

The Practising Lawyer

VASUDHA NAGARAJ

K Balagopal took up the legal profession quite late in his life. He enrolled in the Bar Council of Andhra Pradesh in 1997. Not even a dozen years passed before his sudden demise, leaving more than a thousand clients devastated, insecure and defenceless. In the legal profession it is said that the gestation period for a lawyer is about 10 years. It takes that long to apprentice with senior lawyers, to learn to draft, plead, cross-examine, argue, and more importantly, to gain the trust of the litigants. In Balagopal's case, it was different. He entered the profession with an astute assessment of the structure and logic of the law which would often overshadow the expertise of those senior lawyers who gained it over long years of practice.

A number of heart-rending obituaries have been written about his lasting investments in the civil liberties movement in the country and his extraordinary life and politics. In this obituary, which I never thought that I would be writing, I shall devote it to his life in the courts. From 1997 to the last day of his life, he diligently attended the courts from Monday to Friday and devoted his weekends to fact-finding and documenting of rights violations in the areas of state violence, tribal health, farmers' problems, developmental destruction, environment to name a few. As a lawyer, his legal practice spanned several courts. He never missed a case and would not take an adjournment unless it was most necessary. I worked with him briefly during the years 2003 to 2005 and I shall share those memories. It is in no way an exhaustive account of his legal work, but just an indication of the vastness of it.

Vastness in Legal Work

A wide variety of litigants approached Balagopal whose lives, lands, status and employment were threatened. Balagopal made more than full use of the writ jurisdiction of the high court in challenging the violations by the police. Habeas corpus petitions were filed to trace missing

persons belonging to Marxist-Leninist parties often taken away by the police. In some sense, the very filing of such a petition would save the life of the detainee and in most cases he/she would be remanded to judicial custody. Attendant criminal petitions such as bail applications, criminal appeals of the needy/the poor and criminal revision petitions would follow. In the cases of violence against women, dalits and tribals, when the police delayed the investigations and did not file a charge sheet, he sought directions to hasten the investigation process.

In quash petitions filed by husbands to quash the criminal complaints filed by their wives against them, Balagopal appeared on behalf of the women to contest these cases. Even if he could not appear in the criminal trial courts for these cases, he extended his support using the writ jurisdiction of the high court.

A large part of Balagopal's work consisted of securing the employment rights of workers. He chose to practise on behalf of labour, and thereby, had a considerable filing in the labour courts, Andhra Pradesh administrative tribunal, central administrative tribunal, central government industrial tribunal and labour commissioner's office. These cases invariably involved questions of challenging retrenchment of workers, decisions of departmental enquiries, payment of salaries, pensions and gratuity, right to strike and many other matters relating to a worker's life in a factory, shop, five-star hotel, club and hospital. In almost all these cases Balagopal faced not just formidable legal opposition, but several levels of unscrupulous practices by lawyers engaged by the managements of these workplaces. They would often indulge in the popular practice of taking several adjournments and filing unwarranted petitions to wear out the opponent. Balagopal would be quite unfazed and not allow these unscrupulous practices to deter him from pursuing the case. He would hold on to the case through these long and tiring adjournments and

counsel the client that such is the practice of law. He would ride his rickety scooter furiously through the traffic-congested roads of the old city of Hyderabad and appear in these various courts which were at quite a distance from each other. There are many lawyers today who remember his early morning calls asking them to take a "short pass-over" as he would be held up in one of these several courts.

Land Rights of Tribals

Securing the land rights of tribals in the agency areas formed another substantial part of his litigation in the high court. Trinadha Rao, a practising lawyer and long-standing friend of Balagopal, recounts that the latter secured thousands of acres of land for the tribals in the agency areas through his work in the high court. Again, he used the writ jurisdiction in countering the state's actions in promoting the interests of the non-tribals in grabbing tribal lands, business propositions and employment opportunities that were originally meant for the tribal community. In many of these cases the enquiry had to be reopened to correctly represent the claims of the tribals. Trinadha Rao says that these re-enquiries were often challenged by the non-tribals on the principle of *res judicata*, one of the cardinal principles of legal adjudication, that a case which has been examined once cannot be re-examined. Balagopal, in turn, argued that the principle of *res judicata* cannot be applied mechanically and that it shall nullify all claims of the tribals who were often the victims of collusions between the revenue and police authorities and the non-tribals.

