



Human Rights and Judicial Activism in India

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Abstract

HUMAN RIGHTS can be defined as rights inherent in all over the world, without which we cannot live as human beings. Everyone is entitled to these rights without discrimination on the ground of race, sex, nationality, religion and language etc. In this paper the researcher deals that judiciary play vital role to protect human rights in the Indian. This article attempts to analyze the role of justice and judicial action in protecting Human rights. After independence, India played a very important role in protecting these rights. India has not made any effort to translate it into reality, so it has not incorporated the detailed Bill of Rights into its constitution. The judiciary in India has played a key role in turning these rights into reality. Consequently, the court has adopted all legislative, administrative and judicial or quasi-judicial agencies within the scope of the law, acting as the supreme interpreter, protector and guardian of the constitution. The judiciary has the responsibility to review all government actions. Undoubtedly, in a constitution with provisions to protect the basic rights of the people, the judiciary has the power and obligation to protect the rights of the people from any improper and unreasonable infringement.

Keywords: *-Human Rights, Judicial Activism, Violation of Fundamental Rights, Protection of Human Rights and Public Interest Litigation.*

1. Introduction

Human rights are the right that everyone must have to oppose the state, regardless of any other considerations. It is an inalienable right which all men possessed, of which no one may be deprived without a grave affront to justice.* Therefore, it is generally believed that the violation of human rights will be the failure to recognize the value of human life. In fact, the General Assembly first recognized this right internationally in the name of the Universal Declaration of Human Rights in 1948. The declaration stipulated the international common achievement standards of all the people of the country and

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* S. Augender, "Questioning the Universality of Human Rights", 28 (1&2) *ISLJ* 80 (2002).

emphasized the quality of human beings, regardless of race or gender. Language and religion, the right to life, personal freedom and security, etc.

India with other countries, recognizes that the human rights in the Constitution of India as basic rights of all people, regardless of their considerations or reservations. The Supreme Court of India is the custodian of the Human Rights that reflect judicial initiative, involvement, resourcefulness and concern over the recognition of the fundamental Right.

The Supreme Court has the widest powers to protect the basic rights and human rights of citizens or non-citizens, and there is no reason to restrict the Supreme Court from taking any actions and issuing instructions to the state. In the case of *A.K. Gopalan v. Madras State*,

² the Supreme Court of India claimed that judicial review³ is regarded as a unique feature of the written constitution. Article 13(1) and Article 13(2) of the Constitution of India implicitly recognize judicial review, which gives power to the Supreme Court to declare the statute for violation of restrictions. In this context, this document attempts to establish the role of the judiciary in the recognition and protection of human rights.

2. Significant of Human Rights

Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. *Dr. Durga Das Basu* defines “Human rights are the minimal rights that everyone must have against the state or other public powers because they are a ‘member of the human family’, regardless of their considerations.” *Durga Das Basu’s* definition brings out the essence of human rights.

Section 2 (d) of NHRC, 1993 defines ‘human rights’ which means “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.”

Moreover, the United Nations defines human rights as the rights inherent in our natural state. Without these rights, we would not be able to live as human beings.⁴ Human rights belong to every person and do not depend on the specifics of the individual or the relationship between the right-holder and the right guarantor.⁵ *Shri Pavani Parameshwara Rao* said that the “human rights are the inherent dignity and inalienable rights of all members of the human family recognizing them as the foundation of freedom, justice and

² AIR 1950 SC

³ Article 13 of the Constitution of India states that the state shall make no law that takes away or abridges the fundamental rights

⁴ Pramod Mishra, ‘*Human Rights Global Issues*’ 4. (Kalpaz Publications, Delhi, 2000).

⁵ Coicaud, Micheal, W., Jean Marc, and Marie, Anne (eds.) 25. *The Globalization of Human Rights*. (United Nations University Press, New York, 2003)

peace in the world.” Generally speaking, human rights refer to human rights. However, in a more specific sense, human rights constitute rights that are possessed precisely because of being human.⁶

Scot Davidson defined “Human rights are closely related to the protection of individuals in certain areas of their lives from the exercise of state governments or authorities. It also aims to create social conditions in the country where individuals create the greatest potential.” *David Selby* defined “human rights are those rights which pertain to all persons and are possessed by every individual because they are human.”⁷

The idea of Human Rights is reflected in the following popular version “*Loka Samastha Sukhino Bhawanthu*” this means that all people will be happy. The greatest gift of classical and contemporary human thought to culture and civilization is the concept of human rights. Every generation in every society is continuing the struggle to safeguard, protect and promote basic human rights.⁸

3. Foundation of Human Rights

Magna Carta itself was born six hundred years after the birth of Islam, it has loudly declared that the world obtained the concept of human rights from the *Magna Carta*. Human Rights in Islam we really mean that these rights have been granted by God; they have not been granted by any king or by any legislative assembly. They are part and parcel of the Islamic faith.⁹ In Roman law, there is a distinction between domestic law (*Jus Civile*) and laws that are practically common to all countries. (*Jus gentium*)¹⁰. *Jus natural* was the law of nature which is fixed and immutable, higher to all human laws derived from the dictates of right reason.

