

# Socio-Constitutional Analysis of Role of Judiciary Regarding Protection and Promotion of Human Rights in India

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## **Abstract**

Though human rights are valuable to every human being but availability, monitoring, protection of them are equally significant aspects. Therefore, in India Protection of Human Rights Act, 1993 provides for establishment of Human Rights Commission as grievance redress mechanism in case of violation of human rights. However, Apex Court of India has played proactive role for protection of basic human rights, as plethora of judgements is available wherein judiciary has widely interpreted the human rights. Judicial interpretation has not only made human rights available but it has immensely contributed also for expanding scope of human rights. In order to maintain living character of human rights proper judicial interpretation is required, and Apex court has played its role with commitment. In result, as of now, multiple human rights have been expressly evolved by judiciary and enabled to every human being to enjoy with them. Considering the pivotal role of judiciary in protecting, promoting human rights in India, it is necessary to recapitulate the selected judicial verdicts for analysis. In order to know various aspects of human rights evolved by judiciary the role of judiciary through interpretation is assessed. More the wider interpretation more the rights are evolved; hence, quite wide range of decisions containing variety of subject matters is covered.

Key words: judiciary, human rights, interpretation, protection, promotion

## **Introduction**

Admittedly, human rights are statutory rights made enforceable by various statutes. Therefore, implementation of such rights is sine qua non. In India, separate mechanism for grievance redress in the form of commissions has been evolved by independent statute, for monitoring implementation and protection of human rights. Beside commissions, upper level judiciary is also keen in interpreting the basic human rights as liberally as they must be useful in real sense to the individual. Ranging from rights of prisoners to right to liberty to go abroad has been the subject matter of adjudication before Apex court to interpret these all the rights from the human rights perspectives. Plethora of judgements is evident to infer proactive role of judiciary in promotion and protection of human rights from multiple perspectives. Considering judicial interpretations, myriad of human rights have expressly been provided to the human being in India. Proactive role of judiciary is an emblem of socio-

constitutional spirit possessed by the judiciary towards human rights. In this paper selected verdicts of the Supreme Court have been chosen for analysis to understand the proactive role of judiciary in interpreting human rights. In this paper it is argued that, judicial verdicts have maintain living characteristic of human rights, as several aspects of human rights have been coined by the judiciary through decisions from time to time.

### **Human Rights in UDHR 1948**

On international platform UNO has expressly laid down certain human rights by resolving UDHR. The General Assembly on 10<sup>th</sup> December 1948 has resolved UDHR containing certain express provisions providing human rights. It has been enshrined in the preamble of Universal Declaration of Human Rights 1948 that, 'whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. In order to satisfy with the feelings of to do justice, the dignity of human being must have to be recognised. In human rights perspective, all inalienable rights of human family are to be recognised. But, despite of having adhered to this international obligation by virtue of member of United Nations Organisation, there are cases of tremendous violation of human rights, everywhere full of dissatisfaction and restlessness is visible. Hence, judiciary is the last resort of victims of violation of human rights. Cases are reported pertaining to prison maladministration, migrant labourers, unorganised labourers, women victim of trafficking, slum and pavement dwellers.

### **Human Rights under the Constitution of India**

So far human rights are concerned, part III and IV of the Constitution of India encompass civil and political rights and social, economic and cultural rights respectively. Upon meticulous observation close similarity is seen between fundamental rights enshrined under the Constitution of India and human rights provided under UDHR 1948. Part III deal with fundamental rights, Article 12 to Article 35 covers right to equality, right to freedom, right against exploitation, freedom of religion, cultural and educational rights, and right to remedy. part IV covers directive principles of the state policies, Article 36 to Article 51 deal with education, health, and standard of living, organisation of village panchayat, uniform civil code, organisation of agriculture and animal husbandry, protection of environment, promotion of international peace and security, protection of monuments and places of national importance.

Admittedly, these statutory provisions contain limited words, therefore, to make them effective and efficacious wider interpretation is inevitable. The Apex court has interpreted these provisions so fascinatingly that they became strong weapons in the hands of needy population to use and seek justice. role of judiciary is highly appreciable in promotion and protection of human rights for two reasons that, first it has thrown away the traditional procedural mechanism of filing petition in the court, and coined the concept of PIL and second, through wider interpretations it has widened the scope of shorter provisions of the Constitution. Due to diligent

role and wider understanding of the court, the concept of human rights has achieved desired strength in India. Human rights movement could rise up properly though endemic adversaries were found in the way, and in international society, India got respectful place.

