# PROMOTION AND PROTECTION OF HUMAN RIGHTS: A STUDY WITH SPECIAL REFERENCE TO THE ROLE OF THE SUPREME COURT OF INDIA

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**ABSTRACT**

The promotion and protection of human rights are fundamental to the sustenance of a democratic polity. In India, where socio-economic disparities, communal tensions, caste- based discrimination, gender inequality, and custodial violence pose persistent challenges, the role of the judiciary becomes critically significant. This research explores the proactive and dynamic role played by the Supreme Court of India in safeguarding and promoting human rights, particularly through its innovative interpretations and expansive approach to constitutional provisions.

The study begins by tracing the historical development of human rights in the Indian legal and constitutional context, rooted in the Preamble, Fundamental Rights (Part III), and Directive Principles of State Policy (Part IV) of the Indian Constitution. It analyzes the Supreme Court‟s evolving jurisprudence on human rights, especially since the post- Emergency era, which witnessed a paradigm shift from a strict legalistic approach to a more purposive and liberal interpretation aimed at delivering substantive justice.

Central to this analysis is the emergence of Public Interest Litigation (PIL), which revolutionized access to justice and enabled the court to become a vanguard of the rights of the marginalized, voiceless, and disadvantaged sections of society. The study critically examines landmark judgments where the Supreme Court expanded the scope of Article 21— the right to life and personal liberty—to include a wide array of human rights such as the right to livelihood, shelter, health, education, a clean environment, and protection against torture and custodial violence.

The research also evaluates the role of the Supreme Court in addressing issues like bonded labor, child labor, custodial deaths, women‟s rights, LGBTQ+ rights, and the rights of prisoners and undertrials. It further explores how the Court has balanced individual rights with concerns of national security and public order, particularly in cases involving preventive detention and counter-terrorism laws.

While the Supreme Court has undoubtedly played a transformative role, the study does not shy away from highlighting certain limitations and criticisms. These include judicial overreach, inconsistency in judgments, delays in enforcement, and at times, the failure to adequately address state impunity. The research also reflects upon the interplay between the judiciary and other institutions—executive, legislature, and human rights commissions—in the overall framework of human rights protection.

Methodologically, the study is doctrinal in nature and relies on a critical analysis of constitutional provisions, case laws, legal commentaries, and reports of national and international human rights bodies.

In conclusion, the research underscores the Supreme Court of India as a pivotal institution in promoting and protecting human rights, acting not merely as an interpreter of law but as a guardian of constitutional morality and human dignity. However, it calls for greater consistency, sensitivity, and accountability in its approach to ensure that justice is not only done but also seen to be done, especially for the most vulnerable sections of society.

**Keywords:** human rights, judiciary, protection, judicial activism, judicial review

## Introduction

Human Rights are fundamental rights and freedoms that are guaranteed to everyone on the planet. Without prejudice, we are all equally committed to our human rights. Rights encompass not only biological necessities, but also the conditions of life that allow for the free growth and application of human traits such as knowledge and conscience, as well as the fulfillment of our spiritual needs. No monarch, constitution, or regulation can bestow human rights. Human rights are inherent in every human person. The Supreme Court has given fresh meaning to Article 21 of the Constitution, declaring that the right to life provided by Article 21 is not limited to bodily existence, but also encompasses the right to live in dignity. The right to life is not limited to the existence of animals. It entails more than just surviving physically. Everyone has a human right, which is a fundamental right. Human rights are not a new notion; the Vedas, Manusmriti, Arthashastra, and other scriptures that also discuss human rights can be found. Individual rights were asserted in numerous written documents such as the Magna Carta (1215), the French Declaration of Man and Citizens (1789), and the US Bills of Rights (1791). In the twentieth century, the United Nations was founded in 1945, following World War II. After three years, the Universal Declaration of Human Rights was given to the world in 1948, with 30 articles granting universal recognition to human rights. Human rights are now

emphasized in a variety of international agreements, treaties, covenants, and domestic laws. The focus of this paper is on how effective judiciary has been in protecting human rights.