The *Magna Carta* of England in 1215 was the first written document on civil liberties. The Charter also introduces the concept of jury in Article 39 to prevent arbitrary arrest and imprisonment. Therefore, *Carta* put forward the principle that kingship is not absolute. The *Magna Carta* was later converted into the Bill of Rights in 1689.

The French people’s representative organized by the National Assembly believes that ignorance or contempt for human rights is the only cause of public disasters. According to

⁶ Mamta Rajawat, *Burning Issues of Human Rights*. 33-47 (Kalpaz Publications, Delhi 2001).

⁷ A.P. Kumar, *National Human Rights Commission of India*, 10 (Atlantic Publishers and Distributors, New Delhi 1995).

⁸ Upendra Baxi, “In human wrongs and Human rights, un conventional essays”, P.1 (HarAnand Publications, New Delhi 1994).

⁹ Dr. M. Asad Malik, “Right to Food: A Human Rights Perspective” in Dr. Alok Pandey *Human Rights in India Changing Dimensions*⁹ (VL Media Solutions, New Delhi 1st edn. 2015).

¹⁰ The Expression “*Jus Gentium*” develops in more recent times into the concept for the rules of law regulating relations between states i.e., International law.

the French “**Declaration of Human Rights**”¹¹ rights of men and citizens includes guarantee of equality,¹² liberty,¹³ free speech¹⁴ and laid down that law is the expression of the general will.¹⁵

Apart, from that there are various other documents¹⁶ also reflected the ideas of human rights which helps in its development. In fact, since the beginning of the 19th century it was recognised in the constitutional law of many States that human beings possess certain rights. Worth of human personality began to be realised.

Although some universal human rights concepts based on earlier cultural developments including religious prescriptions first began to appear clearly in the second half of the 18th century. At that time, groups like the creators of the American Revolutionary Bill of Rights began to argue that everyone has the right to "life, freedom, and the pursuit of happiness. The first concrete movement to capture this new idea was the anti-slavery movement to abolish slavery, especially because the use of people as property contradicted their apparent rights as humans. But various revolutionary movements also began to project ideas that there should be protection of other rights, such as freedom of the press or religious choice. Obviously, human rights have not gained ground as rapidly or uniformly as their proclamations might suggest.¹⁷

It was not until 1945 that human rights were generally unknown in international law. On the basis of the philosophical arguments of the Enlightenment, both France and the United States declared the existence of “human rights” in the second half of the 18th century. But until the United Nations era, there was no general treaty on this issue. But it was not until the massacres and atrocities of the 1930s and 1940s that Franklin Roosevelt and others mentioned human rights in the Charter of the United Nations. He believes that human rights are related to international peace and security, and some of the root causes of World

¹¹ See http://avalon.law.yale.edu/18th_century/rights_of.asp.

¹² Article 1 provides that men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.

¹³ Article 4 provides that liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.

¹⁴ Article 11 stated that the free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

¹⁵ Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents. (Article 6).

¹⁶ See Virginia Declaration of 1776, The Constitution of the US of 1787, American Bill of Rights 1789, The Geneva Convention 1864,

¹⁷ Peter N. Stearns, “Human Rights in World History” 1 (Routledge 2012).

War II are human rights violations against Nazi Germany and Japanese imperialism. Human rights are not mentioned in the League of Nations covenant, although Japan urged a statement on racial equality in 1919, while the United Kingdom and the United States were initially interested in statements on religious freedom.¹⁸

In fact, the General Assembly first recognized this right internationally in the name of the Universal Declaration of Human Rights in 1948, which established a common international standard of achievement for people of all countries. The Universal Declaration of Human Rights is the first part of the International Bill of Human Rights, which includes the International Covenant on Economic, Cultural and Social Rights and the International Covenant on Civil and Political Rights, which were passed by the UN General Assembly in 1966 and entered into force in 1976.

