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Review Article



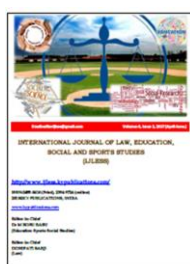
ROLE OF JUDICIARY IN PROTECTION OF HUMAN RIGHTS-A STUDY

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ABSTRACT

A human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human simply because he is human. Human rights are held by all persons equally, universally, and forever. Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. It seems that the concept of human rights is as old as the civilization. This is evident from the fact that almost at all stages of mankind there have been a human rights documents in one form or the other in existence. Different countries ensure these rights in different way. In India they are contained in the Constitution as fundamental rights, i.e. they are guaranteed statutorily. In the UK they are available through precedence, various elements having been laid down by the courts through case law. In addition, international law and conventions also provide certain safeguards. In democratic countries throughout the world, human rights receive effective protection in the courts. One of the vital ways to keep human rights safe is by preserving the prevailing role of the judiciary. Standards developed by the judiciary have a significant beneficial effect of making the lives of people better and the accomplishment of the government's goals easier. In addition these standards may ensure a better understanding of the relationship between the people and their government, on the one hand, and among the members of the international community, on the other. The rights of individuals would be without value if no legal system were able to play an active role in their protection. In India, a close examination of the judicial action reveals that the Supreme Court has devised new strategies and tools to ensure the protection of Human Rights to the people. The courts are innovating new methods for the purpose of providing access to justice to large masses of people who were denied their basic Human Rights. This paper seeks to analyse the concept and approaches of human rights and its development both at national and international level. The paper aims at highlighting the role played by Indian Judiciary in the protection of Human Rights.

INTRODUCTION

A human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human simply because he is human. Human rights are fundamental to our very existence without which we cannot live as human beings. The basic human rights constitute what might be called "sacrosanct rights" from which no derogation can be permitted in a civilized society.ⁱ These are nothing but the modern name of what had been traditionally known as "natural rights" i.e. rights bestowed upon human beings by nature.ⁱⁱ The greatest value of human life is best represented in the recognition of fundamental rights, and in fully enabling people to enjoy and exercise these rights to the extent that preserves their humanity and respects their civility. Life would be meaningless if individuals were not able to practice their natural rights. Moreover, life would be unendurable if individuals were unable to enjoy security in their communities. Human rights are universal and cut across all national boundaries and political frontiers. Despite this, in countries across the globe, governments, security forces, traditional leaders, armed groups or religious leaders place obstacles in the way of human rights. They abuse the rights of citizens and create an atmosphere where human rights are not respected. The idea of promotion and protection of human rights challenges the existing political, economic or cultural power structures to put mechanisms in place to ensure the realization of human rights. The magnificence of human rights is that it is all pervading, the trick lies in the successful execution of the same. In democratic countries throughout the world, human rights receive effective protection in the courts. One of the vital ways to keep human rights safe is by preserving the prevailing role of the judiciary. Standards developed by the judiciary have a significant beneficial effect of making the lives of people better and the accomplishment of the government's goals easier. In addition these standards may ensure a better understanding of the relationship between the people and their government, on the one hand, and among the members of the international community, on the other. The rights of individuals would be without value if no legal system were able to play an active role in their protection.ⁱⁱⁱ In India, a close examination of the judicial action reveals that the Supreme Court has devised new strategies and tools to ensure the protection of Human Rights to the people. The courts are innovating new methods for the purpose of providing access to justice to large masses of people who were denied their basic Human Rights.^{iv}

