



Subject :
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SUBJECT TOPICS

- 1. HUMAN RIGHTS AND THE
CONSTITUTION OF INDIA**
- 2. REMEDIES FOR VIOLATION OF
HUMAN RIGHTS**
- 3. ROLE OF JUDICIARY TO
PROMOTE AND PROTECT HUMAN
RIGHTS**

HUMAN RIGHTS AND THE INDIAN CONSTITUTION

The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of the race, religion, language, sex and culture." The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens.¹⁰

India and the Universal Declaration of Human Rights

India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights. The following chart makes it very clear.

Indian Constitution and UDHR

No	Name of Right	Universal Declaration	Indian Constitution
1	Equality before law	Article 07	Articles 14
2	Equality of opportunity in matters of public employment	Article 21(2)	Article 16(1)
3	Protection of certain rights regarding freedoms of speech, etc,	Article 19	Article 19(1) A
4	Protection in respect of conviction for offences	Article 11(2)	Article 20 (1)
5	Protection of life and personal liberty	Article 9	Article 21
6	Prohibition of tracking in human beings and forced labor	Article 14	Article 23
7	Freedom of conscience and free Profession practice and propagation of religion	Article 18	Article 25 (1)
8	Protection of Interests of minorities	Article 22	Article 29 (1)

9	Right of minorities to establish and administer Educational Institutions	Article 20(3)	Article 30(1)
10	Right to property	Article 17 (2)	Not a fundamental rights after amendment 44, but now in Article 300A
11	Remedies for enforcement of rights conferred by this part	Article 8	Article 32

Table 3.1: Similarities between Universal Declaration of Human Rights and Indian Constitution

Indian Constitution and ICCPR

Rights	Convention on Civil And Political Rights	Indian Constitution
Prohibition of trafficking in human beings and forced labor	Article 8(3)	Article 23
Equality before law	Article 14(1)	Article 14
Prohibition of discrimination on ground of religion, race, caste, sex or place of birth	Article 26	Article 15
Equality of opportunity in matters of public employment	Article 25(c)	Article 16(1)
Protection of certain rights regarding freedom of speech	Article 19(1, 2)	Article 19
To assemble peaceably and without arms	Article 21	Article 19 (1b)
To form association or unions	Article 22(1)	Article 19(1c)
To move freely throughout the territory of India	Article 12 (1)	Article 19(1d,e,g)

Protection in respect of conviction for offences	Article 15(1) Article 14 (7)	Article 20(1)(2)
No person accused of any offence shall be compelled to be a witness against himself	Article 14(3g)	Article 20(3)
Protection of life and personal liberty	Article 6 (1), Article 9 (1)	Article 21
Protection against arrest and detention in certain cases	Article 9 (2,3,4)	Article 22
Freedom of conscience And free profession, practice and propagation of religion	Article 18(1)	Article 25

Table 3.2: Similarities between Covenant on Civil and Political Rights and Indian Constitution

Indian Constitution and ICESCR

The table below shows that most of the economic, social and cultural rights proclaimed in the Universal Declaration of Human Rights have been incorporated in Part IV of Indian Constitution.

No	Name of Right	Convention on Civil And Political Rights	Indian Constitution
1	Equal pay for equal work	Article 7a (1)	Article 39d
2	Provision for just and humane conditions of work and maternity relief	Article 7b	Article 42
3	Right to work, to education and public assistance in certain cases	Article 6(1)	Article 41
4	Opportunity for children	Article 10 (3)	Article 41f
5	Compulsory education for children	Article 13 (2a)	Article 45
6	Living wage, etc, for workers	Article 7(a)(11) Article 7 (d)	Article 43
7	Nutrition and standard of living	Article 11	

Table 3.3: Similarities between Covenant on Economics, Social and Cultural Rights

In *Keshavananda Bharati v. State of Kerala*, the Supreme Court observed, "The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted." In the case of *Jolly George Varghese v. Bank of Cochin* the point involved was whether a right incorporated in the Covenant on Civil and Political Rights, which is not recognized in the Indian Constitution, shall be available to the individuals in India. Justice Krishna lyer reiterated dualism and asserted that the positive commitment of the State Parties ignites legislative action at home but does not automatically make the Covenant an enforceable part of the 'Corpus Juris' in India. Thus, although the Supreme Court has stated that the Universal Declaration cannot create a binding set of rules and that even international treaties may at best inform judicial institutions and inspire legislative action. Constitutional interpretation in India has been strongly influenced by the Declaration. In the judgement given in the *Chairman, Railway Board and others v. Mrs. Chandrima* as, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts.¹⁰

India ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on March 27, 1979. The Optional Protocol to the International Covenant on Civil and Political Rights, 1989, however, was not ratified by India.

Fundamental Rights and Human Rights

The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural educational rights and the right to Constitutional remedies.¹⁰

Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is violative of any of the fundamental right, is void. In *ADM Jabalpur v. Shukla*, Justice Beg observed "the object of making certain general aspects of rights fundamental is to guarantee them against illegal invasion of these rights by executive, legislative, or judicial organ of the State." Earlier, Chief Justice Subba Rao in *Golak Nath v. State of Punjab* had rightly observed, "Fundamental rights are the modern name for what been traditionally known as natural rights been traditionally known as natural rights."

The Supreme Court of India recognizes these fundamental rights as 'Natural Rights' or 'Human Rights'. While referring to the fundamental rights contained in Part III of the Constitution, Sikri the then Chief Justice of the Supreme Court, in *Keshavananda Bharati v. State of Kerala*, observed, "I am unable to hold these provisions to show that rights are not natural or inalienable rights. As a matter of fact India was a party to the Universal Declaration of Rights . . . and that Declaration describes some fundamental rights as inalienable." The Chief Justice Patanjali Shastri in *State of West Bengal v. Subodh Gopal Bose* observed referred to fundamental rights as those great and basic rights, which are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country.

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Fundamental Rights for Citizens only

The Indian Constitution has classified fundamental rights into two categories:

1. Fundamental rights which are available to citizens only;
2. Fundamental rights available to all persons residing within the territory of India for the time being and subjected to its jurisdiction. The rest of the category, which is available to the citizens includes:
 - (a) Article 15 relating to prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
 - (b) Article 16 relating to equality of opportunity for all citizens in matters of public appointment
 - (c) Article 19 relating to protection of rights
 - i. freedom of speech and expression
 - ii. to assemble peaceably and without arms
 - iii. to form associations or unions
 - iv. to move freely throughout the territory of India
 - v. to reside and settle in any part of the territory of India and

- vi. Article 19(1) (f) relating to the right to own and acquire property was deleted by the Constitution 42nd Amendment Act 1978 with effect from 20-06-1979
- vii. To practice any profession or to carry on any occupation, trade or business.

(d) Article 29 relating to protection of interests of minorities

The second category of fundamental rights comprise the remaining fundamental rights which use the word 'Person.' In *Hans Muller of Nuremburg v. Superintendent Presidency Jail Calcutta* it was laid down in the judgment that Article 19 applies only to citizens. Fundamental rights mentioned in Article 19, which contains the right to "basic freedoms", are available only to the citizens of the country. The word 'citizen' that occurs in the above Article has not been used in a sense different from that in which it has been used in part II of the Constitution dealing with citizenship. In *Anwar v. State of Jammu and Kashmir* it was held that non-citizens could not claim fundamental rights provided under Article 19.¹⁰

In *Chairman Railway Board and others v. Chandrima Das* the Supreme Court has observed that:

Fundamental rights: are available to all the persons of this country and those who are not citizens of this country and who come here as tourists or in any other capacity, are entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to life in this country. Thus they also have the right to live with human dignity so long as they are here in India. Article 14 which guarantees equality before law and equal protection of laws within the territory of India is applicable to "person" who would also include both the "citizens" of this country and non-citizens. In this case, a Bangladeshi national Mrs. Khatoon was gang raped by the Railway employees in a room at the Yatri Niwas of the Howrah Railway Station in West Bengal. The Calcutta High Court allowed compensation of a sum of rupees 10 lacs to her for having been gang raped. Upholding the decision of the High Court, the Supreme Court held that as a national of another country, she could not be subjected to a treatment, which was below the dignity, nor could she be subjected to physical violence at the hands of Government employees who outraged her modesty. According to the tone and the tenor of the language used in Article 21, they are available not only to every citizen of this country but also to a person of another country. The

Apex Court also held that since the word 'life' has been used in Article 21 of the Constitution as a basic human right in the same sense as understood in the Universal Declaration of Human Rights of 1948, there is no reason why it should be given a narrow meaning.¹⁰

Article 39(a) and Article 44 of the Directive Principles of State Policy contained in part IV of the constitution are for the citizens only.

The following are the rights contained in the Covenant on Civil and Political Rights. They are available to the citizens of India through judicial decisions, though they are not specifically mentioned in the Constitution.¹⁰

1. Right to travel abroad (Article 21)

The right to travel abroad is a guaranteed right under Article 12 paragraph (2) of the Covenant on Civil and Political Rights. In *Sathwant Singh Sawhney v. D. Ramanathan, Assistant Passport Officer, New Delhi*, the Court held that the right to go abroad is part of an individual's personal liberty within the meaning of Article 21.

2. Right to privacy (Articles 21 and 19 (1) (d))

This right is stipulated under Article 17 paragraph (1) of the Covenant on Civil and Political Rights. In *Kharak Singh v. State of Uttar Pradesh* it was held by the Supreme Court that the 'domiciliary visits' is an infringement of the right to privacy and is violative of the citizen's fundamental rights of personal liberty guaranteed under Article 21.

