

PROTECTING HUMAN RIGHTS THROUGH THE JUDICIAL PROCESS IN INDIA

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ABSTRACT

Human Rights may be regarded as those fundamental and inalienable rights which are essential for life as human being. Human rights are thus those rights which are inherent in our nature and without which we cannot live as human beings. Jack Donnely pointed out that human rights are the new standard of civilization. India as a democratic country has a main objective of protection of the basic rights of the people. The Constitution of India recognize these rights of the people, the Constitution of India which assures dignity of the individual as a core value in its Preamble. When an institution or individual wants interpretation to a human rights provision in the constitution or other instruments the court is there to lend a helping hand. Preamble attaches a great importance to the concept of democracy. The Supreme Court has rightly declared that democracy is an essential feature of our Constitution and is part of its basic structure². The laws are meant to reaffirm and recognize human rights and to provide the mechanism for their enforcement.

KEYWORDS: Indian Judiciary; Judicial Process; Human rights; Constitution.

INTRODUCTION

Human Rights are those rights which are inherent in human existence and belong to all human persons irrespective of gender, race, caste, ethnicity, religion etc. The upholding of rights is essential for maintaining human dignity.

‘All human rights for all’ is the goal of the century and the aim is to ensure that human rights are universally accepted and respected. The seven freedoms essential are:

- Freedom from discrimination – by gender, race, ethnicity, national origin or religion.

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² S.R Bommai v. Union of India, AIR 1994 SC 1918, 1976, per Sawant and Kuldip Singh, JJ.; AIR SCW 2946; see also Keshvanand Bharti v. State of Kerala, AIR 1973 SC 1461, 1535, 1603.

- Freedom from want – to enjoy a decent standard of living.
- Freedom to develop and realize one's human potential.
- Freedom from fear – of threats to personal security, from torture, arbitrary arrest and other violent acts.
- Freedom from injustice and violations of the rule of law.
- Freedom of thought and speech and to participate in decision-making and form associations.
- Freedom for decent work – without exploitation.

JUDICIAL PROCESS IN INDIA

According to the Wikipedia (2013) the judiciary is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes. Administration of justice is the primary function of the judiciary. However, the judiciary performs certain other function too. The role of the judiciary is not only to interpret but also to expound the law to provide for those situations as well, though within the bounds of law, since rule of law which does not permit any vacuum, must prevail to respond to the needs of the society. To understand the concept of human rights in the Constitution of India, it is also pertinent to look the objectives of the preamble which indeed the aims and objectives of the Constitution of India. The words of the preamble embody the hopes and aspirations of the people and capture and seek to reproduce the social, economic, and political philosophy underlying the Constitution and running through the warf and woof of the entire fabric³.

The constitutional remedy of enforcement of fundamental rights is provided in article 32. It is a fundamental right in the Constitution, which is the original jurisdiction of the Supreme Court of India. A similar power is given to the High Courts in article 226 of the Constitution. Article 32 was described by Dr. B.R. Ambedkar as the *soul* of the Constitution; and Patanjali Sastri C.J. called the Supreme Court of India the *sentinel on the qui vive*⁴. This is the significance of the fundamental rights of the individuals guaranteed in Part-III of the Constitution, which are the basic human rights and enforceable in Courts of law. Fundamental rights are not absolute by nature as they are subjected to reasonable restrictions, which are imposed by the laws⁵. Fundamental Rights are said to be those great and basic rights, which are recognized and guaranteed as the

³ Dr. Pradeep Jain v. Union of India, AIR 1954 SC 1420,1423, per Bhagwati,J.

⁴ V.G. Row Vs. State of Madhya Pradesh, AIR 1952 SC 196.

⁵ See The Constitution of India, Articles 19 (2) to (6), and 25 (1)

natural rights inherent in the status of a citizen of a free country⁶. In *ADM Jabalpur v. Shukla*, Justice Beg had stated that the object of making certain general aspects of rights fundamental is to guarantee them against illegal invasion of these rights by executive, legislative, or judicial organ of the State⁷. Fundamental Rights can be suspended during proclamation of a national emergency under Article 352, in accordance with the Constitution⁸.

Judicial review is also a basic feature of the Constitution and therefore, a part of the basic structure which cannot be taken away by amendment⁹. The directive principles of state policy contained in Part-IV of the Constitution shall not be enforceable by any Court, but principles fundamental in governance as mentioned in article 37, which also says that they are not justiciable. There is no denying the fact that the object of Directive Principles of State Policy is to embody the concept of welfare State¹⁰.

