

# The Role of Indian Judiciary in Enforcing Fundamental Human Rights



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### Abstract

Human rights are a subject not only of law but of a common universal faith or religion or human religion. All human being have natural rights which are to be guarded by themselves as well as by the state concerned of which they are nationals. Human rights are derived from the principles of natural law. In this research paper I have tried to explain the history of human rights in international level and national level under the constitution of India as well as declaration of our supreme court from time to time on fundamental human right. Judiciary is the powerful organ to enforce and protect the fundamental human rights. Judicial Process is an important armor of judiciary. At this paper subtly attempts to examine the concept of judicial process or judicial activism or pil or writs employed by Indian judiciary, especially, upholding fundamental human rights of citizens. It further delineates, the limitations within which the judges need to exercise due caution to avoid such criticisms, and, to provide the sought remedial mechanism without crossing the limitations as advocated by the constitution.

**Keywords:** Women, Empowerment, Feminism, Objectives, Constitutional and Legal Remedies.

### Introduction

The expression "Human Rights" is defined in section 2(d) of the protection of Human Rights Act, 1993 to mean 'The rights relating to life, liberty, equality, and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India'<sup>1</sup>. Human rights are commonly understood as "inalienable rights to which a person is inherently entitled simply as she or he is a human being". Human rights are thus conceived as universal (applicable everywhere) and egalitarian (the same for everyone). these rights may exists as natural rights or as legal rights, in both national and international law.<sup>2</sup> Human Rights allow every human being to develop the human qualities, intelligence, talents and of course, the conscience. Human rights are intrinsic by nature, which cannot rather must not to be snatched away by government. In line with the Universal declaration of human rights, the constitution of India has incorporated provision in part 3 and part 4 directive principal of state policy respectively dealing with various facts of human rights<sup>3</sup>. Indian constitution provides number of Human rights. But it is true that a declaration of fundamental and human rights is meaningless unless there is effective machinery for the enforcement of the rights. It is the remedy which makes the rights real. if there is no remedy there is no right at all. Judiciary of every country is to be final protector of every rights. So under article 32 of the Indian constitution empower the Supreme Court as well as article 226 empowers all the high court's to issues the writ for the enforcement and protect the fundamental rights. Besides this public interest litigation and judicial activism are also powerful mechanism of judiciary in India for the protection and enforcement of human rights.<sup>4</sup> Thus supreme court of India has recognized these rights as alienable rights. In *Golak Nath v. state of Punjab*<sup>5</sup>, Supreme court held that "fundamental rights are modern name for what have been traditionally known as natural rights". subsequently in *Keshvanand Bharti v State of Kerla*<sup>6</sup>, SC held that "I am unable to hold these provisions how the rights are not natural and alienable rights".

### Research Methodology

As we know that social values and attitudes, existing as well as expected, keep on changing. It makes the law to be dynamic and cope with the changing social ethos. In such situations, research, becomes necessary: (i) for ascertainment of law on a given topic or subject, (ii) to highlight ambiguities and inbuilt weaknesses of law, (iii) to critically

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examine legal provisions, principles or doctrines with a view to see consistency, coherence and stability of law and its underlying policy, (iv) to undertake social audit of law with a view to highlighting its pre-legislative 'forces' and post-legislative 'impacts', and (v) to make suggestions for improvements in, and development of, law.<sup>7</sup>

In any research work research methodology plays a very important role. The present research shall be conducted by using doctrinal research<sup>8</sup> for which the researcher will analyze the constitutional provisions, text books, journals, commentaries, case laws, articles, reports of the national committees on election reforms, suggestions given by the law commission of India for election reforms and all other available literature for arranging and systemizing the legal propositions.

