

JUDICIARY AS A GUARDIAN OF HUMAN RIGHTS WITH REGARD TO PRISONERS

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ABSTRACT

In a democratic society, the State and its organs have to protect and promote human rights. The Supreme Court of India has laid down certain guidelines for law enforcement agencies to follow. The judiciary adopts an innovative approach towards the interpretation of Fundamental Rights and Directive Principles of State Policy. The Supreme Court of India has expanded the extent of Judicial Review to include review of all those state measures, which either violate the Fundamental Rights or the Basic Structure of the Constitution. The Supreme Court of India has developed Human Rights jurisprudences in order to preserve and protect the prisoner's Right to Human Dignity. Also, when an accused has no representing council, it is the duty of the court to appoint a counsel on Government expenses for his defence. The right to speedy trial has become a universally recognised human right. A significant contribution of judicial activism in the post Maneka Gandhi period has been the development of compensatory jurisdiction of the Supreme Court and the High Court's under Articles 32 and 226 of the Constitution. Further, Article 24 of the Constitution prohibits the employment of children below the age of Fourteen years. The Supreme Court held that right to live with Human Dignity under the Article 21 includes the protection of health and strength of workers, men and women and of tender age of children against abuse. Indian Judiciary, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious of the precious Human Right to Life and Personal Liberty.

Key Words: Prisoners, Human Rights, Judicial Review, Public Interest Litigation

INTRODUCTION

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights and nobody can function ultravires to it. Basically, these rights are those that are entitled to every human being such as non discrimination, right to be treated with dignity etc.³Protection of human rights is an outcome of good governance. In a democratic nation, it is the responsibility of the government to enforce and enhance human rights. All Government offices, be it the police department, the army, the judiciary or the civil administration have an obligation to respect human rights, to prevent human rights violations, and to take active steps for the promotion of human rights. The Constitution of India approves everyone in India to protection of their human rights. Part III, that is, The Fundamental Rights, which is referred to as the heart of the Constitution, guarantees human rights to all. It states that the State will safeguard human rights and will protect its citizens from undue invasions on their liberty, security and privacy. The Supreme Court has over the years, explained and elaborated the scope, validity and extent of Fundamental Rights. It has strongly opposed any violations upon any Human Rights by agents of the State, by asserting that the rights and dignity of individuals must always be upheld. The Court has laid down certain guidelines for law enforcement. These guidelines deal with various aspects of police work at the station house or cutting edge level, such as registration of a case, conduct of an investigation, carrying out of an arrest; treatment of an arrested person, grant of bail, questioning of a suspect and protection of the rights of women, poor and the disadvantaged. The promotion and protection of Human Rights depends upon the extent of the strength and independence of the judiciary. This paper researches about the role of judiciary as the guardian of Human Rights.

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OBJECTIVES

- To discuss upon the various protections given to prisoners in order to protect them from any human rights violations.
- To discuss upon the human rights provisions with regard to child labour.
- To analyse the various steps taken by the judiciary to protect human rights of the prisoners.

WRIT JURISDICTION FOR PROTECTION OF HUMAN RIGHTS

The Fundamental Rights guaranteed under the part III of the Indian Constitution are corresponding to the basic human rights. Of all the human rights, the most significant is the Right to Constitutional Remedies under the Articles 32 and 226 of the Indian Constitution. Those persons whose fundamental or human rights have been violated, have the right to approach the High Courts or Supreme Court of the country directly for judicial rectification, redressal of grievances and enforcement of Fundamental Rights. Under such scenarios, the courts have the power to issue appropriate directions orders or writs in the name of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari. With the provisions of Article 32, the Supreme Court has expanded the extent of judicial review to include review of all the state measures that are violative of either the basic structure or the fundamental rights of the Constitution. The Article 226 contemplates that notwithstanding anything in Article 32, every High Court has the power, to issue to any person or authority including the appropriate cases, any government, within those territories, direction, orders or writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them for the enforcement of Fundamental Rights conferred by part-III and for “any other purpose”. This shows that the jurisdiction of a High Court is not limited only to the protection of Fundamental Rights but also to other legal rights that are vested with a person. The concurrent jurisdiction conferred on High Courts under Article 226 does not imply that a person who alleges the violation of Fundamental Rights must approach the High Court first, but he can also approach the Supreme Court directly if he wishes to. This was held in the case of Ramesh Thapper vs. State of Madras. Contradicting to the prior judgement, in P.N. Kumar vs. Municipal Corporation of Delhi the Supreme Court held that a citizen should first go to the High Court and if not satisfied with the redressal given by it, can approach the Supreme Court. A number of cases of Human Rights violation were brought into the notice of the Supreme Court and the High Courts. Supreme Court has introduced new tools and effective methods to give redressal to any citizen whose human rights have been violated.

PROTECTION OF HUMAN RIGHTS OF PRISONERS

The Supreme Court of India in the recent past has acted vigilantly against violations of Human Rights of those under custody or remanded under the judiciary or the court. Article 21 of the Constitution of India elucidates that “No person shall be deprived of his life and Personal Liberty except according to procedure established by law”. Not only in India, but in every democracy, The RIGHT TO Life and Personal Liberty form the back bone of the concept of Human Rights. The Indian Judiciary, through judicial activism has taken up issues of intrusion into human rights and has also prescribed effective remedies for such violations. In the case of Maneka Gandhi V Union of India it was held that the part III of the Indian Constitution should be interpreted to its widest extent. The person under judicial custody or remand by police should not be denied from the following humanitarian rights such as right to legal aid, speedy trial, right to have interview with friend, relative and lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment, right to travel abroad, right live with human dignity, right to livelihood, etc. These rights though aren't openly mentioned in the constitution, they come under the wide interpretation of fundamental rights under part III of the Constitution. It is said that one of the most powerful issues that were sorted out through the PIL is the Human Rights of Prisoners.