Role of Judiciary in protection of Human Rights

International human rights standards provide for the principles of equality before the law, the presumption of innocence and for the right to a fair trial by a competent, independent and impartial tribunal established by law, and guarantee competent, independent and impartial tribunal established by law. The importance of these standards in the protection of human rights is underscored by the fact that there is a judicial to guarantee them. The judicial process provides for the effective implementation of the law, the protection of the rights of individuals and groups, and sets a standard in the form of precedents for the subsequent equitable enforcement of the law. Consequently, human rights receive effective protection in the courts. The International Institute of Human Rights in Strasbourg divides the human rights into three generations. First-generation human rights are fundamentally civil and political in nature, as well as strongly individualistic in nature; the Second-generation human rights are basically economic, social and cultural in nature, they guarantee different members of the citizenry with equal conditions and treatment; the Third-generation human rights refers to the right to self-determination and right to development. The judiciary is the guardian of the Indian Constitution which contains human rights law in the form of fundamental rights viz.. Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Education Rights, Right to Constitutional Remedies , Right to life and Right to education. Of course, all legal rights are human rights but it is unfortunate that all human rights have

not become legal rights as on date. This is because the law follows the action, as a consequence, it is not possible to codify all probable laws in anticipation for protection of human rights, and this is when the due procedure of law or the principle of natural justice plays an active role in protecting the rights of the people when there is no legislation available. In case the laws made by any of law-making bodies' conflict with the constitutional provisions which could lead to human rights violations, the judiciary is empowered to declare the relevant legislation illegal. Further, the effectiveness of judiciary is an important indicator of the advancement and civilization of a Nation.

The judiciary must be free from executive and legislative interference. This enables the judiciary to give out justice even against the government without fear. The judiciary should form part of a system of mutual checks and balances aimed at preventing abuses of power to the detriment of a free society. Only an independent judiciary is able to render justice impartially on the basis of law, thereby also protecting the human rights and fundamental freedoms of the individual. The role of the judiciary in the promotion and protection of human rights cannot be overstated in any country that wishes to uphold Human Rights.^v The independence of the judiciary is the key factor that allows the members of the judiciary to be outspoken. This independence strengthens the effectiveness of the courts and enhances the Judiciary's role in the realization of justice and in the restoration of human rights. The international, regional, and local organizations ought to be recognized for their powerful contribution toward the advancement of human rights. Consequently, human rights organizations are an important source for the advancement of the communities. Therefore, the judiciary should exist to keep those organizations active and influential. If the judiciary does not undertake its duties to support human rights activities, the human rights organizations may become an easy target for unfair restrictions made by the government. As a result of the influence of the judiciary, individuals may enjoy equality, and the other branches of government may function efficiently. When the judiciary makes equitable decisions, those decisions set a valuable precedent for the future resolution of disputes between individuals or between the State and individuals. The judicial process emanating there from provides for the effective implementation of the law, the protection of the rights of individuals and groups, and sets a standard for the subsequent equitable enforcement of the law. Consequently, human rights receive effective protection in Courts.

Human Rights - Indian Scenario

In modern times, history of India in relation to human rights began with Raja Ram Mohan Roy, a great visionary; who led India or rather transformed India from feudalism to modernity. Rituals like Sati and Child Marriage, which existed since time immemorial and patronized, and violence against women in the name of religion were discouraged and done away with. He advocated for equal rights of women including widow remarriage and women's right to property. He also advocated for civil liberties and freedom of press. His work was carried forward by many great social reformers like Ishwar Chandra Vidyasagar, Mahadev Govinda Ranade, Mahatma Jotiba Phule, Swami Dayanan Saraswati and Swami Vivekananda and Sri Narayana Guru. The independence movement led by Mahatma Gandhi took up issues like abolition of untouchability, right of Harijans to enter temples, etc., which are even today regarded as milestones in the protection, promotion and preservation of human rights in India. India being a diverse country with its multicultural, multi-ethnic and multi-religious population, the protection of human rights is the sine qua non for peaceful existence.

