

JUDICIAL ACTIVISM & HUMAN RIGHTS IN INDIA: RECENT TREND

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Abstract

The Constitution incorporated in part III certain rights which are fundamental for the human existence and certain duties on the state under part IV so as to guide the action of the state in the performance of its obligations. The Supreme Court has been vested with the power to interpret the constitution and to issue writs in the nature of Habeus Corpus, Mandamus, Certiorari, Prohibition and Quo warranto under Article 32 and Article 226 of the Constitution of India. The Supreme Court has also been vested the power to do complete justice under Article 142 of the Constitution. Also the constitutional Courts have the power of judicial review flowing from Article 13(2) which places a bar on the state from framing any law that takes away or abridges the fundamental rights of its citizens. The Supreme Court and the High Courts by exercising its power under the Constitution has demonstrated the role of activist and armoured the human rights of the people. Thus in the midst of inaction of legislature and indifferent behaviour of executive, activism by judiciary is need of the hour.

Key Words: *Judicial Activism, Human Rights, Constitution, Public Interest Litigation, Separation of Power, Constitutional Law.*

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WHERE DO HUMAN RIGHTS BEGIN?

“Where, after all, do universal human rights begin? In small places, close to home-so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he live in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world” (**Eleanor Roosevelt**)

The topic of the paper “Judicial Activism and Human rights” is relevant and holds great importance. In this paper the researcher seeks to discuss the Role of Judiciary in Protection, Promotion and enforcement of Social Justice & Human Rights. An attempt has been made to analyse the recent cases decided by the Hon’ble apex Court of India and to find out whether judiciary is the only alternative left to the deprived.

INTRODUCTION

Every human being is endowed with certain natural rights by birth, being a member of this universe. The individual can flourish in the society through such rights. Such basic rights in legal form are known as Human Rights. Human Rights are commonly understood as “inalienable fundamental rights to which a person is inherently entitled simply because he/she is a human being”. The Universal Declaration of Human Rights, 1948 is a milestone in the field of human rights.

Article 1 of the Universal Declaration of Human Rights, 1948 provides that all human beings are born free and equal in dignity and rights.

According to *Section 2(d)* of the Protection of Human Rights Act, 1993:

“Human Rights mean the rights relating to life, liberty, equality and dignity of the Individual guaranteed by the Constitution or embodied in the *International covenants* and enforceable by courts in India.”

The words International Covenants occurring in this definition mean the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly in the year 1966.

HUMAN RIGHTS IN INDIA

Dr. Ambedkar¹ (24th March 1947)

“Ask those who are unemployed whether what are called Fundamental Rights are of any value to them. If a person who is unemployed is offered a choice between a job of some sort, with some sort of wages, with no fixed hours of labour and with an interdict on joining a union and the exercise of his right to freedom of speech, association, religion, etc., can there be any doubt as to what his choice will be. How can it be otherwise? The fear of starvation, the fear of losing a house, the fear of losing savings if any, the fear of being compelled to take children away from school, the fear of having to be a burden on public charity, the fear of having to be burned or buried at public cost are factors too strong to permit a man to stand out for his Fundamental Rights. The unemployed are thus compelled to relinquish their Fundamental Rights for the sake of securing the privilege to work and to subsist.”

In this environment the framers of Indian Constitution were inspired by a new spirit of human rights. They referred the constitutions of various countries and the United Nations Charter to learn from their experiences. The fundamental rights and the directive principle of state policy is the reflection of the same. *Pt. Jawaharlal Nehru* unequivocally declared that the main objective of the Indian Constitution is to establish *Ram Rajya* in India which is to ensure the dignity of man and freedom from social, economic and political oppression. The preamble to the Constitution of India restates the same.

The government of India with a view to achieve the objectives laid down in the Constitution enacted a number of legislations relating to the protection of human rights such as the Abolition

¹ Dr. Murlidhar Lecture, Judicial Engagement with Socio-Economic rights, NALSAR University of Law, 2014

of Untouchability Act, Suppression of Immoral Traffic Act, 1956, Protection of Civil Rights Act, 1955 etc.