Even before the “Universal Declaration of Human Rights”, the concept of human rights was incorporated into the provisions of the “United Nations 1945 Charter Convention.” Articles 1 and 55 of the Charter emphasize universal respect for human rights and fundamental freedoms for all people, without distinction of race, gender, language or religious beliefs. In addition, Article 68 of the Charter stipulates that the Economic and Social Council is obliged to establish a commission for the promotion of human rights. Therefore, the Council established an International Human Rights Commission in 1946, which is composed of a 43-member body and is responsible for dealing with all aspects of human rights issues with the active participation of the international community.

4. Classification of Human Rights

Human Rights have been divided into three categories:

- (i) **First Generation Rights** include civil and political rights. These rights are enforced and protected through procedural rights that everyone is equal before the law. Political rights are privileges and rights enjoyed by citizens when they exercise national sovereignty. Some political rights are the right to free elections, and they also allow individuals to represent certain social or secular institutions.
- (ii) **Second-generation rights**, such as economic, social, and cultural rights, have gained the power to resist the threat of large-scale manipulation under the threat of some powerful private interests monopolizing the public media.
- (iii) **Third Generation Rights** such as the right of self-determination and the right to participate in the benefits from mankind’s common heritage.¹⁹

¹⁸David P. Forsythe, “Encyclopedia of Human Rights” (Oxford University Press. Inc. 2009)

¹⁹ Mehta P. L. and Jaswal S. S., “Human Rights: Concept and Ideology”, 30 (1&2) *ISLJ* 83 (2004).

5. Human Rights in India

India is one of the few countries that has adopted a constitution to protect human rights. Civil and political rights that are guaranteed as basic rights can be enforced by the courts. Economic, social and cultural rights, although not mandatory, are mandated to promote the promotion of these rights in various countries in order to achieve a fair social order and improve the quality of life of all sectors of society in accordance with the “Instruction Principles.”

The Human Rights Law in India can be categorized into the following three heads:

- (i) Human Rights and the Constitution of India.
- (ii) Human rights protected by the 1993 Human Rights Act.
- (iii) Other measures to protect human rights.

Human Rights and the Constitution of India

The Constituent Assembly drafted the “Constitution of India” and passed it on November 26, 1949, and entered into force on January 26, 1950. It is now a detailed document, including near about 450 articles, divided into 25 parts and 12 schedules.²⁰ It contains detailed provisions on human rights and fundamental freedoms in the preamble, fundamental rights, national policy guidelines and basic duties. These provisions of the Constitution include most important aspects of human rights and fundamental freedoms stipulated in the United Nations Charter and the 1948 Universal Declaration of Human Rights.

The Protection of Human Rights Act 1993

The National Human Rights Commission, 1993 (NHRC) established under the Act has been authorized to take action on “*suomotu*” or any complaints about human rights violations. Most of the complaints received by the Commission between April 1, 1996 and March 31, 1997 were related to Custodial deaths and rapes. In such case, the committee not only passed an order to compensate the victim, but also recommended action against the guilty.

The International Bill of Human Rights embodies the judicial mechanism. Article 8 of the 1948 Universal Declaration of Human Rights stipulates that everyone has the right to obtain an effective remedy. If the basic rights granted by the Constitution or the law are violated, the competent National Tribunal may enforce the remedy. It has been further strengthened by the International Covenant on Civil and Political Rights 1966.

²⁰ V.N. Shukla, *Constitution of India*, revised by D.K. Singh 17 (Eastern Book Company Lucknow, 2012).

The Economic and Social Council has recommended that the United Nations establish appropriate mechanisms to alleviate severe personal oppression. The Council further emphasized the development of international recourse and remedies for victims of human rights violations when national channels may be insufficient. The World Conference on Human Rights, Vienna, 1993 has reaffirmed that the administration of justice, including law enforcement and prosecuting agencies, should be strengthened.

These conventions and the Council reaffirmed that every country should provide an effective framework for victims of human rights violations. Therefore, people all over the world have realized to some extent that the state's prosecution of offenders should comply with laws and procedures.

6. Judicial Activism and Public Interest Litigation

Judicial activism describes alleged judicial decisions based on personal or political considerations rather than existing laws. According to Professor *Lino Graglia*, when the court exceeds the express authorization of the Constitution to restrict the work of other government departments, the court will engage in judicial action.²¹ The Blackstone agrees that judicial legislation is the strongest feature of common law, while Bentham believes that this is a usurpation of legislative functions, a disguise or "tragic sophistry."

