

HUMAN RIGHTS AND INITIATIVES TAKEN IN INDIA

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ABSTRACT

This study follows the descriptive and analytical method and studies the various judgments and judicial activism to describe the role of the judiciary in the protection and development of Human Rights in India. The fact that we are human beings allows us to make claims. The paper discusses the Indian Constitution's human rights provisions. The purpose of this study is to examine the role of the Indian judiciary and judicial activism in the preservation of human rights. India has played a critical role in the protection of human rights since independence. In India, the judiciary is not superior, but we do have constitutionalism, which states that the judiciary is autonomous and that all entities must obey the Supreme Court's orders for the good of the country. Human rights have traditionally been considered the foundation of any democratic system and the Judiciary has played a vital role in defending and safeguarding human rights. The article explores the key aspects of human rights in India and highlights the initiatives undertaken to safeguard these rights.

Keywords: Human Rights, Judiciary, Constitution, Judicial Activism.

OBJECTIVE OF STUDY

The objective of the study is to know about the role of the judiciary in the protection of Human Rights in India and to study the various judgments to describe its working for Humanity. The study will also discuss judicial activism and its worth.

RESEARCH METHODOLOGY

The study was conducted in order to determine the Role of the Judiciary in the protection of Human Rights in India. This study follows the descriptive and the analytical method. The information in this study is gathered from secondary sources such as publications, websites, bare acts, books, judgments and journals, etc.

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INTRODUCTION

Humans were known to be the most civilised creatures and the evolution of humankind led to the need to be in a surrounding where without exception everyone will be protected and have a life to live with dignity. The human rights concept was drafted and well-developed to make sure that all possible individuals will have a life where they have equality, freedom from slavery & torture, freedom of opinion and expression, right to work and education, and many more. The Protection of Human Rights Act, 1993 was one of the initiatives which aimed to safeguard the violation of human rights. The Act has been well written concentrating mainly on the working, powers, duties and similar things of the National Human Rights Commission.

This paper is directed towards initiatives taken by India to protect human rights. Human rights awareness and implementation are insufficient here and the present scenario takes us to the start of the concept of rights of human beings which was limited to Food, clothes and Shelter but as we developed, we get to understand that there are other things which a human being needs to survive and after that came the notion of 'Standard Living' which is in our Constitution as a Directive Principle of State Policy.

The concept of human rights developed with the emergence of natural rights in the world, particularly in Europe. The idea and notion of natural rights were further elaborated by philosophers like John Locke, Thomas Hobbes, Hugo Grotius, etc. These rights, like the right to life, the right to liberty and pursuit of happiness, and the right to property, were mentioned in documents like the [Magna Carta in 1215](#)¹, the [Bill of Rights of 1688](#)² the [US Declaration of Independence \(1776\)](#)³ and so on. During these years, the focus was on the humanitarian growth of society and providing certain basic rights to people across the globe. For example, the Congress of Vienna in 1815 aimed at abolishing the slave trade, which was achieved in 1890.

It is pertinent to note that the development of human rights and the humanitarian movement gained momentum after the two brutal world wars. Countries felt a need to form an organisation to look into the matter of human rights and regulate the same at the international level. India is still in the phase of developing country which means that new innovative ideas are emerging

¹ Stenton, Doris Mary. "Magna Carta". Encyclopedia Britannica, 27 Jul. 2024, <https://www.britannica.com/topic/Magna-Carta>. Accessed 16 September 2024.

² Bill of Rights [1688] ch 1 Will and Mar Sess 2

³ Britannica, The Editors of Encyclopaedia. "Declaration of Independence". Encyclopedia Britannica, 12 Sep. 2024, <https://www.britannica.com/topic/Declaration-of-Independence>. Accessed 16 September 2024.

here yet we want awareness of the present working system and to make sure that every individual is well aware of their own rights and duties. The parliamentarians are now playing a great role in recognizing the rights of people and passing statutes, amending provisions etc. as and when required.

HISTORY

The history of human rights in India can be divided into three stages: Ancient, Medieval and Modern. We will discuss about the Human Rights in Modern India.

Human Rights in the Modern Age- The British rule in India can be seen in the Modern period. During this period, the British government of India not only restricted the freedom of its people but also built its foundation upon exploiting the masses, causing economic, political, cultural and spiritual harm to India.

After enduring colonial rule, every Indian firmly believed that the recognition, safeguarding and implementation of human rights were not only fundamental but also essential for leading a civilized life.

Key constitutional provisions in India contribute to the history of human rights in India in modern times. These include the Preamble, Fundamental Rights, Directive Principles of State Policy, recently added Fundamental Duties, reservations for scheduled castes and tribes, and special provisions for Anglo-Indians and other backward classes. India is the biggest democracy in the world. Being a democratic country one of the main objectives is the protection of the basic rights of the people. The government of India has given due consideration to the recognition and protection of human rights. The Constitution of India recognizes these rights of the people and shows deep concern towards them.

