

Human Rights Protection under the Constitution of India and Judicial response

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ABSTRACT: The framers of the Indian constitution incorporated all basic human rights as fundamental rights and made special provisions to ensure their enforcement under article 226 and 32. of The Constitution. The Constitution of India was drafted after the Universal declaration of Human Rights by the United Nations on Dec. 10, 1948 and therefore some ideas were borrowed right from the declaration itself. But after long period Indian parliament enacted the Protection of Human Rights Act in 1993 to provide for the Constitution National Human rights Commission and state Human Rights Commissions and Human Rights Court for the protection of human rights. The researcher view and analysis in this research paper is that to what extent Indian Judiciary protecting Human rights as per the constitutional safeguards in this respect. So the discussion in this paper is what rights are considered as Human rights by Indian Judiciary and what protection has been given by Indian Judiciary in different forms of its decisions in various cases. As we all are well aware about the violation of Human rights everywhere but it's a hard task to prevent the violation of Human Rights. So we are going to analyze best efforts made by Indian Judiciary in the recognition and protection of Human Rights in the decisions of various leading cases.

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Introduction:

Human Rights and Indian Constitution-

Human beings are rational being. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Since these rights belong to them because of their very existence they become operative with their birth. Human rights, being the birth right, are therefore inherent in all individuals irrespective of their caste, creed, religion sex, and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical suitable conditions for the material and moral uplift of the people. Because of their immense significance to human being; human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

The Constitution of India is one of the most rights-based constitutions in the world. Drafted around the same time as the *Universal Declaration of Human Rights* (1948), the Indian Constitution captures the essence of human rights in its Preamble, and the sections on Fundamental Rights and the Directive Principles of State Policy.¹

The Constitution of India is based on the principles that guided India's struggle against a colonial regime that consistently violated the civil, political, social, economic and cultural rights of the people of India. The freedom struggle itself was informed by the many movements for social reform, against oppressive social practices like sati (the practice of the wife following her dead husband onto the funeral pyre), child marriage, untouchability etc. Thus by the mid-1920s, the Indian National Congress had already adopted most of the civil and political rights in its agenda.

The movement led by Dr B R Ambedkar (one of the founding fathers of the Constitution) against discrimination against the Dalits (the erstwhile outcasts or so-called untouchables who formed the lowest strata of the caste hierarchy and who currently number more than 170 million or 16.5% of the total population of India) also had an impact on the Indian Constitution.

In spite of the fact that most of the human rights found clear expression in the Constitution of India, the independent Indian State carried forward many colonial tendencies and power structures, including those embedded in the elite Indian Civil Service. Though the Indian State under Jawaharlal Nehru took many proactive steps and followed a welfare state

¹ Universal Declaration of Human Rights (1948)

model, the police and bureaucracy remained largely colonial in their approach and sought to exert control and power over citizens. The castes, feudal and communal characteristics of the Indian polity, coupled with a colonial bureaucracy, weighed against and dampened the spirit of freedom, rights and affirmative action enshrined in the Constitution. So the discussion in this paper is over here what rights are considered as Human rights.

(i) Right to life and Human Dignity-Article 21 of the Indian Constitution 1950 states that 'No person shall be deprived of his life or personal liberty except according to procedure established by law.

The preamble states that one of the aims of the Constitution is to secure to all its citizens 'equality of status and of opportunity As already discussed Right to Life is not only confined to physical existence but includes within its ambit the right to live with human dignity. In *Francis Coralie v. Union Territory of Delhi*² the Supreme Court struck down Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, as violation of Article 14 and 21. The impugned Section 3 provided that a detainee could have interview with his legal adviser only one time in a month and that too only after obtaining prior permission of the district magistrate, Delhi and to take place in the presence of customs officer. In *Peoples Union for Democratic Rights v. Union of India*³, held that non-payment of minimum wages to the workers employed in various A said Projects in Delhi was a denial to them of their right to live with basic human dignity and violation of Article 21 of the Constitution. Bhagwati, J., speaking for the majority held that the rights and benefits conferred on the workmen employed by a contractor under various labour laws are "clearly intended to ensure the basic human dignity to workmen and of the workmen violate are deprived of any of these rights and benefits, that would clearly be a violation of Article 21." He held that the non-implementation by the private contractors and non-enforcement by the State Authorities of the provisions of various labour laws violated the fundamental right of the workers "to live with human dignity."