### **History of Human Rights**

HUMAN RIGHTS can generally be defined as those rights which are inherent in our nature without which we cannot live as human beings.<sup>9</sup> In other words, human rights and fundamental freedoms allow us to develop fully and to use our human qualities, our intelligence, our talents and our conscience to satisfy our spiritual and other needs.<sup>10</sup> In fact, it was the first time in 1948 that recognition to such rights at international level was given by the General Assembly in the name of Universal Declaration of Human Rights, which lay down the international common standard of achievement for all the people of the nations and stress on the quality of human beings without any distinction of race, sex, language and religion and the right to life, liberty and security of the person, etc. The Universal Declaration of Human Rights is the first segment of the International Bill of Human Rights which includes International Covenant on Economic Cultural and Social Rights and International Covenant on Civil and Political Rights, adopted by the General Assembly in 1966 and came into force in 1976.<sup>11</sup> Even before the Universal Declaration of Human Rights, the concept of human rights was involved within the provisions of the United Nations Charter 1945. Articles 1 and 55 of the Charter place emphasis on the universal respect for human rights and the fundamental freedoms for all without distinction of race, sex, Language or religion. Further, article 68 of the charter lays down an obligation on the Economic and Social Council to set up a Commission for the promotion of human rights.

Consequently, in 1946 the Council set up an International Commission of Human Rights consisting of a 43-member body dealing with all aspects of human rights issues with the help of active participation of the international community.<sup>12</sup>

### **Indian Position and Human Rights**

So far as the Indian position in respect of human rights is concerned, it can be said that India always paid high respect to human rights. It is due to the reason that the architects of the Indian Constitution involved the concept of human rights within parts III and IV of the Constitution.

Further the "commitment of the Government of India to International Covenants on Human Rights"<sup>13</sup> and later on their implementation through the Protection of Human Rights Act 1993 shows the sincerity of the country in this matter. The National Human Rights Commission (NHRC) established under the Act has been authorized to act 'suo motu'<sup>14</sup> or on any complaint made to it about the violation of human rights. Mostly complaints received by the Commission during the period between 1 April 1996 to 31 March 1997 relate to custodial deaths and rape. In such cases the Commission not only passes the order to compensate the victim but also recommends action against the guilty person.<sup>15</sup>

### **Human Rights and The Indian Constitution**

The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of the race, religion, language, sex and culture." The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens.<sup>16</sup>

### **India and The Universal Declaration**

India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights. The following chart makes it very clear.<sup>17</sup>

1	Name of Right	Universal Declaration	Indian Constitution
2	Equality before law	Article 07	Articles 14
3	Equality of opportunity in matters of public employment	Article 21 (2)	Article 16(1)
4	Protection of certain rights regarding freedoms of speech, etc	Article 19	Article 19(1) A
5	Protection in respect of conviction for offences	Article 11 (2)	Article 20(1)
6	Protection of life and personal liberty	Article 9	Article 21
7	Prohibition of tracking in human beings and forced labor	Article 14	Article 23
8	Freedom of conscience and free Profession practice and propagation of religion	Article 18	Article 25(1)
9	Protection of Interests of minorities	Article 22	Article 29(1)
10	Right of minorities to establish and administer Educational Institutions	Article 20(3)	Article 30(1)
11	Remedies for enforcement of rights conferred by this part	Article 8	Article 32

*Remarking An Analisation***This above table Similarities between Universal Declarations of Human Rights and Indian Constitution**

Rights	Convention On Civil And Political Right	Indian Constitution
Equality before law	Article 14(1)	Article 14
Prohibition of tracking in human beings and forced labor	Article 8(3)	Article 23
Prohibition of discrimination on ground of religion, race, caste, sex or place of birth	Article 26	Article 15
Equality of opportunity in matters of public employment	Article 25(c)	Article 16(1)
Protection of certain rights regarding freedom of speech	Article 19(1, 2)	Article 19
To assemble peaceably and without arms	Article 21	Article 19(1b)
To form association or unions	Article 22(1)	Article 19(1c)
To move freely throughout the territory of India	Article 12(1)	Article 19(1, d e g)
Protection in respect of conviction for offences	Article 14 (7), 15(1)	Article 20(1)(2)
No person accused of any offences shall be compelled to be a witness against himself	Article 14(3g)	Article 20(3)
Protection of life and personal liberty	Article 6 (1), 9(1)	Article 21
Protection against arrest and detention in certain cases	Article 9 (2,3,4)	Article 22
Freedom of conscience And free profession, practice and propagation of religion	Article 18(1)	Article 25

**The above table Similarities between Covenant on Civil and Political Rights and Indian Constitution Human Rights and Judiciary in India**