Judicial activism is an extension of judicial review and an aspect of judicial review. The Realistic School stated that, 'The role of the judge is the most important', but according to the Black Stone, 'The role of the judge is to declare the existing laws'. The *theory of social bond* stated that "whenever the needs of the society want to be met, the judiciary should come forward to provide justice to the people of the country, because the law is a tool for social change."

The *theory of vacuum filling* refers to that when the two government agencies of the administrative agency and the legislature do not perform their duties as stipulated in the constitution, the judicial agency should step in and make the judicial agency come forward. Because the basic purpose of the judicial system is to provide justice to the people of the country. Article 32 is itself a fundamental right. Article 226 also empowers all high courts to issue writs, including *habeas corpus*, *Mandamus*, *Prohibition*, *Quo-warranto* and *Certiorari* to enforce fundamental rights.²²

²¹ Graglia Lino A., *It is Not Constitutionalism, It is Judicial Activism*, 19 (Harvard Journal of Law & Public Policy 293-96 (1996)

²² Dr. Pandey, J. N., *The Constitutional Law of India* 372 (Central Law Agency, Allahabad, 49th edn. 2012).

Origin of Judicial Activism in India

First time in India the concept of judicial activism traces in *Rv.Phopi et al.*, 1893. In this case, Justice Mahmood made a different opinion and ruled that the prerequisite for 'hearing' can only be met when someone is speaking. This is a case under trial and unable to hire a lawyer, so the question is whether the court can decide its case only by looking at its documents. But the Indian Constitution came into effect on January 26, 1950, and the Supreme Court of India was established on January 28, 1950. Under the Indian Constitution, neither the term judicial review nor judicial activism is used under Indian Constitution. The concept of judicial activism basically evolved after the evolution of PIL.

Public Interest Litigation.

According to traditional status litigation rules, only those who have been infringed on their legal rights or interests protected by the law have the right to use the courts for judicial remedies. This rule prevents those who are unable to seek remedies from the courts due to poverty or social or economic disadvantages, and cannot have equal access to justice. The traditional rule is that only those whose basic rights have been violated can get the right to move in the Supreme Court.²³ The powers granted to the Supreme Court can only exercise the basic rights. A writ that requires remedial measures under Article 32 must be related to a fundamental right to be enforced. Remedial measures must be sought through appropriate procedures.

In *Mumbai Kamgar Sabha v. Abdulbhai Faizullahai and others*,²⁴ Justice Krishna Iyer freely extended the *locus standi* litigation and observed that in our socio-economic environment, the public interest can be promoted through a wide-ranging legislative litigation system...representative litigation, free public litigation and the like...conform to the current justice and consent of ordinary people.

In a series of judgments, the Supreme Court expanded the scope of constitutional provisions to enforce the human rights of citizens and tried to align Indian law with global trends in human rights jurisprudence.

In *A. B. S. K. Sangh (Rly) v. Union of India*,²⁵ It was ruled by justice Krishna Iyer, that AkhilBhartiyaSoshitKarmachariSangh (Railway), although unregistered associations can keep a petition under Art. 32 to correct common grievances. Through "class action",

²³Bokaro and Rampur Ltd. v. State of Bihar AIR 1963 SC 516

²⁴ AIR 1976 SC 1455

²⁵ AIR 1981 SC 298

“public interest litigation” and Access to justice for “representative proceedings” is the current constitutional law.

Seven judges bench of the Supreme Court explained the concept of public interest litigation (PIL) in *SP Gupta v. Union of India*,²⁶ and ruled that “any public or social group member who shows good faith” can invoke the High Court or Supreme Court’s Written jurisdiction to claim compensation for violations of legal or constitutional rights that cannot be brought to court due to poverty, social or economic or other disability. Speaking for the majority Bhagwati, J., (as he then was) stated the rule as follows:

“If the violation of any constitution or legal rights causes legal errors or legal harm to a person or a specific class of people, and that person or a specific class of people is poor, disabled, helpless, or socially or economically disadvantaged as a result, where it is impossible to seek relief from the court, any public can apply to the High Court for appropriate instructions or orders in accordance with Article 226, or in violation of any of the fundamental rights granted to the Court by Article 32. When it comes to weaker parts of the community, such as prisoners struggling in prison without trial during trial, prisoners in Agra’s protective housing, or Khaliyan workers engaged in road construction in Ajmer district, they live in poverty and desolation, those suffering from the tragic life of sweat and hard work barely making a living are helpless victims of an exploitative society and people who are not easy to obtain judicial assistance. The Supreme Court will not insist that the energetic public submit petitions regularly. Individuals support the cause and seek relief for them. The Supreme Court will respond to such free public letters from individuals at any time. Indeed, the Supreme Court has established rules that prescribe the procedures for giving over to relief under Article 32, and these rules require that various forms of formalities must be passed by the person seeking treatment. However, don’t forget that procedures are just hand-made justice, and any procedural technical means must not waste justice reasons. Therefore, the court will not hesitate to abolish the procedural technical rules when exercising its distribution rights, and treat the letter of a moral individual as a petition and take action against it.”

