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Role of Judiciary in the Protection of Human Rights



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The idea of human rights has a long history but the rules and machinery for the legal protection of the rights and machinery for the legal protection of the rights and freedoms of the individual are to a large extent, a post second World War development. Almost all the international and regional instruments for the protection of human rights have been enacted and brought into existence only during this period. Human rights are those minimal rights, which every individual must have against the state or other public authority by virtue of his being a member of the human family irrespective of any other consideration. Though the concept of human rights is as old as the ancient doctrine of natural rights founded on natural law, the expression human rights is of recent origin, emerging from, post second World War international charters and conventions.¹The dignity and rights of man, a dominant theme in the political philosophy of the 18th century, flowered into practical significance with such instruments such as the Virginia Declaration of Rights, 1776, the American Declaration of Independence 1776, the French Declaration of the Rights of Man and of the Citizen 1789 and of more lasting importance the series of Amendments to the United States.

Constitution adopted in 1791 as the American Bill of Rights.² By playing a vital role in the task of protecting human rights, the American judiciary has made a positive contribution in this field. The

function of the American judiciary was intended to be proscriptive to block the enforcement of an unjust law or action instead of being prescriptive giving directions as to how remedial action should be taken by the executive. The important development in judicial activism in the United States was noticed in the first and second Brown cases when the court under the leadership of Chief Justice Earl Warren, disallowed social segregation in public schools and extended that prohibition to all public facilities. In Canada, there was no declaration of human rights in the British North America Act, 1867, the original constitution of the Dominion of Canada. In spite of such shortcomings, the Canadian Supreme Court established a full-fledged judicial review on the touchstone of the Canadian Bill of Rights, 1960 by virtue of number of land mark decisions.³

The most important development in France was the French Revolution of the Rights of Man and Citizens adopted by the National Assembly on August 26, 1789. The French Declaration further goes on to proclaim a number of the natural and imprescriptible rights of man; equality before law, freedom of opinion, freedom of religion, freedom of expression and the rights of property etc.⁴ Judiciary has invented novel forms of action to provide relief to the poor, underprivileged, downtrodden section of the society. Era of epistolary jurisdiction is emerging. Epistolary jurisdiction allows access to justice to the poor

and the weaker section of the society. The court entertains a letter as writ petition ignoring all procedural norms and technicalities. The epistolary jurisdiction is a new strategy adopted by the judiciary for protection of human rights of the vulnerable sections of the society. The recent teleological approach of the judiciary provides basis for the meaningful understanding of the Human Rights. In that directions the scope of right to life and personal liberty under Article 21 was widened to the extent that life means life with human dignity. The scope of right to equality under Art-14 was dynamically interpreted as distributional equality that is equality of result along with equality of opportunity in recent times. The apex court started taking directive principles of state policy as basis for meaningful enforcement of fundamental rights. Now the directives of Part-IV are not more directives. They are supplementary and complimentary to fundamental rights. Now the Legislature also wanted to enlarge the fundamental rights in tune with the judicial activism particularly regarding free and compulsory education up to 15 yrs age through out India by bringing 86th constitutional Amendment through which a new Art 21-A was added to the fundamental rights chapter. National Human Rights Commission was also constituted to ensure the effective implementation of Human Rights in India. Even though it has not teeth, its reports strike the conscience of the Indian society. Various Human Rights Courts were also established at district level to promote human rights jurisprudence in India.⁵ According to Justice Bhagwati Judicial Activism in India is being used for achieving distributive justice which is otherwise labelled as “Social Justice”. Judicial activism follows from the failure of the executive to adhere to law. The more responsible the executive, the lesser the judicial activism, but juristic/judicial activism flows from the judges.⁵

The term judicial activism is used with reference to the judicial decisions in various fields. Its areas are widening such as public interest litigations, writ petitions under Article 32'

interpretations of Article 14, 19, 21 etc. Term judicial activism is interpreted in different ways. On this background it is very much essential first to ascertain the meaning of “Judicial Activism”. Judicial Activism is an act of judge to fill up the gaps, doubts, because the provisions of constitution are couched normally in general terms to give them adaptability and elasticity. The final burden of interpreting those elastic provisions is upon courts. This function is performed by courts through judicial activism introduces and elaborates new ideas and concepts without actually suing them in deciding case in hand. It is one of the functions of the judiciary to fillup the gaps and doubts left by legislature. Now a days it is getting more and more popularity in India because the judges of higher judiciary have to delivery the judgements on the subjects touching all aspects of national life. Including corruption, environment, pollution, nexus between criminals, politicians and others. The object of judiciary is clean out all social political and national maladies of the Country.⁶

The Apex court of India starts a positivist tendency and strictly confined to the rule of liberalization. In the case of *A.K. Gopalan Vs. State of Madras*.⁷ The court acts in a liberal view to interpret the Article 21 of the constitution, rather than the customized narrow construction to word such as “Personal Liberty” and “Procedure established by law”. In matter of personal liberty, the Courts observed judicial restraint and legitimated the actions of the Government. In 1967, in the case of *Golknath Vs. Punjab*,⁸ Courts held that, Parliament retaliated by passing the Twenty-Fourth Amendment which explicitly stated that parliament was not limited in its power of constitutional amendment. When that amendment was challenged, the court held in *Kesawan and Barti V. Stat of Kerala*,⁹ that although parliament could amend every provision of the constitution, it could not alter the basic structure of the constitution, it could not alter the basic structure of the constitution. It create a controversy between the non elected judicial officers and elected members of parliament.

