A TALE OF HUMAN RIGHTS IN INDIA

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INTRODUCTION

Human Rights are those irreducible minima which belong to every member of the human race when pitted against the state or public authorities or groups and gangs and other oppressive communities.

………..V.R Krishna Iyer .J

Human Rights - Two simple words but when put together they constitute the very foundation of our existence. It is the cornerstone of democracy and enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. These are inherent right of an individual vested in them in order to maintain absolute freedom and human dignity. It, therefore set tune with civil, economic, political, social and political rights. These are the rights which no person shall be deprived of during his existence in the material world, rather it is the duty of the Government to maintain Individual liberty and succumb to human dignity. All those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent may be termed as human rights.

D.D Basu also in his book ‘Human rights in Constitutional Law’ defines Human Rights as those minimum rights which every individual must have against the state or other public authority by

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1 Extract From Special Address by Hon’ble Mr. Justice P.Sathasivam, Judge, Supreme Court of India at the South Zone Regional Judicial Confernece on”Role of Courts in protection of Human Rights” at Tamil Nadu State Judicial Academy dated 25th Dec,2012


3 ManekaGandhi v. Union of India AIR 1978 SC 597 at p.619(Observation of Justice P.N Bhagwati)
virtue of his being a member of human family, irrespective of any other considerations. It is necessary to safeguard the liberty of the human spirit. Our country and all its resources shall be used for the good of the world and we will have our relations with the world on the basis of the fundamental principal of human welfare and equality. We shall try to live up to the high human ideals enunciated in the 'Rig Veda'--Devahitam Yadayuh.

One of Nehru's first assertions in the Constituent Assembly was: “The first task of this Assembly is to free India through a new constitution, to feed the starving people, and to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity.” India was not hostile to the political significance of rights because its constitution recognized their importance rather, India opposed outside meddling in its domestic affairs by other states and international organizations on the basis of human rights principles.

Mr. R. V. Dhulekar also in Constituent Assembly Debate rightly stated that “to turn a major part of community into untouchables and to deprive them of human rights is a crime that can never be excused. The only atonement for this is to acknowledge their rights and to return the same to them.”

**HUMAN RIGHTS: HISTORICAL PERSPECTIVE**

"All human beings are equal. The King should have the same regard for his subject that a mother has for her sons."

.........................8th 'Mandal' of the 'Rig Veda'

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4 Dr. H.O. Agarwal, "International Law and Human Right", 17th Edn. 2010, Central Law Publications, Allahabad at p. 731
5 Statement by Sri RadhaKrishnan on Constituent Assembly of India Debate (Proceedings), Vol.II, dated 20th Jan, 1947
6 Statement by Shri Algurai Shastri on Constituent Assembly of India Debate (Proceedings) , Vol.II, dated 20th Jan, 1947
8 David P. Fidler and Sumit Ganguly, "India and Eastphalia", 17 Ind. J. Global Legal Stud. 147, Winter, 2010; PART III of the Constitution of India, 1950
9 Constituent Assembly of India Debate (Proceedings), Vol.II dated 21st Jan, 1947
The Concept of Human rights are as old as Natural rights. The root for the protection of the rights of man may be traced as far back as in the Babylonian laws in the form of Hammurabi Code of Law (282 B.C). As a matter of fact, the world of all major religions have a humanist perspective that supports human rights despite the differences in the contents.

Historically, one of the important instruments referred to in any study of Human Rights is the Magna Carta, 1215 AD accepted by King John at Runnymede in Britain. Another oldest mode signifying the existence of Human Rights was Bill of Rights, 1688.

The expression “Human Rights” is of recent origin emerging from the Post-2nd World War i.e International Charters and Conventions. The 1st documentary use of the expression of ‘human rights’ is to be found in the charter of United Nation which was adopted after the 2nd World War at San Francisco on June 25, 1945 and ratified by a majority of its signatories in October, 1945. Even, British India was a signatory to the UN Charter. Later on, the first concrete step taken by United Nation for the existence of Human Right came in the year 1948 as a declaration. However, this declaration was itself inspired by the ideal of ‘inalienable rights’ enshrined in the Declaration of American Independence which were later guaranteed by first ten amendments to the American Constitution (1791). Even, European Convention for the Protection of Human Rights, 1950 became effective in the year 1953 and was legally binding on 18 states.

