

Role of Indian Judiciary to protect the Human Rights

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ABSTRACT

Human Rights are those rights which are essential for the development of every individual. Human rights can be defined as an inherent right to all the people regardless of their nationality, sex, language, ethnic, race or any other status. These kinds of rights are required equally status to every human being without any discrimination. These rights are treated as indivisible, interrelated and independent. Because all people are born free and equal in dignity, esteem and rights. These rights are related with the liberty, dignity, life and equality of each and every person. For the purpose of live with dignity certain basic rights and freedom are needed to lead a life of meaningful and worthy of human being. Hence, human rights required inherent dignity to ensure that every person is secured against unfair or injustice which undermine their dignity and confer the basic opportunities they require to realize their full potential without any kind of biasness and discrimination.

Keywords: Human Rights, Fundamental Rights, Judiciary, UDHR, Inherent Rights

INTRODUCTION

Human Rights are treated as basic rights and freedoms for every individual which commences from birth until death in human race. These rights are not bestowed by any statute, law or constitutional framework but these are natural rights which are acquired by birth irrespective of race, status, place etc. In fact, a human being is born with natural human rights. These are inherent in every human being regardless of their sex, religion, nationality, color, or any other kind of consideration. In simple words, these rights are applied irrespective of where you are from, what you believe or how to choose the way to live your life. Human rights define the worth and values of every person.

The Supreme Court conferred a new dimension to Article 21 of Indian Constitution, and declared that right to live under Article 21 gives guaranteed not only extent to physical existence but also extent to right to live with dignity. The right to live is not only prohibited to animal existence but it something more than just physical existence.

Definition of Human Rights: Section 2(1)(d) of Protection of Human Rights Act 1993 defines the meaning of Human Rights are as under;

“Human Rights means the rights relating to life, equality and dignity of individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.”

The Constitution of India provides a guarantee of essential human rights to every person in the form of fundamental rights that is given under Part III and Part IV of Indian Constitution.

Hence, human rights are inalienable and indivisible in nature, because a person cannot either lose these rights being a ceased of human being or denied a right because it is less important or non-essential.

Human Rights include Civil and Political Rights namely;

- The Right to Freedom of Religion or conscience
- The Right to Property
- The Right to Privacy
- The Right to Vote
- The Right to Freedom of Expression
- The Right to Freedom of Assembly

Human Rights include several Economic, Social and Cultural Rights namely;

- The Right to Education
- The Right to adequate Food, Shelter, Water, Sanitation etc
- The Right to adequate standard of living
- The Right to Social Security
- The Right to Health

Human Rights under the Constitution of India

Human rights are described under Indian Constitution in the form of fundamental rights are as follows;

- **Right to Equality:** that consists of equality before law, which prohibits the discrimination on the ground of caste, religion, gender, sex or place of birth and equality of opportunity in matters of employment, posts and services under the state and also abolish the untouchability and titles.
- **Right to Freedom:** that consists of freedom of speech and expression, association, assembly, union or cooperatives, movement, residence and right to practice, profession or occupation with subject to impose reasonable restrictions for sovereignty, decency, morality or public order
- **Right against Exploitation:** that restricts all the kinds of child labour, forced labour and trafficking of human beings.
- **Right to Freedom of Religion:** that guarantees of freedom of conscience and free profession, practice and propagation of religion, freedom to manage religious matters, freedom from certain taxes and freedom from religious instructions in certain educational institutions.
- **Cultural and Educational Rights:** which guarantees of every citizen to preserve their culture, script, languages and also provides the right for the minorities to formation and administer educational institutions of their choice.
- **Right to Constitutional Remedies:** which is a guarantee of enforcement of fundamental rights.
- **Right to Education:** which guarantees to provide free and compulsory education to every child of the age of six to fourteen years.