Human Rights and Indian Judiciary

The preamble to the Universal Declaration of Human Rights states: "... It is essential if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".^{vi} Article 3 of the Universal Declaration of Human Rights adopted by the General Assembly on 10-12-1948 provides: "Everyone has a right to

life, liberty and security of person".^{vii} The definition of Human Rights can be found under Section 2(d) of the Protection of Human Rights Act, 1993 as, "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 the Court of India. " So it is evident that Courts have a major role to play in enforcing the rights. 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. Article 226 of the Constitution empowers High Courts to issue directions, orders or writs in the nature of Habeas Corpus, Quo Warranto, Mandamus, Certiorari, and Prohibition for the enforcement of fundamental rights as well as any other legal rights. Article 32, itself a Fundamental Right, invests the Supreme Court with the power of judicial review for the enforcement of fundamental rights with the power to issue directions, orders and writs as well. 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. A close examination of the judicial action reveals that the Supreme Court has devised new strategies and tools to ensure the protection of Human Rights to the people. The court is innovating new methods for the purpose of providing access to justice to large masses of people who were denied their basic Human Rights.

The International Institute of Human Rights in Strasbourg divides the human rights into three generations. First-generation human rights are fundamentally civil and political in nature, as well as strongly individualistic in nature; the Second-generation human rights are basically economic, social and cultural in nature, they guarantee different members of the citizenry with equal conditions and treatment; the Third-generation human rights refers to the right to self-determination and right to development. The status of human rights is fairly high under the Constitution of India which makes provision for human rights in the form of fundamental rights. India is a signatory to international conventions on economic, social, cultural, civil and political rights, with certain conditions. The basic fundamental rights which are enshrined in the Indian constitution are Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Education Rights and Right to Constitutional Remedies, Right to Life and Right to Education in Part III of the constitution. The Constitution no matter how well crafted it is, will not be able to deliver the goods unless the system which it introduces functions effectively to realise the dreams of the founding fathers of the Constitution. When we talk of the Constitution as living law it is usually understood to refer to the doctrines and understandings that the courts have invented, developed, spread and applied to make the Constitution work in every situation. Unless life can be pumped into the cold print of the Constitution to keep it vibrant at all times it shall cease to be a living law. Generally speaking, this role of pumping life is assigned to the higher courts, more particularly under a Constitution which has separation of powers as its core. The right to enforce the Human Rights provided in the Constitution of India is protected through enabling provisions. The Indian judiciary with its widest interpretation in observance of Human Rights has contributed to the progress of the nation and to the goal of creating India as a vibrant State.^{viii}

The courts are in the scheme of the Constitution guardians of the Constitution, though not the only guardians and upon them rest the responsibility to check unconstitutional behaviour and enforce the constitutional mandate. Every instrumentality under the Constitution is charged with similar duties and obligations, courts are just the last resort. Under the Constitution, judicial institutions have a role to play not only for resolving inter se disputes but also to act as a balancing mechanism between the conflicting pulls and pressures operating in a society. Evolving new juristic principles for the development and growth of law is an accepted role of the judiciary in almost all the countries. Public Interest Litigation is an excellent example to refer to at this moment. It is an innovation of the apex court to answer the call of downtrodden and marginalised people of India whose voices were hitherto unheard of. It can be seen a plethora of human right violations and

injustices being dealt with using the mechanism of PIL. Some of them are : lack of access to food,^{ix} deaths due to starvation,^x out-of-turn allotment of government accommodation,^{xi} prohibition of smoking in public places,^{xii} investigation of alleged bribe taking,^{xiii} employment of children in hazardous industries,^{xiv} rights of children and bonded labours,^{xv} extent of the right to strike,^{xvi} right to health,^{xvii} right to education,^{xviii} sexual harassment in the work place,^{xix} are some of the human right violations that have come to the purview of the Court. Many of the recent changes in law and policy relating to education in general, and primary education in particular, are owed to the decision in Unnikrishnan P.J. vs. State of A.P. and others,^{xx} The decision in Paschim Banga Khet Mazdoor Samity & Ors vs. State of West Bengal & Anr.,^{xxi} delineates the right to emergency medical care for accident victims as forming a core minimum of the right to health. The orders in PUCL vs. Union of India,^{xxii} underscore the right of access for those below the poverty line to food supplies as forming the bare non-derogable minimum that is essential to preserve human dignity. PIL cases concerning environmental issues have enabled the Court to develop and apply the 'polluter pays principle', the precautionary principles, and the principle of restitution