3. Right against solitary confinement

4. Right to human dignity

5. Right to free legal aid in a criminal trial

6. Right to speedy trial

7. Right against handcuffing
8. Right against delayed execution
9. Right against custodial violence
10. Right against public hanging
11. Right to health care or doctor's assistance
12. Right to shelter
13. Right to pollution free environment
14. Freedom of the press
15. Right to know
16. Right to compensation
17. Right to release and rehabilitation of bonded labour
18. Right of inmates of protection homes
19. Right of not to be imprisoned for inability to fulfill a contractual obligation. In *Jolly George Varghese v. Bank of Cochin*⁴⁰ it was held by the Supreme Court that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is a violation of Article 21.

Directive Principles of State Policy and Human Rights

(Judicially non-enforceable rights)

Judicially non-enforceable rights in Part IV of the Constitution are chiefly those of economic and social character. However, Article 37 makes it clear that their judicial non-enforceability does not weaken the duty of the State to apply them in making laws, since they are nevertheless fundamental in the governance of the country. Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty) many of these principles and made them enforceable.

The duties of the State encompass securing a social order with justice, social, economic and political, striving to minimize and eliminate all inequalities (Article 38), securing for "the citizens, men and women equally" the right to an adequate means of livelihood (Article 39 (a)), distribution of ownership and control of community resources to subserve the common good (Article 39(b)), prevention of concentration of wealth and means of production of the common detriment (Article 39(c)), securing equal pay for equal work for both men and women (Article 39(d)), preventing abuse of labor, including child labor (Article 39(e)), ensuring of child development (Article 39(f)), ensuring of equal justice and free legal aid (Article 39 A), organization of village democracies (Article 40), provision of the right to work, education and public assistance in case of unemployment, old age sickness and disability (Article 41), provision of humane conditions of work (Article 42), living wage and a decent standard of life (Article 43), securing participation of workers in the management of industries (Article 43A), provision of a uniform civil code for the whole country (Article 44), provision for early child care and education to children below the age of six years. The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years (Article 45), promotion of educational and economic interest of the weaker sections of the people and their protection from injustice and all forms of exploitation (Article 46), raising the standard of living, improving the level of nutrition and public health and prohibition of intoxicating drinks and of drugs (Article 47), scientific reorganization of animal husbandry and agriculture (Article 48) conservation of environment, forests and wildlife (Article 48A), protection of monuments and things of artistic or historical importance (Article 49), separation of judiciary from the executive (Article 50) and promotion of international peace and security (Article 51).¹⁰

REMEDY FOR VIOLATION OF HUMAN RIGHTS

a) Remedy under International Law: the remedy can be analyzed from the relation between Indian Constitution and UDHR, Indian Constitution and ICCPR and Indian Constitution and ICESCR.

b) Remedy under Indian Law:

- i) Remedy under legislations
- ii) Remedy under PIL
- iii) Remedy under writ jurisdiction
- iv) Remedy under judicial activism
- v) Remedy under 125 Cr PC

Some measures of Protection of Hu-man Rights under Indian Law

1. The Protection of Civil Rights Act, 1955
2. Suppression of Immoral Traffic in Women and Girls Act, 1956
3. Maternity Benefit Act, 1961
4. Dowry Prohibition Act, 1961
5. Equal Remuneration Act, 1976
6. Bonded Labor (Abolition) Act, 1976
7. Employment of Children Act, 1938 (Amended in 1985)
8. The Child Labor (Prohibition and Regulation) Act, 1986

9. Juvenile Justice Act, 1986
10. Indecent Representation of Women (Prohibition) Act, 1986
11. Sati (Prevention) Act, 1987
12. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
13. The National Commission for Women Act, 1990
14. The National Commission for Minorities Act, 1992
15. The National Commission for Safai Karamcharis Act, 1993
16. The National Commission for Backward Classes Act, 1993
17. The Mental Health Act, 1993
18. The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995.

Public Interest Litigation and Human Rights

Public Interest Litigation - an expansion of class action under the common law - is a procedural innovation, which the Indian judiciary has by now fairly perfected on the basis of a concept borrowed from the United States. The rule of 'locus standi' normally dictates that he who approaches the court must prove his legal standing vis-a-vis the claim he seeks to vindicate, usually in terms of a legal right or a legal obligation violated by the defendant/respondent causing thereby some injury or damage to him for which law provides a remedy. On the other hand, the public interest litigation is based on the principle that: We cannot write off the weaker victims of injustices; the court's door when they knock shall open ... How can a bonded laborer working in a stone quarry ever know of moving the Supreme Court?, asks Justice Krishna Iyer, a redoubtable public interest activist judge of the Supreme Court of the seventies. He explains that public interest litigation, chiefly, in the realm of public law assists 'all people concerned with governmental lawlessness, negligence of the administration, environmental pollution, public health, product safety, consumer protection and social exploitation being served

by professionals like lawyers and public interest lobbies working for 'reform of decision-making processes in Government and out-side, affecting the public at large'. Public Interest Law offers new challenges and opportunities for the committed lawyers and social groups to serve the unequal segments of society better. This sensitive development is part of democracy (of the disabled) and of the movement to vindicate social justice through professions for the people. As a result, 'judges with a vision have new universes to behold, and mansions of people's justice to build.

Justice Krishna lyer realizes that the public interest litigation is likely to be abused. Hence he advised that the court should prima facie be satisfied that the information laid before it is of such a nature that it calls for examination. By looking at the credentials of the informant, the specific nature of the allegation, the gravity or seriousness of the complaint, and any other relevant circumstances should also be derived. It should also use its own wide investigative faculties as appropriate for the situation.

Ever since the public interest litigation came to be promoted by the Supreme Court, there has been an ongoing debate in the country between its supporters and opponents. In the *Sunil Batra v. Union of India* case, the Supreme Court entertained a letter from Batra, a prisoner, complaining about the treatment meted out to a fellow prisoner in a jail. The letter activated [the Court to deal with a wide variety of issues such as solitary confinement in jails, conditions of under-trial prisoners, sexual exploitation, sexual exploitation of blind girls in Schools, detention of mentally ill persons, minimum wages, illegal sale of babies, bonded labor, environmental protection, ill-treatment of freshers in Colleges, better roads, land entitlement, conditions of children in children's homes, treatment of inmates of care homes, conditions of mental hospitals and deaths at alleged Police encounters. As the court opened its doors wide shedding procedure formalism, many of these issues repeatedly came before it as well as many others such as torture of young prisoners, Police brutality like blinding of suspects during investigation, custodial violence against women prisoners, deaths in Police custody, handcuffing of accused persons facing trials and fetters on incarcerated prisoners.

As the legal procedure became deformed, the court evolved new devices to assist it in dealing with public interest litigation, such as special inquiry, fact-finding commission, scheme remedies and post decisional monitoring. A nationwide Legal Aid Scheme came to be established on the initiative of the Supreme Court.

In 1982 the Supreme Court promised to examine a range of relevant issues concerning the public interest litigation procedure. An examination of these issues; may be useful to streamline the public interest litigation law and practice with a view to discouraging abuses. As Justice Krishna Iyer remarked it is "too late to burke PIL, but always welcome to reform, and reform, eliminate the entropy and abuse of the process." It is quite possible that the burden of a backlog of cases awaiting adjudication is what worries the Court. But this is never a reason when 'we the People of India demand social justice,' reminds Justice Iyer.

The judiciary should never bite more than it can chew, Justice Sujata Manohar strikes a note of caution in the context of Article 21 of the Constitution. Article 21 embodies a judicially enforceable right. Therefore, it should essentially be a right capable of being protected by a judicial order. A right not capable of such enforcement, if spelled out from Article 21. . . may result in the trivialization of court's pronouncements and may encourage the habit of ignoring them . . . Every human right may not be capable of judicial enforcement. It points out the limits and limitations of judicial activism.

Taking into account the peculiar nature of public interest litigation, the Supreme Court of India in a public interest litigation, *D.K. Basu v. State of West Bengal*, issued guidelines to be followed in all cases for arrest and detention by the State interrogatory agencies till legal provisions are made on that behalf as preventive measures.

The Guidelines are:¹⁰

1. The Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of such Police personnel who handle interrogation of the arrestee must be recorded in a register.

2. The Police officer executing the arrest shall prepare a memo at the time of arrest and shall be attested by at least one witness. This may be either a member of the family of the arrested or a respectable person of the locality from where the arrest is made. It shall be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a Police Station or interrogation center or other lockups, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as possible that he has been arrested and is being detained in a particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the Police when the next friend or relative of the arrestee lives outside the District or town through the Legal Aid Organization in the District and the Police Station of the area concerned telegraphically within 8-12 hours of the arrest.
5. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the Police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and the major and minor injuries if any present on his body and must be recorded at that time. The 'Inspection of memo must be signed by both the arrestee and the Police officer effecting the arrest and a copy shall be provided to the arrestee.
8. The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a doctor from a panel of approved doctors appointed by the Director, Health Services of the State concerned or Union Territory. He should prepare such a panel for all talukas and Districts as well.
9. Copies of all the documents including the memo of arrest referred to above should be sent to the Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during in-terrogation though the later may not be present throughout interrogation.
11. A Police control room should be provided at all District and State headquarters so that information regarding the arrest and the place of custody of the arrestee can be communicated by the Officer carrying out the arrest within 12 hours of effecting the arrest and at the Police control room it should be displayed on a conspicuous notice board.

The Supreme Court also insists that the requirements that flow from Articles 21 and 22 (1) of the Indian Constitution are to be strictly followed. These would apply with equal force to other Government agencies including the Directorate of Revenue Intelligence, Directorate of Enforcement, Coast Guard, Central Reserve Police Force (C.R.P.F), Border Security Force (B.S.F.) the Central Industrial Security Force (C.I.S.F), the State Armed Police, Intelligence Agencies, such as the Intelligence Bureau, RAW, Central Bureau of Investigation (C.B.I.) and C.I.D. These guide-lines are only a few out of a large number of Judgments of the apex court in which the court upheld the human rights of the oppressed individuals.

