Supreme. [*Taittiriyanopanishat -Jnanasadhana Nirupanam vide Sasvara Vedamantra p.128*]

Madhavacharya, the Minister to Hakka and Bukka, founder Kings of Vijayanagar Empire, in his commentary on *Parashara Smriti* ,has briefly and precisely explained the meaning of *Dharma* as follows: *Dharma* is that which sustains and ensures progress and welfare of all in the world and eternal bliss in the other world. The *Dharma* is promulgated in the form of Commands. Human Rights had merged with the ancient concept of *Dharma*.

The modern schools of thought on the concept of Human Rights could be traced along several documents beginning with *Magna carta Libertatum*, commonly called *Magna Carta*, is a Royal Charter of Rights agreed to by King John of England at Runnymede , near Windsor on 15 June 1215.

The Declaration of the Rights of Man and of the Citizen , set by France's National Constituent Assembly in 1789, is a Human Civil Rights Document from the French Revolution. The Declaration was drafted by the Abbe' Sieye's and the Marquis de Lafayette, in consultation with Thomas Jefferson.

The Four Freedoms were goals articulated by United States President Franklin Roosevelt on Monday 6 January 1941.

Soon after the conclusion of the World War-II the war-torn world realized the need for a mechanism to prevent the repetition and recurrence of strife between the Nations and the individuals. From such a predicament has arisen the 'United Nations Charter of Universal Declaration of Human Rights 1948 . The Universal Declaration of Human Rights is a document adopted by the United Nations General Assembly , a set of principles for the enforcement and preservation of rights of individuals. The doctrine was accepted by the General Assembly at its third session on 10 December 1948 as Resolution 217 at the *Palais de Chaillot* in Paris, France.

Every case filed before a Court of law is invariably a battle for establishing ones rights ,or for its protection and preservation. In every case before the Courts of Law the life, liberty and property of the individuals ae involved. Taken on a wider plane, in each war between Nations , the collective lives of the people , their liberty and property of the are involved.

Every civilized democratic nation has incorporated the spirit of the principles enshrined in the United Nations Charter of Universal Declaration of Human Rights in their respective Constitutions. Indian Constitution embodies the principles of Human Rights in Part III as Fundamental Rights.

In spite of such embodiment in the corner stone of the legal system the plight of the common man is still pathetic. No matter who the rulers are, if the common man's lot is not affected in a positive manner it matters little for him , whether it is democracy or dictatorship. Freedom of a nation does not mean it at the superficial level. Freedom should percolate into the masses in order to have any meaning.

A litigant's life is the subject of discussion in this paper. A subject of this nature cannot be treated at a macro-level since what exactly accentuates denial of human rights by the very establishments to protect them escapes identification. It has to be seen at the micro-level analyzing individual cases. Human life has a hundred years length, most. If the litigation lasts longer than the active life of a litigant what benefit he has from the Courts, from the law, in spite of the Human Rights guaranteed under the Constitution?

The author is a lawyer practicing in Kerala and is conducting a civil case which started in the year 1983. Now the litigants pursuing the case belong to the second generation. The short facts of the case are as follows. The subject matter is an extent of 18.89 acres of land in Pallivasal Village Devikulam Taluk, Idukki District in Kerala State. The land is in possession and enjoyment of the plaintiff in O.S.No.1/1983 a suit for prohibitory injunction on the files of the Munsiff's court Devikulam. The Court granted prohibitory injunction against the defendants therein vide judgment dated 16-7-1984.