**Review of literature**

Om Prabha Saini [1] in his research writes that Judiciary and National Human Rights commission have played very important role in development and protection of Human Rights.

Martina Arun Sapkal [2] writes that Human rights may be said to be rights that are inherent in people by virtue of being human being, the rights are absolutely essential for the full and complete development of human personality.

Dr. Justice Anand [3] writes that, it is the obligation of the state to ensure everyone the right to adequate food, education and enjoyment of highest attainable standards of physical and mental health. These rights have to be respected and made available to the citizens by the state.

Ashok Mukhopodhyay [4] in his paper writes that much earlier than the Greeks and Romans, ancient Indian philosophers and thinkers expounded a theory of higher moral law of Dharma about five thousand years ago. The oldest of Vedas, the Rig Veda declares that all human beings are equal. The Atharveda recognize equal rights of all human beings over food and water.

Alok Pandey [5] in his research writes that the rule of law is foundation of the democratic society. The judiciary is the guardian of rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State.

Amartish Kaur [6] in his book Protection of Human Rights in India: A Review writes that Because the safeguarding of people human rights is a constitutional mandate of the judiciary, high courts and the Supreme Court have the authority to intervene when these rights are violated. The writs and instructions issued by the aforementioned Courts in cases of infringement of Fundamental Rights are Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari.

**Objective of study**

The objective of the study is to know about role of judiciary in protection of Human Rights in

India and to study the various judgments to describe its working for Humanity. Study will also discuss the judicial activism and its worth.

**Research Methodology**

The study conducted in order to determine the Role of Judiciary in protection of Human Rights in India. This study follows the descriptive and the analytical method. The information in this study is gathered from secondary sources such as publications, websites, bare acts, books, judgments and journals, etc.

**Human rights in Constitution of India**

India, the world's most democratic country, is a signatory to the Universal Declaration of Human Rights. The Universal Declaration of Human Rights protects civil, economic, cultural, political, and social rights. In the form of protected fundamental rights, the Indian constitution protects human rights. These, like human rights, are passed down from generation to generation. These rights cannot be changed because they are a component of our constitution's fundamental framework. Parts III and IV of the constitution require the state to respect human rights, but only part III is enforceable, while part IV is not. The safeguarding of an individual's dignity is also mentioned in the Constitution's preamble. The state is required under the Constitution to make efforts to defend human rights. People can go to the Supreme Court (SC) to get the rights guaranteed by part III, and article 13 empowers the SC to declare any statute void if it infringes on part III; all of this makes the Supreme Court the custodian of these rights. Article 32 (3) states that the legislature can empower any other court to protect these rights through legislation. The fact that a substantial portion of human rights are referred to as essential rights is a unique aspect of the Indian constitution. We have a list of Fundamental Rights in the Indian Constitution:

1. Rights to Equality
2. Rights to Freedom
3. Rights against Exploitation
4. Cultural and Educational Rights

5. Rights to Freedom of Religion 6. Rights to Constitutional Remedies.

**Judiciary in India**

In our country Judiciary is known as independent part of government. This independent judiciary has two rules first is The traditional job of the judge, which is to interpret the laws; and second is Judicial Activism, which is to go beyond the statute and use judgment to provide justice. It effectively fulfils both functions for the preservation of fundamental rights. Any person whose fundamental rights have been violated can file a petition with the Supreme Court. The Supreme Court and the High Court have the power to issue writs to the government in order to enforce rights.

The Supreme Court is known as the "keeper of fundamental rights," and one of its most important functions is to defend these rights. We are signatories to international human rights accords; hence HR is enshrined in part III of our constitution as a fundamental right. The separation of powers principle establishes the judiciary's independence from the other two institutions, allowing it to preserve the rule of law and protect human rights. In India, the judiciary effectively uses its authority of interpretation of Part III to promote progress in the protection of human rights. The Supreme Court of India has the power of judicial review, and article 32 expands on this power by empowering the court to evaluate all government actions and declare them void if they violate part III of the constitution's basic framework. This authority of review keeps all of the state's organs within the bounds established by the constitution or any other statute. In the event of a violation of part III rights, a person may file a complaint with the High Court under article 226 and the Supreme Court under article 32, which is also a fundamental right.