THE ROLE OF JUDICIARY TO PROMOTE AND PROTECT HUMAN RIGHTS

Introduction

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The preamble of the Constitution of India encapsulates the objectives of the Constitution-makers to build a new Socio-Economic order where there will be Social, Economic and Political Justice for everyone and equality of status and opportunity for all. This basic objective of the Constitution mandates every organ of the state, the executive, the legislature and the judiciary working harmoniously to strive to realize the objectives concretized in the Fundamental Rights and Directive Principles of State Policy.

The judiciary must therefore adopt a creative and purposive approach in the interpretation of Fundamental Rights and Directive Principles of State Policy embodied in the Constitution with a view to advancing Human Rights jurisprudence. The promotion and protection of Human Rights is depends upon the strong and independent judiciary. The main study here would be given wide coverage to the functional aspect of the judiciary and see how far the Apex judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Human Rights in the light of our Constitutional mandate. The major contributions of the judiciary to the Human Rights jurisprudence have been two fold: (1) the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and (2) the procedural innovation of Public Interest Litigation.

Writ Jurisdiction of the Supreme Court and the High Courts

The most significant of the Human Rights is the exclusive right to Constitutional remedies under Articles 32 and 226 of the Constitution of India. Those persons whose rights have been violated have right to directly approach the High Courts and the Supreme Court for judicial rectification, redressal of grievances and enforcement of Fundamental Rights. In such a case the courts are empowered to issue appropriate directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari. By virtue of Article 32, the Supreme Court of India has expanded the ambit of Judicial Review to include review of all those state measures, which either violate the Fundamental Rights or violative of the Basic Structure of the Constitution. The power of Judicial Review exercised by the Supreme Court is intended to keep every organ of the state within its limits laid down by the Constitution and the laws. It is in exercise of the power of Judicial Review that, the Supreme Court has developed the strategy of Public Interest Litigation.

The right to move to the Supreme Court to enforce Fundamental Rights is itself a Fundamental Right under Article 32 of the Constitution of India. This remedial Fundamental Right has been described as “the Cornerstone of the Democratic Edifice” as the protector and guarantor of the Fundamentals Rights. It has been described as an integral part of the Basic Structure of the Constitution. Whenever, the legislative or the executive decision result in a breach of Fundamental Right, the jurisdiction of the Supreme Court can be invoked. Hence the validity of a law can be challenged under Article 32 if it involves a question of enforcement of any Fundamental Rights.

The Right to Constitutional remedy under Article 32 can be suspended as provided under Articles 32(4), 358 and 359 during the period of promulgation emergency. Accordingly, in case of violation of Fundamental Rights, the petitioner under Article 32 for enforcement of such right can not be moved during the period of emergency. However, as soon as the order ceases to be operative, the infringement of rights made either by the legislative enactment or by executive action can be challenged by a citizen in a court of law and the same may have to be tried on merits, on the basis that the rights alleged to have been infringed were in operation even

during the pendency of the presidential proclamation of emergency. If, at the expiration of the presidential order, the parliament passes any legislation to protect the executive action taken during the pendency of the presidential order and afford indemnity to the execution in that behalf, the validity and effect of such legislation may have to be carefully scrutinized.

Under Article 226 of the Constitution of India, the High Courts have concurrent jurisdiction with the Supreme Court in the matter granting relief in cases of violation of the Fundamental Rights, though the High Courts exercise jurisdiction in case of any other rights also. The Supreme Court observed that where the High Court dismissed a writ petition under Article 226 after hearing the matter on merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same relief filed by the same parties will be barred by the rule of Resjudicata. The binding character of the judgment of the court of competent jurisdiction is in essence,¹ a part of the rule of law on which, the administration of justice is founded .

Thus the

judgment of the High Court under Article 226 passed after hearing the parties on merits must bind the parties till set aside in the appeal as provided by the Constitution and can not be permitted to be avoided by a petition under Article 32.

Article 226 contemplates that notwithstanding anything in Article 32, every High Court shall have power, throughout the territorial limits in relation to which it exercises jurisdiction 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”. Hence, the jurisdiction of a High Court is not limited to the protection of the Fundamental Rights but also of the other legal rights as is clear from the words “any other purpose”. The concurrent jurisdiction conferred on High Courts under Article 226 does not imply that a person who alleges the violation of Fundamental Rights must first approach the High Court, and he can approach the Supreme Court² directly. This was held in the very first case Ramesh Thapper vs. State of Madras .

¹ Daryao Vs. State of U.P (AIR 1961 SC 1457)

² AIR 1950 SC 124

But in P.N. Kumar vs. Municipal Corporation of Delhi³ the Supreme Court expressed the view that a citizen should first go to the High Court and if not satisfied, he should approach the Supreme Court. Innumerable instances of Human Rights violation were brought before the Supreme Court as well as the High Courts. Supreme Court as the Apex Court devised new tools and innovative methods to give effective redressal.

Rule of Locus Standi vis-à-vis Public Interest Litigation

The traditional rule is that the right to move the Supreme Court is only available to those whose Fundamental Rights are infringed. A person who is not interested in the subject matter of the order has no Locus Standi to invoke the jurisdiction of the court. But the Supreme Court has now considerably liberalized the above rule of Locus Standi. The court now permits the “public spirited persons to file a writ petition for the enforcement of Constitutional and statutory rights of any other person or a class, if that person or a class is unable to invoke the jurisdiction of the High Court due to poverty or any social and economic disability. The widening of the traditional rule of Locus Standi and the invention of Public Interest Litigation by the Supreme Court was a significant phase in the enforcement of Human Rights.

⁴In S.P. Gupta vs. Union of India and others , the seven member bench of the Supreme Court held that any member of the public having “sufficient interest” can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of their poverty or other disabilities. A person need not come to the court personally or through a lawyer. He can simply write a letter directly to the court complaining his sufferings. Speaking for the majority Bhagwathi, J. said that any member of the public can approach the court for redressal where, a specific legal injury has been caused to a determinate class or group of persons when such a class or person are unable to come to the court because of poverty, disability or a socially or economically disadvantageous position. In the instant case, the court upheld the right of lawyers to be heard on matters affecting the judiciary. By this judgement Public Interest Litigation became a potent weapon for the enforcement of “public duties” where executed inaction or misdeed resulted in public inquiry.

³ AIR 1989 SC 1285

⁴ AIR 1982 SC 149

While expanding the scope of the “Locus Standi”, Bhagwathi, J. expressed a note of caution and observed “but we must be careful to see that the member of the public, who approaches the court in case of this kind, is acting bonafide and not for personal gain or private profit or political motivation or other consideration. The court must not allow its process to be abused by politicians and other”. Hence the court was aware that this liberal rule of Locus Standi might be misused by vested interests.

As a result of this broad view of Locus Standi permitting Public Interest Litigation or Social Action Litigation, the Supreme Court of India has considerably widened the scope of Article 32 of the Constitution. The Supreme Court has jurisdiction to give an appropriate remedy to the aggrieved persons in various situations. Protection of pavement and slum dwellers of Bombay, improvement of conditions in jails, payment of Minimum Wages, protection against Atrocities on Women, Bihar blinding case, Flesh trade in protective home of Agra, Abolition of Bonded Labourers, Protection of Environment and Ecology are the instances where the court has issued appropriate writs, orders and direction on the basis of Public Interest Litigation.

The strategy of Public Interest Litigation has been evolved by this court with a view to bringing justice within the easy reach of the poor and disadvantaged sections⁵ of the community. In *Union for Democratic Rights vs. Union of India* the⁶ Supreme Court held that Public Interest Litigation is brought before the court not for purpose of enforcing the right of one individual against another as happened in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of Constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantageous position should not go unnoticed and unredressed.

⁷In *Bandhu Mukti Morcha vs. Union of India*, the Apex Court held that the power of the Supreme Court under Article 32 includes the power to appoint Commission for making enquiry into facts relating to the violation of Fundamental Rights. The Apex Court further held that Public Interest Litigation through a letter

⁵ Bihar Legal Support Society vs. Chief Justice of India (1986) 4 SCC 767

⁶ AIR 1982 SC 1473

⁷ AIR 1984 SC 803

should be permitted, but expressed the view that, in entertaining such petitions, the court must be cautious so that, it might not be abused. The court suggested that all such letters must be addressed to the entire court and not a particular judge and secondly it should be entertained only after proper verification of materials supplied by the petitioner. This is known as epistolary jurisdiction.

The advent of Public Interest Litigation (here in after referred to as PIL) is one of the key components of the approach of “Judicial Activism” that is attributed to the higher judiciary in India. The verdict of Bhagwati, J. in *M.C.Mehta vs. Union of India*⁸ opened the doors of the Apex Court of India for the oppressed, the exploited and the down – trodden in the villages of India or in urban slums. The poor in India can seek enforcement of their Fundamental Rights from the Supreme Court by writing a letter to any judge of the court even without the support of an Affidavit. The court has brought legal aid to the door steps of millions of Indians which the executive has not been able to do despite that, a lot of money is being spent on new legal aid schemes operating at the central and state level.

A study of the notable cases of the Supreme Court speak of the fact that the Indian judiciary has adopted strong sentiments in favour of Public Interest Litigation and the functioning of judiciary reveals that it has exercised its powers in the most creative manner and devised new strategies to ensure the protection of Human Rights to the people. The Supreme Court of India has used the strategy of Public Interest Litigations as an aid to enforce the rights of prisoners, workers, pensioners, victims of environmental pollution and others. The Public Interest Litigation plays an important role in ensuring the Principle of Rule of Law by making the administration is accountable to the people. The Supreme Court of India in *Narmada Bachao Andolan vs. Union of India*⁹ held that Public Interest Litigation was an invention essentially to safeguard and protect the Human Rights of those people who were unable to protect themselves.