As a counter-blast to the suit O.S.No.1/1983 , the defendants in the said suit files another suit O.S.No.523/1983 a suit for declaration of possessory title before the Sub Court Thodupuzha against the plaintiff in the O.S.No.1/1983. The plaintiff No.1 in the O.S.No.523/83 is the mother in law of the defendant No.1 and mother of the defendant No.2 in the O.S.No.523/83. The plaintiff No.2 in O.S.No.523/1983 was the brother of defendant No.1 in O.S.No.523/1983. The defendants No. 1 and 2 in O.S.No.523/83 were the defendants No. 1 and 2 in O.S.No.1/1983 in which there was the decree of prohibitory injunction against them. The defendant No.3 in O.S.No.523/1983 was the plaintiff in O.S.No.1/1983. On 30-9-1987 the suit O.S.No.523/1983 was decreed in favour of the plaintiffs. Soon thereafter , the plaintiffs in O.S.No.523/1983 moved the Hon'ble High Court of Kerala for police assistance against the defendant No.3 in O.S.No.523/1983 who was in possession of the plaint schedule property. The police assistance was granted by the Hon'ble High Court of Kerala and the plaintiffs in O.S.No.523/1983 forcefully dispossessed the defendant No.3 and took possession of the land. The defendant No.3 had filed Appeal A.S.No.186/1987 before the District Court Kottayam which was allowed and the judgment and decree in O.S.No.523/1983 was set aside and dismissed vide judgment dated 23-10-1991. Soon thereafter the plaintiffs in O.S.No.523/1983 filed Second appeal No. 967/1991 before the Hon'ble High Court of Kerala , which was dismissed on 14-2-2008 upholding the first appellate judgment. During the litigation, the defendant No.3 had passed away on 10-10-1988.

During the course of litigation 15 third party encroachers trespassed upon the land to try their luck. It was shown that a false civil case could be won by the earlier victory of the plaintiffs in O.S.No.523/1983. This encouraged the encroachers to file 15 false cases against the defendants No.1 , Defendant No.2 and one of the legal heirs of defendant No.3 in O.S.No.523/1983. The suits filed by the encroachers was for declaration of their possession of the land.

The cases that ensued as a consequence of the erroneous judgment in O.S.No.523 of 1983 are the following:-

- 1] O.P.No.10954/87 of the Hon: High Court of Kerala.
- 2] Munnar Police Station in Crime No.91/87
- 3] O.P.No. 9609/1988 of the Hon: High Court of Kerala
- 4] A.S. No.186/87 of the District Court Kottayam
- 5]S.A.No.967/91 of the Hon: High Court of Kerala.
- 6] O.S.No.53/1992 of the Hon'ble Munsiff's Court Devikulam.
- 7] B1-6432/91 File of the Sub Divisional Magistrate Devikulam for police protection.
- 8] O.P.No.11343 of 1991 of the Hon: High Court of Kerala.
- 9] O.S.No.109 of 1999 of the Hon: Munsiff's Court Devikulam
- 10] O.S.No.114 of 1999, of the Hon: Munsiff's Court Devikulam.
- 11] A.S.59 of 2003 of the Hon: Sub Court Thodupuzha.
- 12] O.S.No.115 of 99, of the Hon: Munsiff's Court Devikulam
- 13] A.S.No.67 of 2002 Hon: Sub Court Kattappana
- 14] O.S.No.116 of 1999 of the Hon: Munsiff's Court Devikulam

- 15] O.S.No.117 of 1999 of the Hon: Munsiff's Court Devikulam
- 16] O.S.No.118 of 1999 of the Hon: Munsiff's Court Devikulam
- 17] O.S.No.119 of 1999 of the Hon: Munsiff's Court Devikulam
- 18] A.S.No.49 of 2002 of the Hon: Sub Court Kattappana.
- 19] O.S.No.126 of 1999 of the Hon: Munsiff's Court Devikulam
- 20] O.S.No.127 of 1999 of the Hon: Munsiff's Court Devikulam
- 21] O.S.No.128 of 1999 of the Hon: Munsiff's Court Devikulam
- 22] O.S.No.129 of 1999 of the Hon: Munsiff's Court Devikulam
- 23] A.S.No.59 of 2002 of the Hon: Sub Court Kattappana.
- 24] O.S.No.130 of 1999, of the Hon: Munsiff's Court Devikulam
- 25] C.M.A.3 of 2003 of Sub Court Thodupuzha.
- 26] O.S.No.131 of 1999 of the Hon: Munsiff's Court Devikulam
- 27] O.S.No.152 of 1999 of the Hon: Munsiff's Court Devikulam
- 28] O.S.No.137 of 2000 of the Hon'ble Munsiff's Court Devikulam
- 29] The Counter-claim filed by the Petitioner in O.S.No.114/1999 of the Hon: Munsiff's Court Devikulam and in the connected 15 suits.
- 30] E.P.No.89 of 2003 in O.S.523 of 1983 of Sub Court Thodupuzha.
- 31] C.C.No.551 of 2006 of the Judicial First Class Magistrate Court Devikulam
- 32] Petition filed by the petitioners before the Land Revenue Commissioner, Thiruvananthapuram.
- 33] Petition filed by the petitioners before the Chief Minister of Kerala.
34. Various other petitions preferred before the District Collector Idukki, Tahsildar Devikulam, Village Officer Devikulam, Superintendent of Police Idukki concerning the schedule property.
35. W.P. [c] No.16393 of 2015 of Hon'ble High Court of Kerala.