In *Shivjirao N. Patil v. M.M. Gosavi*,²⁷ free publicity constitutes an important state-owned in the current judicial system. The rules of status standards have been watered down. The

²⁶ AIR 1982 SC 149.

²⁷ AIR 1987 SC 294.

court has replaced impartial judges and actively participated in judicial work. They developed the jurisprudence of compassion. This jurisdiction was created and established by judicial creativity and craftsmanship. It was pointed out that under appropriate circumstances, private interest cases can also be regarded as public interest cases.

Similarly, in *Guruvayur Devaswom Management Committee v. C.K. Raian*,²⁸ the Supreme Court explained:

“The court exercising judicial review power was shocked to find that the poorest poor, the deprived, illiterate, unorganized labor departments in urban and rural areas, women, children, ignorant, poor and illiterate, and other oppressed disabled persons cannot access justice or be deprived of Judicial deprivation. In order to achieve complete justice for the above categories of people, the new branch of litigation is called ‘social interest litigation’ or ‘public interest litigation’.”

The first signs of judicial activism appeared in the realm of constitutional law when the Supreme Court ruled that the parliament could amend any part of the constitution save what they considered the ‘*basic structure of the constitution.*’ The court then moved on to making this provision paramount in the *Maneka Gandhi* case and has since ruled in many cases in a manner that can only be described as judicial activism.

Although the Supreme Court of India has expanded the scope of intervention in public administration and government policy decisions, it is well aware of the limitations of its operation. In *P Ramachandran Rao v. State of Karnataka*,²⁹ someone pointed out: “*The Supreme Court does not consider itself an empire of the empire, nor will it act as the dictatorship of the country.*”

The Indian Constitution does not envisage a strict separation of powers. The respective powers of the three wings are clearly defined. The goal is that each wing must play a role in the areas specified by the constitution. The Supreme Court of India considered all these issues in its decision in *State of Kerala v. A Lakshmi Kutty*,³⁰ “*Judges have a special responsibility to avoid taking an overly positive attitude and Ensure that they do not violate the rights of others. Within the scope designated for the other two branches of the state.*”

The seven judges of the Supreme Court declared in the *P Ramachandra Rao case* “*The main function of the judiciary is to interpret the law. It can set principles, guidelines, and*

²⁸ (2003) 7 SCC 312.

²⁹ (2002) 4 SCC 578.

³⁰ (1986) 4 SCC 632

be creative in areas that are open and not occupied by legislation. But they cannot entrench upon in the field of legislation properly meant for the legislature. It is not difficult to understand the boundary between legislation and statutory law allowed by judicial instructions-this is an area reserved exclusively for the legislature.”

The first action of judicial activism that was widely recognized in *Kesavananda Bharati v. State of Kerala*.³¹ Although in this case, most judges do not often admit that this is judicial activism, most judges have evolved “the concept of “basic structure” into any basic concept that is not explicitly mentioned or even implied in the constitution. The reasons behind the court may be twofold. The first is that the court interprets the constitution based on the legislative intention behind it, and the second is to protect the country’s rule of law. Although the first interpretation may still conform to the traditional role of the court, the second interpretation is the extension of the court’s power.” Therefore, this is the first example of the court extending its power of interpretation to the extent that it crosses the line between traditional functions and judicial activism.

The *Maneka Gandhi v. Union of India*,³² case and the Gopalan case formed a clear divergence. In this case, the court agreed to “extend its power of interpretation to a certain extent so that natural law does not exceed its jurisdiction. In ruling that the right to travel is a basic right Therefore, the right to travel must not be deprived of the right to travel unless a procedure prescribed by law is passed. In addition, the procedure must not be arbitrary, and the courts are conducting judicial activities.”

The court made two breakthrough amendments to Indian law in this case. The first is that natural law is now the subject of Indian law, and judges now have the power to rule on whether a particular litigation is fair, just, and moral. This marked the official beginning of judicial activism, because judgments based on natural law expanded the scope of interpretation to the extent that personal opinions were needed, because natural law was not codified into a positive interpretation. The second change is the scope allowed by the court's interpretation of the term “life and personal freedom” until *Maneka*’s freedom of judgment is interpreted as meaning physical freedom rather than physical confinement. The judgement extended its meaning to also mean freedom to travel not only within the country but also without. This case is only the beginning in a long line of extensions to the meaning of the words ‘life’ and ‘liberty’.