Now the duty was on the courts to effectuate the rights in real sense. To protect the Rights guaranteed under Constitution of India the Supreme Court has been vested with the power to issue prerogative writs under Article 32 and High Court under Article 226 of the Constitution of India. The Supreme Court has also been vested the power to do complete justice under Article 142 of the Constitution. Also the constitutional Courts have the power of judicial review flowing from Article 13(2) which places a bar on the state from framing any law that takes away or abridges the fundamental rights of its citizens. Dr. B.R. Ambedkar, has described judicial review as the '*heart of the Constitution*'. The Supreme Court has also devised various methods such as Public Interest Litigation, Polluter Pays Principle, Strict Liability, Continuing Mandamus etc. Thus the judiciary is the protector and the guardian of the Constitution. Also the separation of powers between the Legislature, Executive and Judiciary is the salient feature of Indian Constitution. The powers and functions of the three main organs have been laid down under the Constitution. To do complete justice Legislature enacts the law, Judiciary interprets the law and Executive executes the law.

JUDICIAL ACTIVISM AND HUMAN RIGHTS

The apex court has always armoured human rights of the people in India by widening the ambit of right to life enshrined under Article 21 of the constitution of India. As a result, many of the non-justiciable Directive Principles of state policy embodied in Part IV of the Constitution has now become enforceable as fundamental rights by the magic wand of judicial activism. In the words of Justice Bhagwati in *Francis Coralie v. Union Territory of Delhi*²:

"...The right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms."

This expansion of the power of judicial review is often described as "**Judicial Activism**".

² Francis Coralie v. Union Territory of Delhi (1981) 1 SCC 688

Some of the instances wherein the Supreme Court of India has demonstrated the same by delivering landmark judgements are *Hussainara Khatoon and others v. State of Bihar*³(right to speedy trial), *Unnikrishnan v. State of A.P. and others*⁴(right to education), *Bodhisattwa Gautam v. Subhra Chakraborty (Ms.)*⁵(right to compensation), *D.K. Basu v. State of West Bengal*⁶ (custodial deaths and any form of torture or cruel, inhuman or degrading treatment fall within the inhibition of Article 21 of Constitution of India), *Prem Shankar Shukla v. Delhi Administration*⁷(right to personal liberty), *Smt. Nilabati Behera v. State of Orissa & Ors.*⁸, *Vishaka & Others v. State of Rajasthan & Others*⁹(Sexual harassment of women at workplace amounts to violation of rights of gender equality and right to life and liberty), *Subhash Kumar v. State of Bihar*¹⁰(right to pollution free environment), *Olga Tellis v. Bombay Municipal Corporation*¹¹(right to livelihood), *Bandhua Mukti Morcha v. Union of India*¹² (Bonded labour is violation of fundamental right) and *Rupa Ashok Hurra v. Ashok Hurra*¹³ (mechanism of curative petition was designed).

A great legal breakthrough was achieved by the advent of “Basic Structure of the Constitution” by the apex court in the case of *Kesavananda Bharati v. State of Kerala*¹⁴. The Supreme Court

³ *Hussainara Khatoon and others v. State of Bihar* AIR 1979 SC 1360

⁴ *Unnikrishnan v. State of A.P. and others* AIR 1993 SC

⁵ *Bodhisattwa Gautam v. Subhra Chakraborty* AIR 1996 SC 922

⁶ *D.K. Basu v. State of West Bengal* AIR 1997 SC 610

⁷ *Prem Shankar Shukla v. Delhi Administration* (1980) 3 SCC 526

⁸ *Smt. Nilabati Behera v. State of Orissa & Ors* (1993) 2 SCC 746

⁹ *Vishaka & Others v. State of Rajasthan & Others* (1997) 6 SCC 241

¹⁰ *Subhash Kumar v. State of Bihar* AIR 1991 SC420

¹¹ *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180

¹² *Bandhua Mukti Morcha v. Union of India* (1997) 10 SCC 549

¹³ *Rupa Ashok Hurra v. Ashok Hurra* (2002) 4 SCC 388

¹⁴ *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461

held that the Fundamental Rights are the ends for which DPSPs provide the guidelines. Fundamental Rights and the Directive Principles of State Policy constitute the conscience of the constitution.

Even if there is some violation of human rights by the state machinery, judiciary comes into play and has thus maintained its image as the saviour of the rights of the down trodden by applying the balm of relief and making good the harm caused.

