

“Protection of Human Rights in India – A Critical Analysis”

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ABSTRACT

Every Individual is entitled to certain basic natural rights which are essential for his human growth is called Human Rights. Like every discourse of human rights, the main point of consideration is how far human rights come within the category of legal rights or they are at best regarded or even after seventy plus years of Universal Declaration of Human Rights it is merely a declaratory ideals to be observed by member states in their internal and inter-state conduct.

For the subject matter of this paper we will only concentrate our genesis of study to India. This paper attempt to analyse the development of concept of Human rights and it's protection in India and how it evolved over the time in pre and post-independence. Paper is divided majorly into three segments the First part of paper tracks the historical background of Human Rights in world and India. From Cyrus Cylinder of 6th century BC First known declaration of Human Rights which gives people of Babylon unfettered right to choose their religion to agreement between Bahmani and Vijaynagara Empire for treatment of war prisoner dated 1367AD to condition which lead to formation of Universal Declaration of Human Rights 1948.

Second part of paper deals with the constitutional scheme for protection of Human Rights. It throws light on certain important debates of constituent assembly in this regard. The constitution of India is the imprint of India's Cultural Heritage and philosophy. Paper also tries to include that how Gandhian Nehruvian ideals has influenced the constitution.

Third part of the paper tries to track judicial response over the topic and how Judicial Approach towards the protection of Human Rights changed over years after Independence. Judicial Activism Movement started in 1973 played a very important role for ensuring basic human rights for Poors and downtrodden people.

At last paper tries to illuminate briefly about concerns of International Organisation like Amensty International etc. after rise of majoritarian nationalism in India.

Thus this paper attempts to make a critical analysis of concept of Human Rights in India.

Keywords:- Human Rights; Judicial Activism; Constituent assembly debate

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1. INTRODUCTION

Every human is being born with certain basic and intelligible rights. Probably every living being in the planet aims to survive but the civilization makes survival easy. The aim of human civilization is to ensure betterment of humankind. According to Prof Yuval Noah Harari Humans unique ability to cooperate in huge numbers gives them ability to believe in things existing entirely in the imagination, such as and human rights².

Different thinkers of social contract theory are of the opinion that object of the creation of state is to protect the rights of individuals Aristotle has remarked that State has come into existence out of basic necessities of life however it continues for the sake of better life³. Locke was of the view that primary function of state is to remove the obstacle of Human Development⁴.

The concept of human rights starts gaining international acceptance in 20th century. However the notion of human rights is as old as humanity. The concept of human rights has developed in various stages in different era and it takes it long to become the concept which we are seeing today. These rights were present in all ancient societies although it is referred by different names, it includes socio cultural and civil rights. These rights are substantial for all humans as these are constant with the dignity and freedom which ultimately lead to social welfare.⁵

The collective analysis of development of different countries of world shows that countries having better human rights framework has better development rate also. As better human rights framework gives a better opportunity to Protection of human rights is a necessity for the development and growth of an individual personality, which ultimately contributes in the development of the nation as a whole. It is an internationally recognized issue and various international instruments have been established for the protection of human rights. The concept of human rights is dynamic and adapts to the needs of the nation and its people. The ultimate purpose of the national as well as international law is to safeguards the human rights of the people.

The international human rights laws is continuously growing and getting its due acceptance with time, there is some consensus among international community and there are some widely accepted legal standards which nations must accept and it should be reflected in their domestic

² YUVAL NOAH HARARI, *SAPIENS: A BRIEF HISTORY OF HUMANKIND* (Dvir Publishing House Ltd. (Israel) (2014) The book provides a brief summary of how the humans have evolved as a most powerful species of the planet. The principle argument of the author is that the ability to coordinate in large number gives humans special ability.

³ J.S. Badyal, *Abc of Political Science* page no 73 (Raj publishers (Regd.), Jalandhar, 2005).helpful in dealing with certain basic principles of political science. Beautiful account of views of different political thinkers.

⁴ ibid

⁵ Dr. S. Subramanian, *Human Rights International Challenges Vol.1 3* (Manas Publication, New Delhi, 1997) provides that in all ancient societies the human rights were always present in one form or another though with different names.

laws the same has been reflected in various article of UDHR⁶. The governments of all nations are bound to promote human rights in their countries.

India has second biggest population in the world and has most vibrant and culturally diverse population. India has a long civilization history and has seen different types of rulers in different parts of country. After independence democracy is adopted as a means to rule the nation and in starting of 21st century India has become largest democracy of world. It is also quit significant to mention that India got independence when concept of Human Rights was blooming in the world as a result of which Constitution of India shows strong commitment towards protection of Fundamental rights which is more or less basic human rights⁷. As a democratic country one of the main Object is to give protection to the basic human rights of the people⁸. Government of India has always given a prime consideration to protection and development of basic human rights in India.

Constitution guarantees most of the human rights contained in Universal Declaration of Human Rights. Part III of the constitution contains civil and political rights, whereas economic, social and cultural rights have been included in Part IV of the Constitution⁹.

The philosophy and objective behind the Constitution of India which is enshrined in preamble of constitution ensure dignity of any individual¹⁰. The constitution of India provides fundamental rights not only to the citizen but to individual which are necessary for the development of an individual's personality, these fundamental rights include right to life, right to freedom, the right to equality, the right to follow religion of own choice, the right against exploitation, some educational and cultural rights and the right to approach apex court in case of infringement of fundamental right. It is the duty of Government to provide adequate facilities to every individual in order to protect his human rights. Further Directive Principles of State Policy provided in the Part IV, ascertains duties upon state to work for welfare of people and to protect their . These are guiding principles that how a state should act. Directive principles of state cast duty on state to frame policies regarding economic justice, right to working condition, free education, social security, protection of interest of weaker section, free legal aid and to improve public health facilities, protection and improvement of environment etc. so that everyone can enjoy rights to the fullest.

⁶ S. K. Kapoor, International Law & Human Rights 800(Central Law Agency, Allahabad, 17th edition 2009) very helpful in understanding various principles which are governing international law how it evolved with time and how it effect the domestic laws of India.

⁷ Das, Jogendra Kr. "REFLECTIONS ON HUMAN RIGHTS AND THE POSITION OF INDIAN WOMEN." *The Indian Journal of Political Science*, vol. 64, no. 3/4, Indian Political Science Association, 2003, pp. 203–20, <http://www.jstor.org/stable/41855782>.

⁸ Amitesh kaur "PROTECTION OF HUMAN RIGHTS IN INDIA: A REVIEW" *Jamia law journal* volume 2 available at https://niu.edu.in/sla/online-classes/Amartish-Kaur_Human-Rights.pdf

⁹ Supra 5

¹⁰ Supra 7

2. HISTORICAL BACKGROUND OF HUMAN RIGHTS INDIA AND ABROAD.

HISTORICAL ORIGIN

The History of Human Rights:- Human rights were recognized as a moral or legal ideal in ancient civilizations in the form of inherent rights. People's natural rights are derived from the nature of man, as these are inherent in his nature and are a part of his deep rooted essence. It implies that there are some moral standards embedded in the nature of the cosmos that can be discerned by man using his abilities to reason and self-determination. There are a variety of ideas about the nature, meaning, and evolution of natural rights, all of which lead to the conclusion that a man possesses rights within society or against society, which are referred to as human rights. Some historians believe that this concept of human rights is an updated version of the classic 18th century concept of man's right. After the Second World War, the concept of human rights as we know it today arises. The Second World War resulted in a significant loss of human life, raising severe concerns about mankind around the world. This has accelerated the advancement of human rights around the world. The first major instrument was the 'Universal Declaration of Human Rights (UDHR),' which was adopted by the United Nations General Assembly in 1948, and a huge number of international human rights statutes, agreements, and covenants were created after that.