In the recent past Public Interest Litigation has acquired a new dimension. Apart from securing several non–justifiable socio–economic rights as guaranteed under the Fundamentals Rights, the Supreme Court has frequently resorted to a novel

⁸ AIR 1987 SC 1087

⁹ (2000) 4 SCJ 261

feature in the field of Human Rights jurisprudence such as compensatory jurisprudence, judicial law making with a view to secure justice to the down-trodden and also to the oppressed people. Public Interest Litigation is a weapon which has to be used with care and caution. The judiciary has to be extremely careful to see that whether it contains public interest or private vested interest. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The strategy of Public Interest Litigation should not be used for suspicious products of mischief. It should be aimed at the redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta¹⁰.

There have been in recent times, increasingly instances of abuse of Public Interest Litigations. Therefore there is a need to re-emphasize the parameters within which Public Interest Litigation can be resorted to by a petitioner and entertained by the court. It was essentially meant to protect basic Human Rights of weak and disadvantaged. Public Interest Litigation has not been moved under disguise with some ulterior motive or some purpose. The courts are now imposing moderate to heavy costs in cases of misuse of Public Interest Litigation which should be an eye opener for non-serious Public Interest Litigation mover.

The greatest contribution of Public Interest Litigation has been to enhance the accountability of the governments towards the Human Rights of the poor. Public Interest Litigation interrogates power and makes the courts as peoples court. The Supreme Court of India in a number of important decisions has significantly expanded the scope and frontier of Human Rights. Public interest matters today focus more and more on the interests of the Indian middle classes rather than on the oppressed classes.

PIL seeking order to ban Quran¹¹ transmission of T.V. Sa¹²

in~~tion~~ of

Consumer Protection Law¹³ removal of corrupt ministers¹⁴

in~~tion~~ of irregular allotment of petrol pumps¹⁵ and government accommodation¹⁶ prosecution of politicians and bureaucrats for accepting bribes and Kickbacks through Hawala

¹⁰ Ashok Kumar Pandey vs. State of West Bengal (2004) 3 SCC 349

¹¹ Chandanmal Chopra VS. State of West Bengal AIR 1986 Cal 104

¹² Oddessey Lok Vidyayana Sanghatan vs. Union of India (1988) ISCC 168

¹³ Common Cause vs. union of India (1996) 2 SCC 752

¹⁴ D.Satyanarayana vs. N.T.Rama Rao AIR 1988 AP 144

¹⁵ Centre for Public Interest Litigation vs. Union of India (1995) (supp) 3 SCC 382

¹⁶ Shiv Sagar twari vs. union of India (1996) 2 SCC 558

transactions¹⁷, better service conditions of the members of lower judiciary¹⁸ or quashing selection of university teachers¹⁹ are some blatant examples espousing middle class interests. Some initial successes of PIL, however cannot certify that it shall always remain an effective instrument for protection of Human Rights. The future of PIL will depend upon who uses it and for whom.

Prisoners and the Human Rights

The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. In this area an attempt is made to explain the some of the provisions of the rights of prisoners under the International and National arenas and also as interpreted by the Supreme Court of India by invoking the Fundamental Rights. Article 21 of the Constitution of India provides that “No person shall be deprived of his life and Personal Liberty except according to procedure established by law”. The rights to life and Personal Liberty is the back bone of the Human Rights in India. Through its positive approach and Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights.

By giving a liberal and comprehensive meaning to “life and personal liberty,” the courts have formulated and have established plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 20²⁰ 21. In A.K.Gopalan’s Case²⁰, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case²¹ and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that “the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation” and also opined that the procedures prescribed by law must be fair, just and reasonable.

¹⁷Vineet Narayan vs. union of India (1996) 2 SCC 199

¹⁸All India judges association vs. Union of India AIR 1992 SC 165

¹⁹Bishwajeet serisha vs. Dibrugarh University AIR 1991 GAU. 27

²⁰A.K. Gopalan vs. State of Madras A.I.R 1950 SC P.27

²¹Maneka Gandhi vs. Union of India A.I.R 1978 SC P.597

In the following cases namely Maneka Gandhi²², Sunil Batra (I)²³, M.H.Hoskot²⁴ and Hussainara Khatoon²⁵, the Supreme Court has taken the view that the provisions of part III should be given widest possible interpretation. Every activity which facilitates the exercise of the named Fundamental Right may be considered integrated part of the Article 21 of the Constitution. It has been held that 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. though specifically not mentioned are Fundamental Rights under Article 21 of the Constitution. One of the most powerful dimensions that arose through Public Interest Litigation is the Human Rights of the prisoners.

The Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Supreme Court by its progressive interpretation made Article 21, which guarantees the Right to Life and personal liberty, the reservoir of prisoner's rights. Under the seventh schedule of the Constitution of the India, the prison administration, police and law and order are to be administered by the respective states. The states have generally given low priority to prison administration. In fact, some of the decisions of the Supreme Court on prison administration have served as eye-openers for the administrators and directed the states to modernize prison administration.

The Human Rights saviour Supreme Court has protected the prisoners from all types of torture. Judiciary has taken a lead to widen the ambit of Right to Life and personal liberty. The host of decisions of the Supreme Court on Article 21 of the Constitution after Maneka Gandhis case, through Public Interest Litigation have unfolded the true nature and scope of Article 21. In this thesis, an attempt is made to analyse the new dimensions given by the Supreme Court to Article 21 through Public Interest Litigation to safeguard the fundamental freedom of the individuals who are indigent, illiterate and ignorant. Public Interest Litigation became a focal point to set

²²Maneka Gandhi vs. Union of India AIR 1978 SC P.597

²³Sunil Batra (I) vs. Delhi administration AIR 1978 SC 1675

²⁴M.H.Hoskot vs. State of Maharashtra AIR 1978 SC 1548

²⁵Hussainara Khatoons NO. I vs. Home Secretary, State of Bihar AIR 1979 SC 1360

the judicial process in motion for the protection of the residuary rights of the prisoners.

Judicial conscience recognized that Human Rights of the prisoners because of its reformistic approach and belief that convicts are also human beings and that the purpose of imprisonment is to reform them rather than to make them hardened criminals. Regarding the treatment of prisoners, Article 5 of the Universal Declaration of Human Rights, 1948 says “No one shall be subjected to torture or cruel treatment, in human or degrading treatment or punishment”. While Article 6 of the Universal Declaration of Human Rights, 1948 contemplates that “everyone has the right to recognition everywhere as a person before law”. Article 10(1) of the International Covenant on Civil and Political Rights lay down that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

The Supreme Court of India has developed Human Rights jurisprudence for the preservation and protection of prisoner’s Right to Human Dignity. The concern of the Apex judiciary is evident from the various cardinal judicial decisions. The decisions of the Supreme Court in Sunil Batra was a watershed in the development of prison jurisprudence in India.

Rights against Inhuman Treatment of Prisoners

Human Rights are part and parcel of Human Dignity. The Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lock-up²⁶. The Supreme Court read the right against torture into Articles 14 and 19 of the Constitution. The court observed that “the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14”. In the Raghbir Singh v. State of Bihar²⁷, the Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock – up.

In Kishore Singh VS. State of Rajasthan²⁸ the Supreme Court held that the use of third degree method by police is violative of Article 21.

- ²⁶ Ramana Murthy V. State of Karnataka AIR 1997 SC 1739; Munna VS. State of U.P AIR 1982 SC 806; Rakesh VS. Suptd. Central prison, New Delhi, AIR 1981 SC 760; D.K.Basu VS. State of West Bengal (1997 I SCC 416; Sheela Barse VS. State of Maharashtra AIR 1983 SC 378;
- ²⁷ Khedat Mazdoor Chetna Sangtham V. State of M.P. AIR 1995 SC 31
(1986) 4 SCC 481
- ²⁸ AIR 1981 SC 625

It is pertinent to mention that the custodial death is perhaps one of the worst crimes in civilized society governed by the rule of law. The court promptly ruled that the inhuman treatment meted to the accused in police custody is the gross and blatant violation of Human Rights. In the absence of any legislative or executive guidelines the court has undertaken an activist role and ruled in plethora of cases and one such case is D.K.Basu vs. State of West Bengal²⁹

The decision of the Supreme Court in the case of D.K. Basu is note worthy. While dealing the case, the court specifically concentrated on the problem of custodial torture and issued a number of directions to eradicate this evil, for better protection and promotion of Human Rights. In the instant case the Supreme Court defined torture and analyzed its implications. The observations of the court on torture are valuable and worth quoting at length. With a view to curbing this menace, the Supreme Court laid down detailed guidelines as preventive measures as follows.

- a. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- b. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- c. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock – up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as practicable that he has been arrested and

²⁹AIR 1997 SC 610

is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or relative of the arrestee.

- d. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through legal aid organizations in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- e. The person arrested must be aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- f. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- g. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
- h. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- i. Copies of all the documents including the memo of arrest, referred to above should be sent to the area Magistrate for his/her record.
- j. The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.
- k. A police control room should be provided at all district and state head quarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12

hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

In the instant case, the Apex Court made it clear that, custodial violence, including torture and death in the police lock-up, strikes a blow at the rule of law, which demands that the powers of the executive should not only be deprived from the law but also that the same should be limited by the law. The court also made it clear that failure to comply with guidelines should, apart from rendering the official concerned liable for departmental action and also render him liable to contempt of⁴⁰ court . The Supreme Court has made it clear beyond doubt that any form of torture of cruel, inhuman or degrading treatment is offensive to Human Dignity and is violative of Article 21 of the Constitution.