**Types of Writs**

1. **Habeas Corpus:** A writ of Habeas Corpus is a court order that the person who has been arrested be brought before it. It can also be used to order the release of a person who has been arrested if the method or circumstances of the arrest are not legal or satisfactory.

2. **Mandamus:** The Latin phrase Mandamus means "We Command." This writ is issued when a court determines that a certain office holder is not performing lawful duties

and, as a result, is infringing on an individual's right.

3. **Prohibition:** When a lower court considers a case that is beyond of its jurisdiction, a higher court issues this writ.

4. **Qua-Warranto:** Qua-Warranto basically translates to "by what warrants?" or "what authority do you have?" If the court determines that a person is holding an office that he or she is not entitled to, the court will issue a writ prohibiting that person from acting as an official holder.

5. **Certiorari:** The court issues this writ when it wants a subordinate court or another authority to transfer a case to a higher authority or court.

The following decisions of the Supreme Court exemplify how the Court advanced the protection and promotion of human rights

**Fundamental Rights:** Kesavananda Bharati v/s State of Kerala [7] case was heard by the greatest constitutional bench in history, consisting of 13 judges. The doctrine of the basic structure has been bestowed upon us by this court. The court determined that this concept is inviolable, and as a result, the court stated that the ability to amend is not limitless, but rather limited. This case overruled the Golaknath case [8], and the court stated that if the parliament tries to rewrite the entire constitution using its jurisdiction under Article 368 of the constitution, it will be considered ultra-vires. The Supreme Court's position safegu ards fundamental human rights.

**Habeas Corpus Case:** ADM Jabalpur v/s Shivakant Shukla [9] case is a blemish on Indian historical verdicts. In this instance, four out of five judges ruled that during an emergency, all fundamental rights shall be suspended. Justice H.R. Khanna wrote a dissenting opinion that established the norm that the state cannot deprive someone of their right to life or liberty without due process of law.

**Personal Liberty:** The court in Maneka Gandhi's [10] case gave a broader interpretation of the term "personal liberty." The court reasoned that because article 14, 19, and 21 are interrelated, the requirements of article 14 and 19 must be met in order to deprive a person of personal liberty.

**Maintenance Case:** The Supreme Court granted Shah Bano [11] maintenance and safeguarded Muslim women's rights outside personal law in the Shah Bano case, but the Muslim community believed that the court's decision infringed on Muslim Sharia Law, thus parliament established the All India Muslim Personal Law Board in 1973.

**Article 21 Interpretation:** The word "life" is clarified in a watershed case by the United States Supreme Court [12] that it is something more than mere animal existence [13]. According to the Supreme Court of India, the right to life entails not just physical survival but also the right to live in dignity [14]. Non-payment of wages to workers, according to Article 21, is a violation of their right to live in dignity [15]. Sexual harassment [16] in the workplace is a violation of articles 14, 15, and 21 of the Constitution, according to the Supreme Court. Right to shelter [17], right to know [18], right to livelihood [19], right to be free of solitary detention [20], right to free legal representation [21], right to health [22], right to privacy [23], and so on. When the Supreme Court exercised its power of interpretation, it added all of these as an intrinsic component of Article 21.

**The third Gender:** Transgender [25] people were recognized as the third gender by the Supreme Court in 2014, and their rights were protected.

**Triple Talaq:** In 2017, the Supreme Court of India ruled that Triple Talaq is illegal since it jeopardises and breaches the rights of Muslim women in every way. The bill has not yet been passed due to some controversies. Sabarimala Temple: Because devotion cannot be subjected to gender discrimination, the Supreme Court allowed women between the ages of 10 and 50 to enter the Sabarimala temple [25].