Although the west may have affected the human rights law or legislation, the concept of human rights is deeply rooted in Indian culture. Since the Vedic era, our forefathers have voiced their belief in the benefit of humanity:- The concept of human rights can be traced back to the Vedas period of the fifteenth century B.C. in ancient India. A wide range of stories and pronouncements have been discovered that paved the way for the concept of human rights. Human rights are represented in the Vedas via the concept of equality. The Vedic Charter of Equality for All states that no one is superior or inferior, and that everyone should endeavour to advance together in the interest of the land. Kautilya sums up the concept of welfare state perfectly when he says that the state's happiness is dependent on the happiness of his subjects. During this time, Manu not only formulated civil and legal rights, but he also introduced a number of economic rights. It is clear from the facts and legends that society during the Vedic time was well stimulated, organised, and committed to human rights. In truth, Jainism, Buddhism, and other minority religious groups all endorse the value of human rights. No study of human rights and their origins in the ancient world is complete without including Ashoka. "All men are my children," Ashoka writes, "and all I wish for my children is that they may have every type of prosperity and happiness in this world and the next, just as I wish for all men." In truth, King Ashoka laboured tirelessly to preserve human rights at all hours of the day and night. It's regrettable that human rights have been deteriorating.

CYRUS CYLINDER:- FIRST CHARTER OF HUMAN RIGHTS

It is acceptable to assume that human rights have always existed in some form or another in various civilizations around the world. As a sense, Human Rights have a long history.

In the year 539BC, one of the earliest references to the concept of human rights may be found. After defeating Babylon, Ruler Cyrus the Great, regarded the first king of Persia, emancipated all the slaves and stated that every citizen would have the opportunity to choose his faith, attempting to promote racial equality¹¹. This declaration of King Cyrus were recorded in baked clay cylinder like structure which is known as Cyrus cylinder. Cyrus cylinder is considered as -inspiration to first four articles of Universal declaration of Human Rights¹²

Another watershed in the progress of human rights was the proclamation of the Magna Charta in 1215 in England, which for the first time in history established the notion of "Rule of Law," which states that the law will always be higher to the ruler and that even rulers must follow the law. Magna Charta also provides legal acknowledgment to the fundamental concept of liberty for all people, as well as protection from arbitrary government persecution¹³. It was the first time that the rule of law was acknowledged above the rule of an individual or a group of individuals. The rule of law is the bedrock of all democratic societies and one of the foundational concepts of all modern constitutions.

Some people believe it is the inspiration for the United States Bill of Rights because it is the foundation stone of constitutional monarchy (1971)

Magna Carta's major themes were eventually inferred in the form of the English Bill of Rights. It was an act signed by Mary II and William II, the rulers of England following the collapse of King James II's government. This statute emphasised essential constitutional and civil rights, gave parliament ultimate power and authority, and limited the monarchy's role. Many political thinkers regard the English Bill of Rights as a cornerstone of constitutional monarchy, and some even see it as a model for the United States Bill of Rights (1971) 14

¹¹ *Welcome to the Youth for Human Rights E-Course*. United For Human Rights. (n.d.). Retrieved December 22, 2021, from <https://www.youthforhumanrights.org/course/lesson/background-of-human-rights/the-background-of-human-rights.html>

¹² Supra 10

¹³ Hill, M. (n.d.). *Magna Carta's legacy: Common law and human rights*. COMPARATIVE LAW REVIEW. Retrieved December 22, 2021, from <http://www.comparativelawreview.unipg.it/index.php/comparative/article/view/87>

¹⁴ V.R. Krishna lyer. (1990). *Hum'an Rights and Inhuman Wrongs*. New Delhi:

Another notable human rights charter was the Declaration of the Rights of Man and Citizen, which was adopted by the National Assembly of France in 1789 and incorporates many of the concepts that inspired the French Revolution¹⁵.

The fundamental principle established by this Declaration was that "all men are born free and equal in rights," which were defined as the rights to liberty, private property, personal inviolability, and resistance to oppression. All citizens are equal before the law and have the right to actively or indirectly participate in the formulation of laws; no one will be detained without a legal order¹⁶.

HUMAN RIGHTS IN ANCIENT INDIA

Human rights are not a foreign concept to India, as they have always existed in Indian Civilization. Even ancient traditions such as the Mahabharata and Ramayana depict the rules of combat and provisions for the healing of those injured in battle, even while the enemy is present. The concept of Dharma establishes guidelines for the king and his subjects. Dharmashtras state explicitly that a king's judgment must be unbiased and unaffected by his own feelings¹⁷. Vinay Patrika provides a interesting illustration of case of Ananthapindika v. Jeta¹⁸ A ordinary man filed a complaint against the Prince, and the Prince was found guilty. The punishment imposed on Prince will have to be accepted.

Dharma is the foundation of ancient Hindu law, and the objective of ancient Hindu legal philosophy was the creation of a socio-legal order free of conflict, misery, and exploitation. A perspective of "Dharma" law in this light is a model for universal legal order.

The Vedas guarantee bodily (Tan) and mental (Jibase) freedom, as well as the right to live in one's own home (Skridhi),

During the middle Ages, Muslim conquerors such as Mahmud Ghaznavi and others launched direct attacks on Indian Harmony, resulting in horrific war crimes and breaches of human rights. Native Americans were classified as second-class citizens. However, Emperor Akbar brought some fundamental reforms to his government, ushering in a new era in history, as compared to his predecessor. However, Emperor Akbar implemented some significant improvements in his administration, ushering in a new era in the history of India in the realm of human rights.

¹⁵ Britannica, T. Editors of Encyclopaedia (2020, May 8). Declaration of the Rights of Man and of the Citizen. Encyclopedia Britannica. <https://www.britannica.com/topic/Declaration-of-the-Rights-of-Man-and-of-the-Citizen>

¹⁶ Supra¹⁵

¹⁷ V.R. Krishna Iyer, *The Dialectics and Dynamics of Human Rights in India: Yesterday Today and Tomorrow*, Tagore Law Lectures page 115 (New Delhi: Eastern Law House, 1999) The book consist of very good lectures on Human Rights by Justice Krishna Iyer it has references from various books and it provides account of concept of human rights in ancient hindu jurisprudence.

¹⁸ P.B. Mukherji, *The Hindu Judicial System - The Cultural Heritage of India*, Vol.II, 434-435. Cited by V.R. Krishna Iyer, *The Dialectics and Dynamics of Human Rights in India - "esterday Today and Tomorrow*, Tagore Law lectures (Calcutta: Eastern Law House. 1999) 115.