Right to Legal Aid

The main object of the Free Legal Aid scheme is to provide means by which the principle of equality before law on which the edifice of our legal system is based. It also means financial Aid provided to a person in matter of legal disputes. In the absence of Free Legal Aid to the poor and needy, Fundamental Rights and Human Freedoms guaranteed by the respective Constitution and International Human Rights covenants have no value.

Though, the Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and are not in a position to engage the lawyer of their own choice. The⁴²nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive³⁰ Principles of State Policy under Article 39A in the Constitution . This is the most important and direct Article of the Constitution which speaks of Free Legal Aid . Though, this Article finds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making

³⁰ Article 39-A provides that “the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular, provides Free Legal Aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

laws³¹. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

Maneka Gandhi vs. Union of India³² case was a catalyst which laid down a foundation for interpreting Articles 39-A and 21, widely to cover the whole panorama of Free Legal Aid. In the instant case the Supreme Court held that procedure established by law in Article 21 means fair, just and reasonable procedure.

In Madhav Hayawadan Rao Hosket vs. State of Maharashtra³³, a three judges bench (V.R.Krishna Iyer, D.A.Desai and O.Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.PC together declared that the Government was under duty to provide legal services to the accused persons. Justice Krishna Iyer observed that Indian socio legal milieu makes free legal services, at trial and higher levels, an imperative procedural piece of criminal justice. The Supreme Court decided the point of Legal Aid in appeal cases as follows “If a prisoner sentenced to imprisonment is virtually unable to exercise his Constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the court under Article 142 read with Articles 21 and 39 A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice”. The court further added that legal Aid in such cases is states duty and not Government’s charity.

In the words of justice Krishna Iyer, “Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence of incommunicado

³¹ Article 37 of the Constitution of India reads as “the provisions contained in part IV shall not be enforceable by any court but the principles there in laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

³² AIR 1978 SC P597

³³ AIR 1978 SC 1548

situation, the court shall, if the circumstances of the case, the gravity of sentence and the ends of justice so require, assign competent counsel for the prisoners defence, provided the party does not object to that lawyer. The state which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum of as the court may equitably fix”.

In *Hussainara Khaton and others vs. Home Secretary, State of Bihar*³⁴, the main observations of the Supreme Court are on speedy trial. Bhagwathi and Koshal, JJ observed that the speedy trial, which means reasonably expeditious trial, is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21. However the Apex Court declared the speedy trial as a constituent of Legal Aid and directed the Government to provide Free Legal Aid service in deserving cases. This case reinforces the principles laid down in *M.H Hoskot*’s case.

Justice Bhagwathi observed that Article 39-A of the Constitution also emphasizes that free legal service is an unalienable component of reasonable, fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore clearly an essential ingredient of “reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in Article 21 of the Constitution. In the instant case justice Bhagwathi emphasized upon the necessity of introducing by the central and state Governments, a dynamic and comprehensive legal services programme with a view to reaching justice to the common man. His lordship thought this cause as a mandate of equal justice implicit in Articles 14, 21 and also the compulsion of Constitutional directive embedded in Article 39-A. The concern of his lordship was that such programmes of legal Aid are intended to reach the justice to the common man.

In *Sunil Batra vs. Delhi administration (II)*³⁵ justice Krishna Iyer observed that the free legal services to the prison programmes shall be promoted by professional organization recognized by the court. His lordship further added that the District Bar Association should keep a cell for prisoner relief.

³⁴ AIR 1979 SC 1360

³⁵ AIR 1980 SC 1579

In *Khatri (I) vs. State of Bihar*⁵⁵ a division bench of the Supreme Court held that the state is under Constitutional mandate to provide Free Legal Aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state.

In *Kedra Pahadiya and others vs. state of Bihar*⁵⁶, the Supreme Court once again reiterated the principles laid down in *Hussainara Khatoons* and *Sunil Batra (I)* cases, and observed that the court directed that the petitioners must provided legal representation by a fairly competent lawyer at the cost of the state, since legal aid in a criminal case is a Fundamental Right implicit in Article 21, and the Fundamental Right has merely remained a paper promise and has been grossly violated. In the instant case, the Supreme Court directed the state Government to file a list of undertrial prisoners who have been in jail, for a period of more than 18 months without their trial having commenced before the Courts of Magistrates.

It is submitted that while making the above observations, the Supreme Court was more concerned with Article 39-A and least bothered to Article 21. Right to Free Legal Aid was raised to the status of a Fundamental Right in *Hoskot*'s case as a part of fair just and reasonable procedure under Article 21 and this premise was reinforced in cases of *Hussaniara*, *Khatra (I)*. Right of Free Legal Aid was included in under the protective umbrella of Article 21, which is a Fundamental Right under the Constitution. Though Article 39 A, a non – enforceable and non justiciable directive principle became an enforceable Fundamental Right . Hence Free Legal Aid is a Fundamental Right which can be enforced against the state as defined in Article 12 of the Constitution, if Free Legal Aid is denied for whatever reasons.

7.4.6 Right to Speedy Trial

The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as

⁵⁵ AIR 1981 SC 928

⁵⁶ (1981) 3 SCC 671

possible. It is therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that “delay in trial by itself constitute denial of justice” which is said to be “justice delayed is justice denied”. It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary.

The right to speedy trial has become a universally recognized human right. In United States of America, the speedy trial is one of the Constitutionally guaranteed rights. In India, the right to speedy trial is not specifically enumerated as one of the Fundamental Rights in the Constitution since 1978, there have been sea - saw changes in the judicial interpretation of the Constitutional provisions. In *Maneka Gandhi vs. Union of India*⁵⁷, the Supreme Court has widened the concept of life and Personal Liberty under Article 21 of the Constitution. In this case, the court established that the law and procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Articles 14 and 19. It also establishes that the procedure established by law within the meaning of Article 21 must be right, just and fair but not arbitrary, fanciful or oppressive.

Taking the principle of fairness and reasonableness evolved in *Maneka Gandhi's* cases, the Supreme Court in *Hussainara Khatoon (I) VS. Home secretary*⁵⁸ case held that “Obviously procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair, or just unless that procedure ensures a speedy trial for determination of the guilty of such person. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21. There can be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21. Thus, the right to speedy trial is implicit in broad sweep and content of Article 21 of the Constitution. Hence any accused who is denied this right of speedy trial is entitled to approach the Supreme Court for the purpose of enforcing such right.

⁵⁷ AIR 1978 SC 597

⁵⁸ (1980) I SCC 81

However, the main procedure for investigation and trial of an offence with regard to speedy trial is contained in the code of criminal procedure. The right to speedy trial is contained under section 309 of Cr.PC⁵⁹. If the provisions of Cr.PC are followed in their letter and spirit, then there would be no question of any grievance. But, these provisions are not properly implemented in their spirit. It is necessary that the Constitutional guarantee of speedy trial emanating from Article 21 should be properly reflected in the provisions of the code. For this purpose in A.R.Antulay vs. R.S.Nayak⁶⁰ the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners. The concerns underlying the right to speedy trial from the point of view of the accused are:

- a. The period of remand and pre – conviction detention should be as short as possible. In other words, the accused shall not be subjected to unnecessary or unduly long detention point of his conviction.
- b. The worry, anxiety, expense and disturbance to his vocation and peace resulting from an unduly prolonged investigation, in query or trial shall be minimal; and.
- c. Undue delay may result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non–availability of witnesses or otherwise.

In the instant case the Apex Court held that the right to speedy trial flowing from Article 21 of the Constitution is available to accused at all stages like investigation, inquiry, trial, appeal, revision and retrial. The court said that the accused cannot be denied the right to speedy trial merely on the ground that he had failed to demand a speedy trial.

From the above cases and principles of the Supreme Court, it can be concluded that the right to speedy trial is implicit under Article 21 of the Constitution. In the words of justice Bhagwathi that it is the Constitutional obligation of the state to

⁵⁹ Section 309 (1) of Cr.PC contemplates “In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds that the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

⁶⁰ AIR 1992 SC 1701

provide a procedure which would ensure speedy trial to the accused. The state cannot be permitted to deny the Constitutional rights of speedy trial to the accused on the ground that the state has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speed trial.

A close examination of the judicial action reveals that the Supreme Court has devised new strategies and tools to ensure the protection of Human Rights to the people. The courts are innovating new methods for the purpose of providing access to justice to large masses of people who were denied their basic Human Rights. The Supreme Court has enlarged the ambit and scope of the Right to Life and Personal Liberty in Article 21 in very wide and comprehensive terms. The crucial right in Article 21 is greatly enlarged in magnitude and dimension to include the rights of prisoners.

7.5. Compensatory Jurisprudence and Human Rights

A significant contribution of judicial activism in the post Maneka Gandhi⁶¹ period has been the development of compensatory jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution. The scope of writ jurisdiction has also been expanded to uphold the Human Dignity and other Fundamental Human Rights. Consequent upon the expansion of writ jurisdiction, the Compensation as a mode of redressal of violation of Human Rights gained importance. The Supreme Court made a departure from the ordinary civil law, where the right to claim compensation is only through a civil suit instituted by the aggrieved party before the court of first instance.

Currently, the writ jurisdiction of higher judiciary and the original jurisdiction of the civil court regarding the award of compensation invoked upon infraction of Human Rights are based upon distinct Constitutional and legal principles. Judicially, it is well established that doctrine of sovereign immunity is not applicable against the Constitutional remedy under Articles 32 and 226 of the Constitution. The development of the remedy of monetary compensation as to Constitutional and civil

⁶¹ AIR 1978 SC 597

law remedies for violation of Human Rights is analysed through the judicial pronouncements expanding their respective nature, extent and limitations.

