

BALANCING JUSTICE AND RIGHTS: THE INDIAN JUDICIARY'S APPROACH TO HUMAN RIGHTS PROTECTION

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ABSTRACT

The Indian judiciary plays a pivotal role in interpreting and safeguarding human rights within the framework of the Indian Constitution. This paper explores the judiciary's perception of human rights, focusing on its proactive approach in expanding the scope of fundamental rights and ensuring justice for marginalized communities. By examining landmark judgments, the study highlights the judiciary's emphasis on the principles of equality, liberty, and dignity as enshrined in the Constitution. Additionally, it underscores the judiciary's commitment to balancing individual rights with societal interests, often bridging gaps left by legislative and executive inaction. Despite challenges such as judicial overreach and delays, the judiciary's evolving perception reflects its dedication to promoting justice and upholding human rights in a dynamic and diverse society. These abstract aims to provide insights into the judicial perspective, emphasizing its critical contribution to human rights jurisprudence in India.

Keywords: Human Rights, Constitution, Judicial Perspective, Indian Society, Fundamental Rights, DPSP

1. INTRODUCTION

The Indian judiciary has a crucial function in maintaining and implementing human rights safeguards within the legislative structure of the country. This chapter explores the diverse and complex role of the Indian judiciary in protecting fundamental rights, guaranteeing access to justice, and upholding the rule of law. This analysis explores significant court rulings, legal doctrines, and institutional frameworks that influence the judiciary's stance on safeguarding human rights. It also evaluates the obstacles and possibilities in upholding human rights in India.

Human rights, often described as the inherent and inalienable rights of individuals, form the cornerstone of any democratic society. In India, the judiciary has played a significant role in shaping the understanding and enforcement of these rights. The Indian Constitution, particularly through its Fundamental Rights and Directive Principles of State Policy, provides a robust framework for the protection and promotion of human rights. However, the judiciary's interpretation and application of these provisions have significantly influenced the evolution of human rights jurisprudence in the country.

Over the years, the Indian judiciary has exhibited a dynamic perception of human rights, characterized by an expansive approach that often goes beyond the textual provisions of the law. By interpreting the Constitution in a progressive manner, courts have reinforced principles such as equality, freedom, and human dignity. Landmark judgments have expanded the scope of human rights to include environmental protection, gender justice, and socio-economic rights, among others.

This introduction aims to explore the judiciary's perception of human rights, analyzing its proactive role in addressing the gaps left by the legislative and executive branches. While the judiciary has been lauded for its activism in safeguarding rights, it has also faced criticism for overstepping its jurisdiction. This nuanced understanding of the judiciary's perception is critical to appreciating its contribution to the realization of human rights in India.

2. HISTORICAL BACKGROUND

The Indian judiciary's involvement in safeguarding human rights can be attributed to the nation's colonial history and its fight for independence. In the colonial era, the British Raj enforced repressive legislation and restricted civil freedoms, resulting in considerable dissatisfaction and opposition. The Indian National Movement, spearheaded by prominent leaders such as Mahatma Gandhi and Jawaharlal Nehru, championed the ideals of liberty, egalitarianism, and fairness, establishing the foundation for independent India's unwavering dedication to the principles of human rights.

The Indian judiciary's perception of human rights has evolved over decades, shaped by historical contexts and constitutional mandates. Its journey can be traced through three key phases: pre-independence, post-independence, and the modern era of judicial activism.

During British colonial rule, the concept of human rights was largely absent in the legal framework, as laws were designed to maintain colonial authority rather than protect individual freedoms. However, early movements for civil liberties, such as those led by the Indian National Congress and other reformers, laid the groundwork for a rights-based discourse. The Government of India Act, 1935, provided limited rights, but they were largely subordinate to colonial interests. This era saw the judiciary playing a minimal role in promoting or protecting human rights.

After India gained independence in 1947, the adoption of the Constitution in 1950 marked a paradigm shift. The framers of the Constitution, drawing inspiration from global human rights movements and documents like the Universal Declaration of Human Rights (UDHR), embedded Fundamental Rights (Articles 12–35) and Directive Principles of State Policy (Articles 36–51) into the constitutional framework. These provisions established the judiciary as the guardian of individual rights.