(ii) Right to Die-The meaning of the words "personal liberty" came up for consideration of the Supreme Court for the first time in *A.K.*

*Gopalan v. Union of India*⁴. The scope of Article 21 was a bit narrow at that time. In this case the Supreme Court held that the word deprivation was construed in a narrow sense and it was held that the deprivation does not restrict upon the right to move freely which came under Article 19 (1) (d). Finally, in *Maneka Gandhi v. Union of India*⁵, the Supreme Court has overruled Gopalan's case and widens the scope of the words "personal liberty", which is as follows: Now, the question arises whether right to life under Article 21 includes right to die or not. This question came for consideration for first time before the High Court of Bombay in *State of Maharashtra v. Maruti Sripati Dubal*⁶. In this case the Bombay High Court held that the right to life guaranteed under Article 21 includes right to die, and the hon'ble High Court struck down section 309 IPC which provides punishment for attempt to commit suicide by a person as unconstitutional. In *P Rathinam v. Union of India*⁷ a Division Bench of the Supreme Court supporting the decision of the High Court of Bombay in *Maruti Sripati Dubal* case held that under Article 21 right to life also include right to die and laid down that section 309 of Indian Penal Code which deals with 'attempt to commit suicide is a penal offence' unconstitutional.

This issue again raised before the court in *Gian Kaur v. State of Punjab*⁸. In this case a five judge Constitutional Bench of the Supreme Court overruled the *P. Rathinam's* case and held that "Right to Life" under Article 21 of the Constitution does not include "Right to die" or "Right to be killed" and there is no ground to hold that the section 309, IPC is constitutionally invalid. To true meaning of the word 'life' in Article 21 means life with human dignity. Any aspect of life which makes life dignified may be include in it but not that which extinguishes it. The 'Right to Die' if any, is inherently inconsistent with the "Right to Life" as is "death" with "Life" but still now it is unsolved question whether right to die include in right to life or whether euthanasia is permitted or not.

(iii) Right to Privacy-"Privacy" has been defined as "the state of being free from intrusion or disturbance in one's private life and in affairs." In *R. Sukhanya v. R. Sridhar*⁹, Court held

⁴ AIR 1950 SC 27

⁵ AIR 1978 SC 597

⁶ AIR 1978 SC 597

⁷ AIR 1994 SCC 394

⁸ AIR 1996 SCC 648

⁹ AIR 2008 Mad. 244.

² AIR 1981 SC 746.

³ AIR 1982 SC 1473.

publication of matrimonial proceedings, meant to be conducted in camera, as invasion of right of privacy and more importantly the Court also held that “the rightful claim of an individual to determine to which he wishes to share himself with others and control over the time, place and circumstances to communicate with others.” In *Malak Singh v. State of Punjab*,¹⁰ was included in the surveillance register by the police under section 23 of the Punjab Police Act, he not being given an opportunity of being heard. Since he was not heard and including his name in the register, he argued, had infringed his right to privacy under Article 21. The Court held that “organised crime cannot be successfully fought without close watch of suspects. But, surveillance may be intrusive and it may so seriously encroach on the privacy of a citizen as to infringe his fundamental right to personal liberty guaranteed by Article 21 of the Constitution and the freedom of movement guaranteed by Article 19(1) (d). That cannot be permitted.” In *R. Rajagopal v. State of Tamil Nadu*,¹¹ the Supreme Court has asserted in recent times the right to privacy has acquired constitutional Status; it is “implicit in the right to life and liberty guaranteed to the citizens” by Article 21.

(iv) Right to Livelihood.—The right to life include the right to livelihood. The sweep of the right conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because; no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not included in the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right

to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.¹²

(v) Right to Speedy Trial.—As stated in *Moses Wilson v. Karluriba*,¹³ a procedure cannot be reasonable, fair and just unless it ensures a speedy trial for determination of the guilt of the person deprived of his liberty. It was observed In *Maneka Gandhi v. Union of India*,¹⁴ that “No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair and it would fall foul on Article 21.” In *Hussainara Khatoon v. Home Secretary, State of Bihar*,¹⁵ it was brought to the notice of the Supreme Court that an alarming number of men, women and children were kept in prisons for years awaiting trial in courts of law. The Court took a serious note of the situation and observed that it was carrying a shame on the judicial system which permitted incarceration of men and women for such long periods of time without trials. In *Hussainara Khatoon v. Home Secretary, State of Bihar*,¹⁶ the Court held that detention of under-trial prisoners, in jail for period longer than what they would have been sentenced if convicted, was illegal as being in violation of Article of 21. The Court, thus, ordered the release from jail of all those under-trial prisoners, who had been in jail for longer period than what they could have been sentenced had they been convicted. In *A.R. Antulay v. R.S. Nayak*,¹⁷ A Constitution Bench of five judges of the Supreme Court dealt with the question and laid down certain guidelines for ensuring speedy trial of offences some of them have been listed below:

It is the constitutional obligation of the state to devise such a procedure as would ensure speedy trial to the accused. The state cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the state. It is also the constitutional obligation of the supreme court as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the

15 AIR 1981 SC. 234

16 AIR 1995 SC 264

¹² <http://lawyersupdate.co.in/LU/13/1053.asp>

¹³ AIR 2008 SC 379.