JUDICIAL ACTIVISM AND HUMAN RIGHTS: RECENT TREND

In the recent years with the stepping into the shoes of 21st century, the judiciary has been vested with greater responsibility. The government cannot perform its functions single handed and thus for its convenience it has established corporations to discharge the functions. Now with the rise of governmental corporations there exists greater risk of violations of human rights. The government may under the veil of corporation, infringe upon the fundamental rights of the people. Therefore it may on one hand guarantee rights to the people and on the other hand infringe the same under the guise of corporation. It is submitted this would amount to constitutional fraud and if court does not come to the rescue of the people nothing can be as bizarre as this. Here I am reminded of a Tamil proverb which says “*when fence eats the crops*”. The one who was vested with the power to protect, himself abuse the power. The situation would be as pitiable as of a girl child who is being raped by her father (State) in front of her mother (Judiciary).

The recent past has witnessed the most activist role of the Constitutional Courts in India. The Court has moved from the jurisprudence of establishing Rule of Law to the philosophy of broadening the definition and ambit of rights and reading more and more rights into Article 21 of the Constitution of India.

In a recent case *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors.*¹⁵, the Delhi High Court while reiterating that right to health is a fundamental right had no hesitation in observing:

¹⁵ *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors W.P.(C) 8853/2008*

“There cannot be a situation where a pregnant woman who is in need of care and assistance is turned away from a Government health facility only on the ground that she has not been able to demonstrate her Below Poverty Line (BPL) status or her “eligibility”. The approach of the Government, both at the Centre and the States, in operationalising the schemes should be to ensure that as many people as possible get “covered” by the scheme and are not “denied” the benefits of the scheme. Instead of making it easier for poor persons to avail of the benefits, the efforts at present seem to be to insist upon documentation to prove their status as “poor” and “disadvantaged”.

In the present case the court ordered for the payment of compensation to the family of the victim. The positive effect of the verdict was that the government of India launched in June 2011 another scheme, Janani-Shishu Suraksha Karyakram (JSSK) spelling out certain entitlements for pregnant women and sick new born children as highlighted by the court.

Manual Scavengers

Very recently in a landmark judgment, the Apex Court in the case of *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*¹⁶ while appreciating the orders passed by the Delhi High court for the rehabilitation of the manual sewage workers employed by the Delhi Jal Board, observed that it is the obligation of the court to do justice to the poor and the disadvantaged section of society. The Court observed that “If given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that at the end of the day they will be able to make some money and feed their family. They risk their lives for the comfort of others. The Courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life.”

In another significant judgment the Supreme Court highlighted its power of granting continuing mandamus. In the case of *Safai Karamchari Andolan v. Union of India*¹⁷, Court took cognizance

¹⁶ *Delhi Jal Board v National Campaign for Dignity & Rights of Sewerage & Allied Workers* (2011) 8 SCC 568

¹⁷ *Safai Karamchari Andolan v. Union of India* 2014 AIR SCW 2268

of the flagrant violation of the Employment of Manual Scavengers and Construction of Dry. Latrines (Prohibition) Act, 1993 and issued various directions and orders in the nature of *continuing mandamus* and sought for the compliance from all the States and Union Territories. Due to effective intervention and directions of the Court, the Government of India brought an Act called “The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013” for abolition of this evil and for the welfare of manual scavengers.

It is submitted that the court by its activist approach caused the enactment of a welfare legislation. It is a welcome step.

Judicial Activism: Defining Public Purpose

In a recent case *Greater Noida Industrial Development Authority v. Devendra Kumar*¹⁸ the court cautioned the government while judging to act in public purpose. The court held:

“.....land is just like mother of the people living in the rural areas of the country. It is the only source of sustenance and livelihood for the landowner and his family. If the land is acquired, not only the present but the future generations of the landowner are deprived of their livelihood and the only social security. They are made landless and are forced to live in slums in the urban areas because there is no mechanism for ensuring alternative source of livelihood to them. Mindless acquisition of fertile and cultivable land may also lead to serious food crisis in the country.”

Judicial Activism and Nuclear Plants

Public interest litigation was filed before the Supreme Court of India in the case of *G. Sunderrajan v. Union of India*¹⁹ wherein the closure of the project of Nuclear Power Plant at Kudankulam in the State of Tamil Nadu was sought.

