

PROTECTION OF HUMAN RIGHTS AND INDIAN CONSTITUTION**Dr. Mukhram Chouhan**Assistant Professor,
Saheede Aajam Bhagat Singh Law College, 9-Z, Sri Ganganagar (Raj.)**Abstract**

This paper is the important segment in this work on Human Rights. When we seek to protect the rights of individuals with help of statutory provisions, then the law of land has to play a vital role in restoring the rights of people. Indian constitution is the basic source of endowment of rights on its citizens. Therefore this chapter focuses on how the framers of Indian constitution have adopted the provisions of UDHR while designing the rights of people. It is widely understood that Indian constitution is a social document. Society is the collection of Individuals. Thus, all the provisions included in the chapter on Fundamental rights, aim at betterment of these people, the normal citizens of our land.

Key words: Human Rights, Indian, Constitution, Judiciary, Human Dignity, Law

INTRODUCTION

As all the roads from inside any district lead to a highway or any express way, in the same manner, all the constitutional provisions ultimately aim at protection of rights of its citizens. Rights could be related to property, service matter, right to have healthy environment etc. A close examination of all these rights, reveal that ultimately these rights point towards protecting dignity of that individual. When we try to protect Dignity of an Individual, then it aims at the protection of the basic right of that individual. This chapter has the discussion of various cases, which have helped in restoring dignity of an individual and ultimately becoming landmark judgments, with respect to human rights.

Constitution of any country is the supreme law of that country. In India our constitution which came into force on 26th January 1950, has by nature been very dynamic and has developed in consonance with the changing times and needs. The constitutional development results through a variety of processes:

- The constitutional amendment by the parliament.
- Role of judiciary in its interpretation.

The judiciary immensely contributes to constitutional development while administering justice. Our constitution is also in tune with the United Nations in determining what human rights are

and adopts the same holistic approach in determining the protection of human rights.

The framers of our constitution had certain specific ideals which were enshrined in the wording of our constitution. Ultimately law of the land is always for its inhabitants, thus numerous judicial pronouncements have contributed to ultimately protect the Human Rights. It is the interpretation of the constitution which is actually a highly creative judicial function. Indian Democratic Society enjoys and lives the values like Individual Liberty, Human Dignity, Rule of Law and Socio-Economic Justice. The judiciary is under an obligation to interpret the constitution in an apt manner to protect the rights of people. Since the commencement of constitution, the Supreme Court has rendered many decisions giving creative, purposeful, liberal and dynamic interpretation while expanding various provisions of the constitution.

The UDHR and UN Charter's relevance in Indian Constitution:

As far as Human Rights are concerned, the provisions in the Indian Constitution related to fundamental rights and fundamental freedom, are actually an extension of the principals laid down in the UDHR of the UN. The framers of Indian Constitution were influenced by the concept of Human Rights. They developed on this concept substantially from the constitution of the USA. Certain provisions of our Constitution find a direct

influence of the Universal Declaration of Human Rights.

The protection of human rights is not limited to having very ideal and adaptable statutory provisions. Judicial activism is the dominating topic among the conscious citizens and law knowing people of India. It signifies the power of Judiciary to probe into the inner functioning of the Executive in matters of public interest. Growing frontiers of human rights in national and international spheres have also contributed to the scope and frequency of judicial activism.

Lord Coke of England in Bonham's case propounded the doctrine to adjudge void, an Act of Parliament when it is against a right and reason or repugnant or impossible to be performed. In America, there was a charge against Chief Justice John Marshall when he invalidated the legislation enacted by the American Congress in Marbuty v. Madison.

The Indian Judiciary is not lagging behind of other judiciaries of the world. On the contrary the Indian Supreme Court is probably the only court in the history to have asserted the power of judicial review over amendments to the Constitution.

'The Indian Judiciary has adopted an activist goal-oriented approach in the matter of interpretation of fundamental rights. The Judiciary has expanded the frontiers of fundamental rights and in process, rewritten some parts of the Constitution through a variety of techniques of judicial activism. The Supreme Court of India has undergone a radical change in the last few years and it is now increasingly being identified by the justices as well as people as 'the last resort for the purpose of the bewildered'.

The United Nations (UN) has therefore adopted a holistic approach in determining what human rights are, and the international community has repeatedly affirmed the interdependence of both sets of rights. The International community also recognizes the concept of aiming at having desired change by protection of Human Rights.