Examples of Human Rights violations in India

There are many ways where human right can be infringed which discussed under;

- Custodial death
- Fake encounters
- Atrocities on minority and lower castes
- Bonded labour
- Immoral trafficking
- Child labour
- Offences at work place
- Illegal detention
- Cases related to children and women

Role of Judiciary to protect the Human Rights

In every democratic country, Judiciary has an essential duty and a constitutional role to defend the Human Rights. According to the Constitutional mandate, this function is assigned to the Supreme Court and High Court. The Indian Constitution empowers to the Indian Judiciary to secure the human rights of citizens in the form of fundamental rights which are enumeration in Part III of Constitution and if a case raise of any violations of fundamental rights then Judiciary played a significant role to protect and restore the same. After the commencement of Indian Constitution, the country is governed by rule of law not by a single authority. There is a reason behind that the Constitution of India empowers the State for the welfare of the citizens and to defend their liberty, life, dignity, fundamental or human rights. The Supreme Court is also known as guardian of fundamental rights because it has a great fame of credibility and independence. The Apex Court is one of the most vigilant courts in the matter of protection of Human Rights. That's why the Supreme Court of India is act like a shield in respect of protection of Human Rights. Hence, there are various cases have been interpreted by the Supreme Court for the protection of human rights as follows;

Scientific tests like Polygraph, Narco and BEAP are violations of Human Rights

Selvi v. State of Karnataka: The Supreme Court held in this case that the scientific tests like Polygraph test, Narco Evaluation and BEAP on accused to be cruel, inhuman and violative of Article 21 of Indian Constitution. The Court further stated that if any kind of action is done on accused is considered as violations of several provisions in following ways;

- Article 21 of Constitution of India
- Article 5 of the Universal Declaration of Human Rights, 1948

- Article 7 of International Covenant on Civil and Political Rights, 1966
- Article 17 of Geneva Convention in respect of treatment of prisoners of war, 1949
- Section 24,25 and 26 of Indian Evidence Act, 1872
- Article 1 and 16 of the United Nation Convention against torture and other cruel, inhuman or degrading treatment or punishment, 1984
- Principles 1, 6 and 21 of the United Nation Body of principles for the protection of all persons under any form of detention or imprisonment, 1988

Denial of benefits under Law is amounts to violation of Human Rights

Ram Deo Chauhan v. Bani Kant Das: If an individual is entitled to benefit under any statutory or particular law and such benefit is denied to that individual under such law it would be considered as violation of human rights under section 2(d) and 12(j) of Protection of Human Rights Act, 1994.

Fundamental and Human Rights

Keshvananda Bharati v. State of Kerala: The Supreme Court highlighted the significance of fundamental rights that was heard by largest constitutional bench of 13 judges. The Apex Court noted that the basic structure of Constitution of India cannot be modified and curtailed even by a constitutional amendment. The Court further said that the legislature amends any part of Indian Constitution except when the amendment process is not covered under the basic structure of Indian Constitution.

Habeas Corpus

ADM Jabalpur v. Shiva Kant Shukla: Under this case four out of five judges held that all the fundamental rights will remain suspended during emergency. This case stigmatized on the Indian Judiciary. But the Justice H.R. Khanna pronounced the dissent judgement and said that the state cannot deprive the right to life and personal liberty of any person without due process of statutory law.

Personal Liberty

Maneka Gandhi v. Union of India: The Supreme Court defined the scope of personal liberty and gave a wider interpretation to the word of personal liberty. The Court said that personal liberty means freedom from coercion and physical restraint which is not sanctioned by law. The court further stated that if any provision of law deprives a personal liberty of person, then the Article 14, 19 and 21 must be tested. This case is also known as golden triangle case where Articles 12, 19 and 21 are interrelated.

Maintenance Case

Mohd. Ahmad Khan v. Shah Bano Begum: In this case. The Supreme Court granted the maintenance to the Muslim woman Shah Bano and secured the rights of all Muslims women beyond the personal law.

Recognition of Third Gender

National Legal Services Authority v. Union of India: This case was a landmark judgement of Apex Court in the history of Indian judiciary ever. In this case, the Supreme Court recognised the transgender as third gender and also entitled the fundamental rights in same way as others person are entitled. The fundamental rights are also applicable to third gender and such rights must be protected.