The concept of equality in article 14 and the meaning of the words 'life', 'liberty' and 'law' in article 21 have been considerably enlarged by judicial decisions. Anything which is not 'reasonable, just and fair' is not treated to be equal and is, therefore, violative of article 14. The word 'life' in article 21 has been construed to mean life with dignity and not mere physical existence; 'liberty' has been construed in the manner envisaged in the Preamble. It has been held that the validity of a law contemplated by article 21 must satisfy the test of articles 14 and 19 as well. The requirement that every state action must satisfy the test of fairness¹¹; consideration of every legitimate expectation¹² in decision making is necessary to satisfy the rule of non-arbitrariness; and absolute power in any individual is antidemocratic¹³, are judicially evolved principles which form part of the constitutional law. Article 21 protects life and liberty, however it can be deprived in accordance with the procedure established by law. The Supreme Court in *Maneka Gandhi v. Union of India* case has held that it must be just, fair and reasonable procedure established by law and not any procedure by law¹⁴. It is significant that even though, to begin with, in *A.K. Gopalan*¹⁵, the Supreme Court construed the meaning of word 'law' in article 21 narrowly, in later decisions the requirement of substantive and procedural fairness was held essential for the validity of a law contemplated by article 21. 'Right to know' is read in article 19(1) (a) which guarantees freedom of speech and expression¹⁶. Indian print and electronic media was fully controlled by the state which

⁶ Patanjali, J., in *State of West Bengal v. Subodh Gopal Bose*, 1954 SCR 587.

⁷ AIR 1976 SC 1207.

⁸ The Constitution of India, Articles 358 and 359.

⁹ *Keshvanand Bharti V. State of Kerala* AIR 1973 SC 1461.

¹⁰ *Keshvanand Bharti V. State of Kerala*, (1973) 4 SCC 225, paras 134 and 139.

¹¹ *Kumari Shrelekha Vidyarthi etc. Vs. State of UP*, AIR 1991 SC 537

¹² *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, AIR 1993 SC 1407

¹³ *SCAOR Vs. Union of India*, AIR 1994 SC 268 (Second Judges case)

¹⁴ 1978 SCR (2) 621

¹⁵ AIR 1950 SC 57

¹⁶ *Miss Lily Thomas v. President of India and others*, AIR 1982 SC 149.

was the major constraint on its freedom. Freedom of Press including electronic media is derived from article 19(1)(a) subject only to the reasonable restrictions provided in article 19 (2) ¹⁷.

It has been held that the fundamental rights guaranteed under articles 14 and 21 of the Constitution are available even to non-citizens and not merely to citizens¹⁸. Abolition of child labour has been held to be the obligation of the State and the practice of child labour has been held to be a violation of the basic human rights¹⁹. Right against exploitation as a 'bonded labour' and to rehabilitation after release have been recognized under article 24²⁰. Right to corruption free governance is also a human right. Non-discrimination or the right to equality is undoubtedly an essential human right. The quality of governance determines the realization of the human rights of the people. Right to corruption-free governance, particularly in developing nations, must be a basic human right upon which the other rights depend.

CONCLUSION

The constitution of India is known as one of the most right-based constitutions in the world. Indian constitution provides the spirit of human rights in its preamble and in the Fundamental rights and Directive Principle of State Policy. Rights have been defined as those claims of an individual that are necessary for the self-development and recognized by state or society. These fundamental rights are defined as basic human freedom for a proper and harmonious development of personality of every Indian citizen. Article 32 of the Indian Constitution contains a tool which joins the public with judiciary. The Judicial process of India occupies a unique place in Indian democratic set up. As an interpreter of the Constitution, the Indian judiciary is an independent organ of state and contains the power to strike down executive, quasi-judicial and legislative actions as unconstitutional. It is armed with the power to punish for contempt of the law or court and also reinforces the position of the judiciary as a Constitutional authority that enforces accountability and answerability of the other organ of the state.

¹⁷ Express Newspaper (P) Ltd & Anr. V. Union of India & Ors., AIR 1958 SC 578: 1959 SCR 12; Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. v. Union of India and Ors., AIR 1986 SC 515: 1985(1) SCC 641: 1985(2) SCR 287; Sakal Papers (P) Ltd. & Ors. v. Union of India & Ors., AIR 1962 SC 305: 1962(3) SCR 842; and Express Newspapers Pvt. Ltd. & Ors. v. Union of India & Ors., AIR 1986 SC 872: 1986(1) SCC 133” 1985 Supp (3) SCR 382.

¹⁸ National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742: AIR 1996 SC 1234.

¹⁹ M.C. Mehta (Child Labour Matter) v. State of Tamil Nadu, (1996) 6 SCC 756: AIR 1997 SC 699.

²⁰ Bandhua Mukti Morcha v. Union of India & Ors., AIR 1984 SC 802: 1984(3) SCC 161: 1984(2) SCR 67; Neeraja Chaudhary v. State of Madhya Pradesh, AIR 1984 SC 1099: 1984(3) SCC 243.