3. CONSTITUTIONAL ASPECTS:

The Indian Constitution, adopted in 1950, serves as the cornerstone for protecting human rights across the nation. It encompasses a broad spectrum of fundamental rights, including equality before the law, freedom of speech and expression, the right to life and personal liberty, and access to legal remedies as enshrined within its provisions. This chapter delves into the evolution of constitutional jurisprudence on human rights, emphasizing key Supreme Court decisions that have expanded the scope and interpretation of fundamental rights.

Judicial activism signifies a proactive approach by judges to interpret and enforce laws based on broader societal values, occasionally diverging from the original legislative intent or established precedents. The Indian judiciary is widely recognized for its robust application of judicial activism, where courts actively intervene to protect citizens' rights and ensure governmental accountability. Through mechanisms like Public Interest Litigation (PIL) and suo motu actions, the judiciary has addressed critical human rights concerns, including environmental protection, gender equality, and police misconduct. This chapter highlights significant judicial interventions that underscore the courts' commitment to justice, equity, and the safeguarding of fundamental rights.

The Preamble of the Constitution contains quite assertive statements. The Preamble declares the objective of ensuring justice, both social and economic, as well as political justice. It also guarantees freedom of thought, expression, belief, and faith. Furthermore, it emphasises the importance of equality in both status and opportunities, and aims to foster a sense of brotherhood among all citizens while ensuring the dignity of individuals.

The "Principles of State Policy" refer to the guidelines outlined in the Indian Constitution. The Declaration of Human Rights lists several rights that are fundamental to a democratic government. These rights are naturally included in the

Indian Constitution and make up its fundamental framework. It is recommended to provide a concise explanation of the 'Fundamental Rights' and 'Directive Principles of state policy' that ensure, safeguard, and ensure the protection of Human Rights

4. JUDICIAL PERSPECTIVE

The judiciary has a crucial role in safeguarding well-established rights and freedoms that are considered essential. It accomplishes this by establishing norms of statutory interpretation that limit the extent to which the legislature can infringe upon these rights and freedoms.

The system of judicial review has been derived from Britain. The Indian Courts have constructed a control system based on this premise. India possesses a hierarchical legal system, with the Supreme Court of India serving as the highest court. The highest authority in interpreting and applying the law, the ultimate court of appeal for all civil, criminal, and constitutional cases. Additionally, it serves as the ultimate safeguard for individuals' Fundamental Rights.

Judicial Review is an essential component of the Constitution and a fundamental aspect of its structure. It cannot be eliminated or weakened, even though a constitutional amendment, in any democratic society. Judicial review is essential to the system since it upholds democracy and the rule of law.

The Supreme Court has the authority to conduct judicial review as outlined in Article 32. Article 32(1) ensures individuals have the right to approach the Supreme Court to enforce their Fundamental Rights. Article 32(2) grants the Supreme Court the authority to issue directives, orders, or writs to enforce these rights. The right to appeal to the Supreme Court for the protection of Fundamental Rights is considered a Fundamental Right in itself. The Court is obligated to provide an adequate remedy if it is proven that a violation of Fundamental Rights has occurred, and it does not have the authority to withhold such a remedy at its own discretion. Hence, it is not only the prerogative and authority but also the obligation of the Supreme Court to uphold and defend the Fundamental Rights of the citizens.

Judicial review is not intended to analyse the actual decision made by an administrative entity, but rather to examine the process by which the decision was made.

Thus, the Court is unable to exercise appellate jurisdiction and reevaluate the primary or perceptual facts determined by the fact-finding body. The availability of judicial review is contingent upon the specific circumstances of each particular case; yet, it is not possible to review a theoretical legal principle in isolation.

The Supreme Court has expanded the scope of Fundamental Rights. It has been asserted that a right does not need to be explicitly mentioned in Part III of the Constitution. The new right can be comprehended and deduced from the rights expressed in Part III. In addition, the Court has broadened the scope of Fundamental Rights, including the 'right to life', to encompass certain freedoms and rights that are deemed crucial for the full realisation of these rights.