Under the facets of various remedies, the Supreme Court of India has brought the victims at the door of justice.

### **Judicial interpretation in PIL regarding human rights**

Active and committed judiciary is a symbol of progressive state. Activeness and commitment of judiciary is calibrated through its path showing verdicts. Ability of beneficial interpretation in judges comes when they are deeply involved in the cause of social development. In case of human rights, judiciary has played proactive role so as to achieve human development which is base of national development. Role of judiciary in protection and promotion of human rights is analysed through its judgements. Due to inevitable limitations selected judgements have been chosen for analysis as samples, those can be generalised in other cases. Selected cases are hailing from different categories but their core issue for judicial determination is human rights. Post independence era is known for just society. Due to promulgation of humanitarian principles in the Constitution of India assured to peoples of India to have equality, justice, fraternity, liberty on all walks of life. It is pertinent to mention here that, judiciary has been catalytic to make human right effective and equally meaningful in the Indian society.

PIL means Public Interest Litigation<sup>2</sup>, it is indeed a revolutionary approach pioneered by the Supreme Court of India, whereby, age old prerequisite condition of *locus standi* for filing of case was site tracked. PIL permits a public spirited person to knock the door of court, for seeking justice for other persons who are not able to come to the court for the reasons of lack of acquaintance of law and procedure or illiteracy, poverty etc. Under the garb of judicial activism court suo moto can treat a news item as case before it as issue appropriate directions to responsible authorities. Let us recapitulate the judicial interpretations given by the court in respective cases from time to time.

In '*Mumbai Kamgar Sabha Vs. Abdulbhai*'<sup>3</sup> justice Krishna Iyer has expanded the rule of *locus standi* and observed 'public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances... representative actions, *probono publico* and like... are in keeping with the current assent of justice to the common man'.

This grant of relaxation from *locus standi* has resulted in filing continuous flow of cases on the one hand and encouraging litigant for seeking justice on the other hand, 'in a series of decisions, the Apex Court has widened the ambit of constitutional provisions to enforce the human rights of citizens and has sought to bring the Indian

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<sup>2</sup> In case of 'People's Union for Democratic Rights Vs. Union of India, AIR 1982 SC 1473. PIL is said to be a legal action initiated for public interest or general interest by a citizen having no personal motive.

<sup>3</sup> AIR 1976 SC 1455.

law in conformity with the global trends in human rights jurisprudence'.<sup>4</sup> The Supreme Court of India, has also shown its concern stating PIL as a need of hour, in the verdict given in case of '*A. B. S. K. Sangh (Rly) Vs. Union of India*'<sup>5</sup> that, access to justice through "class action", "public interest litigation" or "representative proceedings" was the present constitutional jurisprudence. Again the concept of PIL was explained in '*S. P. Gupta Vs. Union of India*'<sup>6</sup> by the Apex court laying down by seven Judge Bench that, "any member of the public or social group acting bona fide" could invoke the writ jurisdiction of the High Court or the Supreme Court, seeking redressal against violation of legal or constitutional rights or persons, who, owing to their poverty or social or other disability, could not approach the Court for relief".

Coining concept of PIL by judiciary indeed proved to be a gift for seeking justice to those who were incapable due to complex procedure. It laid a ladder to climb the steps of courts for seeking justice through any one as representative who possesses public spirit. In this way for the purpose of enforcement of human rights of deprived section of society anybody may come forward and seek protective measures through judiciary. Its rampant use has proved efficacy of this weapon made reachable to the incapable at large.

Certain relevant cases are discussed below, for showing the role of judiciary in protecting and promoting the human rights in such way that to maintain living characteristic of them. Judiciary has played such proactive role that the concept of human rights became effective in Indian society where sizeable section of society was denied status of human being. In the background of prevalence of misconception, and religiously sanctioned customs of discrimination, denial, deprivation judicial interpretation of human rights is commendable.