The Constitution cannot be a living and dynamic instrument if it lives in the past only and does not address the present and the future. The world changes - should not the judiciary try to make the Constitution work in changed circumstances? The law must move with the times and the judiciary has forever to remain alive to this reality. It cannot be denied that the law laid down in the nineteenth century - however, suited to social conditions prevailing at that time - may not be suitable to the social necessities of the twentieth century and the judiciary has, therefore, to mould and shape the principles of law to meet the needs of the people in the twentieth century. Judicial creativity (often being termed as judicial activism), is a mean of evolving new juristic principles for the development and growth of law. Another essential component of rule of law, Judicial review is a basic feature of the Indian Constitution. Judicial review, when considered in proper perspective may turn out to be really the process of development of the law to respond to the needs of the society. That the role of the judiciary commences only when its jurisdiction is invoked in a cause brought in a court of law, on the perception that the remedy to the aggrieved is not available elsewhere. Indian courts have expanded the horizon of fundamental rights that are enshrined in the constitution.

India too in the post constitutional era law has been in the process of evolution. In 1950 in Gopalan case,^{xxiii} the Supreme Court placed a rather narrow and restrictive interpretation upon Article 21 of the Constitution. It was held that the "procedure established by law", means procedure established by a law made by the State and the Court refused to infuse in that procedure the principles of natural justice. The Court evolved the doctrine of exclusivity and declined to infuse the rights contained in Article 19 for want of capacity to enjoy the same. The doctrine of exclusivity of fundamental rights as evolved in Gopalan case was thrown overboard by the same Court about two decades later in Bank Nationalisation case,^{xxiv} and four years later in 1974 in Haradhan Saha case,^{xxv} the Supreme Court judged the constitutionality of preventive detention with reference to Article 19 also. The Supreme Court in Maneka Gandhi case,^{xxvi} pronounced that the procedure contemplated by Article 21 must be "right, just and fair" and not arbitrary; it must pass the "test of reasonableness" and the procedure should be in conformity with the principles of natural justice and unless it was so, it would be no procedure at all and the requirement of Article 21 would not be satisfied. The Supreme Court has been consistently expanding the dimensions of Article 21 (Right to Life and Personal Liberty) within the bounds of law by purposeful interpretations. More than fifteen years ago in Francis Coralie Mullin vs. Administrator, Union Territory of Delhi,^{xxvii} Justice Bhagwati observed:

"The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. The magnitude and content of the components of this right would depend upon the extent of the economic development of the

country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights."

In *Bandhua Mukti Morcha* case,^{xxviii} the Supreme Court reiterated once again that right to life guaranteed by Article 21 included the right to live with human dignity, free from exploitation. The court observed that "the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14. In *Mohini Jain* case,^{xxix} the Court held the right to free education to the children until they complete the age of 14 years also to be a fundamental right by taking note of Article 45 of the Constitution. In *M.H. Hoskot* case,^{xxx} the Supreme Court recognised the right of an indigent person to have legal aid. The courts have been making judicial intervention in cases concerning violation of human rights as an ongoing judicial process. Decisions on such matters as the right to protection against solitary confinement as in *Sunil Batra*,^{xxxi} the right not to be held in fetters as in *Sobraj* case,^{xxxii} the right against handcuffing as in *T. Vatheeswaran* case,^{xxxiii} the right against custodial violence as in *Nilabati Behera* case or the rights of the arrestee as in *D.K. Basu* case,^{xxxiv} or right of the female employees not to be sexually harassed at the place of work as in the case of *Vishaka vs. State of Rajasthan*,^{xxxv} are just a few pointers in that directions. On environmental issues, in the *Doon Valley* case,^{xxxvi} Article 21 was invoked by the Court to prevent the degradation of Mussoorie Hills due to the mining operations there, which was becoming a health hazard. The Court held that Article 21 included in its sweep a right to clean environment and that the permanent assets of mankind cannot be allowed to be exhausted in our generation. Again, in *M.C. Mehta vs. Union of India*,^{xxxvii} the Supreme Court reiterated the fundamental right to a clean environment for healthy living and held that pollution treatment plant is a fore-condition of the existence and continuation of an industry.