The judgment of the trial Court which was found erroneous in appeal and second appeal was enforced with police assistance. That was an encouragement to intending encroachers and ultimately lead to miscarriage of justice. The aggrieved litigant and his legal heirs had to run from pillar to post for restitution and are yet to get justice thanks to the tardy judicial process. The Judgment in O.P.No.10954 of 1987 of the Hon: High Court of Kerala dated 12-1-1988 is reads:-

'I heard counsel on both sides. In the light of Ext.P3 judgment, passed by the civil court, which has not so far been varied or nullified, respondents 3 to 5 are bound by the same. Counsel for the respondents has no case that Ext.P3 Judgment has been stayed or kept in abeyance or in any way varied so far. Respondents 1 and 2 – State and S.I. of Police Munnar—are also bound to respect and give effect to Ext.P3 judgment, so long as it stands. Reliance placed by counsel for respondents 3 to 5 on a few documents to say that notwithstanding Ext P3 judgment respondents 3 to 5 are in possession of the property is unsustainable. The third respondent was a party to Ext.P3 proceedings. He is bound by it. He cannot be heard to say anything contrary in these proceedings. In these circumstances, I am of the view that the petitioner is entitled to a direction to respondents 1 and 2 to see that Ext.P3 judgment is conformed to and respondents 1 and 2 have got a further duty to render all assistance and help to the petitioner in conformity with Ext.P3 judgment passed by the Sub Court ,Kottayam. Respondents 1 and 2 cannot be heard to say anything contrary to Ext.P3 judgment so long as it stands. I direct respondents 1 and 2 to take such action as is warranted and in conformity with Ext.P3 judgment. The petitioner will be afforded sufficient police protection and aid by respondent 1 and 2 in conformity with Ext.P3 judgment.'

The Ext.P3 judgment referred above is the judgment of the trial Court. The legal heirs of the 3rd defendant in the trial court again approached the Hon'ble High Court of Kerala for police protection and allied reliefs by filing W.P. [c] No.16393 of 2015 . The Hon'ble High Court of Kerala vide judgment dt.8-7-2015 directed the legal heirs of the 3rd respondent in the trial Court to move the original Court which passed the decree for restitution under S.144 of the Code of Civil Procedure 1908. The said petitioners moved a Restitution Petition No.1636/2015 in O.S.No.523/1983 before the Hon'ble Sub Court Thodupuzha which is now pending. It is pertinent to note that by the passage of time many parties to the suit had passed away and the legal heirs had to be impleaded. For the service of notice to the parties to be completed it took 5 years. Even now the matter stands at the stage of filing. No tangible orders are passed even an application for appointing a Receiver.

Now analyzing the factors that contributed to the denial of human right , it can be seen that the human right infringement is first committed by the trial Court by passing a wrong Judgment. Judges have freedom to decide matters

rightly or wrongly before them. The aggrieved can move appeal before appellate courts. This is a basic feature of our jurisprudence. Now the second aspect of the denial of human right was the affording of the police assistance for the enforcement of the erroneous decree of the trial Court, while the ordinary remedy for the decree holder was to pursue execution of the said decree. 37 years of litigation from 1983 has reached nowhere.

The term 'justice' attains significance when it has stretched its arm against the drowning man , and not beyond. The success of a sound judicial system is evidenced by the sight of litigants walking out of the Court with justice in hand, without having had to wait for it ,over a life time.

'Justice' carry meaning only when it is rendered in time. It has only a timely value. An out of time rendering of a decision by a Court of law cannot be called rendering of Justice. It is an adjudication sans justice. Any judicial system, not capable of rendering timely justice is an abject failure and is a mockery of law. They take away the bulk of public time and public money without any avail.

Thodupuzha,

11-08-2020.