For instance, Article 21 guarantees the right to employment. The Supreme Court has extensively addressed the rights of those who have been arrested, detained, or are awaiting trial. Through a series of decisions, the court has established a comprehensive body of law concerning the rights of suspects, undertrials, convicts, and inmates. This body of law is sometimes referred to as prison jurisprudence. These rights have been established as a constituent of Fundamental Rights.¹

The Supreme Court has utilised International Conventions to interpret and clarify the Fundamental Rights, and has implemented them accordingly. The articles of the Covenants that clarify and implement the Fundamental Rights guaranteed by our Constitution can be relied upon by Courts as integral components of those Fundamental Rights and hence enforceable as such.

The Berubari Union involves the exchange of enclaves.² The Supreme Court noted that the process of making treaties by a sovereign state on the transfer of national territory, as well as the implementation of such treaties, is governed by the constitutional provisions of the country. In general terms, the treaty-making authority must be exercised in accordance with the Constitution and be subject to the limitations set by it. The implementation of the treaty will depend on whether it can be enacted by regular legislation or if it requires changes to the Constitution, as specified in the Constitution itself.

¹ Ibid.

² *Berubari Union and exchange of Enclave (AIR 1960, SC 845).*

In the case of *A.D.M. Jabalpur v. Shukla*³, one of the questions presented to the Supreme Court was whether the Universal Declaration of Human Rights and the two International Covenants on Human Rights from 1966 were included in Indian domestic law. The Supreme Court, by a majority, determined that they were not included in Indian Municipal Law. In his dissenting opinion, Justice H.R. Khanna argued that in the event of a disagreement between an international treaty and local law, the latter should take precedence. However, if there are two viable interpretations of the Municipal legislation, the Court should adopt the interpretation that promotes harmony between Municipal legislation and International Law or treaty.

In the case of *Jolly George Varghese vs. Bank of Cochin*⁴, the Supreme Court ruled that if there is a conflict between a provision of an international treaty, such as Article 11 of the International Covenant on Civil and Political Rights (to which India is a party), and a provision of a state statute, such as section 51 (Proviso) and order XXI Rule 37 of the Civil Procedure Code, the state statute will take precedence. This is true if the international treaty has not been specifically adopted into the domestic law or undergone any changes. Judge Krishna Iyer, who issued the ruling, also made an additional observation.

Essentially, the fundamental right protected by the International Covenants can only serve as guidance for courts and inspiration for legislative measures in member States. However, beyond this profound respect, the power of the judiciary to take corrective action on behalf of an injured individual is limited.⁵

The stance will vary when there is no contradiction between the International Convention and the domestic legislation. The Supreme Court, in the case of *Vishaka vs. State of Rajasthan*, highlighted.⁶ The absence of domestic legislation addressing the issue of sexual harassment of women in the workplace necessitates the reliance on international conventions and norms to interpret the constitutional guarantees of gender equality, the right to work with dignity, and the safeguards against sexual harassment provided in Articles 14, 15, 19(1)(g), and 21 of the Constitution. Any International Convention that does not align with the Fundamental Rights and is not in accordance with its essence should be interpreted within these provisions to expand their meaning and substance, and to further the purpose of Constitutional guarantee. The authority to implement International Conventions and norms is derived from articles 51 (c) and the enabling power of the Parliament statute, as stated in articles 253 read with entry 14 of the union list in Seventh Schedule of the Constitution. Article 73 is also applicable. The provision states that the executive powers of the union will cover the areas for which Parliament has the authority to create legislation. The executive power of the union remains in effect until the parliament enacts legislation specifically addressing the necessary actions to control the mentioned evil.⁷

In the case of *Menka Gandhi v/s UOI*, Justice J.S. Verma stated that human rights encompass the essential rights required to safeguard and uphold an individual's dignity, as well as to establish circumstances that enable every human being to fully develop their personality.

David P. Forsythe argues that there is no universally agreed-upon definition of dignity, although it is generally associated with concepts of fairness and a well-functioning society.

According to India's Chief Justice, Hon'ble Justice J.S. Verma, human dignity is the highest point of human rights."