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The preamble of the Constitution of India encapsulates the objectives of the Constitution-makers to build a new Socio economics order where there will be Social, Economic and Political Justice for everyone and equality of status and opportunity for all. This basic objective of the Constitution mandates every organ of the state, the executive, the legislature and the judiciary working harmoniously to strive to realize the objectives concretized in the Fundamental Rights and Directive Principles of State Policy.<sup>18</sup>

The judiciary must therefore adopt a creative and purposive approach in the interpretation of Fundamental Rights and Directive Principles of State Policy embodied in the Constitution with a view to advancing Human Rights jurisprudence. The promotion and protection of Human Rights is depends upon the strong and independent judiciary. The main study here would be given wide coverage to the functional aspect of the judiciary and see how far the Apex judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Human Rights in the light of our Constitutional mandate. The major contributions of the judiciary to the Human Rights jurisprudence have been twofold: (1) the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and (2) the procedural innovation of Public Interest Litigation and judicial activism<sup>19</sup>.

**Writ Jurisdiction of the Supreme Court and the High Courts**

The most significant of the Human Rights is the exclusive right to Constitutional remedies under

Articles 32 and 226 of the Constitution of India. Those persons whose rights have been violated have right to directly approach the High Courts and the Supreme Court for judicial rectification, redressed of grievances and enforcement of Fundamental Rights. In such a case the courts are empowered to issue appropriate directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari. By virtue of Article 32, the Supreme Court of India has expanded the ambit of Judicial Review to include review of all those state measures, which either violate the Fundamental Rights or violative of the Basic Structure of the Constitution. The power of Judicial Review exercised by the Supreme Court is intended to keep every organ of the state within its limits laid down by the Constitution and the laws. It is in exercise of the power of Judicial Review that, the Supreme Court has developed the strategy of Public Interest Litigation and judicial activism.<sup>20</sup>

The right to move to the Supreme Court to enforce Fundamental Rights is itself a Fundamental Right under Article 32 of the Constitution of India. This remedial Fundamental Right has been described as "the Cornerstone of the Democratic Edifice" as the protector and guarantor of the Fundamentals Rights.

Under Article 226 of the Constitution of India, the High Courts have concurrent jurisdiction with the Supreme Court in the matter granting relief in cases of violation of the Fundamental Rights, though the High Court's exercise jurisdiction in case of any other rights also. The Supreme Court observed that where the High Court dismissed a writ petition under Article 226 after hearing the matter on merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same relief filed by the same parties will be barred by the rule of Res judicata<sup>21</sup>.

**Rule of Locus Standi vis-à-vis Public Interest Litigation**

The traditional rule is that the right to move the Supreme Court is only available to those whose Fundamental Rights is infringed. A person who is not interested in the subject matter of the order has no Locus Standi to invoke the jurisdiction of the court.

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But the Supreme Court has now considerably liberalized the above rule of Locus Standi. The court now permits the public spirited persons to file a writ petition for the enforcement of Constitutional and statutory rights of any other person or a class, if that person or a class is unable to invoke the jurisdiction of the High Court due to poverty or any social and economic disability. The widening of the traditional rule of Locus Standi and the invention of Public Interest Litigation by the Supreme Court was a significant phase in the enforcement of Human Rights<sup>22</sup>.

*In S.P. Gupta vs. Union of India and others*, the seven member bench of the Supreme Court held that any member of the public having "sufficient interest" can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of their poverty or other disabilities. A person need not come to the court personally or through a lawyer. He can simply write a letter directly to the court complaining his sufferings. Speaking for the majority Bhagwathi, J. said that any member of the public can approach the court for redressed where, a specific legal injury has been caused to a determinate class or group of persons when such a class or person are unable to come to the court because of poverty, disability or a socially or economically disadvantageous position. In the instant case, the court upheld the right of lawyers to be heard on matters affecting the judiciary. By this judgment Public Interest Litigation became a potent weapon for the enforcement of "public duties" and where executed inaction or misdeed resulted in public inquiry and human rights.<sup>23</sup>