7.5.1 Monetary Compensation and Human Rights

It is internationally recognized principle that right to compensation is not alien⁶² to the concept of enforcement of guaranteed right . The development of the remedy

of monetary compensation for the enforcement of Human Rights may be discussed with reference to writ jurisdiction of the higher judiciary and the ordinary original jurisdiction of the civil court. Compensation through writs is a recent development and an extension of the prerogatives of the Supreme Court and High Courts in the field of Constitutional remedies. Even though, there was much criticism on the payment of compensation under Article 32 of the Constitution, because of this Article as such itself does not expressly empowers the courts to award such relief. It is important to mention here that the seed of compensation for the violation of the rights⁶³ implicit in Article 21 is first sowed in *Veena Sethi vs. State of Bihar* and *Khatri vs.*

*State of Bihar (II)*⁶⁴ . In both the cases, one of the questions raised was if the state

deprives a person of his life or Personal Liberty on violation of the right guaranteed by Article 21, is the court helpless to grant relief to the persons who has suffered such deprivation? To this question, Bhagwathi, J in *Veena Sethi* case observed that “the question would still remain to be considered whether these prisoners are entitled to compensation from state Government for their illegal detention in contravention of Article 21 of the Constitution.

Where in *Khatri*’s case, the Supreme Court initiated the jurisdiction of payment of monetary compensation under Public Interest Litigation to the victims on violation of their life and personal liberty. Therefore a question of great Constitutional importance as to what relief could be given for violation of Constitutional rights was before the court. Bhagwathi .J., speaking for the court observed: “the court can certainly inject the state for depriving a person of his life or Personal Liberty except in accordance with the procedure established by law but, if life or Personal Liberty is violated otherwise than in accordance with such procedure, is the court helpless to

⁶² Article 9(5) of the International Covenant on Civil and Political Rights states that “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.

⁶³ AIR 1983 SC 339

⁶⁴ 1981SC 928

grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new and devise new remedies for the purpose of vindicating the most precious Fundamental Right to life and Personal Liberty? Otherwise Article 21 would be reduced to a nullity, a “mere rope of sand”. The court described this issue as of gravest Constitutional importance involving exploration of new dimension of the Right to Life and personal liberty⁶⁵ .

The jurisdiction to award compensation for deprivation of Fundamental Rights of a person through writs was recognised by the Supreme Court in Rudal Shah VS. ⁶⁶State of Bihar case, wherein the petitioner was detained illegally in the prison for

over fourteen years after his acquittal in full dressed trial. He challenged the said act in the court by filing habeas corpus petition and contended that he was entitled to be compensated for his illegal detention and that the court ought to pass an appropriate order for the payment of compensation. The Supreme Court in this case explained the jurisdiction to award compensation under Article 32 of the Constitution by observing; “It is true that Article 32 cannot be used as a substitute for enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts, civil and criminal. A money claim has therefore, to be agitated in and adjudicated upon the suit instituted in a court of lowest grade competent to try it. In the exercise of its jurisdiction under Article 32, the Supreme Court can pass an order for the payment of money in the nature of compensation consequential upon the deprivation of a Fundamental Right to Life and Liberty of the petitioner”.

The decision of the Supreme Court in Rudul Shah case made it clear that, through the exercise of writ jurisdiction, the Supreme Court or the High Courts have powers to award compensation for the violation of Fundamental Rights and this decision has been followed in a number of decisions by the Supreme Court and the High court’s in the similar situations of violation of the Right to Life and liberty of a person.

⁶⁵ Ibid at P 930 Para 3

⁶⁶ AIR 1983 SC 1086

The Supreme Court in Sebastian M.Hongray VS. union of India⁶⁷ case, through a writ petition of habeas corpus awarded exemplary costs on failure of the detaining authority to produce two missing persons, on assumption that they were not alive and had met unnatural deaths at the hands of security forces. In the instant case D.A.Desai and O.Chinnappa Reddy JJ. Observed that the respondents would be guilty of civil contempt because of their wilful disobedience to the writ. The Supreme Court keeping in view the torture, the agony and mental oppression through which the wives of the persons directed to be produced has to pass, instead of imposing a fine, directed that as a measure of exemplary cost of Rs. 1,00,000/- to each of the wives of the persons.

Subsequently, in the case of Bhim Singh vs. state of Jammu & Kashmir⁶⁸, the Apex Court followed Rudul Shah and Sebastian cases, by observing that “when a person comes to the Supreme Court with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his Constitutional legal rights were invaded, the mischief or malice and invasion may not be washed away or wished away by his being set free. In appropriate cases, the court has the jurisdiction to compensate the victim by awarding suitable monetary compensation. In this case, the illegal detention of the petitioner was held to constitute violation of rights under Articles 21 and 22 (2) of the Constitution by the Supreme Court. O.Chinnappa Reddy and V.Khalid, JJ. Stated that police officers who are the custodians of law and order should have the greater respect for the Personal Liberty of citizens and should not flout the laws by stooping to the bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. The duty of the police officers is only to protect and not to abduct. Exercising its power to award compensation under Article 32, the court directed the state to pay monetary compensation of Rs. 50,000/- to the petitioner for violation of his Constitutional right by way of exemplary costs.

In Saheli, A women’s Resource Centre vs. Commissioner of Police, Delhi⁶⁹ case, the police officers raided the house of Mrs. Kamalesh Kumari. The Victim was staying in a house with her three children. The landlord of that house took the help of

⁶⁷ AIR 1984 SC 1026

⁶⁸ AIR 1986 SC 494

⁶⁹ AIR 1990 SC 513

police to forcibly evict them from the house. During the police raid, the police trampled upon nine years child of Kamalesh Kumari resulting the death of the child. It is well settled that the state is responsible for the tortious acts of its employees. In the instant case court observed that “in the matter of liability state is liable for tortious acts committed by its employees in the course of their employment. On these facts, the Supreme Court ordered for payment of Rs. 75,000/- as compensation to the mother of the deceased child. In this case, the court ordered to recover the amount of compensation from the concerned police officer.

In Nilabati Behara vs. state of Orissa and others⁷⁰ case, the Supreme Court struck down the doctrine of sovereign immunity in the arena of public law. This is the case of the custodial death of a person. In the instant case one youth by name Suman Behara was taken into police custody in connection with the investigation of a theft on 1st December, 1987, and on the next day, his dead body was found on the railway track. There were multiple injuries on the body of Suman Behara. The petitioner Nilabati Behara, addressed a letter to the Supreme Court under Article 32 of the Constitution of India. The police took the plea that the deceased was taken to custody but he managed to escape from the custody and that they could not trace him. The police denied the custodial death. In this context, the Supreme Court ordered enquiry by the District Judge of Sundergarh, Orissa. The report of the District Judge reveals that there is a torture of the deceased with eleven external injuries and as a result of these injuries inflicted by the police, the report confirmed that the death is in the nature of custodial death. The Supreme Court awarded Rs. 1,50,000/- as compensation to the mother of the deceased.

In the instant case, the court further held and clarified that “public law proceedings” are different from private law proceedings” and the award of compensation in proceedings for the enforcement of Fundamental Rights under Article 32 and 226 of the Constitution is a remedy available in public law. It was rightly observed: “the court is not helpless and wide powers given to the Supreme Court by Article 32, which itself is a Fundamental Rights, imposes a Constitutional obligation on the court to invent such new tools, which may be necessary for during

⁷⁰ AIR 1993 SC 1960

complete justice and enforcing the Fundamental Rights guaranteed in the Constitution which enable the ward of monetary compensation in appropriate cases”.

To support the above observation, the court rightly referred to Article 9 of the International Covenant on Civil and Political Rights, 1966 and held that the state is liable to pay compensation for police atrocities. The court further held that the said provision indicates that an enforceable right to compensation is not alien to the concept of a guaranteed right. It is also pertinent to mention that the provision of compensation to the crime victims is crying need of the honour. The International Covenant on Civil and Political Rights, 1966 indicates that an enforceable right to compensation is conceptually integral to Human Rights.

It would suffice to state that the provisions of the covenant which elucidate and go to effectuate the Fundamental Rights guaranteed by the Constitution under part III can certainly be relied upon by courts as facets of those Fundamental Rights and hence enforceable as such. It is doubtful whether it was right on the part of the court to reach such a conclusion without ensuring authority of such covenants and leaving it for the decisions of a later forum. It is also to be noted that the covenant on civil and political rights, 1966 was ratified by India with a reservation that Article 9 (5) of the said covenant is not applicable in India. Hence it is submitted that reading of the covenant into the Indian law is not correct.

Nature of the Constitutional Remedy

A perusal of the above judicial panorama in the foregoing discussion makes it clear that, at present, the power to grant compensation through the writs is an established remedy. Compensation has been awarded by the Supreme Court by referring to its different concept like “Exemplary costs”, “palliative measures”, solarium or “exemplary damages”.

On the basis of the above discussion it can be inferred that the development of Constitutional remedy affords an effective remedy in the form of monetary compensation on infraction of Human Rights. However this remedy is a distinct remedy and not a substitute of the remedy under civil law. The Constitutional remedy is only an additional remedy and an aggrieved person avail other remedy available to him under law. In Nilabetis case, a distinction is made between the remedy of

compensation available under the public law i.e., Constitution and the private law, i.e. civil law of Tort. In this case Anand J, in his concurring judgment further explained the distinction by observing that “the payment of compensation in such cases not to be understood, as it is generally understood in a civil action for damage under the private law, but in the broader sense of providing relief by an order of making “monetary amends”, under public law for the wrong done due to breach of public duty of not protecting the Fundamental Rights of the citizen. The compensation is in the nature of exemplary damages awarded against the wrongdoer for the breach of its public law duty and it is independent of the rights available to the aggrieved party to claim compensation under the private law in action based on tort through a suit instituted in a court of competent jurisdiction or to prosecute the offender under the penal law.