The court while showing green flag to the project held that Nuclear power plant is being established not to negate the right to life but to protect the right to life guaranteed under Article 21 of the Constitution. The court highlighting the need and importance of establishing Nuclear Power Plant held that a proper balance has to be drawn between the interest of the smaller

¹⁸ *Greater Noida Industrial Development Authority v. Devendra Kumar* (2011) 12 SCC 375

¹⁹ *G. Sunderrajan v. Union of India*, Special Leave Petition (Civil) No.36179 Of 2013

section of the society who will be affected by the establishment of the plant and the larger interest of the society which will benefit from the plant. The court held that the project will generate employment opportunities, cater power crisis, provide an opportunity of livelihood, contribute to economic growth of our country and held in alleviating poverty etc. which is larger public good. Besides it should be noted that life which is the greatest asset of an individual should not be put at risk otherwise it would fail the very purpose of the welfare state, therefore safety should be secured to the people living in the surrounding area and the people working in the project.

Arbitrary exercise of Pardoning Power

Recently, in a landmark judgment, in *Shatrughan Chauhan & another v. Union of India & Others*²⁰, the Hon'ble Supreme Court of India got the opportunity to deal with the pardoning power of the President of India. The Hon'ble Court commuted the death sentence of 15 convicts into life imprisonment on the ground of unreasonable, unexplained and exorbitant delay caused in disposing the mercy petitions of the petitioners and has played a vital role in the protection of human rights of the convicts.

The Supreme Court over the decades has expanded the horizon of 'right to life' guaranteed under the Constitution to balance with the progress of human life. The Court has yet sought another momentous occasion to decide upon the violation of Article 21 and laid down certain guidelines to be observed in dealing with mercy petitions and execution of death convicts and thereby attempted to safeguard the interest of the death row convicts.

Again, relying on the guidelines laid down in the above judgement, the apex court in *V. Sriharan @ Murugan v. Union of India*²¹, has gone to the extent of even converting the death sentence into life imprisonment of the assassins of the Former Prime Minister Rajiv Gandhi on the ground that the President had decided their mercy petitions after undue and unexplained delay of 11 years which had dehumanizing effect on the death row prisoners. It is submitted that keeping a convict in suspense while consideration of his mercy petition by the President for many years is

²⁰ Shatrughan Chauhan & another V. Union of India & Others Writ Petition (Criminal) No. 55 of 2013

²¹ V. Sriharan @ Murugan v. Union of India 2014 AIR SCW 1350

certainly an agony for him and that prolonged delay in execution of death sentence, by itself, gives rise to mental suffering and pain which renders the subsequent execution of death sentence inhuman and barbaric.

State should protect Fundamental Rights of its citizens

In a case *In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News*²² dated 23.01.2014, the Supreme Court took *suo moto* cognizance of the matter and held that “The State is duty bound to protect the Fundamental Rights of its citizens”. The court further took notice of the failure of the police to prevent the grave and blatant violation of the fundamental and human right to life.

In this case “khap panchayat” functioning in the state of West Bengal, ordered the gang rape of a 20 year old girl as punishment for having relationship with a man from a different community. The stage was set in the center of the village and girl was tied with the tree and raped by at least 13 people. History has never witnessed such a grave and gruesome violation of human right. The Supreme Court in this case ordered the state to pay compensation to the victim for her rehabilitation.²³

In another recent case in *Mohd. Haroon v. Union of India*²⁴, the Supreme Court took cognizance of the miserable conditions of the sufferers of muzaffarnagar riots and slammed the Uttar Pradesh Government for the violation of human rights in the shelter camps. The Hon’ble Supreme Court directed the state government to make provision for the protection from cold, supply of food and proper establishment to the victims of Muzaffarnagar Riots.

The court criticized the state government and the police officials that it has failed to perform its duties and protect the fundamental rights of the people. Looking at the plight of the shelter dwellers, the gruesome rapes committed on the women and the helpless condition they have

²² *Suo Motu Writ Petition (Criminal) No. 24 of 2014* available at www.judis.nic.in

²³ www.dnaindia.com : West Bengal Gang Rape ordered by ‘Kangaroo Court’ branded as ‘horror of life in rural India’ by world media.

²⁴ *Mohd. Haroon v. Union of India* (2014) 1 SCC 701

been, the only thing that can be concluded is that the state has failed to perform its constitutional obligations.

Justice for Transgender

The revolutionary court did not stop here it went to the extent of granting the transgender the status of third gender in the case of *National Legal Services Authority v. Union of India*²⁵.

The Court observed that “Article 14 of the Constitution of India provides that the State shall not deny to “any person” equality before the law or the equal protection of the laws within the territory of India. Article 14 does not restrict the word ‘person’ and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression ‘person’ and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.”