The greatest contribution of Public Interest Litigation has been to enhance the accountability of the governments towards the Human Rights of the poor. Public Interest Litigation interrogates power and makes the courts as peoples court. The Supreme Court of India in a number of important decisions has significantly expanded the scope and frontier of Human Rights. Public interest matters today focus more and more on the interests of the Indian middle classes rather than on the oppressed classes. PIL seeking order to ban Quran<sup>24</sup> transmission of T.V. Serials<sup>25</sup>, implementation of Consumer Protection Law<sup>26</sup> removal of corrupt ministers<sup>27</sup>, invalidation of irregular allotment of petrol pumps<sup>28</sup> and government accommodation<sup>29</sup> prosecution of politicians and bureaucrats for accepting bribes and Kickbacks through Hawala transactions<sup>30</sup>, better service conditions of the members of lower judiciary<sup>31</sup> or quashing selection of university teachers<sup>32</sup> are some blatant examples espousing middle class interests. Some initial successes of PIL, however cannot certify that it shall always remain an effective instrument for protection of Human Rights. The future of PIL will depend upon who uses it and for whom.

### **Judicial Activism and Human Rights**

When there is any discussion on human rights in the country, the role of judiciary in giving a new dimension to these rights through its activism cannot be ignored. Judicial activism is a dynamic

process of judicial outlook in a changing society. According to Black's Law Dictionary "judicial activism is a judicial philosophy which motivates judges to depart from the traditional precedents in favour of progress and new social policies. There are a number of cases where the concept of human rights has been given a new dimension through judicial activism".<sup>33</sup>

Judicial activism has greatly contributed in the expansion, protection and enforcement of fundamental rights. judicial activism under the impact of socio-economic legislation does not confine the idea of justice of the rights of individual but extends it to the socio-economic sphere. In the welfare state of today, the spurt in corruption, lawlessness and violation of human right has given rise to judicial activism. Judiciaries enforce its activism through public interest litigation according to social picture.<sup>34</sup>

### **Prisoners and the Human Rights**

*State of Maharashtra v. Prbhakar Panduranga Sanzgiri*<sup>35</sup>, has already been mention in which the right of a detainee to send his book, written during detention, for publication was recognized. *In state of A.P.v.Challa Ramakrishna Reddy*<sup>36</sup> held that A prisoner is entitled to all the fundamental rights unless his liberty has been constitutionally curtailed.

### **Rights against Solitary Confinement**

*In Sunil Batra (no. 1) v. Delhi administrations*<sup>37</sup> held that if by imposing solitary confinement there is total deprivation of comradeship (friendship) amongst prisoner comingling and talking and being talked to it would offend article 21 of the constitution. There is human rights and liberty to move, mix, mingle, share company with co-prisoners.

### **Rights against Hand Cuffing**

*Prem shanker v. Delhi administration*<sup>38</sup>, SC added yet another projectile in its armory to be used against the war for prison reform and prisoner rights. "handcuffing is prima facie inhuman and therefore, unreasonable, is over harsh and at the first flush arbitrary, absent fair procedure and objective monitoring, to inflict irons is to resort to zoological repugnant to art 21....

### **Right to adequate nutrition, clothing and shelter:**

The Supreme Court has made it clear that the right to adequate nutrition, clothing and shelter are important aspects of the right to life. Justice Bhagwati while delivering the judgment in *Francis Coralie v. Union Territory of Delhi*<sup>39</sup> said: Right to life includes the right to life with dignity and all that goes alongwith it - namely, the bare necessities of life such as adequate nutrition, clothing shelter over the head...

### **Right to Wholesome Environment**

Now the right to life under article 21 is no more restricted to the protection against arbitrary arrest or to protect life but after various important judgments of the court, it includes the right to wholesome environment such as the right to clean air and water, etc. In this context *M.C. Mehta v. Union of India*<sup>40</sup> can be referred to where the court observed that article 21 embraces the protection and prevention of natural gift without which life cannot be enjoyed.

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### Right to Speedy Trial

Though the right to speedy trial is not specifically mentioned as a fundamental right, it is in the provision of article 21. The Supreme Court in *Hussainara Khatoon v. Home Secretary, Bihar*<sup>41</sup> said that the procedure which keeps such a large number of people behind the Bar without trial cannot be regarded as just and fair and is in conformity with the requirement of article 21. On this point the case of *Phoolan Devi*<sup>42</sup> can be referred to, she was released by the Supreme Court on parole on the ground that she remained in custody for a period of 11 years which violated article 21.

