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# Human Rights and Indian Judiciary

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## ABSTRACT

*Human rights are universal, inalienable entitlements and freedoms that transcend distinctions of color, caste, or gender. The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, formed a pillar of this global human rights movement and was subsequently used as an inspiring document and played a major role in upholding Human Rights worldwide. The long arc of India's struggle for human rights has interacted with modern influences like UDHR and framed its constitutional framework to enforce this simmering fuse phosphate in its supreme law.*

*The Indian judiciary with its activist voice interpreted human rights in the finest form possible through several landmark judgments. These judgments played a crucial role in defining the history and the future of Indian human rights activism. Notable cases like Maneka Gandhi, and Kesavananda Bharati carry an upper hand in the dynamic evolution of human rights in the Indian context. Thus, the paper fundamentally talks about the indispensable role played by the Indian judiciary in safeguarding the human rights of its individuals.*

**Keywords:** *Human rights, Universal Declaration of Human Rights, Judicial activism, Writ jurisdiction, Public Interest Litigation.*

## I. INTRODUCTION

The idea of human rights is that regardless of our color, caste, or sex, we are entitled to the same basic rights and freedoms. Human rights are not privileges and they cannot be granted or revoked. They are universally applied inalienable rights. These universal rights are inherent to all of us ranging from basic rights like shelter, food, and clothing to fundamental rights like livelihood, education, security, health, dignity, justice, liberty, etc....

Educating and upholding them properly is essential to make an ordinary man aware of these rights. With this view, the UN General Assembly in 1948 adopted the first legal document that acted as a parent document in the human rights revolution. Through 30 long Articles, UDHR covers almost all the needs and wants of a man to provide him with a dignified human life in this society. Even as a non-legally binding document, the UDHR influenced various institutions, treaties, constitutions, instruments, and laws. Such influence is clear in our

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supreme law of the land.

## **II. HUMAN RIGHTS AND INDIAN CONSTITUTION**

The idea of human rights has a long history in India. The influence of UDHR is a modern phenomenon. Because the various religious texts and cultural practices contained provisions for human rights in ancient India. However, the proper meaning of human rights was only received through the conventions by the international organizations and the Magna Carta.

India as a democratic country, that aims at attaining social welfare, strategically carved its constitution by including various human rights. This is evident in part III of our constitution which describes six fundamental rights from Article 14 to 32. It is not the only one that was inspired, but the remaining part of the Indian constitution also carried the essence and values of these rights. Like the directive principles of state policy etc...

The word human rights is not directly used in our constitution, rather it is called the fundamental rights. Initially, it was seven but later it was amended and became six. Which is the handwork of the Indian judiciary. They are as follows:

1. Right to equality. (Article 14-18)
2. Right to freedom. (Article 19-22)
3. Right against exploitation. (Article 23-24)
4. Right to freedom of religion. (Article 25-28)
5. Cultural and educational rights (Article 29-30)
6. [\*\*\*]<sup>2</sup>
7. Constitutional remedies. (Article 32)

These rights attained their full meaning only through the wide interpretation of the judiciary. This means the Indian judiciary played an important role in interpreting these to adapt to the dynamic societal change.

## **III. ROLE OF INDIAN JUDICIARY**

Transcribing rights in the Constitution doesn't ensure the efficient mechanism of protecting human life and liberty. Thus, there should be a proper system to check on the violation and implementation of these rights. That's where the constitutional mandatorily of the judiciary to protect the human rights of the citizens came to the scene. Supreme Court and High Court act

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<sup>2</sup> The sub-heading "Right to Property" omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 5 (w.e.f. 20-6-1979).

as guardians for that. The various ways the judiciary transformed the color of human rights are as follows:

### **(A) Writ Jurisdiction and Human Rights**

The provision for writ jurisdiction is provided in Articles 32 and 226 of the constitution. An aggrieved person can approach the supreme court or high court of the concerned state directly for the protection of rights, redressal of grievances, and full enjoyment of his/her fundamental rights in its reasonable format. In this case, the court is empowered to order an appropriate solution, direction, and order like Habeas Corpus, Mandamus, Prohibition, Quo-Warranto, and Certiorari. The infamous *Maneka Gandhi v. Union of India*<sup>3</sup> case law is an example of how the judiciary interprets a human right to its wide scope. The Supreme Court propounded the theory of “emanation” to make the existence of fundamental rights meaningful and active. Thereafter many case laws took their form to widely interpret the meaning and dynamic nature of fundamental rights in India. Such as *People's Union for Civil Liberties v. State of Maharashtra*<sup>4</sup>, *Francis Coralie Mullin v. The Administrator, Union Territory Delhi*<sup>5</sup>, held that the Right to life includes the right to lead a dignified human life. Along with that, *Vishaka v. State of Rajasthan*,<sup>6</sup> is known as the landmark judgment of Human rights in India. It created a history of bringing safety and equality to women in working conditions. Therefore, through judicial interpretations various rights have been recognized and evolved.