'Universal Reconciliation and Tolerance might be considered as the ideal for modern democracy,' he says. Even European visitors to Akbar's empire praised his commitment to human rights and justice. His commitment to justice was shared by a number of his successors. However, during the reign of Aurangzeb, the Mughal Era's final prominent king, the trend was reversible. The Bahmani and Vijayanayar empires, for example, have agreed to provide compassionate treatment to prisoners of war in exchange for sparing the lives of the enemy's unrarled inhabitants.¹⁹

DEVELOPMENT IN MODERN INDIA IN PRE INDEPENDENCE ERA-

The nationalist movement, which coincided with the foundation of the Indian National Congress in 1885, strengthened the demand for fundamental rights. The Indian National Congress drafted the Constitution of India Bill 1895 in 1995. This document, also known as the "Home Rule Document," lays the groundwork for a constitution that guarantees residents basic human rights such as freedom of expression, property rights, and equality before the law.

In 1925, the Indian National Congress proposed a draught of India's Common Wealth, which included a "Declaration of Rights." The Congress's Madras Session in 1927 urged that any future constitutional framework include a "Declaration of Fundamental Rights." The National Congress formed a committee to explore fundamental rights, led by famous lawyer Motilal Nehru. After independence, the constituent assembly adopted ten of the 19 rights proposed by the Motilal Nehru Committee²⁰.

However, the British created the Simon commission to investigate into Motilal Nehru's request, but the committee ignored it, leading to the demand for poorna swaraj. The British, on the other hand, approved the Government of India Act, 1935, without a bill of rights, adding fuel to the fire. Sapru emphasised the importance of a codified code of fundamental rights in 1945²¹. Human rights were demanded to be included in the Constituent Assembly.

3. HUMAN RIGHTS AND CONSTITUTION

The Constituent Assembly established an advisory council for fundamental rights on January 24, 1947, with Sardar Patel as its chairman. Legends such as Dr. B. R. Ambedkar, B. N. Rau, K. T. Shah, Harman Singh, K. M. Musnshi, and other members of the Congress expert group drafted a list of fundamental rights. Although few revisions were offered, the major concepts accepted were not in dispute. The rights in the Universal Declaration of Human Rights were nearly identical in the Indian Constitution framework, either in Part 3 (Fundamental Rights) or in

¹⁹ Paramjit S. Jaswal and Nishtha Jaswal, *Human Rights and the Law, 1S'ed.* (New Delhi: Ashish Publi;hing House, 1995) The author puts the detailed analysis of history of the human rights in medieval India its specifically provides about how Vijaynagar and Bahmani empire has a agreement for treatment of people injured in war.

²⁰ .(S.Subramanian, *Human ri-ghts. International Challenge.* Vol.1page 56 (New Delhi: Manas Publication. 1997) Article provides a very good account about how human rights has developed in the pre independence era.it provides about Motilal Nehru committee which was formed to suggest some basic citizens rights to be included in government of India Act. Later this rights were adopted by constituent assembly.

²¹ Supra 56 and 57

Directive Principles of State Policy (Directive Principles of State Policy). As previously stated, the Motilal Nehru Committee Report offered nineteen fundamental rights in 1928, eleven of which were recognized as fundamental rights and three of which were accepted as fundamental duties.

In the year 1942, India was one of the first countries to sign the Universal Declaration of Human Rights. Part III of the Constitution of India is sometimes referred to as the "Magna Carta" by some jurists. These are the rights that can be used directly against the government in the event of a breach, and they can be enforced by petitioning the Supreme Court. Article 13(2) precludes the state from enacting legislation that violates fundamental rights. If a part of the law is made in contravention of the Fundamental Rights, that part of the statute will be considered void. If the void portion of the statute cannot be distinguished from the rest of the statute, the entire statute will be ruled void.

The Supreme Court of India concluded in *Keshvanand Bharti v. State of Kerala*²² that "the Universal Declaration of Human Rights may not be a legally enforceable instrument, but it demonstrates India's commitment to human rights at the time the Constitution was drafted."

IDEALS THAT INSPIRED HUMAN RIGHTS-

Indians always have the will to oppose the alien rule against them. Shivaji has probably first time in history of India has proposed the principle of 'Swaraj' which means self rule. Later the concept of swaraj or self rule found its place in the writings of Mahatma Gandhi and Bal Gangadhar Tilak.

As discussed earlier that during the Muslim and British Rule India has seen gross violation of Human Rights and that's why our constitution makers show a great commitment towards the Human Rights of citizens. Our constitution does not only provides the rights to citizens but also provides duty to state to ensure the rights of citizens.

In the year 1946, India's Constituent Assembly met for the first time. Human rights were given supreme priority in our constitution because it was the product of a long struggle for citizen rights. "The need for a declaration of fundamental rights developed due of four circumstances," according to Guha. Those four circumstances are²³

1. Bad status of civil liberty in India during colonial rule.
2. Substandard social conditions like untouchability.
3. Presence of huge diversity of religion language and ethnic group.
4. Exploitation of the tenants by the landlords.

²² (1973) 4 SCC 225

²³ Sunil Deshta and Ms Kiran Deshta. "Philosophy of Right to Life, A Movement from Rigidity to Flexibility." *Civil and Military Law Journal*, Vol. 31: 3. 123.

The Constituent Assembly included the zest of the right accepted by Universal Declaration of Human Rights in General Assembly²⁴

CONSTITUENT ASSEMBLY –DEBATES

As a result, the battle against colonial power provided the framework for the development of the language of rights. As a result, the independence struggle was driven by the principles of equality and freedom as basic requirements of a dignified human existence. It also resulted in the establishment of the Constituent: Assembly. The Assembly drafted the Indian Constitution, which became the wellspring of people's sovereignty in a newly independent country. Judicial Backup and Confirmation of Rights are two of the rights that have been impacted. The difficulty regarding the function of the court in the protection of rights sprang directly from the preceding. Those in favour of positive rights, such as K.M.Munshi, advocated for judicial examination of fundamental rights. Munshi, as a result, devised elaborate constitutional remedies through the Supreme Court.

Rights in a Socio-Economic Context: The substance of the rights to be secured was a major topic of discussion within the Fundamental Rights Subcommittee. Would the Indian Constitution, for example, grant people only political rights, as in the United States, or also economic rights, as in the Soviet Union? What would India's response be to the problems of illiteracy, poverty, and exploitation if it became independent? How would India undertake land reforms or end untouchability, for example? Members of the Subcommittee felt that certain rights, such as the right to education and workers' rights, could not be legally enforced if justifiability was accepted as a fundamental part of Fundamental Rights. These rights were viewed as a necessary component of social and economic planning. As a result, the Subcommittee determined to divide rights into two categories: justifiable rights, which were later adopted as Fundamental Rights, and non-justifiable rights, which were later incorporated as Directive Principles of state policies.

