

ROLE OF JUDICIARY INTERVENTION TOWARDS HUMAN RIGHTS IN INDIA

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Abstract

Protection of human rights is a pre-requisite for sustenance of peace and order in every 'pluralistic society' such as India. In this backdrop, it may be said that in Indian legal system, human rights may be classified into three sets. First set of human rights consists of those that are constitutionally specifically incorporated rights, such as, *inter alia*, right to equality, right to life, freedom of speech and expression, freedom to form association, freedom of movement, and freedom of religion. Second set consists of constitutionally not specifically incorporated human rights, such as right to privacy, right to compensation, right to marriage, right to found a family, right to honour, and right against torture, among others. The Supreme Court (hereinafter referred to as the Court), on case-basis, has been incorporating some of these rights into the Constitution. It primarily consists of those international human rights standards that are judicially incorporated. The basis for the judicial incorporation has been the international human rights standards found in International Human Rights Law. The third set comprises of human rights which are neither constitutionally incorporated nor judicially incorporated. The ultimate protection of rights of the individuals in a society governed by Rule of Law depends upon an independent judiciary, speedy and effective administration of justice system. This article attempts to evaluate the role of the Court in protection of civil and political rights, besides economic, social and cultural rights.

Keywords: *Judiciary, Human Rights, Law, Act etc.*

1. INTRODUCTION

Human rights are not western in origin. In fact, every civilised society had recognised certain basic rights of the individuals, such as right to life, right to worship, freedom of movement, freedom of speech and expression. It was only the degree and the form of recognition given to such rights that varied from one society to another and from one time to another because an act of conferment of the said rights primarily depended upon nature of the society, existing socio-economic and political circumstances, and the will of the ruling Governments. A 'right' is

generally understood as 'entitlement' to individuals that cast obligation on others including the State and its machineries to respect it. Rights may even be considered as a typical liberal response that requires individuals to value rights for the freedom they give to plan one's own life-courses. In this way, then, rights bring more closely together the will and the self by enabling the right-holders to self-definitions.

'Rights claim' involves an ethical demand for action, thus they are normative trump cards according to Ronald Dworkin. Indeed, Joel Feinberg points out that rights are a most useful sort of moral furniture. It is said, appeal to rights establishes a base within the treatise of political legitimation and then it creates a foundation for the constant expansion and reformulation of those same rights. There are categories of rights such as natural rights, moral rights, legal rights, and the like, but all categories of rights are of importance to individuals because they enable the right-holders in achieving the desired progress while preventing the State from its recourse to arbitrary form of governance. Therefore, human rights are moral, political and legal entitlements which act as limitations on the powers of the States.

This would also imply that rights protect a minimum level of happiness because such a threshold is required if citizens are to live with the dignity to which their humanity entitles them. Human beings are born with rights to which they are entitled. Human rights are universal in nature, thus they can be enjoyed by everyone who adheres to the principles of equality and non-discrimination based on nationality, religion, caste, gender, or any other criterion. States must not only guard liberties as are necessary for their subjects but also ensure that all its subjects have access to basic social amenities that enable them to live human lives with dignity.

Though the concept of human rights transcends all nations, groups, and historical and political experiences, it was not enough to assure that all persons may enjoy human rights in the same way. The only way to empower all people to enjoy their basic rights without discrimination was for human rights to be internationalised and universalized. In addition, sovereign states were required to commit to the cause of human rights protection and advancement. This led to the formal recognition of State-intervention on humanitarian grounds, development of human rights and its norms based on international cooperation. It is submitted that international peace, security and rights of the individuals are closely connected with each other. Therefore, they may be regarded as interdependent. This is because if security and peace has to survive, then the individuals must have cordial relations and harmony with one another, and from the States' side, they must limit their powers to ensure that their actions comply with human rights norms.

2. CIVIL AND POLITICAL RIGHTS AND THE SUPREME COURT

Soli J. Sorabjee has once remarked, "The first is that the judiciary which is regarded as the weakest branch of the State, because it has neither the power of the sword nor of the purse, in effect and reality is pretty powerful because of the impact of its decisions on the life of a nation."¹ The Court has the constitutional authority and a duty to protect Fundamental Rights guaranteed by the Constitution. Since, civil and political rights enshrined in Part III of the Indian Constitution are justiciable, the Court has been enforcing these rights where the actions or inactions of the State have adversely affected them. However, while doing so, the Court has exhibited inconsistency in its approach and efforts to protect the rights conferred by the Constitution. Indeed, the Court was a weak protector of rights during initial years of its establishment and in emergency times. Subsequently it has acted as a better protector of rights. Despite their dissatisfaction or disgust with the length of time it takes for the legal system and the judicial process to work, aggrieved individuals continue to turn to the judiciary because it is one institution in which they have faith and which, despite its flaws, is regarded as a restorative or redeeming star. Undoubtedly, it is tremendous faith that people have upon the Court while they speak of justice and effective enforcement of law through judicial orders.