The court embarked upon the problem faced by the Trans genders in India viz. harassment by the police in public places, harassment at home, police entrapment, rape, discriminations, abuse in public places, discrimination, lack of educational facilities, lack of medical facilities, homelessness, unemployment, depression, hormone pill abuse, tobacco and alcohol abuse, and problems related to marriage and adoption. In spite of the adoption of Universal Declaration of Human Rights (UDHR) in the year 1948, the transgender have been denied the basic human rights.

It is submitted that the Constitution is a living document; its interpretation must be dynamic. The constitution must be understood in a way that advances modern reality. The judiciary is the guardian of the Constitution and it is the duty of the court to protect the rights of its citizens. The

It is submitted that by recognizing the Trans genders as third “third gender” the court has not only established rule of law but also advanced justice to a class which has been deprived of their natural right since inception. Social justice does not merely mean equality before law in papers but to translate the very spirit and goal of the Constitution which is preserved in the Preamble,

²⁵ National Legal Services Authority v. Union of India 2014 AIR SCW 2285

the Fundamental Rights and the Directive Principles of State Policy into action. The activist and enthusiastic court has brought to end the long existed, wide spread violation of human rights.

Judicial Activism and Gay Rights in India

The Courts in India have been demonstrating the activist role by protecting and safeguarding the rights of the people. At the same time the court is cautious enough of the restraints and the limitations. It is well conversant with the societal changes and recognizes the needs and the demands of the people. Also it is aware what demands should be met with and whether it would be just and reasonable to accept and grant such rights to the people and whether the society would be able to carry such rights.

The ambitious Court in the case of *Naz Foundation v. Govt. of NCT of Delhi*²⁶ observed that Section 377 of the Indian Penal Code and other legal prohibitions against private, adult, consensual and non-commercial same-sex conduct are direct violation of fundamental rights provided under the Indian Constitution and therefore held Section 377 of the Indian Penal Code as unconstitutional. The Supreme Court however in the case of *Suresh Kumar Kaushal v Naz Foundation*²⁷, realized that Indian society is not yet ripe enough to accept the cultural outbreak. It is submitted that the fashion in which the Indian Penal code was drafted was having regard to the social conditions prevailing in the country. It cannot be equated with other jurisdictions. It is because of the fact that India has its own problems which cannot be avoided. It has to be accepted that India has diverse conditions including the culture, morality, social upbringing, level of literacy, and the religious orientations of the people which it is the duty of court to protect. It is submitted that India cannot risk the experiment of allowing a culture that is alien to its society. The arguments which would be valid in one part of the world may not necessarily be as good in respect of India. It is submitted that the cultural differences in India is such that a practice may not be valid for one part but accepted and practiced in the other. Therefore the view of the Supreme Court, that Section 377 is valid and constitutional is a welcome stand.

Adoption Rights to Muslims

²⁶ Naz Foundation v Govt. of NCT of Delhi 160 Delhi Law Times 277

²⁷ Suresh Kumar Kaushal v Naz Foundation Civil Appeal No.10972 Of 2013

The Hon'ble Apex court of India in a much appreciated verdict *Shabnam Hashmi v. Union of India*²⁸, made a positive step towards uniform civil code and observed that a Muslim women also have right to adopt children not under the personal law but under the Juvenile Justice(Care and Protection of Children) Act, 2000 and the rules made thereunder. The JJ Act is a secular legislation and whosoever wishes to adopt a child under the same can observe guidelines provided by Central Adoption Resource Agency.

Although the court left it to parliament whether to make adoption a fundamental right, but by closely examining the Juvenile Justice Act and the CARA guidelines it can be said that the government and the court is trying to establish right to adopt as a fundamental right and by this verdict the court has again highlighted the issue and has given some time to the people of this nation, the government and the religious heads to think about this.

Right to Health: A facet of Article 21

Very recently the judiciary again reaffirmed the faith of the people and showcased its role as the protector and the guardian of the rights of the people. In a symbolic case *Mohd. Ahmad v. Union of India*²⁹, the court held that “simply because someone is poor we cannot allow him to die. The government is bound to ensure that poor and vulnerable sections of society have access to treatment for rare and chronic diseases, especially when there is likelihood of the patient leading a normal life. After all, health is not a luxury and should not be the sole possession of a privileged few”.