IMPACT OF NEHRUVIAN GANDHIAN PRINCIPLES

The ideas of Mahatma Gandhi and Jawaharlal Nehru have had a significant influence on the constitution. When it comes to the evolution of human rights in the constitutional scheme, the contribution of these two personalities cannot be overlooked. Many academics regard Nehru as a human rights defender, whereas Gandhi was a champion of humanity. Gandhi's entire philosophy is based on basic humanitarian values and how a greater acceptance of those values can lead to a large sociocultural political movement. Gandhi is thought to have tackled all of the causes that led to human rights breaches at the time, including untouchability and racism. The constitution prioritised the abolition of untouchability as a result of Gandhi's influence. Gandhi recommended the sarvodaya technique, which means upliftment of society's last member.

²⁴ . A.B.M. Mafizul Islam Patwaris, *Fundamental Rights and Personal Liberty in India, Pakistan and Llangladesh, IS'* ed. (New Delhi: Deep and Deep Publications, 1991) The book provides the account on how three south asian countries have approached towards the fundamental rights of citizens and how it get inspiration from its history.

Gandhi believes that a successful state must strive to improve the lives of the poorest members of society. "Mahatma Gandhi is an experimental scientist who had an impact on every part of a person's life and touched the soul of the nation when he reached out to the last individual of the society," says Justice vikram Prasad²⁵. When Justice Vikramaditya Prasad was asked about Pt. Jawaharlal Nehru's claim that Mahatma Gandhi's spirit was hovering at the Constituent Assembly when he didn't locate him there, he stated that both the essence of Fundamental Rights and Fundamental Duties, when seriously investigated, has ideas of "Even if the entire Constitution is set aside, and if people honestly abide by all the words in the Preamble, there will not be a need to amend the Constitution again," Justice Vikramaditya Prasad said, "there will not be a need to amend the Constitution again, for it contains the essential features of Mahatma Gandhi's ideas, which he always advocated for, i.e. 'Justice, 'Liberty,' Freedom.

ROLE OF NEHRU

When comparing the roles of two prominent Indian leaders, Sardar Patel and Jawaharlal Nehru, in the creation of the Constitution, Austin says that everyone has a specific interest. The former was more interested in princely states, public service, and how the Home Ministry worked, while the latter was more engaged in Fundamental Rights. The Constitution's features on minority rights and social transformation are also important. . In these areas, each of them gave the other practically complete freedom. Fundamental Rights embodied in the Karanchi Resolution were finally inserted into Parts III and IV of the Indian Constitution on Nehru's insistence, despite Patel's cynicism and Rajagopalachari's opposition to sweeping Fundamental Rights²⁶ Again, it was because of Nehru's regard for human rights that the Dalai Lama and some of his followers were allowed shelter after fleeing Tibet, which was being oppressed by China's brutal tactics.

He advocated for a wide spectrum of human rights, including political, economic, social, and cultural rights. He further argued that the people have the right to change the government that denies them these rights. He had spent his life bravely attempting to achieve dignity for the world's people because he felt constant compassion for the underprivileged. Wherever he saw a breach of human rights, he spoke out forcefully against it. He got them incorporated into the Constitution after becoming Prime Minister of India. As a result, he may surely be described as a champion of human rights.

SCOPE OF FUNDAMENTAL RIGHTS V/S HUMAN RIGHTS

All judicially enforceable rights were included under fundamental rights. These are the civil and political rights, as well as the rights of minorities, that are enshrined in Part 3 of the constitution.

²⁵ *Gandhi Smriti and Darshan Samiti: Government of India.* GANDHI SMRITI AND DARSHAN SAMITI | Government of India. (n.d.). Retrieved December 30, 2021, from <https://www.gandhismriti.gov.in/programmes/gds-programmes/71st-anniversary-constitution-india>

²⁶ (Subhash S Kashyap *Jawaharlal Nehru: Constitution and Parliament*, page199Metropolitan)The book describes about the role of Jawahral Nehru in newly independent India and how his ideas plays important role in shaping new independent India which has grown up as a vibrant democracy and super power in years after independence.

These rights include the right to equality, the right to free speech and expression, and the right to freedom of religion, among others.

Fundamental rights are distinct from conventional human rights in that they are unalienable. Citizens' fundamental rights cannot be taken away by law. Article 13 of the constitution declares any law that violates a fundamental right to be null and void. Shivkant Shukla v. ADM Jabalpur In ADM Jabalpur v. Shivkant Shukla²⁷ Justice Beg had observed that the aim of declaring certain rights as fundamental is to ensure them to the people or citizens and to stop encroachment of these rights by executive, legislature, or judicial or any other organ of the State."

In Golak Nath v. State of Punjab²⁸ Chief Justice Subba Rao had rightly held that "Fundamental rights are the modern term for the natural rights'

The scope of human rights is wider than the fundamental rights the fundamental rights only incorporated basic human rights at least in its original form but with time supreme court in its decision widened the scope of fundamental rights.

For example in Ks Puttaswany case²⁹ while Holding privacy to be a fundamental right Justice Chandrachud has taken various international instruments into account. However the rights which are included in part 3 have a supreme importance and has great degree of enforceability as compared to other rights.

In various precedents of supreme court the court has tried to equate fundamental right and human rights State of West Bengal v. Subodh Gopal Bose³⁰ observed that fundamental rights as those great and basic rights, which are recognized and guaranteed as the natural rights inherent by the birth by virtue of a citizen of a free country.

In Ajay Hasia vs. Khalid Mujhid Seharvadi³¹ supreme court held that court has a important responsibility, "to enlarge the scope of fundamental rights in order to advance and strengthen the human rights jurisprudence.

4. ROLE OF JUDICARY FOR PROTECTING HUMAN RIGHTS

Judiciary has played a very important role in protecting and defending the fundamental rights of the people. Earlier the court has limited itself to giving literal interpretation to the people but with the time the approach of judiciary has changed a lot. The interpretation by the court to the fundamental rights can be divided into the following stages:

²⁷ 1976 AIR 1207

²⁸ 1967 AIR 1643

²⁹ AIR 2017 SC 4161

³⁰ 1954 AIR 92

³¹ 1981 AIR 487

1. Initial days judiciary has showed a judicial restraint in the cases like A.K Gopalan vs State of Madras where the court held that doctrine of due process of law is not enforceable in the case of India³²
2. The second stage starts with the start of tussle with the strong government of Mrs Indira Gandhi when the Allahbad High Court has dismissed the election of Smt Indira Gandhi.³³ Supreme court in this period has delivered landmark judgements like Basic structure case³⁴
3. The third phase can be seen with the development of the new instrument called Public interest litigation where the apex court overlooking all the procedural requirement come up for the issues affecting the rights of public in Large.
4. The fourth phase start with the development of concept of the doctrine of constitutional morality.

Other important cases for human rights are:-

Apex Court also guarded the rights of workman in case of BALCO Employees Union (Regd.) v. Union of India,³⁵. In People's Union for Democratic Rights v. UOI³⁶, the Supreme Court held that releasing a person from bonded labour is inextricably linked to the rehabilitation process in order to ensure that he receives full compensation. In another decision, Workmen v. Rohtas Industries³⁷, the Supreme Court concluded that the right to equality was crucial in protecting workers' rights against arbitrary closures and disparities in pension payments.