¹⁴ AIR 1978 SC 597.

¹⁵ AIR 1979 SC 1369.

¹⁶ AIR 1979 SC 1377

¹⁷ AIR 1992 SCC 481

state which may include taking of positive action, such as augmenting and strengthening the investigative machinery sitting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional of judge and other measures calculated to ensure speedy trial.

(vi) Right to Free Legal Aid & Right to Appeal.-In *M.H. Haskot v. State of Maharashtra*, the Supreme Court said while holding free legal aid as an integral part of fair procedure the Court explained that “the two important ingredients of the right of appeal are; firstly, service of a copy of a judgment to the prisoner in time to enable him to file an appeal and secondly, provision of free legal service to the prisoner who is indigent or otherwise disabled from securing legal assistance. This right to free legal aid is the duty of the government and is an implicit aspect of Article 21 in ensuring fairness and reasonableness; this cannot be termed as government charity. In other words, an accused person at least where the charge is of an offence punishable with imprisonment is entitled to be offered legal aid, if he is too poor to afford counsel. Counsel for the accused must be given sufficient time and facility for preparing his defense. Breach of these safeguards of fair trial would invalidate the trial and conviction.¹⁸

(vii) Right to Clean Environment.-The “Right to Life” under Article 21 means a life of dignity to be lived in a proper environment free from the dangers of diseases and infection.³⁷ Maintenance of health, preservation of the sanitation and environment have been held to fall within the purview of Article 21 as it adversely affects the life of the citizens and it amounts to slow poisoning and reducing the life of the citizens because of the hazards created if not checked.

The following are some of the well-known cases on environment under Article 21: In *M.C. Mehta v. Union of India*,¹⁹ the Supreme Court ordered closure of tanneries which were polluting water. In *M.C. Mehta v. Union of India*,²⁰ the Supreme Court issued several guideline and directions for the protection of the Taj Mahal, an ancient monument, from environmental gradation. In *Vellore Citizens Welfare Forum v. Union of India*,²¹ the Court took cognizance of the environmental problems being caused by

tanneries which were polluting the water resources, rivers, canals, underground water and agricultural land. The Court issued several directions to deal with the problem. In *Milk Men Colony Vikas Samiti v. State Of Rajasthan*,²² the Supreme Court held that the „right to life? Means clean surrounding which lead to healthy body and mind. It includes right to freedom from stray cattle and animals in urban areas. In *M.C. Mehta v. Union of India*,²³ the Court held that the blatant and large scale misuse of residential premises for commercial use in Delhi violated the right to salubrious and decent environment.

(viii) Right to Compensation.-Right to claim monetary compensation for the violation of the rights in Article 21 has also been recognized in several case *Rudal Sha v. State of Bihar*,²⁴ while evolving a principle that "if any fundamental right of any person is violated and no remedy is provided by the law then victim can be compensated in monetary form". In this case the court has awarded Rs. 35'000 as an interim relief with the direction to file a regular suit for compensation and directed that the court to hear the case on merit and evaluate his 14 year of lost life behind the bar, which cannot be returned.

Bhim Singh v. State of J. & K.,²⁵ In this case, the court has awarded Rs. 50,000 for two days illegal detention. It was heard from many eminent persons that court was somewhere mistaken while awarding compensation in both case.

Discussion:

Thus Indian Judicial system has a significant role to play in the direction of Human Rights Protection and to ensure safety and security to the citizen of India. So Indian Judiciary as per the Constitution of India has enlarged the scope of right to life so as to read within its compass the right to live with dignity ,right to healthy environment , right to humane conditions of work , right to education , right to shelter and social security, right to know , right to adequate nutrition and clothing and so on in different aspect of Human life.

¹⁸ M.H. Haskot v. State of Maharashtra AIR 1978 SC 1548

¹⁹ AIR 1988 SC 1037 : (1987) 4 SCC 463

²⁰ AIR 1997 SC 734 : (1997) 2 SCC 353

²¹ AIR 1996 SC 2721 (1996) 5 SCC 647.

²² AIR (2007) 2 SCC 413

²³ AIR (2006) 3 SCC 399.

²⁴ AIR 1983 SC 2127

²⁵ AIR 1985 SCC 677

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