**Homosexuality:** Section 377 [26] of the Indian Penal Code, 1860 was decriminalized by the Supreme Court in 2018 on the grounds that it violated Articles 14, 15, 19, and 21 of the Constitution. The Supreme Court's decision merely decriminalizes homosexuality under Section 377; the remainder of the legislation remains unchanged. After 72 years, homosexuals' rights have been restored, and they can now enjoy the same privileges as heterosexuals.

**Adultery:** The Supreme Court ruled that because a husband is no longer the master of his wife, adultery is no longer a criminal because it degrades a woman's dignity and so violates Article 21 of the Constitution. Adultery is still grounds for divorce, according to the court, and it will be regarded criminal if it results in the abetment of suicide. Adultery could be tried under

section 306 of the IPC, 1860.

Even State cannot violate the human rights: The right to life is one of the most fundamental human rights, and no one, not even the government, has the ability to violate it [27].

**Noise pollution:** It is considered to be one of the human rights as noise is injurious to human health which is required to be preserved at any cost. Interpreting the provisions of the Environment (Protection) Act, 1986 and the 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 [28].

Dead person‟s Right: Right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living person but also to his body after his death [30].

**Food of Choice**: What one eats is one‟s personal affairs and it is a part of his right to privacy. To be vegetarian or non-vegetarian is one‟s personal affair and part of his right of privacy [31]. CCTV Camera: Mandatory provision directing installation of CCTV camera in Dance Bars has been held by the Supreme Court to be violative of right of privacy under Articles 21 and also violative of Articles 14 and 19(1)(a) of the Constitution of India [32].

**Narco analysis:** Scientific tests like Narco analysis, polygraph and BEAP on accused persons have been declared to be cruel, inhuman degrading, mentally torchorous and violative of Art 21 of the Constitution [33]. Rights for accused also: Human rights are not only of the victims but also of the accused and the society [34].

**Role of judiciary**

The development of Judicial Review ushered in a new epoch known as Judicial Activism. In his article "The Supreme Court 1947," published in Fortune magazine the same year, Arthur Schlesinger Jr. popularized the term "judicial activism" for the first time. Though the history of judicial activism can be traced back to 1803 when Chief Justice Marshall developed the notion of Judicial Review in the famous case of Marbury v/s Madison. Judicial Activism is defined as a "philosophy of judicial decision-making in which judges utilize their personal ideas about public policy, among other criteria, to shape their decision," by the Black Law Dictionary. Judicial activism can be defined as the use of unusual jurisprudence or a creative method by the judiciary. For example, in India, the Supreme Court has treated even a letter as

a writ petition and issued relevant decisions. This concept has evolved into an important tool for enhancing the applicability of a certain law for societal welfare as well as improving the state apparatus in question.

Judicial activism has also benefited greatly from Public Interest Litigation. In 1970, public interest litigation (also known as "litigation in the public interest") became a part of the legal system. Judges invented this sort of lawsuit to guarantee "equal access" to the underprivileged in society. The concept of a public interest lawsuit arose from the Rome jurisprudence's actiopopular, which granted every citizen access to the courts in cases of public wrongdoing. The development of the Public Interest Litigation (PIL) has aided in making judicial activism more meaningful. Because of this form of lawsuit, the court has been able to issue public-interest directives and enforce public duties. It has been decided in many cases that any person could file Public Interest litigation for another affected person who was deprived and unable to approach the court.

