

Human Rights in India: Role of Judiciary and Judicial Activism

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Abstract – Human Rights can be defined as those rights which are inherent in our nature and without which we cannot live as human beings. There are claims made by virtue of the fact that we are human beings. The paper deal with human rights in Indian Constitution. The paper is a attempt to analyse the role of Judiciary and judicial activism for the protection of rights in India. After independence India has played a very significant role in the protection of rights. India has not incorporated an elaborate Bill of Rights in its constitution by efforts have been made to translate these reality. Judiciary in India played a crucial role to translate these rights in reality.

Keywords: Human Rights, Fundamental Rights, Judicial Activism, Judicial Review.

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INTRODUCTION

Human Rights are basis rights and freedom that belongs to every person in the world. We are all equally emitted to our human rights without discrimination.

Injustice anywhere is a threat to justice everywhere.1 Human Rights are rights inherent to all human beings. Rights is not nearly speaking about biological needs but also those conditions of life which allow to freely development and use or human qualities of intelligence and conscience and to satisfy our spiritual needs.

HUMAN RIGHTS IN INDIA: CONSTITUTIONAL PROVISIONS

India is a democratic country. During our freedom struggle, the freedom leaders of the freedom movement had realised the importance of rights. The Motilal Nehru Committee had demanded a bill of rights as far back as in 1928. It was therefore, natural that when India became independent and the constitution was being prepared the concept of Human Rights was accepted.

A unique feature of the Indian constitution is that a large part of human rights are named as fundamental rights. The fundamental rights in the Indian constitution constitute the Magna Carta of individual liberty and human rights.2

Indian Constitution provides us a list of Fundamental Rights:

1. Rights to Equality.

2. Rights to Freedom.
3. Rights against Exploitation.
4. Cultural and Educational Rights.
5. Rights to Freedom of Religion.
6. Rights to Constitutional Remedies.

ROLE OF JUDICIARY:

In our country Judiciary is known as independent part of government. This independent judiciary has two rules:

1. The traditional role i.e. to interpret the laws, and
2. Judicial Activism, i.e. to go beyond the statute and to exercise the discretionary power to provide the justice. It plays both roles in very well manner for the protection of fundamental rights.

Any individual whose fundamental rights have been violated can direct move the Supreme Court for namely. The Supreme Court and High court can issue writs to the government for the enforcement of rights.

Habeas Corpus: A writ of Habeas Corpus means that the court orders that the arrested person should be presented before it. It can be also order to set free an arrested person if the manner or grounds of arrest are not lawful or satisfactory.3

Mandamus: Mandamus is a Latin word, which means "We Command" This writ is issued when the court finds that a particular office holder is not doing legal duty and thereby is infringing on the right of an individual.

Prohibition: This writ is issued by a higher court when a lower court has considered a case going beyond its jurisdiction.

Qua-Warranto: The word Qua-Warranto literally means "by what warrants?" or "what is your authority". If the court finds that a person is holding office but is not entitled to hold that office, it issues the writ and restricts that person from acting as an officer holder.

Certiorari: Under this writ, the court orders a lower court or another authority to transfer a matter pending before it to the higher authority or court.

Thus Judiciary play a important role for the protection of our fundamental rights.

JUDICIAL ACTIVISM IN INDIA:

The Term "Judicial activism was coined for the first time by Arthur Schlesinger Jr. in his article "The Supreme Court 1947," Published in Fortune magazine in the same year. Though the history of judicial activism dates back to 1803 when concept of Judicial Review was evolved by chief justice Marshall in celebrated case of Marbury vs Madison.

The emergence of Judicial Review gave birth to a new moment which is known as Judicial Activism.

Definition:

Black Law Dictionary Judicial Activism as a "Philosophy of judicial decision making whereby judges allows their personal views about public policy among other factors to guide their decision"

Exercise of unconventional jurisprudence or creative approach of judiciary can be called as judicial activism for a instance in India the Supreme Court has treated even a letter as a writ petition and has passed appropriate orders. This concept has turned into a important means to enhance the applicability of a particular legislation for social betterment and also to bringing improvement in the concerned state machinery.

PIL AND JUDICIAL ACTIVISM:

Public interest litigation means "litigation in the interest of public" entered judicial process in 1970. This type of litigation was innovated by judges to provide "equal access" to the unprivileged section of the society.