Entry of Women into Sabrimala Temple

Indian Young Lawyers Association v. State of Kerala: The Supreme Court removed the ban of all women and girls of reproductive age are not allowed to enter into the sabrimala temple and held that every person can enter into the temple irrespective of gender.

Human Rights cannot be taken away or granted by people

National Legal Services Authority v. Union of India: The Supreme Court held that human rights are associated with every person that initiates since birth of human being until death and these are not depends on particular individual. Human Rights are pre legal rights and these cannot be taken away or granted by the people. These rights are enumerated by the Universal Declaration of Human Rights and adopted as fundamental rights under Part III of Constitution of India.

Presumption of Innocence of Accused

Shabnam v. Union of India: The Apex Court held that presumption of innocence of accused is a human right that covered under Article 21 of Constitution of India. The court further pronounced that the scope of Article 21 not only protects the life and personal liberty but also ensures the fair procedure. The liberty of an individual should not be interfered unless there exist strong grounds therefor.

Right to Property as Human Right

Lachhman Das v. Jagat Ram: The Court held that right to property is not only associated with constitutional right but also associated with human right.

Noise Pollution as violative of Human Rights

Noise Pollution case: The Supreme Court observed that spread the noise pollution by loudspeakers, amplifiers or any other sound gadgets would amount to violation of human rights because it is one of the basic human right as noise is affected the human health which is needed to be sustained at any circumstances. The such court held that noise pollution is violation of Articles 14 and 21 of Constitution of India.

Arrest of Accused by registering FIR u/s 154 of CrPC is not compulsory

Lalita Kumari v. State of Uttar Pradesh: It would be incorrect to say that compulsory registration of FIRs will lead an arbitrary arrest which will straight contravention of Article 21 of Indian Constitution. While registration of FIR is mandatory but the arrest of culprit or accused by registering the FIR is not mandatory at all. Actually, arrest of accused and registration of FIR are two distinct concepts under law and there are numerous grounds are available against arrest. In addition, an accused person entitled to right for apply the anticipatory bail under section 438 of CrPC if certain conditions are satisfied therewith.

Triple Talaq Case

The Supreme Court with the majority 3:2 in August 2017 held that instant pronouncement of Triple Talaq as unconstitutional and its practice and usages jeopardize and violate the rights of Muslim women in India.

Right to Life includes Right to Livelihood

Olga Tellis v. Bombay Municipal Corporation: The Supreme Court observed that Fundamental Rights which are enumerated in Part III of Indian Constitution should be understood in a broader sense. Article 21 is one of the most significant Articles which guarantees the right to life and personal liberty of every person. The Court said that in this case right to life also includes right to livelihood.

D.K. Basu v. State of West Bengal: The Supreme Court held that State's action should be fair, just and right while torturing an individual for the extraction of any kind of information, If is not done so it would be violation of Article 21. A crime suspect can be interrogated but cannot be tortured as it contravenes the constitutional as well as human rights. Under this case, the Supreme Court followed the various guidelines;

- Accurate, clear and visible clear identification mention.
- Prepare a memo of arrest of accused person.
- The arrestee must be informed of grounds.
- The arrestee must be examined by medical within 48 hours of such arrest etc.

CONCLUSION

We concluded that with the help of this paper, Human Rights are natural rights which are acquired by human being of their birth. These rights are very essential in nature because it protects the human beings in every aspect namely socio, economic, cultural, political and civil rights. These rights are not granted by any law or statutory provision because these human rights are inherited by birth. Our Indian Constitution also empowers the Supreme Court and High Court to protect the human rights as well as fundamental rights of people in case of violations of such these rights. For the protection of human rights of citizens, the Judiciary has played a significant role to restore the same. In this paper, several cases have been decided by the Indian Courts for the safeguarding and protecting the human rights. Thus, the Supreme Court provide justice, fairness and right procedure through the interpretation of existing laws. That's why, the Judiciary's role is the most important in order to providing the protection to the citizens against the Human Rights violations.

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