³¹ AIR 1973 SC 1461

³² AIR 1978 SC 1643

In the case of *CERCv.TheUnion of India*,³³ the Supreme Court stated that: “*The right to life with human dignity covers certain aspects of human civilization and makes life worth living.*” This justification is one of the many reasons used by the Supreme Court in the recent *Re Ramlila Maidan*³⁴ case in which the court held that right to sleep is a part of right to life under Article 21. This interpretation by the court shows how the court has covered almost every aspect of life in its expansion of Article 21. The court was however careful to state that by this interpretation they only impose a negative duty on the state to not infringe on a person’s right to sleep and not a positive duty to ensure that every citizen can sleep.

Right to Livelihood

Before the *Maneka Gandhicase* the court was of the opinion that the right to lively hood can only be protected, to a limited extent, under Article 19 and possibly 16 of the constitution but nothing in the language of Article 21 give a person the right to lively hood. This view was asserted in various other cases such as in *Re Sant Ram*,³⁵ *A.V. Nachanev.Union of India*,³⁶ and *Begulla Bapi Rajuv.State of Andhra Pradesh*,³⁷ in which the court applied the principle of reject any argument which include livelihood under Article 21 of the constitution.

Thus the court in *Olga Tellisv. Bombay Municipal Corporation*,³⁸ exercised its new set up power in the light of *ManekaGandhi decision* to expand the scope of the legislature to the preview of life to which include livelihood. The interpretation of the court in this regard was that a person can be deprived of his life and personal liberty through only through the actual act of sentences him to death. The court prominent that “If the right to livelihood is not treated as a part and parcel of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation”

In *Hussainara Khatoonv.State of Bihar*,³⁹ the Supreme courtyard experiential that the “PIL action on behalf of prisoners awaiting try-out who had been languishing in jails for periods longer than the ceiling punishment prescribed for the offences concerned. The date in this defines issued information ensuring apposite relief to the prisoners.”

Right to Privacy

³³AIR 1995 SC 922

³⁴(2012) 5 SCC 1

³⁵AIR 1960 SC 932

³⁶AIR 1982 SC 1126

³⁷AIR 1983 SC 1073

³⁸AIR 1986 SC 180

³⁹AIR 1979 SC 1369

The problem of basic rights or privacy has always existed. Like many other rights, this right can be read into Articles 19 and 21 and has been widely debated. This right was first recognized in the *People's Union for Civil Liberties Union v. Union of India*,⁴⁰ case in 1991. The Supreme Court ruled that:

“Therefore, we do not hesitate to believe that Privacy is a part of ‘life’ and ‘personal freedom’ rights stipulated under Article 21 of the Indian Constitution. Once the facts in a given situation constitute a right to privacy, Article 21 will be attracted. The above-mentioned rights shall not be reduced except in according the procedures prescribed by law.”

A modern illustration is the folder of *Selvi v. Karnataka State*.⁴¹ In this case, a big name advocated not compliant the civil liberties of anesthesia analysis, mind mapping, polygraph trial and other alike interview methods as it desecrated people's privacy aptly and the genuine to differ self-prosecution. Recently in 2017 Apex Court passed a landmark judgment in *Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors*,⁴² Nine Judges Bench of this Court held that right to privacy is considered as a basic constitutional right protected by Article 14, Article 19 and Article 21 of the Indian Constitution.

Recently, in February, 2021 the Supreme Court of Victoria in *Minogue v. Thompson*,⁴³ ruled that conferring to the Charter of Human Rights and Responsibility 2006 (Vic), a person's right to privacy and the right to dignity when deprived of liberty are in prison were violated once he was subjected to random drug and alcohol testing and a strip search before providing a urine sample for such testing. Judge Richards found that Dr. Minogues charter rights had been violated, but her honor had not yet issued a relief order.

Protection from inhumane treatment in prison

Life means more than material existence. This means that everybody or ability in life can be enjoyed. The right to life includes the right to a healthier environment.

Justice P.N. Bhagwati

In our country, no national law outlines the term “prisoner”. However, according to Section 3(2) of the Prison Act of 1894, prisoners are divided into criminal and civil prisoners. According to Article 3(4), the law defines a civil prisoner as someone prisoner apart from criminal prisoners.