The idea of PIL came from actiopopular is of the Rome jurisprudence which allowed Court access to every

citizen in matters of public wrong. Development of PIL has provided significant assistance in making the judicial activism meaningful. On account of this type of litigation the court has found opportunity to give directions in public interest and enforcement the public duties.

ROLE OF JUDICIARY ACTIVISM

The most important power of Supreme Court is the power of Judicial Review. In particular the review power means that the Judiciary can interpret the constitution and the laws passed by the legislature.

If the court arrives at the conclusion that the law is inconsistent with the provisions of the constitution such a law is declared as unconstitutional and inapplicable.

Judicial Activism may be defined as dynamic process of judicial outlook in a changing society. Judicial Activism is all about providing a good governance and ensuring the safety, security and welfare of the society. The decision of Gulalthanath vs. state of Punjab, Keshvanand Bharti vs. state of Kerala, Minerva mills vs. Union of the India are worth putting forth. The colour of Judiciary Activism change with the Supreme Court Judgement in S.P Gupta care wherever it was pronounced that any person could file a Public interest Integration for another affected person who was deprived and could not approach the court.⁴

Case study: Air India vs Nergesh Meerza (Air hostesses case).

In Air India vs Nargesh Meerza the service regulations pertaining to the retirement of air hostesses of Air India and Indian Airlines was challenged as being violative of the right to equality under the Indian constitution.

The Supreme Court upheld the condition permitting the termination of an 'Air Hostess' services on her marriage within the first four years, but invalidated the condition that terminated her services on her pregnancy.⁵

Kesavananda Bharti vs. State of Kerala

The Kesavanda Bharti judgement is a landmark decision of the Supreme Court of India that outlined the 'basic structure doctrine' of the constitution. The Supreme Court held that although no part of the constitution' including fundamental rights, was beyond the amending power of parliament, the basic structure of the constitution could not be changed even by a constutional amendmet.

Shan Bano Case

Shan Bano, a 62-year-old Muslim woman was divorced by her husband in 1978. She filed a criminal suit in the Supreme Court of India, she wanted alimony from her husband.

Supreme Court delivered a judgement favouring maintenance given to aggrieved divorced Muslim women.

Shreya Singhal vs. Union of India

Shreya Singhal vs. Union of India is a judgement of the Supreme Court of India, on the issue of online speech and intermediary liability in India.

The Supreme Court struck down section 66A of the Information Technology Act, 2008, relating to restrictions on online speech, as unconstitutional on grounds of violating the freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India.

Vishakha vs. State of Rajasthan

Vishakha and other women groups filed Public Interest Litigation (PIL) against the State of Rajasthan and Union of India to enforce the fundamental rights of working women under Article 14, 19, 21 of the Constitution of India.

The Supreme Court laid down some guidelines in the Vishakha case, pending formal legislation, for dealing with sexual harassment of women at work place, some of the guidelines are as follows –

- Duty of employer or other responsible persons in work place and other institutions to prevent the commission of acts of sexual harassment.
- Courts also provided guidelines to all employers public or private for taking preventive steps.
- Disciplinary action should be taken against the offender. After providing the guidelines courts said, "Accordingly, we direct that the guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the rights to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field."

CONCLUSION

Human Rights is a very old phenomenon and is integral to every human being for its development. Human Rights has always been regarded as the backbone of every democratic set up (6). India has

made the most sincere efforts for the protection and promotion of human rights in the world over.

Supreme Court, High Court played an important role in protecting and safeguarding the human rights in India. Judiciary provides justice through the interpretation of laws. Sometimes through the wide interpretation of provisions of various legislations and also the provision of constitutional judiciary is able to empower rights.

Another role of judiciary is the activist role which is popularly known as "Judicial Activism." When there is no specific law for a specific offence in that case judiciary applies its activist power for the protection of our rights.

REFERENCES

1. Declaration of U.N General Assembly 1993.
2. Dr. Biswal Tapan (2006). "Human Rights Gender and Environment," New Delhi, Viva Book Private United, p. 127
3. Indian constitution at work, textbook, NCERT P-31
4. Narayan Laxmi (2015). "Human Rights for Women," issues and perspectives, "Jaipur, DND Publication, p. 203
5. "Introducing Human Rights: An overview including issues of gender justice, Environmental and Consumer law, "South Asia Human Rights Documentation Centre, 2006, New York, Oxford University Press.
6. Meena Kumar Alok (2004). "Human Rights in India Concepts and concerns," Jaipur (Rajasthan) Pointer Publication, p. 9

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