In fact, in the view of BalakrishnanRajagopal, a renowned Professor, the human rights record of the Indian Supreme Court is, largely, a product of the post-emergency period in Indian politics. According to him, the Court wanted to rectify its mistake that it had committed in the case of *ADM Jabalpur v. Shiv Kant Shukla*² by not enforcing the rights conferred by Part III during 1975 emergency. Thus, it began an activist phase by rendering liberal interpretation to constitutional rights with intent to expand the ambit of freedom and even to regain the faith of the people.⁴ Certainly, the Court is one of the important protectors of the basic rights of the individuals in India.

3. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND THE SUPREME COURT

It is to be recollected that the Economic, Social and Cultural Rights under Part IV of the Constitution are non-justiciable. However, they are important from the point of view of the administration, governance and growth of the nation. Therefore, the fact that these provisions are not justiciable in a Court of law does not mean that they can be ignored by the State at any time. T.K. Tope, a well-known author, has observed that the Court, from 1978, has been guarding the

¹ Soli J. Sorabjee, Role of the Judiciary-boon or bane? India International Centre Quarterly, Vol. 28, No. 4, Special Commemorative Volume: 40 Years — a Look Back (WINTER 2001/SPRING 2002), pp. 260-270.

² AIR 1976 SC 1207.

political and socio-economic rights of the citizens, predominantly of the unprivileged and the downtrodden people. It has even developed 'public interest litigation' for enforcing the rights of the unprivileged.

In addition, the Court has been successfully reading certain provisions of Part IV along with provisions of Part III making them justiciable. For instance, much before the insertion of Article 21-A by the Constitution (Eighty-Sixth Amendment) Act, 2002, the Court in *Mohini Jain v. State of Karnataka*³ held that right to education that is addressed in Article 41 and Article 45 is part of Article 21 of the Constitution. Subsequently, by the said amendment Act Article 21-A was introduced to give effect to Articles 41 and 45 of the Constitution. Under Article 21-A, a duty is imposed upon the State to provide free and compulsory education. This had to be implemented by a law.

Accordingly, the Right of Children to Free and Compulsory Education Act (RTE) was enacted in the year 2009. However, the implementation of the Act has not been successful primarily due to insufficiency of funds, infrastructure, and poor student-teacher ratio. The said Act, *inter alia*, lays down minimum criteria for teacher qualifications. However, it has not focussed on the need for quality improvement by providing necessary content and methodologies, or in-service training of teachers. For effective implementation of the RTE Act, sound financing is essential. The Centre and the States have decided to share the financial burden. However, some States like Uttar Pradesh has claimed insufficiency of funds to give effect to the Act. In addition, the mechanism to prevent escalation of private teacher training colleges and institutes in the country is not focussed.

Most important shortcoming of the Act is that it neglects early childhood learning that is from three to six years and it is the time when children need to be exposed to literacy environment. Further, it makes difference for children who have access to such literacy environment and those who do not as for the latter as it would be for the first time at the age of six they would be exposed to fundamentals of learning and this may create disadvantage. The Court in its judgment on RTE Act has not considered these issues. Mere declaration that a directive is made enforceable or right to education is a Fundamental Right would help very little in its realisation. The Court could have directed the States to provide effective implementation of the said Act by reworking on its implementation method or policy, but it has not done until date. This would suggest that the Court has failed in addressing the above technicalities, which acts as an obstacle in the enjoyment of the right to education.

³ (1992) 3 SCC 666.

In *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*⁴ right to work, an economic right that is provided under Article 41 of the Constitution was recognized as a Fundamental Right by the Court. Right to work was read with Article 21 of the Constitution. In *Randhir Singh v. Union of India*,⁵ the Court held that the principle of "equal pay for equal work" though not a Fundamental Right is certainly a constitutional goal and therefore capable of enforcement. Similarly, in *D.S. Nakara v. Union of India*,⁶ the Court reiterated that equal pay for equal work is capable of enforcement. In *Daily Rated Casual Labour Employed in P & T v. Union of India*,⁷ the Court has observed that right to work is a Fundamental Right under Article 21 of the Constitution and the job security is an ingredient of the right to work. In *West Bengal Farm Labourer's Association v. The Govt. of West Bengal*,⁸ the Court read Article 47 of the Constitution that deals with the State's obligation to protect health of persons as right to health, a right implicit within the meaning of right to life, and in *Parmanand Katara v. Union of India*⁹ while dealing with right to medical assistance the Court referred to right to health as a Fundamental Right.