Criticism

Judicial authoritarianism cannot be permitted under any circumstances.^{xxxviii} The courts, therefore, have to be very careful to see that their exercise of judicial creativity for attaining social change is not allowed to run amuck and every court functions within the bounds of its own prescribed jurisdiction. The courts have the duty of implementing the constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation. All it means is that Judges are expected to be circumspect and self-disciplined in the discharge of their judicial functions. The virtue of humility in the Judges, a constant awareness that the investment of power in them is meant for use in public interest and to uphold the majesty of rule of law and the realisation that Judges are not infallible even if final, would ensure the requisite self-restraint in discharge of all judicial functions because all actions of a Judge must be judicious in character. The Judges have to be alive to this reality and while discharging their constitutional duties have to develop and expound the law on those lines acting within the bounds and limits set out for them in the Constitution.

Conclusion

Human rights are universal moral rights. They belong to all human beings and they are not earned, bought or inherited, but are inherent in human dignity. The term Human Right covers in its ambit those essential rights defined or undefined which lead and contribute to the balanced development of Human Individual. The concept of Human Rights represents an attempt to protect the individual from oppression and injustice. They provide a human standard of achievement for all the people and all the nations. Therefore, these rights are by nature independent, inalienable and

inviolable and hence universal.^{xxxix} Human rights are available to all irrespective of race, colour, sex, language, religion, birth or any status. In other words, they are universally applicable to all persons. They are not specifically designed for the East or West, Hindu or Christian, Sikh or Muslim; it is for all persons. It may be noted that the concept of human rights in a multi ethnic, multi religious and diversified society has a special significance because the instances and occasions for violation and suppression of human rights are numerous due to needs of security, unity and integrity and of law and order.^{xl} The universality of human rights has always been a cultural, philosophical, and moral issue. In today's world, unfortunately, it has become a political, economic, and development-related issue. Properly exercised the powers of the executive lead to the welfare State; but abused they lead to a totalitarian State.^{xli} When a citizen is unable to get redress from the other branches of the Government, the courts do sometimes need to step in because if the courts also shut their doors to the citizen in that event, he is likely to take to the road which would be bad for the preservation of rule of law. To reaffirm the faith of the people in the rule of law, to preserve democracy and confirm the belief in the Latin maxim *ubi jus ibi remedium* - that there is a remedy under the law for every legal injury - the judiciary is under a constitutional obligation to exercise its jurisdiction to meet the challenge because law abhors a vacuum.

Judiciary is the only organ which can translate these human rights into reality; which is not possible without the help of the judicial officers of the respective courts. The Indian judiciary is playing a role incomparable in the history of judiciaries of the world. It must, therefore, prove itself worthy of the trust and confidence which the public reposes in it. The judiciary must not limit its activity to the traditional role of deciding dispute between two parties, but must also contribute to the progress of the nation and creation of a social order where all citizens are provided with the basic economic necessities of a civilized life, viz. employment, housing, medical care, education etc. as this alone will win for it the respect of the people of the country.^{xlii} To conclude, a review of the decisions of the Indian Judiciary regarding the protection of Human Rights of prisoners 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. From the perusal of the above contribution it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. It has, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious rights that constitution gave to its people, the Human Rights.

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