⁴⁰ AIR 1991 SC 207

⁴¹ AIR 2010 SC 1974.

⁴² (2017) 10 SCC 1.

⁴³ [2021] VSC 56

In 1983, when the *T.V. Vatheeswaran v. State of Tamil Nadu*,⁴⁴ case was decided, the Supreme Court of India was first brought to the attention of prisoners' rights. The court ruled that in conformity with "Articles 14, 19 and 21" of the part III of the Constitution of India, prisoners can enjoy the basic rights of prisoner freedom at any time. The court further pointed out that the prison walls cannot exclude basic rights.

In adjudicating different cases, the Supreme Court of India also stipulated various other protection rights for prisoners in conformity with 'Article 21' of the Indian Constitution, the right to life and freedom by expanding the scope. Rendering to the provisions of Article 21, the rights granted to prisoners are: the right to prohibit torture and death in police custody,⁴⁵ the right to cruel and unusual punishment,⁴⁶ and the right to free legal aid,⁴⁷ the right to a fair trial,⁴⁸ the right to a speedy trial⁴⁹ and the rights of prisoners in protective housing.⁵⁰

Subsequently, in *Sunil Batrav. Delhi Administration*,⁵¹ and in *Sheela Barse v. Union of India*,⁵² the Supreme Court gave important guidelines for the protection of the accused and the convicts whether, (male and female) pertaining to their security and safety, for better conditions in the prisons.

Professional Ethics and Medical Assistance

The Indian judiciary has played a very active role by accepting public interest litigation, which provides an opportunity for the judiciary to pass a limelight in accordance with Article 32 of the Constitution to review the socio-economic and environmental conditions of the oppressed, poor and oppressed people. The Supreme Court instructs to the authority to implement the basic rights of life and freedom, and to implement protective measures in public attention.

The Supreme Court in the case of *Parmanand Katarav. Union of India*,⁵³ Ruled that, whether in government hospitals or elsewhere, each department has a professional obligation to extend its service period with appropriate expertise to protect lives. No law or national action shall interfere to avoid or delay the fulfillment of the most important obligations undertaken Member of the medical profession. In *Paschim Banga Khet Mazoor*

⁴⁴ AIR 1983, SC 361

⁴⁵ *DK Basu v. State of West Bengal* (1997) 1 SCC 416.

⁴⁶ *Jagmohan Singh v. State of UP* AIR 1973 SC 947.

⁴⁷ *M.H. Hoskot v. State of Maharashtra* (1987) 3 SCC 544

⁴⁸ *Rattiram v. State of Madhya Pradesh* (2012) 4 SCC 516.

⁴⁹ *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81.

⁵⁰ *Uppendra Baxi v. State of Uttar Pradesh* (1983) 2 SCC 308.

⁵¹ 1980 AIR 1579.

⁵² (1986) 3 SCC 596

⁵³ AIR 1989 SC 2039

Samityv.State of West Bengal,⁵⁴ It is believed that in a welfare state, the government's primary responsibility is to ensure the welfare of the people, and the government is obliged to provide adequate medical facilities for its people. The government fulfills this obligation by providing medical services to those seeking to use these facilities. Therefore, Article 21 stipulates that the state is obliged to safeguard the right to life of everyone, so as to protect human life is very important. In *Christian Medical and Dental Society of Canadav.College of Physicians and Surgeons of Ontario*,⁵⁵

The two policies require Ontario medical professionals to refer their patients to additional health caution providers, even if the medical professionals conscientiously refuse to provide medical protection for religious reasons.

The Ontario Court of Appeals struck a balance between the rights of patients to enjoy fair medical protection and the rights of religious practitioners. The court held that although these policies violated the right to freedom of religion, in this case, this is equitable and reasonable; the policy does not discriminate against doctors with religious beliefs.

Protection of Sexual Harassment

Eliminate gender-based discrimination always as Human Rights and Constitution Building of India. The principle of Gender equality is reflected in Basic Elements in the Preamble of the Constitution, basic rights, fundamental duties and instructions in principle. However, workplace sex Harassment in India is the first Recognized by the Supreme Court of India in its landmark decision.*Vishakav.State of Rajasthan*,⁵⁶ the court took a step forward in the scope of judicial interpretation from imposing positive obligations to imposing specific rules and regulations, and including private companies within the scope of Article 21. The court ruled in this case:

“As long as international law does not violate domestic law, they have reason to seek international treaties and conventions to fill the gaps in domestic law. International practices to prevent sexual harassment in the workplace do not violate international law, but belong to the Article 21 because sexual harassment violates women’s right to live in dignity.”