Therefore, the monetary compensation through the writs for violation of Human Rights and fundamental freedoms is an acknowledged remedy to uphold the Constitutional guarantee unlike civil law remedy, though Constitutional remedy is not in the nature of damages, for the loss suffered, yet affords monetary relief to an aggrieved person. The very nature of the Constitutional remedy suggests that it is subject to certain inherent limitations viz., precise amount of compensation to make good the loss and Personal Liberty of the concerned officials are the issues which can only be properly adjudicated in a civil suit. The Constitutional and civil law remedies being supplementary to each other also require a discussion on the question of applicability of doctrine of sovereign immunity in their respective forums.

Environmental Protection and Human Rights

The protection and improvement of human environment has become a world wide concern. A clean and healthy environment is the basic need of the existence of life. The ecological imbalance contributes to the environmental hazards like acid rains, noise pollution, air pollution, water pollution. The depletion of ozone layer causes skin cancer, cataracts, damage to body’s immunity system, mutation, loss of productivity. Environmental law is an instrument to protect and improve the environment and to control or prevent any acts or omissions likely to pollute the environment. There are hundreds of environmental laws in India, directly or indirectly dealing with the subject of environment. In the world the Constitution of India is the first which made provisions for the protection of environment which are Articles 21,

47, 48-A, 51 (A)(g) and sections 227 and 278 of Indian Penal Code, sections 133 and 134 of the code of Criminal Procedure. These provisions contain clear mandate on the state and to the citizens to protect and improve the environment.

Judicial Contribution to Protection of Environment

The Apex judiciary in India has been demonstrating its commitment for the protection of environment from time to time and it has given prime importance to the environmental promotion and protection through a series of trend setting judgments. The Supreme Court is also trying to bring an awareness of the massive problems of pollution and filling the gap between the legislation and its implementation by using its extraordinary powers. The higher Judiciary in India delivered many environmental conscious judgments. By constructive interpretation of various provisions of the law, the Supreme Court in particular has supplemented and strengthened the environmental law. The cases relating to each and every aspect of environment have come up before the Supreme Court of India. The court has relaxed rigid and purely technical rules in admitting many cases involving the protection of the environment.

The Supreme Court has played an activist and creative role in protecting the environment. Most of the actions in the environmental cases are brought under Articles 32 and 226 of the Constitution. The environmental litigations are generally based on the notions of violation of Fundamental Rights.

The Supreme Court widened the horizons of environmental protection. It is a new innovation of Indian judiciary was of Judicial Activism. The Apex judiciary made it clear that Public Interest Litigation is maintainable for ensuring pollution free water and air which is involved in right to live under the Article 21 of the Constitution. The higher judiciary has always endeavoured to strike a balance between conservation of environment on one hand and the economic development on the other hand. The adverse effect of industrialisation on human life has caught the attention of Indian judiciary and it is perhaps with this view, in mind it has shown deep concern for prevention of pollution of environment and asked the authorities concerned to take immediate necessary steps to safeguard the society against the ill-effects of industrialization.

The expansive and creative judicial interpretation of the word “life” in Article 21 has led to the salutary development of an environmental jurisprudence in India. The Right to Life is a Fundamental Right under Article 21 and since the Right to Life connotes “quality of life” a person has a right to the enjoyment of pollution free water and air to enjoy life fully. According to many environmentalists and jurists “The latest

and most encouraging of all developments in India is the “Right to a clean and wholesome environment” and the “Right to clean air and water”. These rights have been included in the Right to Life under Article 21 of the Constitution. The boundaries of the Fundamental Right to life and Personal Liberty guaranteed in Article 21 were expanded elevating it, to a position of brooding omnipresence and converting it into a sanctuary of human values for more environmental protection.

In *Ratlam Municipality vs. Vardhichand*⁷⁷ case, the Supreme Court for the first time treated an environmental problem differently from an ordinary Tort or public nuisance. In the instant cases the Apex Court compelled the M.P. Municipality to provide sanitation and drainage despite the budgetary constraints, thereby enabling the “poor to live with dignity”. The Supreme Court expanded the principle of “Locus Standi” in environmental cases and observed that environment related issues must be considered in a different perspective. This development in judicial delivery system brought a new dimension and is considered as a silent “legal revolution” and it has cast away all the shackles of technical rules of procedure and encouraged the litigation from public spirited persons. The Court not only complemented petitioners who filed environment protection litigation but also awarded money to the petitioners. This development has paved the way for Social Interest Litigation, Class Action Litigation and Common Cause Litigation and so on. The court made it clear and stated that the dynamics of the judicial process had a new enforcement dimension.

The Supreme Court gave an expansive meaning to right to environment in ⁷⁸*Rural Litigation and Entitlement Kendra, Dehradun vs. State of UP* . In the instant

case, the representatives of the rural litigation and entitlement Kendra, Dehradun wrote a letter to the Supreme Court alleging that the illegal limestone quarries in the Mussore – Dehradun region were devastating the fragile ecosystem in the area. The court treated the letter as a writ petition under Article 32 of the Constitution. In the instant case the court presupposes the violation of Fundamental Right. The court ordered the closure of certain limestone quarries on the ground that there were serious deficiencies regarding safety and hazards in them. The court stated “the right of the people to live in a healthy environment with minimum disturbance of ecological

⁷⁷ AIR 1980 SC 1623

⁷⁸ (1986) 2 SCC 431

balance and without avoidable hazard to them and to their cattle, house and agriculture, land and pollution of air, water and environment”.

In *Govind Singh vs. Shanthi Swarup*⁷⁹ case, the Supreme Court has taken microscopic view on the contours of the law of public nuisance. In the instant case the Supreme Court held that the effect of running bakery was injurious to the people, as it was polluting the environment by emitting smoke from chimney and ordered the closure of Bakery. The court said that “in a matter of this nature what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large”.

In *M.C. Mehta vs. Union of India*⁸⁰, the Supreme Court observed “The Precautionary Principle” and “polluter pays Principle” have been accepted as part of the law of the land”. In this case, a Public Interest Litigation was filed alleging that due to environmental pollution, there is degradation of the Taj Mahal, a monument of International reputation. According to the opinion of the expert committees, the use of coke/coal by the industries situated within the Taj Trapezium Zone (TTZ) were emitting pollution and causing damage to the Taj Mahal, as also people living in that area. In the instant case the court ordered the re-location of polluting industries.

In *Consumer Education and Research Centre vs. Union of India*⁸¹ the Supreme Court has delivered a historic judgment and held that the right to health and medical care is a Fundamental Right under Article 21 of the Constitution, as it is essential for making the life of the workmen meaningful and purposeful with dignity of persons. In *M.C. Mehta (II) vs. Union of India*⁸² the Supreme Court directed all the Municipalities located on the banks of the river Ganga to take preventive measures for water pollution. The Court held that the Municipality was primarily responsible for the pollution in the river and was not only obliged but also bound to take steps to decrease as well as control the pollution.

⁷⁹ AIR 1979 SC 143

⁸⁰ AIR 1997 SC 734

⁸¹ (1995) 3 SCC 42

⁸² (1998) 1 SCC 471

The Supreme Court in *M.C. Mehta vs. Union of India*⁸³ had given direction to the Delhi city authorities to take effective steps for streamlining vehicular pollution in the city. The order of the Supreme Court prohibiting the use of twenty years old vehicles in the city roads of Delhi and its implementation is a welcome step in prevention of the vehicular pollution, avoiding the accident and protecting health of the Delhi Police.

While treading the path of judicial innovation, the Supreme Court has invented an impressive range of concepts and principles. The principles of Strict and Absolute liability, the principle of Sustainable Development, the Polluter Pays principles, the Precautionary principle and the Public Trust doctrine have thus found firm footing in Indian Jurisprudence.

The Supreme Court has firmly held the view that law should not remain static and that it has to evolve to meet the changes arising out of new situations. Law has to grow in order to satisfy the needs of the fast changing society and to keep abreast with the economic development taking place in the country. Finding the rule of strict liability as laid down in *Rylands vs. Fletcher*⁸⁴ to be unsuitable for dealing with enterprises engaged in hazardous or inherently dangerous activities in the country, the Supreme Court unanimously held in *M.C Mehta and other vs. Shriram Food and Fertilizers industries and Union of India*⁸⁵ case that “where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate to all those who are effected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of Strict Liability under the rule in *Rylands vs. Fletcher*”.

Thus, the Apex court, by departing from the rule of strict liability as laid down in *Ryland vs. Fletcher*, took an epoch-making decision having wide ramifications. It is to be noted that this judgment opened a new frontier in the Indian jurisprudence by a

⁸³ AIR 1991 SC 1132

⁸⁴ (1886) LR 3 HL 330

⁸⁵ AIR 1987 SC 965

new concept of Absolute liability standard, which is not subject to any exception, for industries engaged in hazard activities.

In series of path-breaking judgements towards the end of 1996, the Supreme Court incorporated some of the important environmental norms notably principle of sustainable development, the polluter-pays principle and the precautionary principle as part of the law. While rejecting the old notion that development and environmental protection cannot go together, the Apex Court held the view that sustainable development has now come to be accepted as “a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems”. Thus pollution be commensurate with the carrying capacity of our ecosystem. Thus the court further held that the polluter-pays principle and the⁸⁶ precautionary principle are essential features of sustainable development .