#### *Sunil Batra Vs. Delhi Administration*<sup>7</sup>

This case is a best example of PIL vis-a-vis judicial activism in India. Facts of the case, Sunil Batra was a prisoner in Tihar Jail at Delhi, he wrote a letter to the Supreme Court complaining brutal assault by head warden on his colleague prisoner. Supreme Court has played proactive role, particularly, Justice Krishna Iyer was keen in protection and propagation of human rights who said, "Rights jurisprudence is important but becomes an abstraction in the absence of remedial jurisprudence". Considering this letter as an opportunity to interpret right of prisoner in wider sense, court has laid down right of prisoner as right to life and personal liberty. As prisoner was categorised as wild animal in the colonial period, this judgement has brought paradigm shift in this rhetoric conception. At the conclusion it was observed that, the writ of habeas corpus can be issued not only for releasing a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment. Further the court laid down, whenever the rights of a prisoner either under the Constitution or under any other laws are violated, the power of the court to issue writ can run. In short, rights to the prisoners

<sup>4</sup> Mr. Justice A.M. Ahemadi, "Dimensions of judicial Activism, JT 2003 (2)Journal 1.

<sup>5</sup> AIR 1981 SC 298.

<sup>6</sup> AIR 1982 SC 149. This case is widely known as the First judge transfer case.

<sup>7</sup> AIR 1980 SC 1559



against inhuman treatment were recognised as basic human right of the prisoner; later on it became practice throughout India to treat prisoners in human manner.

*Peoples Union for Democratic Rights vs Union of India*<sup>8</sup>

In this case petitioner alleged that the violation of related laws resulted in the deprivation and exploitation of workers employed. Therefore the court held that, non-payment of minimum wages to the workers employed in various Asiad projects in Delhi was denial of their right to live with basic human dignity and violative of Article 21 of the Constitution. Minimum wages to the workers though it was a statutory right but judiciary has brought it in the ambit of human rights. it was considered at par with right to dignity as enshrined in right to life and personal liberty. In India such broad understanding was never ever found towards labours. consequently it enabled victim to knock the door of High Court or Supreme Court straight way instead of going to lower courts or tribunals.

Beside this, Supreme Court of India is proved to be a vanguard to protect human rights of accused, in case of

*Avtar singh vs State of M. P*<sup>9</sup>.

There was a practice to remain in standing position by the accused. However, it has been ruled that, accused not required to stand up throughout the trial. Hence, keeping accused standing has been considered to be a violation of human rights. This interpretation has provided dignity to the accused. Judicial interpretation in this case has repose confidence in the accused, and wiped away practice of derogatory treatment on \part of human being.

*Bhagalpur Blinding Case*<sup>10</sup>

This case is known on court record as *Anil Yadav Vs. State of Bihar*, it was a first case, where question of granting monetary compensation to the victim was considered positively. It was alleged by the victim that, the police had blinded some persons depriving them of their rights to life and liberty. The Bench was headed by Justice Bhagwati, which held that, if compensation was not granted, Article 21 would be reduced to nullifying “a mere rope of sand”. In addition to this, three police officers were awarded with punishment for violation of laws. it was colonial practice to treat accused with brutality but in the domain of fair trial such practice is banned. however, police were practicing this legacy as if they are emissary of colonial state, this verdict has set their minds right.

*Delhi Judicial Service Association Vs. State of Gujrat*<sup>11</sup>

This case is remarked as the most humiliating episode in the history of judiciary of India. The illegal act on part of the police officers with judicial officer has derogated the status in society of them. Therefore, this act led to

<sup>8</sup> AIR 1983 SC 339

<sup>9</sup> 1982 Cr. L. J. 1740. SC

<sup>10</sup> 1982 (2) SCC 195

<sup>11</sup> 1991 (4) SCC 406

convict to the responsible police officers. Apex Court further embarked on laying down the guidelines for protection of the judicial officers. to have protection to personalities who are engaged in services which are of sensitive nature is necessary. judicial services is one of the sensitive services as fate or destiny of parties concerned is decided, sometimes it may cause dissatisfaction to the parties that could be sufficient to create feeling of annoyance. Therefore, protection to such personalities is necessary to be provided to them as of their human rights.

#### *D. K. Basu vs State of West Bengal*<sup>12</sup>

This is a land mark case wherein the Supreme Court of India has upheld rights of accused while conducting arrest. The prophetic guidelines have been laid down, expecting strict adherence with them by the police personnel while conducting arrest of the accused or suspect. If not, such acts on part of the police would tantamount to violation of fundamental rights of the accused. This judgement has compelled to carry out reforms in the police uniform as it was dictated to have name plate to display on every personal, and while conducting arrest police must be in uniform. These guidelines have been implemented across the country.