When examining human rights in relation to the Indian Constitution,

it becomes evident that the Constitution incorporates nearly all the human rights outlined in various international agreements, covenants and treaties. Some of these include:

- Universal Declaration of Human Rights, 1948
- International Covenant on Economic, Social and Cultural Rights, 1976
- International Covenant on Civil and Political Rights, 1976

- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Convention on the Rights of the Child, 1989
- Convention on the Rights of Persons with Disabilities, 2006

In addition to these constitutional provisions, various laws have been enacted by the Indian legislature to safeguard and promote human rights. Some significant legislations introduced by the union include:

- Protection of Human Rights Act, 1993
- National Commission for Minorities Act, 1992
- National Commission for Women Act, 1990
- Protection of Civil Rights Act, 1995
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
- Immoral Traffic (Prevention) Act, 1987
- Bonded Labor System (Abolition) Act, 1976
- Juvenile Justice (Care and Protection of Children) Act, 2000
- Child Labor (Prohibition and Regulation) Act, 1986 and more.

India has also implemented numerous labour-related legislative measures to ensure social security, significantly influenced by the standards set by the International Labor Organization (ILO).

JUDICIAL ROLE IN THE PROTECTION OF HUMAN RIGHTS

The Judicial Role is very important when it comes to safeguarding an individual's dignity and liberty. Only provision for fundamental rights does not fulfil the objective of 'protection of the dignity of an individual', but free enjoyment of the rights has to be ensured. Therefore, Article 32 guarantees the right to constitutional remedies, i.e. right to move to the Supreme Court to enforce fundamental right.

Over the years the Judicial pronouncements or interpretations have evolved and widened the scope of Human Rights in India in some of the landmark cases, where the court has taken into consideration the application of UDHR⁴ in their interpretations.

- ***In Maneka Gandhi v. Union of India***⁵

This case interpreted the right to life and widened its scope and deduced un-enumerated rights such as the "right to live with human dignity". Supreme Court propounded the theory of "emanation" to make the existence of the fundamental right meaningful and active.

- ***People's Union for Civil Liberties v. Union of India (1997)***⁶

In this case, the scope of freedom of expression was interpreted. The freedom of expression which is a fundamental right was violated by tapping the telephone which was carried out by the Central Bureau of Investigation. The authority and validity of such action were questioned. The Court said that when an individual is exercising his freedom of expression on the telephone, no one can invade his privacy unless on reasonable grounds or reasonable restrictions which are mentioned under Article 19(2) of the constitution.³¹ The Supreme Court took into consideration Article 12 of UDHR and implemented the "Right to Privacy" in affairs of freedom of speech and expression.

- ***Kesavananda Bharati v. State of Kerala (1974)***⁷

This case was heard by the greatest constitutional bench in history, consisting of 13 judges. The doctrine of the basic structure has been bestowed upon us by this court. The court determined that this concept is inviolable, and as a result, the court stated that the ability to

⁴ 217 A(III) (UNGA), art 7.

⁵ Maneka Gandhi v Union of India [1978] 1 SCC 248 (SC)

⁶ People's Union for Civil Liberties v. Union of India [2004] 9 SCC 580 (SC)

⁷ Kesavananda Bharati v. State of Kerala [1973] 4 SCC 225 (SC)

amend is not limitless, but rather limited. This case overruled the Golaknath case [8], and the court stated that if the parliament tries to rewrite the entire constitution using its jurisdiction under Article 368 of the constitution, it will be considered ultra-vires. The Supreme Court's position safeguards fundamental human rights.

The court also compared the UDHR with the Fundamental Rights and interpreted that other than Article 13(2) of the Indian constitution, upon which UDHR is based, the Fundamental Rights cannot be altered and on this observation, the court gave the "Basic Structure Doctrine" which stated that the basic feature or characteristics of fundamental rights cannot be abrogated or altered via amended, neither by the parliament nor through a constitutional amendment.

- **Associate Banks Officers Association v. State Bank of India**⁸

Article 39 of the Constitution guarantees the principle of equal pay for equal work for both men and women. Despite the guarantees of equal rights to women still, they are not equally treated with men. In this case, Supreme Court has played a remarkable role in the protection of their rights and held that women workers are in no way inferior to their male counterparts and hence there should be no discrimination on the grounds of sex against women.

- **Chairman of Railway Board v. Chandrima Das (2000)**⁹

In this case, a foreign woman was raped by an employee of the Indian railways in the workplace. Under the provision of Public Law, on the grounds of infringement of the victim's Fundamental Rights as well as Human Rights Jurisprudence (based on UDHR's Moral Code of Conduct), the court awarded compensation to the victim.³⁴

Here, the court implemented an important and current branch of law i.e., Human Rights Jurisprudence, guarded Human Rights on the levy of state and allowed the importance of Universal Declarations of Human Rights in its interpretations.