The protection of citizens' rights, especially those of inmates, is a priority for the judicial system. By interpreting Article 21 of our Constitution, the Hon'ble Supreme Court safeguarded and defended the rights of detainees. Prem Shankar v. Delhi Administration³⁸ is a well-known case in this regard, in which the Supreme Court held that the practise of imposing handcuffs and fetters on inmates without reason violates their right to human dignity. In another landmark decision, , the Supreme Court noted the importance of protecting prisoners' rights and establishing detailed guidelines for arrest and detention in order to prevent custodial violence³⁹. The court also stated that the right to life includes the right to live a life with dignity. In Sheela Barse v. State of Maharashtra⁴⁰ court dealt with an issue of Abuse of women in a police station of Maharashtra and court issued several guidelines for ensuring of rights of women in custodial/correctional

³² AIR 1950 SC 27

³³ 1975 AIR 865, 1975 SCR (3) 333)

³⁴ Supra 22

³⁵ 2002 2 SCC 333

³⁶ AIR 1982 SC 1473

³⁷ 1976 SCR (3) 12

³⁸ AIR 1980 SC 1535

³⁹ D.K. Basu v. State of West Bengal AIR 1997 SC 610

⁴⁰ 1983 SCR (2) 337

institutions. In another case⁴¹ Apex court held repeated that handcuffing and tying with ropes to Accused is inhuman practice and gross violation of human rights guaranteed under constitution and various international laws. . It is also directed that while making of arrest of any person they cannot be handcuffed unless the police authorities have express order of magistrate.

In a nutshell, it can be argued that our judiciary has played a key role in the protection of people's human rights since independence, by expanding the scope of constitutionally guaranteed rights and recognising various additional rights as the necessity arises. The right to life has been expanded by the judiciary to include numerous entitlements that are important for the enjoyment of the right to live a life of dignity and honour.

People's rights have been upheld by Indian courts in a variety of situations, including the right to freedom from incarceration, the right to a pollution-free environment, the right to good health, and the right to fair remuneration for employees, among others.

In the case of *Sakshi v. Union of India*⁴², the Supreme Court highlighted and observed the need for a uniform procedure that would allow a child victim to give evidence or testify in court without difficulty, and also held that such proceedings should be held in camera. In the case of *Sheba Abidi v. State of Delhi*, the Hon'ble Delhi High Court declared that child victims have a right to have someone support or assist them throughout their trial, and that child victims may testify outside of the courtroom if they like.

In older days women are regarded as weak in our society which has eventually resulted in the backwardness of women in many fields. Women remains downtrodden ones and are often even denied basic human rights. They are frequently subjected to violence weather domestic or non domestic in society whether it is within her house by her relatives or at workplace.

In cases like *State Bank of India v. Associate Banks Officers Association*⁴³ he Apex Court has played a vital role in protecting women's rights to equal wages and other benefits. The Supreme Court upheld women's rights, ruling that female workers are not in any way inferior to male equivalents and that there should be no sex discrimination against them. In *State of Madhya Pradesh v. Pramod Bhartiya*⁴⁴, the Supreme Court held that the state must orient its policy toward achieving equal pay for equal work for men and women under Article 39.

The Mumbai High Court rescued children from the flesh trade in *Public at Large v. State of Maharashtra*⁴⁵, and granted an injunction barring minors from being sexually abused and rehabilitated. Children are not only vulnerable to sexual assault, but they are also occasionally held as bonded labourers, as in the case of *People's Union for Civil Liberties (PUCL) v. Union of*

⁴¹ *Citizens for Democracy v. State of Assam and others*, 1995 (3) SCR 943

⁴² Writ Petition (crl.) 33 of 1997

⁴³ Writ Petitions {Civil} Nos. 763/89 and 819/90

⁴⁴ AIR 1993 SC 286, 1992

⁴⁵ (1997) 4 Bom CR 171

India⁴⁶, in which the Supreme Court ordered the release of child labourers as well as the grant of citizenship.

Human rights are rights which an individual get not by virtue of any king, constitution or statute. A human being is entitled to human rights by virtue of being human. Adding new dimensions to Article 21 of the Constitution the apex Court, in the several cases⁴⁷, has retaliated that the right to life guaranteed by Article 21 is not confined to bodily existence, but also encompasses the right to life in all human dignity. The right to life isn't just about animal survival. It encompasses all aspects of existence, not just physical survival. The right to 'live' does not just refer to the protection of one limb through which life can be enjoyed; it also refers to "the right to live with human dignity," which includes things like adequate shelter, nutrition, clothing, and facilities for reading, writing, and expressing oneself in various ways, as well as freedom of movement. Human rights are violated by anything that restricts the right to live a great life with dignity and decency.

In Indian constitutional scheme Judiciary is known as independent part of state which is duty bound to have check on other two organs. This role of judiciary can be summarized as follows:

1. The traditional role i.e. to interpret the laws for protection of rights of people, and
2. Judicial Activism in which courts has gone beyond the statute to defend the rights of people.

The in early times the Supreme Court has shown restraint in dealing with the issue of human rights but with the time judiciary has established itself as a great protector of human rights.

INTERPRETATION BY COURT

The judiciary is one of the government's various organs that keeps an eye on the other two. In India, the judiciary has emerged as a major promoter of human rights. The role of the courts is primarily to provide new interpretations of fundamental rights in order to protect human rights. As previously stated, the highest court has decided that judges have a specific responsibility to expand the scope of fundamental rights in order to promote human rights jurisprudence.

The Supreme Court of India has already stated that the High Courts of State have vast powers under the Constitutional system to enforce fundamental rights embodied in Part 3 and must exercise these powers freely. The judiciary's primary contributions to human rights jurisprudence can be stated in two ways: (a) broadening the scope of human rights by interpreting Article 21 of the Constitution, and (b) diluting procedural blocks and making filing of in Public Interest Litigation easy.

⁴⁶ 1998(8) SCC 485

⁴⁷ Francis Coralie Mullin Vs Union Territory of Delhi, 1981 SC 746,. Maneka Gandhi Vs Union of India, AIR 1978 SC 597, Sunil Batra Vs Delhi Administration, AIR 1978 SC 1675, Peoples Union for Democratic Rights Vs Union of India, AIR 1982

HOW HUMAN RIGHTS EVOLVED OVER THE YEARS.

The fundamental rights enshrined in part 3 of the constitution was having several practical problem in guarding the rights of people it can be summarized as follows.

1. The right to life provided in article 21 was subject to procedure established by law. During the time government has bring several arbitrary laws to curtail right of people and it got justification under procedure established by law.

However in *Maneka Gandhi v/s Union*⁴⁸ of India the apex court has accepted the American doctrine of due process of law which means the procedure established by law must be just and fair not arbitrary.

2. All the fundamental rights have vertical application that means the fundamental rights is enforceable only against the public authorities or state actors and not against the private party. The problem started when the non state actors start infringing rights of individual such as a private firecracker industry starts employing child labour by virtue of vertical application of fundamental rights this cannot become the matter of violation of fundamental rights.