Judicial Review is the most significant power of the Supreme Court. The review power, in particular, means that the courts can interpret the constitution and laws established by the legislature. If the court finds that the statute is in conflict with the constitution, it is ruled unconstitutional and inapplicable. Judicial activism is a dynamic process of altering judicial perspectives in a changing society. Judicial activism is all about good governance and safeguarding the society's safety, security, and well-being which reflects in various decisions of high courts and Supreme Court. The Supreme Court found in Prem Shankar Shukla v/s Delhi [35] that the practise of handcuffing and fettering prisoners violated the guarantee of basic human dignity, which is part of India's constitutional culture, and thus did not pass the test of equality before the law (Article 14), fundamental freedoms (Article 19), and the right to life and personal liberty (Article 21). The Supreme Court held in Icchu Devi Choraria v/s Union of India [36] that personal liberty is a most valuable possession and that life would be meaningless without it. The court denounced imprisonment of suspects without trial. In *Nilabati Behera v/s State of Orrisa* [37], the Supreme Court asserted the judiciary's jurisdiction as "protector of civil liberties" under the obligation "to repair damage caused by officers of the State to fundamental rights of citizens," holding the State liable to pay compensation to the relatives of a person who has been deprived of life by their wrongful action, reading into Article 21 the "duty of care" that could not be denied to anyone. The Court stated in *Delhi Domestic Working Women's Forum v/s Union of India and others* [38] that "speedy trial is one

of the key requisites of law" and that only quick investigations and trials could give substance to Article 21 of the Constitution's guarantee of "equal protection of law." In the case of *D.K. Basu vs. State of West Bengal* [39], the Court ruled that custodial torture is "a naked violation of human dignity" and that the law forbids the use of third-degree methods or torture on an accused person because "state actions must be right, just, and fair," and "torture for extracting any kind of confession would neither be right, just, nor fair." "Gender equality includes protection from sexual harassment and the freedom to work with dignity, which is a globally recognised basic human right," the Supreme Court stated in *Vishaka and Others v/s State of Rajasthan and Others* [40]. This right's uniform minimal criteria have gained worldwide approval. Numbers of other rights have also been included within the scope of Right to Life and personal liberty through judicial decisions by the various Courts. Some examples of them are bellowed:

1. Right to Live with Human Dignity.
2. Right to Reputation.
3. Right to Livelihood.
4. Right to Shelter.
5. Right against Noise Pollution.
6. Right to Sustainable Development.
7. Right to Information.
8. Right to Social Security and Protection of family.
9. Right against „Honor Killing".
10. Right to Health.
11. Right to Privacy.
12. Right of a Major to live with anybody.
13. Right to Free Legal Aid.
14. Right to Bail.

15. Right against inhuman treatment.

16. Right against Delayed Execution.

The aforesaid cases are only few examples from numerous judgments concerning Human Rights. Apart from this judiciary has shown their intention regarding the humanity through their various judgments with Human Right Values.

**Conclusion**

A study of the notable cases of the high Courts and the Supreme Court of India speak of the fact that the Indian judiciary, through its positive approach and activism, has served as an institution for providing effective remedy against the violations of Human Rights. Historic rulings and functioning reveal that the judiciary has worked hard to safeguard and promote human rights, but we can't conclude that it has always been successful. However, it might be said that the SC used its power of interpretation so effectively that it broadened the scope of rights, making it easier for everyone to exercise their rights. In India, the judiciary is not superior, but we do have constitutionalism, which states that the judiciary is autonomous and that all entities must obey the Supreme Court's orders for the good of the country. Human rights are a long-standing phenomenon that is essential to the growth of every human being. Human rights have traditionally been considered the foundation of any democratic system.

India has put in the most sincere efforts in the world to safeguard and promote human rights. In India, the Supreme Court and the High Court have both played vital roles in defending and safeguarding human rights. The judiciary administers justice by interpreting laws. The judiciary can sometimes empower rights by broadening the interpretation of various provisions, as well as the provisions of the constitution. Another duty of the judiciary is that of an activist, sometimes known as "Judicial Activism." When a specific statute does not exist for a specific offence, the judiciary uses its activist power to preserve our rights. In conclusion, the judiciary has played a critical role in the creation and protection of human rights. It has proved by various decisions given by the courts. In suggestions, it is critical that we continue to work on developing structures and institutions that will enable us all to be more attentive to and responsive to the protection and advancement of human rights.

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