Public Interest Litigation and Human Rights Protection In India the principle of judicial activism will not be completed unless public interest litigation is discussed. The judicial process of PIL has been very useful for protection of human rights of the people. 'The Judiciary was to be an arm of the Social

Revolution upholding the equality that Indians had longed for'. Judiciary plays a vital role in administration of Justice. The constitution is thus supreme and any action of any instrumentality of the state in conflict with it is null and void. Judiciary interprets the true spirit of the constitution. However, role of Judiciary and its constitution, maintenance and sustenance of rule of law has been significant and substantial so far. For variety of reasons, functions of Judiciary is widening and expanding. It is in this juncture the needs to reshape and reinforce our judicial system assume higher, wider and broader dimensions.

The phenomenon, which is now called judicial activism, is, therefore, not one of recent origin. It originated with the Firm establishment of Courts as means of administration of Justice. Blacks Law Dictionary thus defines the term judicial activism as 'Judicial Philosophy which motivates Judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies which are not always consistent with the restraint expected of appellant Judges. It is commonly marked by decision calling for social engineering and occasionally these decisions represent intrusion in the legislative and executive matters'

Judicial dynamism is otherwise called as judicial activism and on the other hand the process of making law by judges is called judicial activism. The concept of Judicial Activism can be noted in various Judgments after independence. The first such Unique Judgment is one delivered by the Supreme Court of India in the matter of Golak Nath The Supreme Court of India enunciated the Judicial Principle of prospective overruling, giving of wider beneficial interpretation of the constitution contained in Art 13 of the constitution. Article 13 mandates that any legislation which conflicts with fundamental rights guaranteed by the Constitution of India would be void to the extent of conflict. All legislations which were in existence prior to 1950 and which conflict with the provisions of the constitution become void from the date the constitution was promulgated. The Court observed that in Golak Nath's case that a legislation, which is void by reason of application of Article 13 of the constitution, will stand overruled prospectively. Such interpretation was necessary to Prevent actions taken under those legislations prior to

the enforcement of the constitution of India being declared illegal retrospectively.

The decade 1960 to 1970 was a period when Supreme Court appeared to be anti-legislative in character. In 1973, the Supreme Court while deciding the writ petition filed by His Holiness Kesavananda Bharati Sri Padagalavaru and other vs. State of Kerala³⁶, 13 Judges had to consider the correctness of the judgment in Golak Nath's case. By majority view, the Supreme Court overruled the decision in Golak Nath's Case in so far as it held that Art. 368 does not entitle the Parliament to amend the Constitution. However the doctrine of prospective over ruling was not touched. In Kesavananda Bharati's case the Supreme Court invented basic structure theory, which consists of supremacy of the constitution.

In Maneka Gandhi vs. Union of India³⁷, Justice Krishna Iyer observed, 'Natural Justice is a distillate of due processes. The concept of natural justice and due process which were rejected in Gopalan's Case forming part of our constitutional Scheme have not been held to be an essential part of the constitutional scheme guaranteeing Fundamental Rights True, our constitution has no "due process" clause of the VIII amendment of the American constitution" Justice Krishna Iyer, observed, but "after Cooper and Maneka Gandhi's case the consequence is the same"³⁸ By this Judgment the Supreme Court envisaged the Quasi-Judicial or Judicial authorities to be so fair. Fearless and confident as to change their decision on patient and impartial hearing after the decision is rendered.

Yet another example of judicial activism is the post controversial judgment of the Supreme Court delivered in the case of ADM Jabalpur vs. Shiv Kanth Sukla.

Art 21, which provides that no person shall be deprived of his life or personal liberty except according to the procedure, establish by law. The majority of Bench, Deciding ADM Jabalpur Case throughout India several political party leaders were arrested by the State before suspension of Fundamental rights by the State under MISA Act of 1971. Law following by which even human life can be taken away can establish a procedure. The judgment was criticized as pro-governmental judgment, but the interpretation under Art 21 given

by his Excellence Justice ChandraChud was excellent example of judicial activism.

The Judgment of the Supreme Court in Vineet Narain v Union of India popularly known as the 'Hawala Case'⁴⁰ is a landmark decision. In that case, the court adopted a novel course of action by which is continued to closely monitor investigations by the CBI in respect of serious accusations made against high dignitaries, a procedure described by the Court as 'Continuing mandamus'. The unique aspect of the judgment is the innovative procedure evolved by the Court. The established procedure of the Court did not enable it to deal with the kind of case it had entertained and it is clear from the observation of the Court that 'as the case progressed, it required innovation of a procedure within the constitutional scheme of judicial review' to permit the Court to find a solution to the problem.