But supreme court has held that State is not only duty bound to not infringe any fundamental rights of citizens but also has positive duty protect human rights of people from non state actors.⁴⁹

The horizontal application of fundamental rights i.e the cases where the state is directed to ensure fundamental rights of people can be seen in many cases like *Consumer Education and Research Centre v Union of India*⁵⁰ where the apex court ruled that employees are entitled to right to health lies against private employer also and private actors are duty bound to provide adequate health facilities to the employees decision and direction were under the exercise of jurisdiction under Article 32. In *Unaided Private Schools of Rajasthan v Union of India*⁵¹ finds Right to Education act 2009 constitutional valid which every public and private school all over India have to admit atleast 25% of children belonging to lower middle income group of age between 6 to 14 years of age. Another example is *Vishkha Vs State of Rajasthan*⁵² where the court has issued the guidelines for prevention of sexual harassment of women in workplace both private and public institutions are bound to follow the directions of court.

3. Rule of Locus Standi was another hurdle for approaching the supreme court. The supreme court has relaxed the rule of Locus Standi involving greater public interest. The supreme court has entertained many landmark judgment for the protection of human

⁴⁸ Supra 26

⁴⁹ MC Mehta vs State of TN)

⁵⁰ 1995 SCC (3) 42

⁵¹ WRIT PETITION (C) NO. 95 OF 2010

⁵² AIR 1997 SC 3011

rights. Supreme court in Rudal Shah vs State of Bihar⁵³ directed the government to release the prisoners from jails who have completed tenure of punishment given to them.

4. India was the one of the First country which has accepted Stockholm convention and has enacted much environmental law in the basis of the convention. But this laws was never enacted properly it was nothing but a bunch of delegated legislation.

But after the apex court start interfering in the environmental related issues under its PIL jurisdiction and delivered many judgment for protection of environment.

JUDICIAL RESPONSE AFTER JUDICIAL ACTIVISM MOVEMENT

One of the First case of fundamental right was A.K. Gopalan v. State⁵⁴ of The court found that "process established by law" merely meant that a procedure had to be created by law approved by a Legislature when a communist leader was arrested on preventative detention.

Another important judgement another important case was FN Balsara⁵⁵ case where court held that no fundamental right is absolute and directive principles of state policy puts positive duty on state to curb toxication and hence restriction imposed is justified Sakal Papers (P) Ltd. -v. Union of India⁵⁶ ruled that freedom of the press cannot be curtailed, unlike the- freedom to carry on business, in the interest of the general public

This right was spelled out in Satwant Singh Sawhney v. D. Ramarathnam⁵⁷, which is enshrined in Article 21 of the Constitution. The Supreme Court agreed with the Bombay High Court that the term "personal liberty" as used in Article 21 encompassed the right to travel abroad and return to India.

In India, judicial activism lends Human Rights a push. India has emerged as a global champion of human rights. However, with the establishment of a right-wing government, India's reputation has suffered some noticeable damage. Several international human rights organisations have expressed alarm about certain concerns.

DEVELOPMENT OF PIL

In Mumbai Kamagar Sabha vs. Abdul Thai⁵⁸ in 1976, Justice Krishna Iyer cultivated the seed of public interest litigation, which was first implemented in Raihvaiv vs. Union of India,⁵⁹ in which

⁵³(1983) 4 SCC 141

⁵⁴ AIR 1950 SC 27;

⁵⁵ 1951(53)BOMLR982

⁵⁶ 1957 AIR 896

⁵⁷ 1967 SCR (2) 525

⁵⁸ 1976 AIR 1455 1976

⁵⁹ *Public Interest Litigation: Genesis and evolution*. Legal Service India - Law, Lawyers and Legal Resources. (n.d.). Retrieved December 30, 2021, from <https://www.legalserviceindia.com/legal/article-542-public-interest-litigation-genesis-and-evolution.html#:~:text=Union%20of%20India%2C%20wherein%20an,prisons%20and%20under%20trial%20prisoners.>

an unregistered workers' association was allowed to file a writ petition under Article 32 of the Constitution for the redress of common grievances.

The first reported case of PIL was in 1979, and it focused on harsh conditions in jails and among detainees awaiting trial. A PIL was filed by an advocate in *Hussainara Khatoon vs. State of Bihar*^[2] based on a news story published in the Indian Express, which highlighted the plight of hundreds of detainees awaiting trial in several Bihar jails. As a result of these processes, about 40,000 persons who were awaiting trial were discharged. The right to speedy justice evolved as a crucial fundamental right denied to these captives.

In the case of *S.P. Gupta vs. Union of India*⁶⁰, Justice P.N. Bhagwati ushers in a new age of the Public Interest Litigation movement. In this case, the Supreme Court ruled that "any member of the public or social action group acting in good faith" can seek redress from the High Courts or the Supreme Court for violations of legal or constitutional rights of people who are unable to approach the Court due to social, economic, or other barriers. The Public Interest Litigation Act (PIL) became a potent instrument for enforcing "public duties" when an activity or misdeed caused public harm as a result of this decision. As a result, any Indian citizen, consumer organisation, or social action group can now seek legal relief from the country's highest court in any scenario involving the general public's or a sector of the public's interests.

Though the Hon'ble Judge appointed for this reason directs it, the petition can be regarded as a writ petition even if it is not in the public interest. Individual petitions alleging harassment, torture, or police death, as well as complaints of atrocities against women such as dowry harassment, bride burning, rape, murder, and kidnapping, as well as complaints about family pensions and complaints about police refusal to register a case, can be filed as writ petitions if approved by the concerned Hon'ble Judge. A report from the competent authority is required if it is deemed essential before submitting the case to the Hon'ble Judge for directions. If the Hon'ble Judge so orders, the letter is recorded as a writ petition and presented to the Court for hearing.

In its most basic form, "Public Interest Litigation" refers to litigation brought in a court of law to protect "Public Interest" issues such as pollution, terrorism, road safety, and construction dangers, among others. Any matter affecting the general public's interest can be handled in a court of law by filing a Public Interest Litigation. There is no statute or Act that defines "public interest litigation."

In *Indian Banks' Association, Bombay & Ors. vs. M/s Devkala Consultancy Service and Ors*⁶¹, the court held that "in an appropriate case, where the petitioner may have moved a court in her private interest and for redress of the personal grievance, the court in furtherance of Public Interest may treat it as a necessity to enquire into the state of affairs of the subject of litigation in

⁶⁰ AIR 1982 SC 149.

⁶¹ Appeal (civil) 4655 of 2000

the interest of justice." As a result, a case containing a private interest can be considered a public interest matter as well.

*Union of India vs. M.C. Mehta*⁶²: In order to avoid future contamination of the Ganga, a Public Interest Litigation was filed against water pollution in the Ganga. While the petitioner is not a riparian owner, the Supreme Court determined that he is authorised to petition the court for the enforcement of statutory limits since he is worried for the lives of those who drink Ganga water.

