

LSR008

1. What is Human Rights Lawyering ?

by Nandita Haksar

There are more than two million lawyers in the world today. A survey of the Legal Profession by the London-based journal, The Economist gives us an idea of how the legal profession has grown into a most lucrative business. The survey does not mention Human Rights lawyers. Perhaps, this is because human rights lawyering is not a part of the legal business. Human Rights lawyering is not merely about legal aid or doing pro bono cases. It is not only about fighting for legal justice. The history of human rights lawyering is inextricably linked to the history of struggles for social, economic and political justice.

The primary concern of the human rights lawyer is to protect people from State violations of human rights guaranteed in the Constitution and under international law. Most Constitutions have a Bill of Rights which incorporate basic freedoms and guarantees to citizens against arbitrary interference by the State. The first such Bill of Rights was written in 1312 and called the Magna Charta. The Magna Charta ensured citizens of certain protection from arbitrary actions by the State. This is the basic right guaranteed under Article 14 of the Indian Constitution.

Human Rights lawyers all over the world are deeply concerned with the protection of people from arbitrary and often repressive policies of the State. They are specially concerned with the violation of the rights of the economically poor, politically powerless and culturally oppressed sections of the people



Human Rights Advocacy (1996)

Paper presented at NLSIU, Bangalore Conference on

like the landless, the indigencous peoples, women and racially discriminated. The international community has set certain standards of human rights. These standards are set out in the United Nations Declarations and Covenants, and form the basis of international human rights law. Once the State Parties ratifies these Covenants they are bound by the provisions of international law. It is true that for the most part these provisions are not enforceable in the national courts but these standards are invaluable in understanding and expanding the concept of human rights in individual countries.

Even when rights are enforceable in a court of law the vast majority of the poor and oppressed peoples in the world do not have the resources to enforce their fundamental rights in a court. The expenses are prohibitive and the courts are far away from their homes. If they do get access to a human rights lawyer it will be probably the last opportunity to get legal justice. This is why a human rights lawyer carries a burden of responsibility which is far greater than other lawyers. A human rights lawyer does not ask for legal charity or judicial sympathy. She or he fights for the right to dignity and self respect of the client. In the process the lawyer's own dignity and self respect is enhanced.

The human rights lawyer must choose strategies which will help to restore the dignity and self respect lost in the process of oppression and exploitation. Every opportunity

in the legal process is an opportunity to change legal definitions of social relations which are unjust and unfair to the oppressed. We must decide on tactics and strategies which will help in building a jurisprudence that supports that struggles. We must advance arguments which will expand the contents of the fundamental rights in addition to getting specific relief for our client. Human rights lawyer often works without the benefit of precedents and must use her or his imagination. In order to cultivate a legal imagination the lawyer must read and understand society in all its complexities.

It is very important to study every concept or idea within the historical framework so that we understand how it evolved and how it can be developed to meet the emerging challenges of the future. A deeper understanding of history will help us in deciding strategies in and out of court. We must be able to look at the evolution of law, the legal system or a particular statute and ask ourselves how it can be made more just. A human rights lawyer is never concerned with merely what the law is but with what the law ought to be.

Many times human rights lawyer has the privilege to appear on behalf of men and women who are fighting for justice and are willing to endure great hardships and even face death rather than give up or compromise their ideals. Many lawyers use their legal training in the course of political struggle. The training helps them to raise questions on the law and justice. Mahatma Gandhi exposes the fact that the law is used as an instrument of

exploitation of Indian people by British colonial rulers, Nelson Mandela exposes the role of the legal system in upholding apartheid in South Africa and Fidel Castro argues that the legal system is a tool to establish military dictatorship in Cuba. All three leaders were trained lawyers.

Bhagat Singh, Angela Davis and Leonard Peltier are not lawyers. Bhagat Singh speech is an indictment of the colonial raj. Angela Davis and Leonard Peltier address to the court are passionate defence of the right to live with dignity in a racist society in the United States which denies Blacks and Native Americans justice. Implicit in their speech is an understanding of justice.