Over the past decade a tide of public interest cases has been brought before the Supreme Court that has led the Court to express its opinion on virtually every aspect of public life. There are judgment of the Supreme Court covering a wide gamete of subjects, such as on issues relating to human rights, custodian deaths, illegal detentions, prison conditions, right to shelter, rehabilitation of mentally retarded and physically handicapped persons issues concerning the rights of the community the right to livelihood, the right to the clean and pollution free environment, maintaining the ecological balance, the right of women and children, guidelines for inter-country adoption, right to education, emancipation of bonded labour, the right to better working conditions, protection against exposure to hazardous substance, the regulation of blood banks and blood donors, consumer rights, functioning of Lok Adalats, protection of ancient monuments', issues relating to public administration and public life road safety and traffic regulation, adherence to municipal and building laws by builders, corruption the nexus between criminals and politicians, criteria for allotment of Government accommodation, telephone tapping, and issues relating to public policy, the privatization of telecommunications, disinvestments of public sector companies, Foreign collaborations in core industrial sectors licensing policy.

The Supreme Court of India is one of the apex Courts that inspires confidence among ordinary

citizens. It is imperative that it continues to enjoy such credibility and support. At the same time Judges must remain conscious of our constitutional scheme and the balance of power between individual interest and state interest. Thus the object to democracy is full filled upon harmonious and coordination interaction between three organs of the Government.

Contribution of Justice P.N. BHAGWATI to the Protection of Human Rights

Role of Judiciary is of great importance when we attempt an analysis of judicial pronouncements. The honorable judges carry out the task of interpretation of statutory provisions and application of the same. This results in administration of justice and restoring rights of those whose rights have been infringed.

The purpose of including Hon. Justice Bhagwati's contribution is justified the following reasons.

Hon. Justice Bhagwati has discharged his duty more as a sensitive individual and in particular as a human being with an ability to recognize and identify pain and agony of others. Certain landmark pronouncements of Hon. Justice Bhagwati, exhibit his minute observation of consequences and ultimately aiming at social sensitization. There are number of cases which have been included hereafter to showcase his unparalleled contribution towards protection of Human Rights.

Another noteworthy reason for inclusion of this topic broadly in this research work is that, while carrying out study on Human Rights, the researcher had an opportunity to organize a UGC Sponsored National Seminar on 'Human Rights and Ethics' in the year 2008, September. The researcher had an opportunity to personally meet Hon. J. Bhagwati as he was invited to deliver a keynote address in the above seminar. Personal interaction with Hon. J. Bhagwati has been a learning experience which will be cherished for years to come.

In the early eighties a new class of litigation has developed which differs from traditional litigation in as much as there are no plaintiffs or defendants nor State/Complainant v. accused; it is less expensive and more efficacious that is the Public Interest Litigation or Social Interest Action.

There is little distinction between Public Action Litigation (PIL) and Social Action Litigations. In the case of Public Interest Litigation the Collective rights of the public are affected and redress is sought for such injury, there may be no direct specific injury to any member of the public as such. Example: Shri Ram Foods and Fertilizer (Oleum gas leakage) case. In the case of Social Action Litigation petitions are made for the enforcement of the specific rights of a determinate class or group of people who are primarily injured by the impugned action. The injury suffered by members of this class is direct and redress is sought on their behalf because they are unable to approach the Court on account of indigence, illiteracy, social and economic disability. Example: Workers in Stone-quarries (Bandhua Mukti Morcha case) inmates of Care Homes, under trial prisoners in jails.

In this very case Justice Bhagwati explained the nature and purpose of PIL that public interest litigation is not in the nature of adversary litigation but it is a challenge and opportunity to the Government and its officers to make basic human rights meaningful to the deprived sections of the community and to assure them social and economic justice which is the constitutional objective.

The Supreme Court of United States relaxed the procedure of 'locus standi' in Gideon's v. Wain Wright, 372 U.S. 335. In January, 1962 on the letter head of a Florida Division of corrections, a handwritten scrawl addressed to the Supreme Court of the U.S. (stated): "I, Clarence Earl Gideon, inform this Court that I am a pauper without funds or any possibility of obtaining financial aid, and I beg of this Court to listen and act upon my plea". This letter was treated as a petition by the Supreme Court of the United States. This relaxation of procedure was on the right lines and rendered a valuable public service. However it gave rise to grave abuse and violated the basic principle in the process of judicial administration and the process has been discontinued and now a post card or letter is treated as an ordinary petition.