The term "epistolary jurisdiction" best describes the PIL procedure's flexibility. In the Judges' case⁶³, the Supreme Court declared. *supra* n. 16; *Forward Construction Co. v Prabhat Mandal*⁶⁴ that a public-spirited person could move the Court even by writing a letter, citing the American Supreme Court's judgement in *Gideon v Wainwright*⁶⁵ in which a postcard from a prisoner was treated as a petition. Letters (in *Ram Kumar Misra v State of Bihar*⁶⁶. This case related to minimum wages not being paid to labourers employed in two ferries) and telegrams⁶⁷ have been accepted as petitions by the Court. In the *Badhua Mukti Morcha* case, Pathak J expressed concern that such ease of access could lead to the fear that a claimant would engage in forum-shopping and approach a particular judge.

In *Paramjit Kaur v State of Punjab*⁶⁸ the CBI, at the request of the Supreme Court, exposed the truth surrounding the Punjab Police's mass cremation of thousands of people by labelling them "unidentified." The proceedings began with a telegraph delivered to Kuldeep Singh J.'s residence.

On December 1, 1988, the Supreme Court issued a notification outlining the types of cases that could be heard as PILs. Under this notification, letter petitions that fit into particular categories will usually be considered. Among the topics mentioned were bonded labour, neglected children, prisoner petitions, police petitions, atrocities against women and children, and scheduled castes and tribes. Environmental petitions, drug and food adulteration, heritage and culture preservation, and other problems of public concern may all be examined. The notification also mentioned landlord-tenant disputes, service difficulties, and admittance to medical and other educational institutions as matters that would not ordinarily be considered PILs. The procedure was also outlined in the notification: the petition would be reviewed first in the PIL Cell before being brought to a judge who had been appointed for this purpose.

⁶² 1988 AIR 1115 1988

⁶³ *P. Gupta v Union of India* 1981 Supp. SCC 87 at 210

⁶⁴ (1986) 1 SCC 100.)

⁶⁵ ((1963) 372 U.S. 335.)

⁶⁶ (1984) 2 SCC 451

⁶⁷ (*Paramjit Kaur v State of Punjab* (1996) 7 SCC 20)

⁶⁸ (1996) 7 SCC 20,

5. MAJOR CHALLENGE FOR HUMAN RIGHTS IN INDIA.

REPORT OF VARIOUS INTERNATIONAL ORGANIZATIONS.

Many human rights breaches are said to have occurred in India in recent years. Few have received international attention, such as the Citizenship (Amendment) Act and the revocation of special status in Jammu and Kashmir. Concerns regarding the safety of some groups in the country, notably religious minorities, have grown as a result of these instances. Instead of dealing with the problem, the Indian government attempted to discredit this watchdog and journalist. Amnesty International had to close its India office, and several people were arrested for assembling a tool kit to defame India. The Indian government's response has further tarnished India's reputation on foreign platforms.

Several organisations have expressed alarm over such incidents that have occurred in India in recent years. The US Commission on International Religious Freedom suggested that the US State Department designate India as a "country of special concern" due to "attacks" on religious minorities in a report released in April 2021. According to the report, the Indian government has "supported Hindu nationalist policies" that have resulted in "systematic, ongoing, and flagrant abuses of religious freedom." In addition, the BJP-led government has "increasingly harassed, detained, and persecuted rights defenders, activists, journalists, students, professors, and others critical of the government or its policies," according to Human Rights Watch's World Report 2021. Amnesty International, a human rights organisation, expressed concern about incidents that occurred in India in 2020.

It said that: Dissent was repressed by arbitrary limitations on nonviolent protests and the silencing of critics, and freedom of expression was only granted selectively. Students, intellectuals, journalists, and artists who advocate for human rights have been unlawfully detained. Human rights claims have been refuted by the Indian government. At the April 2021 India- EU Human Rights Dialogue, it reaffirmed its commitment to human rights. The Joint Secretary for Europe West in India's Ministry of External Affairs and the EU's Ambassador to India co-chaired the discussion.

APPROACH HUMAN RIGHTS COMMISSION

The National Human Rights Commission (NHRC) of India is a government-run organisation established in 1993 under the Protection of Human Rights Act. I The National Human Rights Commission's mission is to defend and promote human rights. The National Human Rights Commission is in charge of investigating human rights violations⁶⁹. The national human rights commission may use civil court authorities to summon or compel witnesses to appear and be examined under oath, to find or produce documents, to receive evidence by affidavit, and so on.

⁶⁹ Justice J.S. Verma, Second Justice M. Hidayatullah Memorial Lecture "Protecting Human Rights through the Judicial Process" on 21 December 2002 at Raipur, 15, available at <http://nhrc.nic.in/Documents/JHidayaMemo-II.pdf>

The NHRC may use the services of any officer or investigation agency under the Central Government or any of the State Governments for the purpose of conducting any investigation related to the inquiry with the approval of the Central Government or the State Government, as the case may be. The National Human Rights Commission also has a significant role in providing guidelines and recommendations to various authorities.

It has given many suggestions on various matters such as health, Education etc. from time to time. Recently, Commission has given various suggestions on Prison Reforms, Human Rights Defenders, Leprosy and Mental Health

National Human Rights Commission has played a important role for the observation of human rights. In various incidents of human rights violation it took suo motu cognizance and also took cognizance on the complaints filed before it. Few important cases are In Gujarat Communal Riot's Case⁷⁰ the National Human Rights Commission took suo motu cognizance on communal riots that took place in Gujarat in early 2002; based upon media reports. The NHRC has even received few e-mail communication requesting them to intervene. A team of the NHRC had visited effected areas of Gujarat in March, 2002 and made a confidential report, which was published later. The Commission in its report observed that the State has completely failed to discharge its primary and major responsibility to defend the right to life, personal liberty, equality and dignity of all of its people.

Bonded Laborers at the Chauna Stone Mines Case⁷¹, Bonded Laborers at the Chauna Stone Mines, Gwalior District, Madhya Pradesh, Bound Labour Liberation filed a complaint alleging that 400 bonded labourers had been working in the Chauna Stone mines in Gwalior District and had been abused and harassed. The Commission urged that the government direct the Labour Commissioner, MP, to inspect these businesses and guarantee that all labour laws are followed. 44 persons were discharged and sent to other areas based on their wishes. The Labour Department of the Government of M.P. indicated in a subsequent report that the released workers were being rehabilitated, as well as the actions taken against the culpable employers. After considering the findings, the Commission decided to close the case.

The Commission has taken suo motu cognizance of a press report captioned "Kids thrashed for refusing pest infested school dinner"⁷². According to the allegation, students at a school in Mithani Milki village, Vaishali district, near Patna, were allegedly assaulted until they passed out by their headmaster for refusing to eat a midday meal of khichdi in which they discovered insects. The Commission summoned the Bihar Chief Secretary and the Vaishali District Magistrate to give a report on the situation as well as their measures. A chargesheet against the

⁷⁰ Arun Ray, National Human Rights Commission of India: Formation, Functioning, and Future Prospects 518 (Khama Publisher, New Delhi, 2nd edn., 2004)

⁷¹ Case No: 1351/12/2001-2002(FC)

⁷² Case No. 2432/4/39/201246

school's Head Master has been submitted with the court, according to the Superintendent of Police of Vaishali, Bihar. The District Magistrate of Vaishali, Bihar, was also instructed to submit a report to the District Magistrate, along with proof of payment, within six weeks about the payment of temporary monetary aid to SC community victim pupils under the provision.