As per Present Context, Human Rights in International scenario have been divided into two segment i.e International Covenant on Civil and Political Rights (ICCPR), 1966 and International Covenant on Economic, Social and Cultural Rights, 1966. It is significant here to note that India is a signatory to both the conventions and in case of necessities the Government do take help all.

11 Dr. H.O. Agarwal, "Human Rights", (12th Edn.2010), Central Law Publications, Allahabad at p.9
12 Ibid.
14 Supra Note 1
15 Art.1 Para 3 of the UN Charter
16 Supra Note 11 at p.9
17 Universal Declaration of Human Rights, 1948
18 Hurtado v. California (1884) 110 US 516
19 Supra Note 10 at p.9
these International Conventions. In case of any issues relating to Human Right violation, the Supreme Court succinctly takes help of these conventions to justify the same\textsuperscript{20}.

As far as Indian Constitution is concerned, the Human Rights perspective is divided into two segment i.e Part III and IV of the Constitution of India, 1950\textsuperscript{21}. India took a holistic approach in this regard with the enactment of Protection of Human Rights Act,1993 which leads to the creation of Human Rights commission.

**JUSTICIABLE AND NON-JUSTICIABLE HUMAN RIGHTS UNDER PART-III & IV OF THE CONSTITUTION**

The Indian Constitution enshrines all the fundamental rights under Part-III AND Directive Principles of State Policy under Part-IV of the Constitution(Art.36 to 51). Article 12 to 35 lays down grounds for Right to equality\textsuperscript{22}, Right to Freedom\textsuperscript{23}, Right against Exploitation\textsuperscript{24}, Right to freedom of religion\textsuperscript{25} and Cultural and Educational Rights\textsuperscript{26}. All the Fundamental rights are absolute and enforceable in the court of Law. These rights have been safeguarded by the Constitution so that it cannot be abridged by any person or organization. It is the duty of an individual to enjoy these fundamental rights without creating rift in the society so that there must not be any kind of Human Rights issue.

The Indian Administrative system fight with these Justiciable Human Rights issues through enactment of proper legislation and at the same time our judicial system fight with these issues by interpreting these legislation and extending their hand in engulfing such issues under seminal clause\textsuperscript{27}.

\textsuperscript{21} Supra Note 2 at p.17
\textsuperscript{22} Art.14 to Art.18 of the Constitution of India,1950
\textsuperscript{23} Art.19 to Art.22 of the Constitution of India,1950
\textsuperscript{24} Art.23 to Art.24 of the Constitution of India,1950
\textsuperscript{25} Art.25 to Art.28 of the Constitution of India,1950
\textsuperscript{26} Art.29 to Art.30 of the Constitution of India,1950
\textsuperscript{27} Art.21 of the Constitution of India,1950: No Person shall be deprived of his life and personal liberty except according to procedure established by the Law.
FIRST HUMAN RIGHTS ISSUE LITIGANT

The entrant of Human Right issues came through the principle of Natural Justice. A.K. Gopalan, a communist leader detained under the Preventive Detention Act of 1950 (PDA), is the first litigant entrant on the human rights stage. Contending that the word “law” in Article 21 of the Indian Constitution does not mean mere state-made law, he argues that the procedure of the PDA, which curtailed his right to life, must be infused with natural justice if it has to be constitutionally sound. Sadly, turning deaf to this cogent plea, the Court affirms the validity of the PDA. Following Gopalan, a majority of the litigants streaming onto the stage are disgruntled landlords and princes distressed at being stripped of their lands with little compensation or royal privileges. Their storylines and dialogues revolve around the right to property and the successive amendments made by Parliament to implement the Directive Principles.