All the six men and women whose speeches are reproduced here suffered long periods of imprisonment and faced humiliations at the hands of the State. Bhagat Singh was executed. Nelson Mandela refused to sign a piece of paper stating that he abjures violence and was in jail for 27 years, Angela Davis was in solitary confinement for months and Leonard Peltier is still in jail.

If we read the speeches of these revolutionaries we see that they stress one point which is very important for us to remember. They stress that the sanctity of law can be maintained only if the law is the expression of the will of the people. If the law ceases to reflect the people's will it ceases to be law. They equate the rule of law with the

is something we will go into in the next few chapters.

There are hundreds of human rights lawyers all over the world who are fighting for justice. Some have specialised in the law relating to political refugees and asylum, others are fighting for the rights of racially discriminated, others focus attention on the people kept in custody without trial, and there are those who are a part of the struggle for abolition of torture and other forms of State violence. These lawyers are fighting against politically the most powerful institutions such as the security forces, illegal armies backed by political power and economic power.

The human rights lawyer requires many skills. She or he must be able to write not only petitions for the court but also write appeals, memorandum, pamphlets. And the writing requires knowledge, not only of the law but a knowledge of a wide variety of subjects. Even for addressing arguments in court this knowledge is crucial for innovative interpretation of the laws to advance the cause of justice. Human rights lawyers need to work harder, longer hours and often the work is voluntary. In addition they often face threats of their life and have become targets of physical attacks.

The Centre for the Independence of Judges and Lawyers at Geneva have been regularly publishing information of the harassment of lawyers by various States all over the world. Their latest report puts on record that 447 jurists in 46 countries

suffered reprisals for carrying out their professional functions between June 1, 1991 to March 31, 1992. Of these 35 were killed, two "disappeared", 17 were attacked, 67 received threats of violence, 103 were detained and 223 were sanctioned professionally. For instance, human rights lawyers like Daniel Sheehan, William Kunstler and Michael Ratner have been subjected to huge monetary fines under a special procedure designed to prevent frivolous suits because they dared challenge the illegal and unconstitutional acts of the United States Government.

Many lawyers like Khin Maung Thein have been sentenced to 25 years imprisonment for opposing military rule in Burma. In Nigeria, lawyers have been arrested for supporting the demand for civil rule, and Luz Gladis Montesillos, a Peruvian lawyer has been threatened because she performed the initial investigation of Santa Barbara case in which the military murdered 15 peasants. 1

In our country too human rights lawyers have been threatened and attacked. One lawyer, Hem Lal Bhandari was locked in a cement cell without light, ventilation or sanitary facilities for voicing his protest against human rights violations in Sikkim. Others have been arrested without warrant and even tortured. For instance Max Phazang, the then Chief Judicial Magistrate in Tamenglong District in Manipur was illegally arrested and detained by the para military forces and given electric shock in May 1986. Nara Prabhakar Reddy, a lawyer and civil liberties activist was killed dead by unidentified men believed to be

Police force daring to defend the rights of peasants, and N.L. Patel a Magistrate in Nadiad, Gujarat was handcuffed bound and beaten by the police in 1989 because he refused to extend police remand of a person accused in a murder case.

It is true that human rights lawyers face great hardships and threats. Human rights work requires a life time of commitment. It is a challenge and responsibility. It is not an easy choice. Jose W Diokno , an ardent nationalist lawyer and founder of the Free Legal Assistant Group (FLAG) in the Philippines said: "It is extremely dangerous to defend our rights. But it would be indefinitely worse not to do so. If we do not struggle with all that we have and do all that we can do to vindicate our rights, we do not only condemn our rights to death; we also condemn our hopes and our dreams, our present, and our children's future.

"Which course shall we choose ?

"Only you can answer."2