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# **ROLE OF JUDICIARY IN** **PROTECTION OF HUMAN RIGHTS**

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*“To deny people their human rights are to challenge their very humanity”, -Nelson Mandela*

## **ABSTRACT:**

*Human Rights and judicial endeavours for its protection - Justice delayed is justice denied. Human right is considered a basic right for all as it is universal and absolute. These rights are not conferred by the law, but by the virtue of humanity, it is inherited in every human. Human right is not considered to be a new concept but it is the Soul of the Vedas, Manu smriti, Arthashastra, and some other scriptures. In various written documents such as Magna Carta (1215), French Declaration of Rights of Man and of Citizens (1789), US Bills of Rights (1791) enumerated various individual rights. In the 20th century, the United Nations came into existence in 1945, after the Second World War and after 3 years in 1948, UDHR (Universal Declaration of Human Rights) was accepted by the world with 30 articles which gained the first recognition to the Human Rights universally. India being a largest democratic country became one of the signatory countries of the UDHR. It protects civil, economic, cultural, political and social rights. Indian constitution protects human rights from peril in the form of fundamental rights. Same as human rights these are inherited by birth.*

*Keywords: UDHR, human rights, UNO etc.*

## **RESEARCH METHODOLOGY:**

A doctrinal method of research is used in this research paper which includes books, articles, research papers, online legal databases, bare acts. In this, various landmark judgements will be utilised to justify the topic.

## RESEARCH QUESTION:

In this research paper the main research question is to find out that what is the role of judiciary in protection of human rights?

## INTRODUCTION:

Human rights are not conferred by any ruler, constitution or any statute. By giving new dimensions to Article 21 of the Constitution, the Supreme Court has declared that right to live as given under Article 21 is not merely confined to physical existence but it includes right to live with human dignity (1).

*Section 2(1)(d) of the Protection of Human Rights Act, 1993* gives the definition of "Human Rights" as: "*Human Rights*" means the rights relating to life, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."(1)

Various philosophers of social contract theory have viewed that the main object of the creation of state is to maintain and protect the rights of people of the society. *According to Aristotle, State came into existence out of base necessities of life and continues for the sake of good life.*<sup>1</sup> *According to Laski who expressed that State is known by the rights it maintains.*<sup>2</sup> In a similar way *Locke* view was that the state has to remove the obstacle that obstructs the development of an individual.<sup>3</sup> Thus, the existence of the state is recognized with the protection of rights of individual which is considered to be the main objective of state.

Each individual is entitled to have some rights which are inherited to human by birth and these rights shall not be infringed on the grounds of gender, race, caste, ethnicity, religion etc. these are called human rights. Human rights are also known as basic rights, fundamental rights, natural rights or inherent rights. The concept of human right is not a new phenomenon, this term is a twentieth century. It has gone through various stages of development and took long time to become the part of present scenario. These rights had a place in all ancient societies with different names <sup>4</sup>it includes civil rights, liberties and social cultural and economic rights. These rights are essential for all individual as these are consonant with the freedom and dignity

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<sup>1</sup> J.S. Badyal, *Abc of Political Science* 73 (Raj publishers (Regd.), Jalandhar, 2005)

<sup>2</sup> Id. at 40.

<sup>3</sup>Supra note 1.

<sup>4</sup> Dr. S. Subramanian, *Human Rights International Challenges* Vol.1 3 (Manas Publication, New Delhi, 1997).

and ultimately contribute to social welfare.<sup>5</sup>

At international level various efforts have been made for the protection of human rights. The United Nations through its charter represents a significant advancement in the direction for the promotion as well as protection of human rights. The UN Charter contains various provisions for the promotion of human rights and fundamental freedoms in the Preamble.<sup>6</sup> Apart from UN Charter there are four international instruments created with the help and support of the United Nations known as International Bill of Human Rights, which include the *Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social, and Cultural Rights 1966, the Optional Protocol to the International Covenant on Civil and Political Rights, 1966.*<sup>7</sup> The international human rights system is keep on growing along with time. The Government of all the nations must work to promote the welfare of people by eliminating all forms of discriminations and provide right to equality and justice to all. (3)

**Human Rights as Fundamental rights:** The Constitution of India endeavours important human rights which is considered to be form of fundamental rights (Part III) and also directive principles of State policy (Part IV), which are important the governance of the country.

**Human Rights cannot be granted or taken away from people:** Human Rights are rights which belong to every individual person which are moral, pre-legal rights and cannot be granted by people or taken away by them. Human Rights have been recognized by the Universal Declaration of Human Rights and adopted as Fundamental Rights in Part III of our Constitution. (*National Legal Services Authority Vs. Union of India, (2014) 5 SCC 438.* (4))

➤ *Even State cannot violate the human rights: Right to life is one of the basic human rights and not even the State has the authority to infringe that right (Siddharam Satlingappa Mhetre Vs. State of Maharashtra, JT 2010 (13) SC 247).*

- **Universal declaration of human rights on December 10, 1948:** With the declaration of human rights on December 10, 1948, India became one of the signatory countries of the world for providing respect and protection of human rights and this has been declared and accepted by the United Nations Organizations. The UNO had ordered the signatory countries to imbed the universally acknowledged human rights in their Constitutions and domestic laws. India being signatory to these UNO Declarations,

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<sup>5</sup> Available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/8112/10/10\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/8112/10/10_chapter%201.pdf) (Last visited on September 28, 2016).