By the time the curtains close on the first part of the play, two and a half decades had sped by with the Court's narrow ruling in Gopalan holding the field, its alignment with the propertied classes leaving the constitution's social justice promise unfulfilled and the Court's subsequent kowtow to the executive transforming India a constitutional democracy into a constitutional dictatorship.

The play reopens in 1978 against the backdrop of a public exultant at having ushered in a new government that promises to resuscitate constitutional safeguards extinguished during the dreaded emergency. A fervor of freedom fills the air, with the judiciary, press, civil servants, and the public all determined to prevent their liberties from being eclipsed ever again.

A young citizen, Maneka Gandhi, challenges the government's impoundment of her passport without affording her an opportunity to be heard in her defense. Supreme Court justices Krishna Iyer and P.N. Bhagwati the principal characters and in a sense the scriptwriters of the unfolding

29 Supra Note 6
30 Preventive Detention Act,1950
31 Madhav Rao Jiwaji Scindia v. Union of India AIR 1970 SC 530
33 Additional District Magistrate,Jabalpur v. Shivkant Shukla AIR 1976 SC 1207, the Supreme Court unfortunately upheld 1975 emergency and declined to issue a writ of habeas corpus for the enforcement of the plaintiff's right under Article 21.
35 Ibid.
human rights story are part of the constitutional bench deciding the case\textsuperscript{36}. In a remarkable show of judicial statesmanship, the Court overrules its 1950 holding\textsuperscript{37} and declares that “life” in Article 21 does not mean mere animal existence and that the overarching purpose of fundamental rights is the self-development of a person\textsuperscript{38}.

**SOCIETAL ,ECONOMIC AND CULTURAL DEVELOPMENT OF JUSTICIABLE AND NON-JUSTICIABLE HUMAN RIGHTS**

The far-reaching impact of the Maneka Gandhi ruling is visible from the mixed characters like now armed with novel issues, posting plain postcards\textsuperscript{39} and flocking to the Court for redress prisoners\textsuperscript{40}, slum-dwellers\textsuperscript{41}, bonded laborers\textsuperscript{42}, fiery journalists\textsuperscript{43}, active environmentalists\textsuperscript{44}, social activist law school professors\textsuperscript{45}, public interest lawyers and Non-governmental organizations\textsuperscript{46}.

Now, the question is “How does the Supreme Court of India interpret Article 21 of the Constitution of India”? “How does the Supreme Court of India use the concept of Natural Justice”? “How does the Supreme Court of India construe the Public policy of the State”? and

\textsuperscript{36} Maneka Gandhi v. Union of India AIR 1978 SC 597  
\textsuperscript{37} A.K Gopalan v. Union of India AIR 1950 SC at pp.31-32  
\textsuperscript{38} Maneka Gandhi v. Union of India , AIR 1978 SC at p.620  
\textsuperscript{39} Concept of Epistolary Jurisdiction: Acceptance of Postal Complaint as Writ Petitions.  
\textsuperscript{40} Hussainara Khatoon v. State of Bihar AIR 1979 SC 1369; See. Sunil Batra v. Delhi Admin. AIR 1978 SC 1675 (prohibiting the imposition of solitary confinement by prison authorities without judicial supervision); Sunil Batra v. Delhi Admin. AIR 1980 SC 1565 (expanding prisoners' fundamental rights to include freedom from mental and physical torture); Charles Sobraj v Delhi Admin. AIR 1978 SC 1590 (prohibiting the use of chains and fetters on prisoners); Prem Shanker Shukla v. Delhi Admin. AIR 1980 SC 1535 (prohibition on handcuffing of prisoners without judicial sanction); Francis Coralie Mulin v. Union Territory of Delhi AIR 1980 SC 849 (articulating the right for prisoners and detainees to meet with their lawyers).  
\textsuperscript{41} Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 80 (Commonly Known as Pavement Dweller’s Case)  
\textsuperscript{42} Bandhua Mukti Morcha v. Union of India AIR 1982 SC 802. See. People’s Union for Civil Liberties v. State of Tamil Nadu AIR 2004 SCW 3771  
\textsuperscript{44} RLEK v. State of Uttar Pradesh AIR 1985 SC 652 (ordering the closure of limestone quarries in the Himalayan mountain ranges on the grounds that their operation were upsetting India's ecological balance and harming the environment); M.C Mehta v. Union of India AIR 1987 SC 1086; T.V. Godavarman v. Union of India W.P 202/1995(Principle of Sustainable Development), M.C Mehta v. Kamal Nath (1997) 1 SCC 388 (Public Trust Doctrine),Sterlite Industries India Ltd. v. Union of India Civil Appeal No.2776-2783/2013 (Polluter’s Pay principle)  
\textsuperscript{45} Upendra Baxi v. State of Uttar Pradesh AIR 1987 SC 191 (right to a quality life even for those housed in a public reformatory institution).  
\textsuperscript{46} People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473; People's Union for Democratic Rights v. Union of India, AIR 1985 Del. 268; People's Union for Democratic Rights v. Union of India AIR 1987 SC 355.
“How does the Supreme Court of India respect the rights of every Individual”? This is, in essence, the story of constitutionalism and rights in India⁴⁷.