Human rights can be defined as the legal rights that individuals are entitled to just by virtue of being human. In this sense, these factors should be considered typical for any human person and do not require any extra condition or ingredient for their identification. Income, rank, age, gender, country, ethnicity, and religion are all irrelevant factors when it comes to claiming the enjoyment of human rights. Once a person's humanity is established, they unequivocally possess the entitlement to assert their enjoyment of human rights. However, it is important to note that when it comes to human rights, there may still be appropriate classifications. Differentiation may also be contingent upon the specific substance and extent of each individual right. Legislation passed by the legislature essentially involves the deliberate choice of a specific group of individuals for the purpose of control or financial gain, while excluding others. The extent to which something is permissible or should be deemed acceptable is a subject that has been the subject of numerous legal disputes, resulting in both victories and defeats. Variations in human qualities would also provide justification for

³ *A.D.M. Jabalpur vs. Shukla* (AIR 1976, SC 1207).

⁴ *Jolly George Varghese vs. Bank of Cochin* (AIR 1980, SC 470).

⁵ *Ibid.* p. 475.

⁶ *Vishaka ss. State of Rajasthan* (AIR 1997, SC 3017).

⁷ *D.D. Basu, "Comparative Constitutions Law" (Prentice Hall of India) p.100*

differences in treatment. The profession of prostitution cannot expect to have the same benefits and recognition as the professions of a doctor or teacher. Doctors may have more extensive responsibilities than the average individual. Unlike those in private employment, public servants may be required to compromise their independence. The presence of numerous disparities helps elucidate the varying treatment observed in the respective domain. However, although legislation may provide justifications based on specific considerations or elements, it is important to remember that the essential "human" element, which must be respected within reasonable boundaries, remains intact and goes beyond the particular characteristics of a situation or group of individuals. Justice Krishna Iyer, in agreement with Albert Einstein, emphasises that human rights are not inherently fixed or unchangeable. Instead, they are ideas and beliefs that have arisen from past events and a desire for a better world. However, throughout history, these principles have often been disregarded and violated. Consequently, a significant portion of history is filled with the ongoing battle for human rights, a perpetual endeavour that cannot be conclusively won. However, the occurrence of fire during that conflict will result in the annihilation of civilization.

According to Researcher Human Rights cannot be protected without the state enforcement machinery such as National Human Rights Commission. It is true that NHRC is lazy sometimes but it is playing a very important role in the Country. Today we are enjoying our natural rights are protected by NHRC and our Judiciary. As thus if we are discussing about Role of Human Rights Commission we have to discuss on the Legislative and Judicial Trends also. The present study tries to explore the ground report of enforcement of Human Rights. This discusses on various areas related to Human Rights and NHRC. This also discusses about various problems facing by humans in various areas. The main purposes of this study are to obtain an insight into the Role of NHRC with special reference of the Legislative and Judicial Trends. This research presents the actual scenario of Implementation and enforcement of Human Rights by NHRC. The majority of the studies discussed above and listed in the bibliography have not attempted to analyze the work of the Human Rights Commission. A research study on this topic is believed to aid in identifying the factors that obstruct the Human Rights Commission's normal functioning and finding appropriate solutions. As a result, the researcher decided to pursue the current research.

5. RIGHTS TO THE ECONOMY, SOCIETY AND CULTURE

Economic, social, and cultural rights, sometimes known as "freedom to" rights, play a role in ensuring that human beings have access to the basic essentials of life. In the lack of fundamental rights, the existence of human beings is prone to endangerment. This category of rights includes the entitlement to an adequate provision of food, clothing, housing, and a decent quality of living, as well as freedom from poverty. It also covers the right to employment, social security, physical and mental well-being, and education. The ICESCR guarantees and protects certain rights.

These rights, often known as positive rights, necessitate active measures from governments rather than inaction. As a result, these rights have resemblance to the initial phase of civil and political rights, when human rights are expressed primarily in terms of positive rights (the right to something) rather than negative freedom from something. The fulfilment of these rights requires a significant allocation of resources, and similar to civil and political rights, they cannot be achieved instantly. Economic, social, and cultural rights are fundamentally grounded on the principle of social equality. The realization of these rights, commonly referred to as second-generation rights, has been characterized by a sluggish pace. They are obvious only as basic ideas, not as specific rules. They have begun to reach maturity, however.

6. CONCLUSION

The Indian judiciary has played a pivotal role in shaping the nation's approach to human rights, often acting as a guardian of constitutional principles and individual freedoms. By expanding the scope of fundamental rights and interpreting the Constitution dynamically, the judiciary has reinforced India's commitment to human rights in various spheres, including equality, dignity, and justice. Landmark judgments, such as those on the right to privacy, environmental justice, and gender equality, illustrate the judiciary's proactive stance in protecting marginalized communities and addressing emerging societal challenges.