The Court made this statement in light of India's participation in the United Nations Organization Water Conference in 1977, holding that the right to clean drinking water is vital to life and that the State has a duty under Article 21 to supply it to its inhabitants. Further reference was made by the Court to its yet another important ruling in *Narmada Bachao Andolan v. Union of India*,¹⁰ "Water is a basic need for human survival and is part of the right to life and human rights as defined in Article 21 of the Indian Constitution..." it was stated. The right to a healthy environment and sustainable development are basic human rights that are implied in the right to "life." These cases demonstrate that the Court is committed to environmental protection and has read some of Part IV's requirements into Part III in this regard.

In *M.H. Hoskot v. State of Maharashtra*,¹¹ the Court recognised that Article 39-A, which provides free legal aid as integral part of Article 21. Consequently, it is the duty of the State to provide without any discrimination a legal aid that is free of cost to those who cannot afford the cost of the counsel in a legal proceeding. Similarly, in *Sunil Batra v. Delhi Administration*,¹²

⁴ AIR 1991 SC 101.

⁵ AIR 1982 879.

⁶ AIR 1983 SC 130.

⁷ (1988) 1 SCR 598.

⁸ (1996) 4 SCC 37.

⁹ AIR 1989 SC 2039.

¹⁰ (2000) 10 SCC 664.

¹¹ Supra note 131.

¹² AIR 1978 SC 1675.

the Court identified two situations in which a prisoner would be entitled for legal aid. As a result, legal assistance was provided not only in judicial procedures but also before the jail authorities. The Court also opined that the “right to free legal aid that is to be provided to the poor accused persons ‘not in the permissive sense of Article 22 (1) and its wider amplitude’ but in the peremptory sense of Article 21 confined to prison situations”.

With regard to right to food, in *Shantistar Builders v. NaryanKhimlalTotame*,¹³ the Court posited that “Basic needs of man have traditionally been accepted to be three — food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in”. Similarly, in *Chameli Singh v. State of U.P.*,¹⁴ it was held by the Court that right to shelter is a Fundamental Right under Article 21 of the Constitution.

The Court in *Peoples Union for Civil Liberties (PUCL) v. Union of India & Ors.*¹⁵ recognised the justiciability of the right to food of specific population as an integral right under Article 21. In this case, the Court passed series of interim orders by which it has made the State Governments and the Union Government accountable for securing food with special reference to vulnerable populations. Food must be provided to the elderly, infirm, disabled, destitute women and men, pregnant and breastfeeding women, and destitute children, according to the Court, particularly in circumstances when they or members of their family do not have adequate cash to do so. Food distribution to the poor and impoverished is scarce and non-existent, resulting in malnutrition, famine, and other associated issues. As a result, the monitoring system must be efficient. In reality, to keep track of hunger and the government's performance, the Court established its own independent monitoring procedures (independent Commissioners). In addition, the Court ordered the government to provide hot cooked nutritious mid-day meals to all children studying in Government aided schools, as well as supplementary nutrition for all children under the age of six throughout India, in order to advance the right to food of vulnerable people like children. The Supreme Court did not only recognise the right to food as a Fundamental Right, but also sought to expand the scope of the right to be free from starvation, which includes food distribution and access, as well as a right to be free from malnutrition, particularly for women, children, and the elderly.

¹³ (1990) 1 SCC 520.

¹⁴ AIR 1996 SC 1051.

¹⁵ W.P. (Civil) No. 196 / 2001.

Recently, the Court in *BrihanmumbaiMahanagarPalika v. Willingdon Sports Club*¹⁶ held the opinion that clubs, hotels, and other establishments that serve food must ensure that the premises where the food is prepared and supplied are kept clean, properly ventilated, and appropriate measures are taken by those in charge of the premises to ensure that the quality of the food is maintained so that people's health and safety are not jeopardised.