<sup>6</sup> S. K. Kapoor, International Law & Human Rights 800(Central Law Agency, Allahabad, 17th edition 2009).

<sup>7</sup> Id. at 817.



fundamental rights under part III have been enumerated in Indian Constitution enforceable since January 26, 1950.

- **Role of judiciary for the development & protection of human rights:** Indian Constitution specifically empowers the judiciary to protect the human rights in the form of fundamental rights enumerated in our Constitution and in case of any violation of the fundamental rights of the citizens and our constitution also empower judiciary to protect the same. The subordinate judiciary being easily reachable to the common citizens and is supposed to come first to the rescue to the protection of same. Since the beginning of the Constitution, the country is governed by rule of law and not by the any of the individual authorities. The object behind making of various legislations and creation of different organs of the State is nothing but to ensure the welfare of the citizens as a whole and to protect their life, liberty, dignity and fundamental/human rights. Apart from the higher judiciary, the subordinate courts do also play very important role in protecting the human rights of the citizens. The subordinate judiciary being easily accessible to the individual and comes first to protect the human rights of the citizens. Different agencies of the executive like police, jail etc. are often blamed for violation of human rights of the citizens. (5)
- **Right to property considered to be a human right:** The right of property is now considered to be not only a constitutional right but also a human right. The (French) Declaration of Human and Civil Rights of 1789 pronounces the scope of the right under Article 17 and so does Article 17 of the Universal Declaration of Human Rights 1948. Earlier human rights were restricted to the claim of individual's right to health, livelihood, shelter and employment, etc. but now human rights have started gaining an advance approach. Now right to property is also imbedded within the definition or meaning of human rights. Even claim of adverse possession has to be read together with human rights. Right to property, while ceasing to be a fundamental right has been given express recognition as a legal right, with a statement being made that *no person shall be deprived of his property save in accordance with law:*
- (i) **Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705.**
  - (ii) **Lachhman Dass vs. Jagat Ram, (2007)10 SCC 448 (iii) P.T. Munichikkanna Reddy vs. Revamma, (2007) 6 SCC 59 8(A).**

- **Noise pollution considered as infringement of human rights:** Noise pollution is spreaded by loudspeakers and amplifiers or other gadgets which produce offending noise and from the protection of noise pollution the Supreme Court held that the same is violative of human rights. It is considered to be one of the human rights as noise is injurious to human health which is needed to be preserved by any cost. By interpreting the provisions of the Environment (Protection) Act, 1986 as well as Noise Pollution (regulation and Control) Rules, 2000, it has been held by the Hon'ble Supreme Court that noise pollution is violative of Articles 14 & 21 of the Constitution. (6)
- **Gender equality as human right:** In terms of Articles 14 and 15 of the Constitution of India, the females are required to be treated equally with the males in terms of employment and other rights. The Hindu Succession Act, 1956 as amended in the year 2005 has brought about revolutionary changes in the old Hindu Law. By` reason of this Act, all female heirs were conferred equal right in the matter of succession and inheritance with that of the male heirs (**G. Sekar vs. Geetha, (2009)6 SCC 99**).
- **Dignified treatment of dead body and last rites of dead person is his human right:** Right to live with dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living person but also after his death. Right to decent burial commensurate with the dignity of the individual is considered to be important feature of the right to life which is endeavoured under Article 21 of the Constitution.
  - (i) *Pt. Parmanand Katara Vs. Union of India, (1995)*
  - (ii) *Pradeep Gandhi Vs. State of Maharashtra, 2020.*
  - (iii) *Judgment dated 16.9. 2020 of the Calcutta High Court in Vineet Ruiya Vs. The Principal Secretary, Ministry of Health and Family Welfare, Government of West Bengal.*
  - (iv) *Ramji Singh Vs. State of Uttar Pradesh, 2009(5) ALJ 376 (All) (DB).*
  - (v) *Judgment dated 1. 10. 2020 of the DB of Lucknow Bench of Allahabad High Court in "In Re: Right to decent and dignified last rites/ cremation" in the case the victim of rape and murder where the Hathras police had burnt the dead body of the victim girl at 2.30 a. m. in the night without informing the parents and family members. (7)*
- **Human Rights Courts constituted under Protection of Human Rights Act,1993:** After passing of Protection of Human Rights Act, 1993, Special Courts of Sessions have been constituted to deal with the offences under the 1993 Act. The court of Sessions Judges in every district have been notified to be the presiding officers of the

Special Court constituted under this act to try the offences related to infringement of human rights.

- **Direction given by the Supreme Court to set up Human Rights Court in every district:** There is nowhere on record to suggest that the Governments have at all made any attempt in this direction or taken steps to consult the Chief Justices of the respective High Courts. **D.K. Basu Vs. State of W.B., (2015) 8 SCC 744. (8)**

## CONCLUSION:

In future times, the lower judiciary has to play vital role in protecting the human rights. Apart from the State Human Rights Commissions and the National Human Rights Commission, the special courts constituted under the Protection of Human Rights Act, 1993 has to be given more importance to deal with the cases of violation of human rights. It is hoped that in the coming years, the scenario related to the protection of human rights in India will get improved.

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