However in 1975 emergency was declared, the ruling party passed such drastic amendments with the help of its brute majority upon parliament's power of constitutional amendment acquired legitimacy. The Apex Court struck out in *Indra Gandhi V Raj Narian* case as constitutional amendment which sought to validate the election of the Prime Minister, earlier set aside by the Allahabad High Court on some technical ground deemed destructive of the basic structure of the constitution. The decisions make a position reflections are the doctrine of the basic structure of the constitution. Supreme Court pronounced that the procedure contemplated by Article 21 must be 'right, just and fair' and not arbitrary; it must pass the test of reasonableness and the procedure should be in conformity with the principles of natural justice and unless it was so, it would not be procedure at all and requirement of Article 21 would not be satisfied.

Responding to the changing times and aspirations of the people, the judiciary, with a view to see that the fundamental rights embodied in the constitution of India have a meaning for the downtrodden and the under privileged classes, pronounced in *Madhav Haskoti's* ¹⁰ Case that providing free legal service to the poor and needy was an essential element of the 'reasonable, fair and just procedure'. Again in *Hussnainara Khatoon's Case* ¹¹ while considering the plight of the under trails in jail, speedy trial was held to be an integral and essential part of the 'right and liberty' contained in Article 21 of the constitution of India. In *Nandini Satpathy V. P.L. Dani* ¹² the Supreme Court held that an accused has the right to consult a lawyer during interrogation and that the right not to make self-incriminatory statements should be widely interpreted to cover the pre-trial stage also. Again, in *Sheela Barse V. State of Maharashtra* ¹³ the Supreme Court laid down certain safeguards for arrested persons. In *Bandhua Mukti Morcha's Case* ¹⁴ the Supreme Court held that right to life guaranteed by Article 21 included the right to live with human dignity, free from exploitation. The courts have,

thus been making judicial intervention in cases concerning violation of human rights as an ongoing judicial process. Decisions on such matters as the right to protection against solitary confinement as in *Sunil Batra V. Delhi Administration*. ¹⁵ The right not to be held in fetters as in *Charles Sobraj V. Superintendent Central Jail*, ¹⁶ the right against handcuffing as in *T.V. Vatheeswaran V. State of Tamil Nadu*, ¹⁷ the right against custodial violence as in *Nilabati Behera V State of Orissa* ¹⁸ the rights of the arrestee as in *DK. Basu V. State of West Bengal* ¹⁹ the right of the female employees not to be sexually harassed at the place of work as in the case of *Vishaka V. State of Rajasthan* ²⁰ and *Apparel Promotion Council V. A.K. Chopra* ²¹ are just a few pointers in that direction. An enforceable rights to compensation in case of 'torture' including 'mental torture' inflicted by the State or its agencies is now a part of the public law regime in India. In many of its decisions, the Supreme Court of India started a new era of compensatory jurisprudence in India legal history. This newly forged weapon to help the torture victims has been sharpened in many of its decisions, like *Rudal Shah V. State of Bihar*, ²² *Bhim Singh V. State of J and K*. ²³ In the case of *Nilabati Behera V. State of Orissa* ²⁴ the Court crystallized the Judicial right to compensation, which was further reiterated in *D.K. Basu V. State of W.B.* ²⁵ in this case the court went to the extent of saying that since compensation was being directed by the courts to be paid by the state, which has been held vicariously liable for the illegal acts of its officials, the reservation to clause 9(5) of ICCPR by the Government of India has lost its relevance. In fact, the sentencing policy of the judiciary in torture related cases, against erring officials in India has become very strict for an established breach of fundamental rights, compensation can now be awarded in the exercise of public law jurisdiction by the Supreme Court and High Courts in addition to private law remedy for tortures action and punishment to wrongdoer under criminal law. The higher judiciary in India delivered many

environment conscious judgements. By constructive interpretation of various provisions of the law, the Apex court in particular has supplemented and strengthened the environmental law. In *Ratlam Municipal Council V. Verdhi Chand*²⁶ the Supreme court has expanded the principle of 'locus standi' in environmental cases and observed that the centre of gravity should shift, as the preamble to the constitution of India mandates, from traditional Individualism of locus standi to the community orientation of public interest litigation. The court further observed that environment related issues must be considered in a different perspective. In *M.C. Mehta V. Union of India*²⁷ the Supreme Court has entertained a public interest litigation filed by a social worker - cum - advocate on pollution of Ganges River which has effected life, health and ecology of Indo-Gangetic plain.

Conclusion: The judiciary has a critical role to play in a representative democracy in safeguarding the constitution. Judiciary has been

transformed from an instrument of State to an Institution of Governance through its judicial activism, due to the decay of other Institutions of State But there must be a limitation or check to the independence of the judiciary Too much of judicial activism hits the confidence of people and rule of law. The new jurisprudence that has emerged in the recent times has undoubtedly contributed in a great measure to the well-being of the society. People, in general now finally believe that if any institution or authority acts in a manner not permitted by the constitution, He judiciary will step in to set right. The wrong judiciary will step in to set right. The wrong judicial activism characterised by moderation and self restraint is bound to restore the faith of the people in efficacy of the democratic institutions which alone, in turn, will activate the executive and the legislature to function effectively under the vigilant eye of the judiciary as ordained by the constitutions. The role of judiciary in the protection of human rights is certainly commendable.

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