The Supreme Court has helped to safeguard human rights by widening the scope of Article 21 and has also give judgments that safeguard the fundamental rights of prisoners and for effecting prison reforms. Under the seventh schedule of the Constitution, the prison administration, police and law and order are to be

administered by the respective states. The states have generally given minimal priority to prison administration. Some of the decisions of the Supreme Court on prison administration induced the state governments on fair administration of prisons and directed the states to modernise prison administration. The Supreme Court has protected the prisoners from all types of torture and has acted as the saviour of the human rights of prisoners. Judiciary has strongly taken steps widen the scope of Right to Life and personal liberty.

RIGHT AGAINST SOLITARY CONFINEMENT

Basically, the term solitary confinement refers to the isolation of a prisoner in a separate cell on account of his punishment. Courts have strongly held many times that the following of solitary confinement is very much violative of the Human Rights of that prisoner. The courts have expressed their strong view that solitary confinement must not be followed unless in exceptional cases where the interaction of the prisoner is of danger to the other inmates and where such a prisoner requires to be separated from the others for safety and behavioural aspects. The Supreme Court in Sunil Batra case discussed on the validity of solitary confinement. The section 30(2) of the Prisoners Act 1894 supports the system of solitary confinement on death sentence prisoners. But in Sunil Batra's case, his mercy petition was still pending and hence he could not be considered as a death sentence prisoner. Hence it was held that such a solitary confinement was invalid.

RIGHTS AGAINST HANDCUFFING

The term handcuffs refers to a metallic fastening that is used to lock around the two wrists and the lock around the wrists are joined by a chain or a bar. This prevents the prisoner from effectively using his hands. It has been a long time contention of the Human Rights supporters that this practice of handcuffing is violative of human rights. In the case of Prem Shankar V. Delhi Administration, the Supreme Court analyzed on the question raised whether handcuffing is constitutionally valid or violative. The Public Interest Litigation contended that the practice is violative of the Article 21 of the constitution. In this case, the court banned the traditional practice of handcuffing prisoners. The court's words were that "hand cuffing is prima-facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict "irons" is to resort to Zoological strategies repugnant to Article 21 of the Constitution".

RIGHT AGAINST INHUMAN TREATMENT OF THOSE UNDER IMPRISONMENT

The term human rights comes hand in hand with human dignity. The Supreme Court of India, in many instances taken inhuman treatment of inmates as a serious offence. It has in many instances issued strict directions to the prison wardens and police authorities regarding the safeguard of rights of prisoners or those under timely custodial lockup. Custodial death is regarded as the worst degradation to human rights and is one of the worst crimes in a developed society. The court has expressed that the treatment of a human being in a manner that offends human dignity is a huge defamation to human rights. This was held in Raghbir Singh V State of Bihar. In DK.Basu V. State of West Bengal it was held that inhuman treatment under police custody is a gross and blatant violation of Human Rights.

RIGHT TO HAVE INTERVIEW WITH FRIENDS, RELATIVES AND LAWYERS

A prisoner's right to basic human dignity does not only protect him from physical abuse but also extends against mental abuse. This means he cannot be denied from his right to life and personal liberty given under article 21 of the Constitution. The right to consult relatives, friends and lawyers is also a part of one's personal liberty which no body has the right to go ultra vires upon. This right to meet friends, lawyers and relatives during the jail period is also made legal under section 304 of the Criminal Procedure Code has made this available as a legal right. Also this right is vested with the arrested person from the time of arrest. The prisoner has the right to choose his lawyer. Even in cases where the prisoner refuses to engage a lawyer the court has to provide an amicus curie to defend him. In Dharmbir vs. State of U.P the court directed the state Government to allow

family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions.

CONCLUSION

The enforcement of Human Rights is constitutionally protected and valid. The Article 226 gives the High Courts the authority to issue writs in case of any violation of fundamental or human rights. The Supreme Court derives the same power from the Article 32 of the constitution. Through such writs the courts are expected to provide redressal in case of violations do anyone's fundamental rights. Not only writs, but also the latest concept of PIL (Public Interest Litigation) also has brought such violations to the eyes of the judiciary and has also resorted justice from the judiciary. In the recent past the judges of the High Courts and the Supreme Court have given innovative judgments to protect the Human Rights.

The protection of Human Rights indicates that the judiciary has been playing a role of a guardian in situations where the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and to provide directions to the executive and legislature. It is also the duty of the society and all its organs to provide justice and correct institutional and human errors affecting basic needs, dignity and liberty of human beings. Fortunately India has pro-active judiciary. It can thus be believed that in furtherance, the concept of Human Rights will further be strengthened in our nation.

By collaborating the above discussions, it is evident that the Indian Judiciary has been very sensitive towards the protection of the Human Rights. Our judiciary has through judicial activism brought in new tools and devised new remedies towards nurturing the precious Human Right to Life and Personal Liberty.

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