### Right to Free Legal Aid to Poor

Now the Supreme Court has established that poor persons have the right to free legal aid. The court while delivering the judgement in *M.H. Hoskot v. State of Maharashtra*<sup>43</sup>, observed that the right to free legal aid services to the poor and needy at the cost of the state is an essential ingredient of reasonable, fair and just procedure as guaranteed under article 21.

### Right to Know

In *Reliance Petrochemicals Ltd V. Proprietors of Indian Express Newspapers*<sup>44</sup> the Supreme Court decided that the people have the right to know, which an essential part of article 21 is. The court recognized this right as a necessary ingredient of participatory democracy.

### Right to Compensation of Victim

In several cases the Supreme Court has recognized the right of the victim to compensation in case of violation of article 21 of the Constitution of India. In this context the name of the cases like *M.C. Mehta*<sup>15</sup> and *Rudal*<sup>16</sup> can be mentioned.

### Right to Release and Rehabilitation of Bonded Labor

Now the Supreme Court has recognized the right of bonded labor to get release and rehabilitation. Reference may be made to the case of *Bandhua Mukti Morcha v. Union of India*<sup>45</sup>

### Right to Health

The supreme court of India in the case of *consumer education of research and research centre v. union of india*<sup>46</sup>-by reading together the directive principles obligation on state to provide health facilities to men, women, children and workers as also old and handicapped person (as contained in article 39(e), article 41, article 42, article 43) with guaranteed fundamental right to life contained in art.21 has held 'right to health and access to medical care to be a fundamental right'.

### Right to woman

There are numbers of provision in India regarding the woman empowerment. But they are in silent positions. But the judiciary is the last recourse to provide remedy and enforce the woman rights in reality. In the Case of *state of Aandhra Pradesh v.P.V.Vijyakumar*<sup>47</sup>, Supreme Court has lay down that the state has power to give priority to woman over men in government service, if the woman is equally capable or qualified equally with man, but the vacancies are limited and all woman and man candidate cannot be appointed then in such case

woman can be priority. The priority is within the ambit of article 15(3).

### Right to Child of Education

A child is a Human being in the true sense of the term. They are entitled to all rights that accrue to human being .however due to age and vulnerability, children often require the state to accord them certain extra protection. They need greater protection against exploitation and disease. The judiciary has one of the most powerful organs in clarifying and giving full meaning to the rights of child. In *mohini jain v.state of Karnataka*<sup>48</sup> and in *unni krishana v.state of A.P*<sup>49</sup> helad that it is the fundamental right of every child to have education up to the age of 14 years. This is the definitely one of the most far –reaching decision of the Supreme Court.

### Right to Privacy

A free and democratic society require respect for the autonomy of individuals, and limit on the power of both, state and private organization to intrude on that autonomy...privacy is the key value which underpins human dignity and other key values such as freedom of association and freedom of speech ...privacy is the basic human rights and reasonable expectation of every person. However on 24 august 2017, the Supreme Court of India (SCI) in Justice K.S. Puttaswamy (*Retd*) vs *Union of India*<sup>50</sup> is a resounding victory for privacy. The ruling is the outcome of a petition challenging the constitutional validity of the Indian biometric identity scheme Aadhaar. The judgment's ringing endorsement of the right to privacy as a fundamental right marks a watershed moment in the constitutional history of India. The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution<sup>51</sup>.

### Conclusion

The right to enforce Human Rights as provided under the Constitution of India is Constitutionally protected. Article 226 empowers the High Courts to issue writs for enforcement of such rights. Similarly Article 32 of the Constitution gives the same powers to the Supreme Court. A new approach has emerged in the form of Public Interest Litigation (PIL) with the objective to bring justice within the reach of the poor and the disadvantageous section of the society. In the recent past the judges of the High Courts and the Supreme Court have from time to time given far reaching and innovative judgments to protect the Human Rights. Public Interest Litigation has heralded a new era of Human Rights promotion and protection in India.A review of the decisions of the Indian Judiciary regarding the protection of Human Rights indicates that the judiciary has been playing a role of saviour in situations where the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. In concluded we can say that judiciary is the last and final protector of the Human rights of people in India.

*Remarking An Analisation***Endnotes**

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