- **ADM Jabalpur v. Shivkant Shukla (1976)**¹⁰

In the above case, the question was whether the court should contemplate the Universal Declaration in the constitution or not, since India is one of its signatories but when one looks

⁸ Associate Banks officers Association v. State Bank of India [1989] 4 SCC 666 (SC)

⁹ The case of Chairman of Railway Board v. Chandrima Das [2000] 2 SCC 465 (SC)

¹⁰ ADM Jabalpur v. Shivkant Shukla [1976] 2 SCC 521 (SC)

at the nation's legal structure, it can give validity and enforceability to the rights through court's interpretations.²⁶ Here, the court was being rigid about the enforceability of UDHR's provisions in this case by stating that anything that conflicts with the constitution is unenforceable as it is stated in Article 51 of the constitution that the courts are allowed to aid treaty principles only if they are consistent with Indian law.²⁷

- **D.K Basu v. State of West Bengal (Custodial Death case) (1997)**¹¹

This case was the court's evaluation of UDHR's Article 5 which states that "*No one shall be subjected to cruelty, torture or inhumane treatment*".²⁹ Since this was a case of death under the custody of police authority, which violated a basic human right of the individual who was arrested, the Supreme Court gave the guidelines for the proper conduct of any arrest or detention and these guidelines would act as preventive measures.

PROTECTION OF HUMAN RIGHTS ACT, 1933: A Standard Legislation?

The Protection of Human Rights Act (PHRA), enacted in 1993 in India, is not a "standard" legislation in the sense of being a universally applied model, but it is a significant piece of national legislation tailored to the specific needs and context of India. The Constitution of India provides safeguards for the protection of human rights, however, for the effective implementation of human rights Government of India has enacted the 'Protection of Human Rights Act, 1993' as it provides for the establishment of the National Human Rights Commission, State Human Rights Commission in various states and also the Human Rights Courts at the district level and Indian judiciary is also working to protect the human rights of the people of India as well as to provide speedy remedy to the victim of human rights violation.¹²

Here's a closer look at what makes the PHRA distinctive and its role in the broader context of human rights legislation:

¹¹ D.K Basu v. State of West Bengal [1997] 1 SCC 416 (SC)

¹² Protection of Human Rights Act, 1993 <https://www.drishtiias.com/loksabha-rajyasabha-discussions/75-years-laws-that-shaped-india-the-protection-of-human-rights-act-1993> accessed 14 September 2024

Key Features of the Protection of Human Rights Act

1. Establishment of the National Human Rights Commission (NHRC):

Function: The PHRA established the NHRC as a statutory body responsible for investigating complaints of human rights violations and ensuring justice.

Powers: The NHRC has the authority to investigate, recommend actions, and take steps to address human rights issues. It can also suggest reforms and hold hearings on human rights matters.

CASE OF GUJARAT RIOTS¹³

The National Human Rights Commission had taken suo-motu cognizance of media reports about the unearthing of a mass grave in Lunawada village of Panchmahal District of Gujarat. The Commission sought a report from the State Government and CBI on the matter.

Large-scale incidences of communal violence were reported in Gujarat during February-March 2002. About three thousand people belonging to the minority Muslim community were killed and property was destroyed. The Gujarat state government and its police did not take appropriate measures to prevent violence and failed to provide safety, security and justice to the victims of a Muslim minority community. The NHRC initiated a suo-moto inquiry into these incidents and directed the state government to report the measures taken to restore peace in the state of Gujarat. The Commission also approached the Supreme Court of India on behalf of the victims of the Gujarat riots.

2. Creation of State Human Rights Commissions (SHRCs):

Role: Similar to the NHRC but at the state level, SHRCs address human rights issues within their respective states. They work in conjunction with the NHRC to handle complaints and promote human rights locally.

¹³ Zakia Jafri v State of Gujrat [2014] 4 SCC 561 (SC)

3. Human Rights Education and Awareness:

Promotion: The Act emphasizes the need for human rights education and awareness programs to promote understanding and respect for human rights among citizens.

4. Funding and Resources:

Support: The Act provides for the allocation of resources and funding to support the functioning of the NHRC and SHRCs.

5. Legal Framework:

Complaints Mechanism: Citizens can file complaints with the NHRC or SHRCs regarding alleged human rights violations. The Act outlines the procedures for handling these complaints and ensuring appropriate responses.