JUDICIAL KILLINGS

Even Following India's independence from the British, there have been multiple instances of extrajudicial executions, sometimes known as "fake encounters." The modern police, under the guise of Section 46 of the Criminal Procedure Code and Section 96 of the Indian Penal Code, confront the accused before the trial. They strive to manipulate the facts to make it appear that the killing was legal and that no one can challenge it. The number of deaths has risen dramatically in recent years. Suspects in police or court custody are subjected to physical, psychological, sexual, and sometimes rape torture, all of which finally leads to the suspect's death, and these incidents are referred to as extrajudicial killings or custodial brutality.

Extrajudicial killing is act of executing a individual illegally or without any authority. It is gross violation of human rights. It is the practice of unlawfully executing a individual without taking due sanction or following any proper legal process. Normally in such process no investigation takes place, sometimes not even has been complaint filed in such cases. Hence it is clear cut case of denying human rights of individuals, denying them any legal opportunity of hearing or legal representatives

Execution of an extrajudicial killing without legal sanction. It is a violation of a person's basic human rights, which he or she has since birth. All Although there is no legal definition for extrajudicial killing, it is commonly defined as the unlawful killing of a person by any official authority or someone linked with the government without first seeking court clearance.

India has a large number of examples of custodian deaths on record, indicating that there are custodian fatalities in which prisoners are killed while being probed. However, convictions in cases of custodian fatalities are uncommon, and police officers convicted of extrajudicial killings are rarely prosecuted. Urutti Kolai was one of the few cases in which police officers suspected of extrajudicial killings were found guilty and sentenced to death by a special CBI court in Thiruvananthapuram.

The police men in instant case were accused of murdering 26-year-old men accused of theft during the interrogation, they used a very heavy rod to torture him resulting the death of accused. Torture technique used in pretext of the interrogation was too intensive. Considering brutality of the case CBI court held it as rarest of rare cases.

National Human Rights Commission (NHRC) come to conclusion that the reasons for these killings are corrupt electoral politics and inaccurate policing questioning the effectiveness of the legal system of India

Mathura rape case *Tukaram v. State of Maharashtra*⁷³, is another perfect example of extra judicial killing in fake encounter and also of custodial violence through sexual harassment, in this case a teen tribal girl was gang raped by two policemen in the police custody however the accused were acquitted by the supreme court.

Another case of extra judicial and custodial violence is the Bhagalpur blinding case⁷⁴ in Bihar. In the years between 1979-1980 crimes like kidnapping, abduction, extortion, In Bhagalpur, theft and murder were on the rise. So, in order to obtain information or obtain confessions from the suspects, police officials began torturing them by pouring acid into their eyes, which resulted in the victims' immediate blindness as their eyeballs were burned or destroyed by acids.

Another infamous case of custodial death is *D.K. Basu vs State of west Bengal*⁷⁵ this case supreme court pronouncing the judgment issued several guidelines for the police while they handle arrest or interrogate a suspect/accused and also supreme court held that violence in custody is an attack on human dignity.

Recent incidents such as the arrest of George Floyd in the United States, the death of Jayaraj and his son Fenix in Santhankulam as a result of custodial violations, the arrest of the infamous wanted gangster Vikas Dubey by UP police, and the arrest of the accused in the Priyanka Reddy rape case by Hyderabad police show that custodial violations exist all over the world. However, despite the fact that laws are becoming increasingly concerned about the victims of these incarceration-related violence and death, the situation continues to deteriorate.

*Neelbati Bohra case*⁷⁶ the Court ordered to give monetary benefit to Smt Nilabathi Behra for the custodial death of her son by ordering the payment of Rupees One Lakh Fifty Thousand as the way of compensation by the way of damages

CONCLUSION

Human rights jurisprudence in the Indian Constitution is extensive. This establishes the most comprehensive global human rights framework ever devised by any other country. Part III of the Constitution, in particular, could be referred to as India's "Magna Carta." In India, the judiciary plays an essential role in preserving citizens' human rights. The Indian courts have now established themselves as the courts of the oppressed and struggling masses, and have opened their doors to the country's poor, stupid, and illiterate masses.

Human rights are integral rights that are necessary for an individual's development and without which he or she cannot live a life of full dignity. Our Constitution guarantees the fundamental rights of not only citizens but also everyone living in India's territory. Provisions have been made

⁷³ (1979) 2 SCC 143

⁷⁴ (*Khatri vs. State of Bihar* 1981 SCR (2) 408, 1981)

⁷⁵ SCC (1) 6271997 1 SCC 416)

⁷⁶ 1993 AIR 1960

not only in Part III of the Constitution, but also in the Preamble, which mentions certain fundamental purposes that the state wishes to offer to its subjects. Many procedural hurdles, such as the rule of locus standi for protecting basic human rights, have been loosened by the Indian judiciary, paving the way for the emergence of a new instrument known as Public Interest Litigation. The Supreme Court has intervened in many cases of human rights violations through public interest litigation.

Human Rights are the rights that every individual has to certain basic inherent rights that are necessary for his or her development as a human being. The main point of discussion in any discussion of human rights is whether they fall under the category of legal rights or whether, even after seventy years, the Universal Declaration of Human Rights is merely a declaration of ideals to be observed by member states in their internal and inter-state conduct.

For the sake of this paper, we shall only focus on India as the source of our research. This dissertation attempts to examine the evolution of the notion of human rights and its preservation in India, both before and after independence. Paper has majorly considered majorly into three segments the First part of paper tracks the historical background of Human Rights in world and India. From Cyrus Cylinder of 6th century BC First known declaration of Human Rights which gives people of Babylon unfettered right to choose their religion to agreement between Bahmani and Vijaynagara Empire for treatment of war prisoner dated 1367AD. to condition which lead to formation of Universal Declaration of Human Rights 1948.

In second part of this paper we try to deal with the constitutional scheme for protection of Human Rights. It throws light on certain important debates of constituent assembly in this regard. The constitution of India is the imprint of India's Cultural Heritage and philosophy. Paper also tries to include that how Gandhian Nehruvian ideals has influenced the constitution.

Third part of the paper tries to track judicial response over the topic and how Judicial Approach towards the protection of Human Rights changed over years after Independence. Judicial Activism Movement started in 1973 played a very important role for ensuring basic human rights for Poors and downtrodden people.

Supreme Court and High court as emerged as a defender of rights of women, workers, children, prisoners and so on. Thus it can be said that judiciary is playing crucial role as the savior of the human rights so that each and every individual can live a life with full dignity. Protection of human rights is major concern of all over the world after second world war various international instruments have been framed for ensuring human rights of people and on this basis International instruments, some statute has been framed in India like Protection of Human Rights Act 1993. Several Provisions have been made under this for the establishment of institutions such as National Human Rights Commission and State Human Rights Commission for States and even provide for ensuring speedy justice in matter related to Human Rights provision for special human rights Courts at the district level has been prescribed. However it is very difficult to say

that how far the National Human Rights Commission has able to achieve its object however there is no doubt that it has been playing a remarkable task in giving monetary relief to the victims of human rights violation.