However, the judiciary's perception and enforcement of human rights are not without criticism. Delays in the justice delivery system, occasional inconsistencies in decisions, and limitations in implementation highlight areas for improvement. To further strengthen its role as a human rights protector, the judiciary must address systemic inefficiencies, enhance access to justice, and remain steadfast against external pressures.

In conclusion, the Indian judiciary's evolving interpretation of human rights reflects its commitment to fostering a just and equitable society. While challenges persist, its interventions have been instrumental in promoting and safeguarding human rights in the face of changing socio-political landscapes.

The Indian court and NHRC have a crucial function in safeguarding and upholding human rights, ensuring the protection of fundamental liberties, and advancing social justice and equality. By issuing significant rulings, engaging in judicial activism, and implementing investigative tools, they have displayed their dedication to maintaining the supremacy of the law and guaranteeing equal access to justice for all individual.

Nevertheless, it is crucial to tackle systemic obstacles, establish responsibility, and improve the availability of legal remedies in order to fortify the safeguarding of human rights in India. Effective collaboration among the court, NHRC (National Human Rights Commission), government, civil society, and media is crucial for tackling impunity, fostering transparency, and upholding human rights norms in the country. India can achieve its vision of a fair, inclusive, and rights-oriented society only by engaging in collective action and demonstrating commitment.

CONFLICT OF INTERESTS

None.

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REFERENCES

- Muralidhar, S. *Law, Poverty, and Legal Aid: Access to Criminal Justice*. LexisNexis Butterworths, 2004.
- Dhanda, Amita, and Archana Parashar (eds.) *Engendering Law: Essays in Honour of Lotika Sarkar*. Eastern Book Company, 1999.
- Desai, Ashok, and S. Muralidhar. "Public Interest Litigation: Prospects and Problems." In *Supreme but Not Infallible: Essays in Honour of the Supreme Court of India*, edited by B.N. Kirpal et al., 159–192. Oxford University Press, 2000.
- Muralidhar, S. "Judicial Enforcement of Economic and Social Rights: The Indian Scenario." In *Justiciability of Economic and Social Rights: Experiences from Domestic Systems*, edited by Fons Coomans, 237–267. Inters entia, 2006.
- Muralidhar, S. "Trials, Errors and Hope: Indian Experiments with Access to Justice." *Journal of National Judicial Academy* 1 (2005): 350–389.
- Muralidhar, S. "Rights of Victims in the Indian Criminal Justice System." *Journal of the National Human Rights Commission* 2 (2003): 88–104.
- Muralidhar, S. "Crime, Punishment and Justice in India: The Trajectories of Criminal Law." *Annual Lecture Series in Criminal Law*, Project 39A, National Law University Delhi, 2018.
- Muralidhar, S. "Unsettling Truths, Untold Tales: The Bhopal Gas Disaster Victims' Twenty Years of Courtroom Struggles for Justice." *International Environmental Law Research Centre Working Paper*, 2004/5.
- Muralidhar, S. "Implementation of Court Orders in the Area of Economic, Social and Cultural Rights: An Overview of the Experience of the Indian Judiciary." *Delhi Law Review* 24 (2002): 113–122.
- Muralidhar, S. "Economic, Social & Cultural Rights: An Indian Response to the Justiciability Debate." In *Economic, Social & Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural Rights*, edited by Yash Ghai & Jill Cottrell, 23–32. Internight, 2004.
- "A Study of Judicial Responses Relating to Human Rights in India" *ResearchGate*, 2022.
- "The Role of Judiciary in Upholding Human Rights" *Edzorb Law*, 2023.
- "Judicial Endeavour in the Protection and Development of Human Rights in India" *International Journal of Law*, 2022.
- "Human Rights in India: Role of Judiciary and Judicial Activism" *Noida International University*, 2020.
- "Examining the Impact of the Indian Judiciary on Human Rights Protection and Promotion" *Jus Scriptum Law*, 2023.
- "Judicial Activism — The Enforcement of Human Rights in India" *Research Gate*, 2023.