### **(B) Public Litigation and Human Rights**

The Black Laws dictionary defines public interest litigation (PIL) as “A legal action initiated in a court of law for the enforcement of public interest or general interest in which public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

The rule of locus standi, i.e. the right to move to the court for the enforcement by the aggrieved party only started to face complications and violations, which resulted in the relaxed format of PIL in our country. Some of the case laws that resulted in the formation are, *Fertilizer Corporation Kamgar Union v. UOI*<sup>7</sup>, where the SC directed that the Doctrine of Locus Standi should be liberalized to provide benefits to poor and underprivileged sections of society. Thus, the locus standi has liberalized and gave birth to PIL by which various human rights were

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<sup>3</sup> AIR 1987 SC 597; (1978) 1 SCC 248

<sup>4</sup> (2014) 10 SCC 653

<sup>5</sup> 1981 AIR 746, 1981 SCR (2) 516

<sup>6</sup> AIR 1997 SC 3011

<sup>7</sup> 1981 AIR 344, 1981 SCR (2) 52

realized. Hence Jurist Bakshi called it Social Interest Litigation.

Some of the case laws which gave new forms and meaning to human rights in India are, *Parmanand Katara v. UOI*<sup>8</sup>, on a PIL filed by a human rights activist, SC held that it is the paramount obligation of every member of the medical profession to give medical aid to every injured citizen without waiting for any procedural formalities. *Olga Tellis v. Bombay Municipal Corporation*<sup>9</sup>, the court held that 'Right to livelihood and housing' of the pavement dwellers and issued an injunction to halt their eviction. *Shela Barse v. State of Maharashtra*<sup>10</sup>, women prisoners were victims of custodial violence, the court directed those women prisoners be guarded by female constables and that accused females be interrogated only in the presence of a female police official. Thus, it's clear that public interest litigation is an opportunity to make the most basic human rights meaningful to the deprived and vulnerable sections of the community.

### **(C) Judicial Activism and Human Rights**

The most attractive power of our judiciary is its power of judicial review. In a practical sense, it's the power of the judiciary to interpret and conclude, whether the law passed by legislation is consistent or inconsistent with the constitutional provisions, especially the fundamental rights. Judicial activism is the result of this so-called judicial review. It can be defined as a dynamic process of judicial outlook in a changing society. Which ensures good governance and protection of human security, safety, and welfare in a society. Through various case laws under judicial activism, the meaning of human rights has significantly changed. The infamous case laws like *Kesavananda Bharti & Ors v. State of Kerala*<sup>11</sup>, *Minerva Mills v. UOI*<sup>12</sup>, *Shreya Singhal v. UOI*<sup>13</sup>, *Moh. Ahmed Khan v. Shah Bao Begum*<sup>14</sup> etc... brought the real nature of human rights into our constitution. This function only strengthens the mechanism of human rights in India. It made us understand that the availability of human rights is not confined to the six fundamentals in our constitution. Rather it can be dived deeper to formulate various other basic rights for our citizens.

## **IV. CONCLUSION**

It's now clear to us that the judiciary plays a vital role in protecting human rights. It has

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<sup>8</sup> AIR 1989, SC 2039

<sup>9</sup> AIR 1986 SC 180

<sup>10</sup> 1983 AIR 378, 1983 SCR (2) 337

<sup>11</sup> AIR 1973 SC 1461

<sup>12</sup> AIR 1980 SC 1789

<sup>13</sup> AIR 2015 SC 1523

<sup>14</sup> 1985 AIR 945, 1985 SCR (3) 844

expanded the scope and application of those to various levels of society. To have a dignified and secure life, the judiciary is essential to mechanize these rights to reality. Courts have played their role at the finest to protect people in numerous cases, whether it is a violation of rights or protection of rights. Thus, it is evident that the judiciary and human rights have a close relationship to regulate its enforceability.

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