HUMAN RIGHTS ISSUES AND CHALLENGES: EMPHASIZING ON ISSUES UNDER THE CONSIDERATION OF SUPREME COURT

The Supreme Court has been indirectly enforcing Non-Justiciable Human Rights, which the constitution set apart from the Fundamental rights by introducing them into separate Part-IV under the label of ‘Directive Principles of State Policy’ which shall not be enforced by any court but it shall be the duty of the state to keep these aspect in mind while making Laws⁴⁸. Justice Frankfurter once stated “The Constitution has many commands, that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action’.

Using the flavor of Directive Principles to enrich the content of the right to life, it carved out an array of new social and economic rights, including the right to live with dignity⁴⁹, right to a livelihood⁵⁰, right to free legal aid⁵¹, right to a clean environment⁵², right to education⁵³, right to health and medical care⁵⁴, right to shelter⁵⁵, right to food⁵⁶ and right to sleep⁵⁷. The historic Maneka Gandhi ruling triggered the blossoming of Article 21 in the criminal justice realm as well⁵⁸.

⁴⁸ Art.37 of the Constitution of India,1950: The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
⁵⁶ People’s Union for Civil Liberties v. Union of India W.P(c) No. 196/2001
⁵⁷ In re. Ramlila Maidan Incident v. Home Secretary, Union of India 2012 STPL (Web) 124 SC
⁵⁸ Sunil Batra v. Delhi Admin. AIR 1978 SC 1675 (right to lead a convict’s life in prison with dignity and freedom from torture); Prem Shanker v. Delhi Admin. AIR 1980 SC 1535; Citizens for Democracy Through Its President v.
A. RIGHT TO LIVE WITH HUMAN DIGNITY

Indian Constitution have taken stringent effort by prohibiting human exploitation particularly child and women so as to maintain their respectable position in the society. In Manipur, the Committee set up by the Supreme Court\(^{59}\) which found six encounter to be fake. In May 2011, the Government of India ratified the UN Convention against Transnational Organised Crime (UNTOC) and its three protocols\(^{60}\) which were in consonance with the Indian Penal Code and the Constitution of India ensuring right against exploitation\(^{61}\), prohibits human trafficking and other contemporary forms of slavery. At the regional level, India has ratified the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare, 2002\(^{62}\). In a case concerning the plight of bonded laborers, the Court emphatically declared that the right to life included the right to live with human dignity, and this right derived its “life breath” from the Directive Principles\(^{63}\). Accordingly, the Court ordered the State to release and rehabilitate bonded laborers and ensure that they received minimum wages. Significantly, the Court conceived forced labor as covering situations where workers' “utter grinding poverty” compels them to accept work for less than the minimum wage\(^{64}\).