As it is clear from the above, a sizeable part of Balagopal's litigation lay in the high court, specifically using its "writ jurisdiction". He filed several writ petitions to stop the pollution generated by industries and to demand that they relocate their operations. The state and district pollution boards were often respondents in his writ petitions. In the area of education and employment, he took up a number of service sector cases, where he defended scheduled caste/scheduled tribe (sc/st) employees who were not considered for employment/promotion and fought for the right implementation of the provisions

of reservations. Demolitions and the rights of the evicted persons constituted another enduring part of his work. Through these writ petitions he enabled persons to challenge several discriminations of caste and gender that are endemic to the administration and bureaucracy. Be it a girl who insisted on keeping her mother's name in her passport application or a Muslim boy accused of being a terrorist, and thereby, not allowed to write his final year medical exams, Balagopal was there to challenge the inactions of the administrative authority in the high court. His practice in the court was not limited to challenging encounter deaths alone, but extended to civil, service, labour and other registers of the law. Apart from his work in the courts, he would be an adviser to countless activists who consulted him on several tricky issues of the feasibilities of resorting to the law.

Court Craft

Many of these cases involved high stakes, and therefore, some of the best legal minds would be in opposition. To counter them one had to be meticulous, well-informed of the facts and provisions of law, as well as the precedent. Balagopal's

pleadings were well-organised, precise and stated the context and contents of the injury/violation in its clearest terms. They would also carry his unmistakable sense of humour. His clerk Sudhakar recounts that never were Balagopal's petitions marked for any mistakes and it was so easy to be his clerk. Balagopal's arguments in the court carried a quiet elegance to it. Despite being such a prolific public speaker, his arguments in court would be measured, and devoid of any flamboyance or outright political tones. His strategy was to remain within the structure of the law and use its ambiguities, double tones, loopholes and contradictions. His thoroughness came from a mastery of the procedures of the law and being updated on the latest case law. He was confident that one could make best use and checkmate the law by playing its own devices. In the painstaking process of the argument, he would gradually persuade the judge to push the limits of the law, to re-examine the founding principles of the law, to allow for a different interpretation and to introduce a legal recognition for contested claims and proceedings. Not always was it a successful process, but it

has left in its wake a culture, practice and politics of using the law and the legal institutions in defence of the marginalised.

Today, with Balagopal's demise, there is a yawning gap in the Andhra Pradesh High Court and all the other courts where he practised. It is true that there are other lawyers, litigants and litigations and that the law will be challenged, exposed and extended. But the genius of Balagopal's legal practice lay in the fact that he was so explicit about whom he defended and why he defended. When he stood to argue before the judges, there was an expectation, a hush in the courtroom, an emotion that this was an argument not merely about a specific claim, but about justice itself. In a profession which is marked by competition, collusions, exorbitant fees and absence of any political commitments, Balagopal developed the most sophisticated legal arguments for those who would otherwise not have the resources to appear before the law.

To say that we miss him would be an understatement.

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SAMEEKSHA TRUST BOOKS

1857

Essays from *Economic and Political Weekly*

A compilation of essays that were first published in the EPW in a special issue in May 2007. Held together with an introduction by Sekhar Bandyopadhyay, the essays – that range in theme and subject from historiography and military engagements, to the dalit *viranganas* idealised in traditional songs and the “unconventional protagonists” in mutiny novels – converge on one common goal: to enrich the existing national debates on the 1857 Uprising.

The volume has 18 essays by well known historians who include Biswamoy Pati, Dipesh Chakrabarty, Peter Robb and Michael Fisher. The articles are grouped under five sections: 'Then and Now', 'Sepoys and Soldiers', 'The Margins', 'Fictional Representations' and 'The Arts and 1857'.

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