The Supreme Court now is ready to interfere under Art. 32 wherever and whenever any injustice is done by the State action to the poor and helpless persons who cannot approach the court. So we can say that Justice Bhagwati has generalized the

technique of liberalized rule of 'locus standi' and he made a momentous social invention by accepting even letter from public spirited citizens and converting them into writ petitions.

This Art. 32 which is a corner stone in the Indian Constitution has been helpful to many of the under privileged, poor, downtrodden persons, under trial prisoners who were languished in the jails for years, children in jails, sexually abused women in protected homes etc. for asserting their rights as Human Beings.

Professor Upendra Baxi, ex-Vice Chancellor of Delhi University referred to the letter petitions introduced by the Supreme Court as the epistolary jurisdiction i.e. jurisdiction which is invoked by epistles to the court.

J. Bhagwati has championed the cause of workers and labourers in addition to women, children and weaker sections of the society. He is the champion of social justice system in India. His reputation and his impact through his Judicial and Legal Aid work is so enormous that the public response has been quite phenomenal, eg: a Village where the tribal people benefited from his judgment, renamed the village after him calling it BHAGAVATIPURAM.'

For this reason we may say that the Hon'ble Justice P.N. Bhagwati, is the pioneer of Public Interest Litigation in India.

Judiciary's Role in Gender Justice:

The term gender refers to culturally based expectations of the roles and behaviors of men and women. The term distinguishes the socially construed from the biologically determined aspects of being male and female. Sex identifies the biological difference between men and women. Gender identifies the social relations between men and women. The reason why gender requires to be studied with social reference is that both men and women face problem as a result of being related with each other. Hence the term gender therefore refers not to men and women but to the relationship between them, and the way this is socially construed. Gender relations are based and perceived contextually and often change in response to altering circumstances.

Gender analysis is a valuable, descriptive and diagnostic tool for development and crucial to gender mainstreaming efforts. Gender analysis could be defined as the systematic gathering and examination of information on gender differences and social relations in order to identify understand and redress inequities based on gender. The methodology and components of gender analysis are shaped by how gender issues are understood in the institution concerned. There are a number of different approaches to gender analysis.

In order to study Gender Equality one has to consider present day's situation related to women, then the emphasis on gender equality and women's empowerment does not presume a particular model of gender equality for all societies and cultures, but reflects a concern that women and men have equal opportunities to make choices about what gender equality means and work in partnership to achieve it. Because of current disparities, equal treatment of women and men is insufficient as a strategy for gender equality. Equal treatment in the context of inequalities can mean the perpetuation of disparities. Achieving gender equality will require changes in institutional practices and social relations through which disparities are reinforced and sustained. It also requires a strong voice for women in shaping their societies.

Gender equality is enshrined in the Indian Constitution in its Preamble, in the realm of Fundamental Rights, Fundamental Duties and Directive Principles. Article 14 of the Constitution provides for equality of all subject to special protection given to deserving sections of society. Article 15 prohibits discrimination on grounds of sex. Article 16 provides for equality of opportunity in public employment. Article 15(3) of the Constitution permits the State to make special provisions for women and children. Article 39 enjoins the State to provide an adequate means of livelihood to men and women. Article 51A (e) makes it a duty of every citizen to renounce practices derogatory to the dignity of women.

There have been number of programs undertaken by the government for the advancement of women. From the Fifth Five Year Plan (1974-78) onwards there has been a marked shift in the approach to women's issues from welfare to

development. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women.

Gender disparity manifests itself in various forms, the most obvious being the trend of continuously declining female ratio in the population in the last few decades. Social stereotyping and violence at the domestic and societal levels are some of the other manifestations. Discrimination against girl children, adolescent girls and women persists in parts of the country. The underlying causes of gender inequality are related to social and economic structure, which is based on informal and formal norms, and practices. Consequently, the access of women particularly those belonging to weaker sections including Scheduled Castes/Scheduled Tribes/ Other backward Classes and minorities, majority of whom are in the rural areas and in the informal, unorganized sector - to education, health and productive resources, among others, is inadequate. Therefore, they remain largely marginalized, poor and socially excluded.