This would suggest that the Court has failed to enforce other provisions contained in the Part IV. This is a serious deficit in the context of contribution of the Court in protection of human rights. This may be due to a reason that a number of Directive Principles of State Policy are not easy to implement without there being necessary resources such as finance, infrastructure and other requisite resources. In fact, many provisions in Part IV of the Constitution starts with the expression such as, "The State shall strive" (Article 38); "the State shall, within the limits of its economic capacity and development" (Article 41); "The State shall endeavour" (Articles 43, 45, 47, 48, 51). It is difficult for the Court to interpret these provisions and to determine the scope or limits of State's economic capacity and to decide whether the State can take steps to give effect to its order which has enforced a provision in Part IV of the Constitution. It is also observed that the Court has shown varied thrust in its effort to enforce some of the provisions of the Directive Principles of State Policy. For instance, in cases of right to education, right to clean environment, right to work and right to livelihood and right to equal pay for equal work, the Court has developed stronger principles and directions than it has for the protection of right to food and right to health.

These observations clarify that the Court enforces only some of the provisions contained in the Part IV based on its assessment of the economic progress made by the State or as to availability of the required resources with the State to give effect to economic, social and cultural rights contained in Part IV of the Constitution. However, it must be recollected that human rights are interdependent and indivisible. Enjoyment of a particular human right would not be possible if other human rights are not made available. Therefore, it was obligatory upon the Court to read the provisions contained under Part IV from the perspective of human rights and this would mean that the Court had to enforce all the economic, social and cultural rights contained in Part IV of the Constitution by this time. This has not happened and in this regard, the Court has much to do. This apart, it is observed that the Court has certain other limitations in giving recognition to all international human rights standards as mentioned below.

¹⁶ (2013) 16 SCC 260.

This apart, all human rights violations cause miseries to the victims, sometimes the victims may even enter into psychological disorders or depressions. While the Court would develop standards and methods to prevent violence against the vulnerable sectors of the community, the post-violence scenario have not been a matter of concern it. However, it is submitted that counselling is important to ensure that the individuals receive the reality without getting into depression. The State has not yet developed full-fledged counselling service to the victims of all human rights violations and the Court has failed to direct the State to provide counselling to the victims of human rights violations. Another limitation is that, sometimes, the Court depends upon certain authorities for the implementation of its directions and orders essentially against the authority the allegations were made. For instance, the Court depends upon authorities responsible for custody of inmates including juveniles to implement its directions aimed at bringing reforms, where the authorities to which it has directed remains the one that had violated the rights of the inmates at the first instance.

If circumstances of the case do not give scope for a judge to incorporate an international human right standard that is un-enumerated right in the Constitution, then the Court resist from giving recognition to such a standard. Because, every instance of incorporation of a right is on case-basis, and where a case does not allow for incorporation of a right the Court does not resort to it. This would suggest that much depends upon the facts and circumstances of the case that is in question before the Court. This would also mean that the Court would not give general recognition to all constitutionally not specifically incorporated international human rights standards. Instead, it is only the most relevant and appropriate right/s that is incorporated by the Court from the point of view of facts and circumstances of the case before it. Further, it is pertinent to note that the nature and extent of judicial incorporation undertaken by a judge depends upon each individual who is a judge. The awareness and sensitization, which a judge has, the lacunas that exists in the domestic legislation in question guides him to decide for incorporation of rights.

The abovementioned limitations interfere with the pro-active role of the Court in creation of successive strategies to uphold rule of law and to enforce fundamental human rights. In addition to this, accusations have been levelled by civil societies and organisations that the Indian State is aiming economic growth at the cost of Adivasis and other marginalised sections of society by violating their rights. In naxal-affected areas, it has also reported a lack of rule of law and government. In the context of Economic, Social and Cultural rights, NHRC highlighted that there is a huge lacuna in the implementation of various Governmental policies because of massive corruption. The Supreme Court of India has much to do in this regard.

4. CONCLUSION

The Court has been largely successful in safeguarding the enumerated rights through adoption of doctrines, among others, like 'basic structure', 'proportionality', and 'reasonableness'. In addition, the Court has also enlarged the scope of 'enumerated rights' under the Indian Constitution by utilising the standards contained under International Human Rights Law as the guiding force, whenever and wherever possible. Similarly, in the case of 'un-enumerated rights' such as the right to privacy, right to health, right to security of a person, right against torture, the Court has been referring to the international human rights standards to give recognition to those rights within the ambit of 'enumerated rights'. Therefore, it is clear that for protection of both the 'enumerated rights' and 'un-enumerated rights' under the Constitution, the Court refers to the international human rights standards contained in human rights norms. This apart, it is also important to note that it is the Judge who selects a right that is to be incorporated into the Constitution based on legislative vacuum and facts and circumstances of the case or insufficiency of protection of human rights. Thus, at once, not all un-enumerated international human rights standards are incorporated into the Constitution in general terms. The Court has given recognition to most of the international human rights standards but has failed to give recognition to all of them as highlighted in this article.

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