The court further held that Article 21 imposes an obligation on the state to safeguard the right to life of every person. The court however acknowledged that health is a priority sector and government should direct its policies towards assuring the right to health to every person but the availability of the finance with the government is a relevant factor and the courts in India cannot be unconscious of the resources and finance. Consequently the court cannot direct free treatment to all the inhabitants at the state expense. But at the same time it should be noted that no one should be compelled to live a life below the basic level

²⁸ *Shabnam Hashmi v. Union of India* 2014 AIR SCW 1329

²⁹ *Mohd. Ahmad v. Union of India* 2014 AIR SCW 1925

of dignified human existence. It is the duty of the state to provide medical health care to its citizens who are unable to maintain themselves.

The court did not stop here it went onto emphasizing the need for encouraging donations to health care sector both in cash and in kind and directed the government to encourage Corporate Social Responsibility under Section 135 of the Companies Act 2013, in the field of medicine.

Right to Know: Fundamental to Democracy

In the case *Resurgence India v. Election Commission of India*³⁰ the apex court held that the voter has the fundamental right to know full particulars of a candidate who will represent him in the Parliament or the Assemblies. The court held that the right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1) (a) of the Constitution.

The present writ was filed under Article 32 of the Constitution of India in order to maintain the purity of elections and to bring transparency in the election process.

It is submitted that the verdict holds great importance in the present time when the criminalisation of politics is at its peak. Free and fair election is the basic structure of the Constitution of India. Democracy cannot survive without free and fair election, and without free and fairly informed voters. If the people would be informed then they *may think over before making his choice of electing lawbreakers as law-makers*.³¹ In a successful democracy the voters speak only by casting votes and if this choice is not transparent, uninformed then there is great chance of tyranny.

PUBLIC INTEREST LITIGATION AND HUMAN RIGHTS

When we talk of judicial activism and human rights we cannot forget, public interest litigation, the role it plays in bringing to the notice of the court the violations of human rights and the effectiveness of the remedy.

³⁰ *Resurgence India v. Election Commission of India & Anr* Writ Petition (Civil) No. 121 Of 2008

³¹ *Association for Democratic Reforms v Union of India* (2002) 5 SCC 294

It is submitted that Public Interest Litigation is only one way of protecting human rights and not the only way and therefore it is required that other routes and procedures should also be developed so as to be available to the masses. At the same time it is necessary that the courts should be cautious enough while dealing with the Public Interest Litigation. That which was designed to help the weaker section of the society should not be abused and become a means to gain publicity. The courts should handle PIL with iron hand.

In a recent case *Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan*³², the Apex Court observed that:

“In the guise of PIL, we are coming across several cases where it is exploited for the benefit of certain individuals. The courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be punished.” The court further observed that “the concept of PIL is a phenomenon which is evolved to bring justice to the door step of the people who are handicapped by ignorance, indigence, illiteracy and other down trodden people. Through the PIL the cause of several people who are not able to approach the court is espoused. If PIL is permitted to be misused the very purpose for which it is conceived, namely to come to the rescue of the poor and down trodden will be defeated.”

It is submitted that the Judiciary has done a commendable work in the past and is doing the same by actively safeguarding the human rights of the people. But the recent time has witnessed the developments in the field of science and technology, the evolution of surrogacy, cyber terrorism etc. In the absence of any concrete law on the subject and considering the scope of human rights violation it appears that it will be challenging for judiciary to act in anticipation.

It is pertinent to mention that some very significant changes have occurred due to the initial efforts taken by the Judiciary. The enactment of the Right of Children to free and Compulsory Education Act 2009 is owed to the decision in *Unnikrishnan P.J v. State of A.P. and others*³³. Similarly, at the cost of repetition it is the activist role of the Supreme Court in *Safai Karamchari Andolan & Ors v. Union of India*, which led to the enactment of The Prohibition of Employment

³²Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan 2014 AIR SCW 3142

³³ Unnikrishnan P.J v. State of A.P. and others (1993) 4 SCC 111

as Manual Scavengers and Their Rehabilitation Act, 2013. The decision in *Paschim Banga Khet Mazdoor Samity & Ors v. State of West Bengal & Anr*³⁴ sets the stage for the right to emergency medical care for victims of accident as a part of right to health. Further in *PUCL v. Union of India*³⁵ the Supreme Court defined the right of access to food supplies for people below the poverty line (BPL) and held that it forms the bare necessity of human life which cannot be derogated.

Not only this, the PIL cases relating to environmental concerns have helped the Court to devise the 'polluter pays principle', the precautionary principles, and the principle of restitution and thereby protected the human right to healthy environment.