It is to be noted that the practice adopted so far by the Supreme Court and the High Courts in Judicial Review of complex issues relating to the protection of Environment has been conspicuous. Before taking a decision they used to refer the matters to professional and technical bodies or commissions for advice. In A.P

⁸⁷Pollution Control Board vs. Prof M.V. Naidu (Retd.,) and others , the Supreme

Court held that monitoring of such investigation process may also be difficult, Formulation of alternative procedure, expeditious, scientific and adequate is necessary and the court thought that “National Environmental Appellate Authority (NEAA) with adequate combination of both Judicial and Technical expertise is the appropriate authority to go into the question in the instant case.

The National Environmental Appellate Authority is the creature of the statute. The question is whether the statutory limitation can tie the hands of the Supreme Court. The jurisdiction is confined to hearing appeals filed by a person aggrieved by an order of environmental clearance. The court relied on Paramjith Kaur vs. State of⁸⁸ Punjab case wherein though barred by limitation under the law, the National Human

Rights Commission could be directed under Article 32 to probe into Human Rights Violations alleged to have occurred long before. The powers of the Supreme Court

⁸⁶ Vellore Citizens Welfare Forum vs Union of India (1996) 5 SCC 650

⁸⁷ AIR 1999 SC 812

⁸⁸ AIR 1999 SC 430

under Article 32 of the Constitution of India to issue direction to a statutory authority can never be curtailed by statutory limitations. Thus, the NHRC can act sui Juris, free from, any conditions circumscribed by the statute that created the commission.

The emerging environmental Jurisprudence should take all aspects into consideration in order to render Justice and ensure sustainable development. For this purpose, the court can refer to scientific and technical aspects for investigation and opinion by such expert bodies as the National Environmental Appellate Authority whose investigation, analyses of facts and opinion, on objections raised by parties, could give adequate help to the Supreme Court or the High Courts for adjudication.

It is pertinent to mention that the right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean⁸⁹ Drinking Water to its Citizens. In *APPCB vs. M.V. Naidu* , the court ruled that “Drinking water is of Primary importance in any country. In fact India is a party to the resolution of the UNO passed during the United Nations water conference in 1977 as “All people”, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of quality equal to their basic needs”. The court observed that “water is the basic need for the survival of human beings and is part of the Right to Life and Human Rights as enshrined in Article 21 of the Constitution of India.

From the foregoing decisions, it is clear that the Supreme Court has made significant contribution in giving fill up to the rights of the citizen to a hygienic environment but the exercise of their discretionary powers in environmental matters is yet to take a concrete form. The courts have time and again faced the difficulties in respect of investigative machinery required for the citizen’s suits in environmental matters. To overcome this, the courts have resorted to appointing distinguished persons as experts or commissions to investigate and report to it. It is also suggested that the environmental courts on a regional basis, with one professional judge and two experts drawn from Ecological Sciences Research Group, should be setup.

It is to be noted that the right to environment is a comprehensive right like any other basic right at both National and International levels. The Supreme Court has

⁸⁹2001 (2) SCC 62.

interpreted the various Constitutional and legal provisions relating to environment in an appropriate direction by promoting ecological balance and sustainable development.

The judiciary reasserted the right to pollution free environment as an integral part of the Right to Life under Article 21 asserting that Human Rights are to be respected. The Supreme Court has during the course of various decisions emphasized that the protection of environment is a Constitutional objective. The growing menace of environmental pollution is a formidable challenge to the human race since it affects the lives of billions of people across the world.

Child Labour and Human Rights

The evil of employment of children in agriculture and industrial sectors in India is a product of economic, social and among others, inadequate legislative measures. The founding fathers of the Constitution, being aware of the likely exploitation by different profit makers for their personal gain specifically prohibited employment of children in certain employment. Article 24 of the Constitution deals with the Child Labour directly, where as Articles 15(3), 21A, 39 (e), 39 (f) and 47 deal with Child Labour indirectly.

Article 24 of the Constitution prohibits the employment of children below the age of Fourteen years in any factory or mine or engaged in any other hazardous employment. Article 15(3) of the Constitution enables the State to make special provisions for the welfare of children. The directive principle of State policy contained in Article 38 (e) directs the state to safeguard the tender age of children from entering into jobs unsuited to their age and strength forced by economic necessity. Article 38(f) imposes a duty on the state to secure facilities for the healthy development of children, and to protect childhood and youth against exploitation as well as moral and material abandonment. Where as Article 21 A directs the state shall provide free and compulsory education to all children of the age of 6 to 14 years. Article 47 imposes a duty upon the state to raise the levels of nutrition and standard of living of its people and improve public health.

The government of India has enacted various welfare legislation for the working children from time to time. The basic aim of the legislation is to prohibit the employment of children in certain employments and regulate the conduct of the employers of child workers in such a way that, these poor innocent child are not exploited any more. The protective provisions of the enactments do not cover children employed in smaller establishment. However, the Government of India enacted the Child Labour (Prohibition and Regulation) Act, 1986 which prohibits the employment of children in hazardous work and also regulates the conditions of work in certain other employment where the employment is not prohibited. The Act has many provisions to be welcomed, but at the same time, it has lacunas and its own limitations.

Response of the Judiciary on Child Labour

The role and concern of the Supreme Court of India has been a profound concern in making better the lives of children, who were objects of exploitation. The Supreme Court in *Bandhua Mukthi Morcha vs. Union of India*⁹⁰ held that “The right to live with Human Dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Article 39(e)(f) and Articles 41 and 42 and at the least, therefore it must include protection of health and strength of workers, men and women and of tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity.

In *Sheela Barse vs. Union of India*⁹¹ the Supreme Court found that though several states have enacted children Acts for the fulfilment of Constitutional obligations for the welfare of children under Article 39(f), yet it is not enforced in some states. In view of this it directed that such beneficial legislation be brought into force and administered without delay. Justice Bhagawathi made a suggestion to formulate and implement a national policy for the welfare of children. Further, the Hon^{ble} justice observed that the children’s programmes should find a prominent part

⁹⁰(1984) 3 SCC 161

⁹¹AIR 1986 SC 1773

in our plans for the development of resources, so that our children grow up to become citizen, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society.

Then the Supreme Court in *L.K. Pandey vs. Union of India*⁹² observed that welfare of the entire community, its growth and development depends upon the health and well-being of its children and that children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves. Further the Supreme Court in *Vishal Jeet vs. Union of India*⁹³ held that it is the duty of the state to see that Article 39(e) and Article 23 of the Constitution are strictly adhered to and every step is ensured to safe guard the interest of the child worker and save them against all forms of exploitation.

In *Peoples Union for Democratic Rights vs. Union of India*⁹⁴ case, the Supreme Court held that the employment of children below 14 years of age was being hazardous, ultra-vires of the Article 24 of the Constitution. The court took a serious note of the construction industry being kept out of the ambit of employment of Children Act, 1938. Expressing concern about the “sad and deplorable omission” the court advised the state Government to take immediate steps for the inclusion of construction works in the schedule of the Act and to ensure that the Constitutional mandate of Article 24 is not violated in any part of the country.

The aforesaid view was reiterated in labourers working on Salal Hydro-Project vs. State of Jammu and Kashmir⁹⁵ case, where the Supreme Court held that construction work being hazardous employment, no children below the age of 14 can be employed in such work because of Constitutional prohibition contained in Article 24. In the instant case the Supreme Court has travelled beyond its traditional job, that is directing the central government to persuade the workmen to send their children to nearby schools ad arrange not only for schools but also provide free of charge, books and other facilities such as transportation etc.,

⁹²(1984) 2 SCC 244 at 249

⁹³1990 Sc 1412

⁹⁴AIR 1982 SC 1473

⁹⁵AIR 1984 SC 177

7.8. Bonded Labour and Human Rights

This is unfortunate that even after so many years of independence and more, certain obnoxious practices like caste system, untouchability, bonded labour and forced labour continue in the Indian Society. They are now being questioned and challenged by the present day society in the changed context of the social order in the welfare society, where rational and sophisticated thinking, Human Dignity, liberty and equality are considered more important than ever before.

7.8.1 Judicial Response on Bonded Labour System.

The latest judicial trend reveals that Indian courts are quite enthusiastic in using the law as a tool of social revolution. The judiciary is expected to act as catalytic agent of social control. In India higher judiciary have been endeavouring to shield the cause of poor, Bonded labour and other deprived sections of the society. A number of writ petitions were filed before the Supreme Court by way of Public Interest Litigation for the enforcement of Article 23 of the Constitution and the Bonded labour system (Abolition) Act, 1976.

7.9. Summary

The right to enforce Human Rights as provided under the Constitution of India is Constitutionally protected. Article 226 empowers the High Courts to issue writs for enforcement of such rights. Similarly Article 32 of the Constitution gives the same powers to the Supreme Court. A new approach has emerged in the form of Public Interest Litigation (PIL) with the objective to bring justice within the reach of the poor and the disadvantageous section of the society. In the recent past the judges of the High Courts and the Supreme Court have from time to time given far reaching and innovative judgements to protect the Human Rights. Public Interest Litigation has heralded a new era of Human Rights promotion and protection in India.

The greatest contribution of Public Interest Litigation has been to enhance the accountability of the Governments towards the Human Rights of the poor. Public Interest Litigation has undoubtedly produced astonishing results which were unthinkable two decades ago. Public Interest Litigation has rendered a signal service in the areas of Prisoner's Rights, development of compensatory jurisprudence for Human Rights violation, Environmental protection, Bonded labour eradication and

prohibition of Child Labour and many others.

A review of the decisions of the Indian Judiciary regarding the protection of Human Rights indicates that the judiciary has been playing a role of saviour 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 provide necessary directions to the executive and legislature,. However while taking note of the contributions of judiciary one must not forget that the judicial pronouncements can not be a protective umbrella for inefficiency and laxity of executive and legislature. It is the foremost 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 aspired that in the times ahead, people"s right to live, as a true human beings will further be strengthened.

From the perusal of the above contribution it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. It has, 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.