#### *Nilavati Behra vs State of Orissa*<sup>13</sup>

In this case also, the Supreme Court has granted monetary relief to the tune of Rs. 1,50,0000 in favour of the mother of the deceased, who died in the police custody. This decision of Apex Court was one sort of dead blow to the 'Star Chamber'<sup>14</sup> practices and implementation of draconian laws. Such huge and unique punishment which was ever imposed, felt to be appropriate for the reason of violation of human rights and fundamental freedoms. In the background of enormous custodial deaths, this judgement is of great significance. Posthumous scenario has been changed, that the graph of custodial deaths has been reduced considerably. In the administration of criminal justice such drastic steps of the judiciary have new paradigm so as to bring justice at the door feet of poor as well. Fair trial enables everyone to avail sufficient opportunity to establish the case. Concept of fair trial guarantees fair justice to every party to the matter, which is to be done by the court and not by the police.

#### *Vishakha Vs. State of Rajasthan*<sup>15</sup>

The Supreme Court has laid down certain guidelines in the context that, there is vacuum of legislative provisions to combat the incidents of sexual harassment of women at working place. Therefore, having regard to the definition of human rights laid down under sections 2 (d) of Protection of Human Rights Act, 1993, befitting guidelines have been dictated. Supreme Court has urged specifically to have such efficient piece of legislation enacted as it would prohibit the incidents of sexual exploitation of women at working place. If

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<sup>12</sup> AIR 1997 SC 610.

<sup>13</sup> AIR 1993 SC 1960

<sup>14</sup> It was one type of court, imparting justice to the victim by allowing inhuman practices by the police against accused persons.

<sup>15</sup> This case is popularly known as case pertaining to sexual harassment of women at working place.

process of enacting law takes time, in order to protect women at work place from sexual attacks, these guidelines would work as of law till enactment is made by the legislature. There was widespread implementation given to this judgement at executive level and to establish special cell at work place to protect working women from sexual attacks was made mandatory.

Such great activism has been shown by the Supreme Court in protecting the human rights of working women. in short, the role which is expected to be played by the legislature to protect and promote human rights has generously been played by the judiciary in India.

Today we are in the age of information and technology, where potential threat has also been created to the sustenance of human rights. There is plethora of judgments given by Supreme Court, on the issue of inhuman treatment given by investigation officer in the course of interrogation. In present era, there is rampant use of narco analysis test, brain mapping test, poly graph test, the use of these tests has cause violation of the right of accused, i.e. protection against self incrimination. In case of *Selvi Murugesan Vs. State of Karnataka*<sup>16</sup> a major blow has been given by the court to investigating authorities, stating that, use of Narco Analysis Test, Brain Mapping Test, Polygraph Test on accused or suspect and even witnesses without their consent is unconstitutional and amount to violation of right to privacy.

## Conclusion

Prompt, efficient and active judiciary is considered to be a vehicle to take the nation towards progress. Role of judiciary is not restricted to simply decide the cases but something beyond. Court has to decide cases keeping in view the larger interest of the society and far reaching effect of decisions. Indian judiciary has proved to be vanguard of protection of human rights of all sections of society, namely, women, accused, common man, member of judiciary, labourers. Hence, besides having an independent mechanism provided for taking care of protection of human rights in Protection of Human Rights Act, 1993, the upper level judiciary has played a pivotal role in promotion, protection and propagation of human rights in India.

A very wide range of judicial interpretations is visible in India, protecting various types of human rights through wider interpretation of statutory provisions, which is worth considering in the arena of judiciary across the world. A close concern has been seemed to be shown by the judiciary in presence and absence of special Act.

Vigilant judiciary is a symbol of progressive society, for progressive society human development must be an object to achieve. Social progress in isolation is futile unless it is accompanied by human progress. In India, active and efficient role has been played by the judiciary in regard to human rights and tried to seek human development which is base of social progress. In nutshell, upon meticulous analysis of judicial interpretation it

<sup>16</sup> 2010 (7) SCC 263.

is concluded that the role of judiciary in promotion and protection of human rights is found to be proactive and protective both. In result judiciary has contributed much in strengthening concept of human rights in India.

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