These are only a few examples from numerous judgements delivered by honourable Supreme Court from time to time protecting, promoting and enforcing human rights.

It can be seen that the judiciary has left no field untouched by its magic wand of judicial review. The judiciary has reaffirmed the faith of the people that they repose in it. Thus, certainly it can be said that victims of violation of human rights see a ray of hope in judiciary.

Sometimes, in clash between judiciary and legislature the progressive judgments delivered by the Apex Court of the country are attempted to make futile to sub serve the political cause as was experienced in the year 1986 wherein Muslim Women (Protection of Rights on Divorce) Act, 1986 was passed to make the landmark judgment of the Apex Court in *Mohd. Ahmad Khan v. Shah Bano Begum*³⁶ as ineffective.

Besides, the Judiciary must also be cautious enough while dealing with such sensitive issues and shall interpret the provisions harmoniously with a view to carry out effectively the object of a statute.

CONCLUSION

³⁴ *Paschim Banga Khet Mazdoor Samity & Ors v. State of West Bengal & Anr* (1996) 4 SCC 37

³⁵ *PUCL v. Union of India* 2003(10) SCALE 967

³⁶ *Mohd. Ahmad Khan v. Shah Bano Begum* 1985 AIR 945

All the three organs of the state must work in coordination and cooperation to achieve the objective laid down in the Constitution of India. It is well known that *“Injustice anywhere is a threat to justice everywhere”*. Here I am reminded of famous lines by **JAMES BALDWIN**:

“If one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected--those, precisely, who need the law's protection most!--and listens to their testimony.”

Therefore it is submitted that the Supreme Court should keep these words in mind while deciding on human rights violations. The court while deciding a case should visit the scene of violation and examine the case first handed because a report submitted by a commission appointed by the Court cannot speak the pain, the agony, the grief and the anxiety of the deprived. It is also great disregard to the feelings of such people when their sufferings find a small place in the footnote as “emotional unrest”. It is submitted that the life of people is the greatest asset to them and the state cannot deprive its people of such asset which is naturally and universally given to every person on this earth.

It is submitted that during the initial years the Court was struggling to firmly establish the foundations of Rule of Law in India. The judiciary assured that rule of law be established and the government does not act in violation of it. Definition of the ‘Basic Structure’ of the Constitution by the Court is the greatest achievement. With the advancement of time, the Indian judiciary has firmly established a framework of rights and has sent a clear message to the government that it should respect the rights of the people and should not unjustly infringe upon it. It is submitted that with the phase of stepping into 21 Century, the court has been vested with greater responsibility and has great challenge to create new rights and expand the ambit of the already existing rights under the Constitution of India. With liberalisation, privatisation and globalisation the government is required to meet the needs and demands of the new society. Besides, the judiciary has been vested with the duty to enforce such rights including easy access to remedies against injustice i.e. bringing justice to the door step of common people. It is submitted that in the expanded and changed nature of social order it will be necessary to take the help of lower judiciary. This would involve revitalizing the subordinate courts of the country. This is a task which requires collective effort of the higher and the lower courts. As the 21st century

progresses, the courts in India particularly the higher judiciary will continue to face the challenges of new and different nature arising as a result of development in the field of science and technology and then the biggest challenge before judiciary would be to maintain its long cherished image and shape the new society as envisioned in the Constitution of India.

When legislature is neglecting to act, executive is showing its indifferent attitude then the only recourse that is left is judicial discourse. And to remind ourselves it is the judiciary which has led the creation and conferment of certain rights on the people and also led to the enactment of various social legislations and has corrected the harm caused. It is submitted in a democracy the people speak through their votes and can overthrow the government by voting them out in the upcoming elections. That option is available but then too when the literacy rate of India is still a challenge, when vote for money is still a fashion and practised widely, when poverty and corruption spreads into the roots of the system then free and fair elections are not guaranteed. Provided the time it takes and the uncertainty of the future government to act as per the demands of the society makes it deplorable. The other alternative, which civilised society has is to turn its fact to the judicial arena and seek justice. Which is more easy, cheap and easily available. Also, a review of long list of, cases show that judiciary has always dealt with the violation of human rights with caution and care and has responded to the apathy of the government with fervent attitude.

Conclusively, in the current situation, judiciary is the only effective means available to the people of this country where violation of human rights is concerned.

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