The Mathura rape case ushered in a wave of public outcry and was instrumental in bringing about wide-ranging changes in rape laws in the country. However, even under the changed legal regime, hardly any substantive improvements seem to have taken place in the ground conditions. Although punishments have become more stringent, the rate of conviction has dropped significantly in the post-reform years, the insensitivity of the justice delivery mechanism and the trauma of the rape victim under an unsympathetic system continue unabated.

The judges of the Supreme Court felt that since Mathura had not raised any alarm, and since there were no visible injury marks on her body, she must have given her consent.

There was a remarkable change which was adopted by the law commission. This welcome change showed some kind of human element while dealing with the cases of heinous crime against women. The Commission recommended shifting the burden of proof of consent to the accused. It suggested specific provisions that would deal with the medical examination of the victim as well as the accused by a registered medical practitioner. It said that girls who are victims of rape should be

questioned only by a female police officer, in the absence of which a qualified woman from a recognized social organization should do the questioning.

The Commission suggested that the law relating to sexual assault be made gender neutral, that is, men and women can be charged with the rape of men, women and children. This meant that for the first time the sexual assault of minor boys was made prosecutable under the law. It asked for Section 377 of the IPC to be dropped.

Based on the Law Commission's recommendations, the government enacted an amendment in the winter session of Parliament in 2002, which deleted Section 155(4) and inserted a proviso to Section 146 of the Indian Evidence Act, which means that a victim of rape can no longer be questioned about her past sexual conduct and her 'general immoral character'. There has been no sign of the government implementing the rest of the Law Commission's recommendations.

In the Bhanwari Devi case of 1994 an enlightened 'Sathin' under the Women's Development Program of the Rajasthan Government was subjected to mass rape for opposing the practice of child marriage in the community. This case continues to typify the near-impossibility under certain circumstances of successfully challenging deeply entrenched patriarchal power structures through legal channels alone.

The trial judge acquitted the accused on the reasoning that "rape is usually committed by teenagers, and since the accused are middle-aged and therefore respectable, they could not have committed the crime. An upper-caste man could not have defiled himself by raping a lower-caste woman".

When it comes to sexual harassment, the Indian Supreme Court has only dealt with the issue directly in one PIL case, and that has turned out to be a landmark decision. Popularly referred to as the Vishaka decision,⁷² became the very first case in India in which the Supreme Court declared sexual harassment in the workplace to be unconstitutional. The decision was handed down in 1997 by a three-judge bench including Chief Justice J.S. Verma, Justice Sujata. Manohar and Justice B.N. Kirpal.

Justice Verma held the opinion that sexual harassment in the workplace is a violation of the

fundamental rights of 'gender equality' and 'the right to life and liberty' under articles 14, 15, and 21 of the constitution. In addition, he found that article 19 (1) (g), which protects the right to 'practise any profession or to carry out any occupation, trade or business,' is also violated when there is an incident of sexual harassment. Justice Verma stated that the fundamental right guaranteed in article 19 depends on the assumption of a 'safe' working environment. He also goes on to explain that:

'The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive'.

When cases of sexual harassment violate the fundamental rights of women workers under the constitution, and are brought before the Court for redressal under Article 32, it is the duty of the Supreme Court to do what the legislature should have done in the first place - provide some guidelines for the protection of these rights. Justice Verma's guidelines are written with regard to the definition of 'human rights' as set out in the Protection of Human Rights Act of 1993. He takes specific note of the fact that currently India's civil and penal laws 'do not adequately provide' any protection for women against sexual harassment at work. He goes on to argue that it would take a good deal of time to put such legislation on the books, and that is precisely why the Supreme Court must set out useful guidelines so that employers and other responsible persons or institutions may begin to observe such rules to aid in the prevention of any future sexual harassment of women in the workplace.

Section 498A of the IPC, which entails filing a criminal complaint for cruelty and harassment, does not take into account other kinds of harassment, such as violence, beating, mental torture, deprivation of finances, and denial of maintenance and abuse of children. The object of the Indian Penal Code is to try the perpetrators and punish the guilty. However, it does not rescue women from a situation of continued violence.

CONCLUSION

India has gone beyond institutional legal and educational measures to strengthen the ability of women at the political level, starting at the grass-roots level, to have a greater say in matters affecting them and society through affirmative action measures that provide for one-third of seats for women candidates in all elected local, village and municipal bodies. Grassroots politics is full of stories of once faceless women emerging from their homes to preside over the social, economic and political destinies of their communities.

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