Latest legislation enacted through judicial activism

Judicial activism has made a huge contribution to society, which can be inferred by the following decisions:

⁵⁴ (1996) 4 SCC 37

⁵⁵ [2019] ONCA 393

⁵⁶ AIR 1997 SC 3011

Sexual intercourse below 18 years of his wife is Rape

In *Independent thought v. Union of India*,⁵⁷ The Apex Court made it a crime for a husband to partake sex with a wife under the 18 years of age. It will be deliberated rape afterwards. In fact, the sentence abolished the husband's protection under Article 375, paragraph 2, of the IPC, which allowed him to have sex with his underage wife, provided that she was under 15 years of age.

Instant triple talaq is invalid

In a landmark judgment, *Shayara Banov. Union of India*,⁵⁸ the Supreme Court held that the inhumane Islamic practice of Talaq-e-biddat or TripalTalaq among Muslims was unconstitutional by a 3:2 majority. The Supreme Court said that Triple Talaq violated the basic rights of Muslim women because it irreversibly terminated the marriage and violated the basic purpose of the Koran because the court said: "What's wrong in the Koran? The law is bad". The highest Court held that this practice violated Article 14 because only men in marriage can practice, and women cannot violate the belief of parity. According to Article 19, women should have the right to choose when divorcing. Article 21 guarantees the right to life and personal freedom.

Passive Euthanasia

Common Cause (Reg. Society) v. Union of India,⁵⁹ in a milestone judgment, the top Court held that the persons have the right to die with dignity as a fundamental right and permissible passive euthanasia. The Supreme Court has stated that individuals can make a "will to live" in advance, and in some cases can approve passive euthanasia. The five-judge Constitutional Court, led by Chief Justice *Dipak Misra*, affirm that if an individual reaches the stage of an irreversible terminal illness medically, the person can authorize the termination of the life support system. The judgment ruled that passive euthanasia is legal and effective nationwide.

Right to marriage

The Supreme Court made a landmark ruling in *Shakti Vahini v. Union of India & Ors*,⁶⁰ A three judge's bench comprising the Chief Justice of India, Mr. Dipak Misra, Justice AM Khanwilkar, and Justice DY Chandrachud ruled and came to a conclusion. It is absolutely illegal for Khap Panchayats or anyone else to gather to obstruct or prevent the marriage of two consenting adults. In addition, the Supreme Court finally elaborated on the right of

⁵⁷ (2017) 10 SCC 800

⁵⁸ (2017) 9 scc 1

⁵⁹ (2018) 13 SCC 440

⁶⁰ (2018) 7 SCC 192

individuals to choose their life partners and right to marriage as their basic rights in accordance with Articles 19 and 21 of the Constitution.

Right to freedom of speech and expression

In case of *Shreya Singhal v. Union of India*,⁶¹ The Supreme Court ruled that Article 66A of the Information Technology Act allows the arrest of offensive content posted on the Internet because it is against the constitution and therefore the harassed part will be cracked down

7. Conclusion

Human rights are basic fundamental rights which are integral part for the enlargement of human being in the absence of which person cannot live life with dignity. Constitution of India protects the basic rights or human rights of the people, provisions for the same have been made not only in the Articles of the Constitution but in fact Preamble also talks about the fundamental freedoms and protection of the dignity of the individual.

The Indian judiciary has done a commendable job in raising awareness of the importance of protection of Human Rights and encouraging people to participate in preventing the violation of these rights through public interest litigation. Ordinary people, social services organization and especially lawyers must show a high sense of responsibility when initiating public interest litigation and should not be motivated by personal interests. The judiciary has even relaxed the conventional rules for the safeguard of human rights, which paved the method for the development of the notion of 'Public Interest Litigation'. Through Public Interest Litigation, the court heard various issues for violations of human rights. The judiciary tried to curb the tendency to file rash petitions under the guise of PIL. These situations can be avoided by considering only those public interest cases handled by recognized and well-respected social institutions or legal aid associations. The protection of human rights is an important matter of anxiety not only in India but also in the entire world. In order to protect human rights, various international instruments have been included, and on the basis of the provisions of international instruments, such as the promulgation of the "Protection of Human Rights Act 1993". The law has provided for the founding of national human rights commissions and state human rights commissions in each state. It also stipulates the configuration of human rights courts at the regional level so that judicial assistance can be provided to the victims of human rights violations at all levels.

⁶¹ AIR 2015 SC 1523