Despite such efforts by the Government sought objectives have not yet been achieved due to the following reasons: -

- i. The Constitution of India has enumerated various rights but there is a large number of people who are not even aware of these rights guaranteed by the Constitution due to their vulnerable conditions and struggle for everyday survival. These are the people who are mostly victims of human rights violations but they cannot think to approach the court as they are more worried about their daily wages instead of protecting their basic human rights.
- ii. Though the Constitution enshrined duties of the State under Part IV i.e., Directive Principles of State Policy¹⁶ to enact laws and to work for the welfare of the people of India in various spheres whereas these directive principles are not enforceable in the Courts and one cannot approach the court if the Government does not enforce these principles.
- iii. The Human Rights Commission is expected to be completely independent in its functioning. But there is no provision for the independence of the Commission. In fact, there are provisions in the Act that draw attention to the dependence of the Commission on the Government these are discussed as follows: -

- a. Commission is dependent upon the Government for its human resources for its functions as per Section 11 of the Act.¹⁴
 - b. Finance is considered the blood of an organization. Section 32 of the Act makes the commission dependent on the central government for its finances as the section states that "the Central Government shall pay to the Commission by way of grants such sums of money as it may consider fit".¹⁵
 - c. The commission does not have the power to constitute special investigation teams for purposes of investigation and prosecution of offenses arising out of violations of human rights.
- iv. The Act has put 1 year limitation period for seeking redressal of grievances before the human rights commissions. Human rights commissions cannot investigate an incident if the complaint was made more than one year after the incident as provided under Section 36 Clause 2.¹⁶ Therefore, a large number of genuine grievances go unaddressed if the victim fails to approach the commission on time for whatsoever reasons.

SUGGESTIONS ON IMPROVING THE EFFECTIVENESS OF HUMAN RIGHTS COMMISSIONS

Improving the effectiveness of Human Rights Commissions, such as India's National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs), requires addressing various challenges and enhancing their capacity to protect and promote human rights effectively. Here are some suggestions for strengthening these institutions:

1. Enhance Institutional Independence

Legal Safeguards: Ensure the NHRC and SHRCs operate with greater autonomy from political and executive interference by establishing clear legal safeguards and protections for their independence.

¹⁴ Protection of Human Rights Act, 1993 (Act 43 of 2006) s.11

¹⁵ Protection of Human Rights Act, 1993 (Act 43 of 2006) s.32

¹⁶ Protection of Human Rights Act, 1993 (Act 43 of 2006) s. 36(2).

Appointment Processes: Strengthen transparency and merit-based processes for appointing commissioners to avoid political influence and ensure the selection of qualified and impartial individuals.

2. Improve Resources and Funding

Adequate Budget: Increase budget allocations to ensure that the NHRC and SHRCs have sufficient financial resources to carry out their functions effectively.

Infrastructure and Staffing: Invest in improving the infrastructure and hiring qualified personnel, including legal experts, investigators, and support staff.

3. Ensure Timely and Effective Service Delivery:

Corruption in governance is the major factor behind human rights violations because it relaxes the timely and effective implementation of government policy and programs. The timely and efficient delivery of services should be guaranteed by appropriate administration and monitoring.

4. Focus on Underdeveloped and Developing Countries:

Majority of the human rights violations take place in underdeveloped and developing nations. So developing and underdeveloped nations should be given proper opportunity to grow and sustain the measures associated with human rights violations.

5. **In the case of India, the NHRC** should be substantially redesigned in order to become a more effective watchdog of human rights abuses across the nation. The efficacy of the NHRC will rise if the commission's recommendations are made **legally binding**. **State and non-state** entities must cooperate and take the lead if the human rights situation in India is to be **improved and strengthened**.

6. **Old laws and provisions** should be aligned according to the latest demand of the circumstances.

CONCLUSION

Human rights are basic fundamental rights that are an integral part of the development of human beings in the absence of which person cannot live life with dignity. The Indian Judiciary had even relaxed the rule of *locus standi* for the protection of human rights which paved the

way for the development of the concept of Public Interest Litigation. Through public interest litigation, various incidents of violation of human rights have been put before the Courts. Courts protected the rights of women, workers, children, prisoners, and so on. Thus, the judiciary plays the role of savior of the human rights of the people so that each individual can live with dignity.

Protection of human rights is an important issue of concern throughout the world various international instruments have been incorporated for the protection of human rights and on the basis of the provisions of the international instruments, national endeavors have been made such as enacting the Protection of Human Rights Act 1993. Provisions have been made under the Act for the establishment of the National Human Rights Commission as well as the State Human Rights Commission in various States and it also provides for the constitution of Human Rights Courts at the district level so that justice can be provided to the victims of human rights violation at every level. Since the establishment of the National Human Rights Commission, it has been playing a commendable task in protecting the human rights of the people and it also gave monetary relief to the victims and to their families. Although some amendments are necessary to be made in the Act for the better implementation of the existing laws.



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