In Olga Tellis v. Bombay Municipal Corp.\(^{65}\), the Court upheld the plea of a group of pavement dwellers who were resisting evacuation by the Bombay Municipal Corporation and asserted that in light of the State's duty to secure for its citizens an adequate means of livelihood and the right

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\(^{59}\) Extra Judicial Execution Victim Families Assn v. Union of India & Ors W.P(Crl.) No.129/2012 Judgement Date 4th Jan, 2013
\(^{61}\) Art.23 and 24 of the Constitution of India
\(^{63}\) Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802
\(^{64}\) Neeraja Choudhary v. State of Madhya Pradesh AIR 1984 SC 1099
\(^{65}\) AIR 1986 SC 180
to work\textsuperscript{66}, it would be “sheer pedantry to exclude the right to livelihood from the content of the right to life.” “Deprive a person of his livelihood and you shall have deprived him of his life,” said the Court.

At the National Level, India Plans to set up 332 Anti-Human Trafficking Units at the District Level and Nodal officers are appointed for each state. The Ministry of Home Affairs has also identified a Division to work as a “Nodal Authority” for human trafficking\textsuperscript{67}. Though, Indian Legal framework have proved to be ineffective in curbing such trafficking. Tribal adolescent girls from rural areas of the States of Bihar, Jharkhand, Chhattisgarh, Orissa, West Bengal, and Assam are deceived, trafficked, and then sold for sexual exploitation in Delhi, Mumbai, Kolkata, Chennai, Goa, and Bangalore. Widespread corruption among police and armed forces, along with the lack of proper documentation on victims of trafficking, exacerbate the problem\textsuperscript{68}. Even, Inter-Country Adoption does have the reflection of bonded labour in certain cases. It is necessary to adopt comprehensive victim-centered legislation on human trafficking with a definition of trafficking distinct from prostitution which provides for a protection and relief scheme for victims to facilitate their rehabilitation and reintegration and labour related provisions\textsuperscript{69}.

**B. RIGHT TO FREE LEGAL SERVICES**

Drawing support from the Directive Principle of free legal aid\textsuperscript{70}, the Court, in a series of cases, created a socially sensitive judicial process by carving the right to free legal services from Article 21\textsuperscript{71}. The Court reasoned that “a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer cannot possibly be regarded as fair, just,

\textsuperscript{66}Art 39(a) and Art .47 of the Constitution of India,1950
\textsuperscript{69}Ibid.
\textsuperscript{70}Art.39-A of the Constitution of India,1950: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
and reasonable\textsuperscript{72}. The Court has also sought for legal aid programmes, lok adalats, niti melas\textsuperscript{73} etc. for the convenient of common people as there is still dearth of awareness at the remote areas.

**C. RIGHT TO A CLEAN AND WHOLESOME ENVIRONMENT**

The Concept of Sustainable development is an essential requirement to curb the issues and challenges of the Right to a clean and wholesome environment\textsuperscript{74}. The 42\textsuperscript{nd} Amendment provided the conferment of a new duty on the State to protect and improve the environment\textsuperscript{75} led to the greening of the Constitution and to the further protection of broad social interests under the Article 21 umbrella. Reiterating that life in Article 21 meant a quality life, the Court held that a person's right to live with human dignity would be violated if he were compelled to eke out an existence in a polluted, unhygienic, and unhealthy environment\textsuperscript{76}. On this basis, the Court halted illegal mining in aravalli hills\textsuperscript{77}, halted mining in limestone quarries\textsuperscript{78}, shut down tanneries which were polluting water\textsuperscript{79}, slapped heavy fines on polluting industries, compelled them to compensate their environmentally injured victims to pay for the cost of the damaged ecology\textsuperscript{80} and called for the creation of powerful environmental courts\textsuperscript{81}.

**D. RIGHT TO FOOD**

The Scope of Article 21 of the Constitution is so wide that this seminal clause can pro-create every necessities of an individual and transform it in the form of right. Right to food is inherent

\textsuperscript{72} Khatri v. State of Bihar AIR 1981 SC 928
\textsuperscript{73} Gupta v. Union of India AIR 1982 SC 149 at Para.19 (Observation by Bhagwati J)
\textsuperscript{75} Art.48-A of the Constitution of India,1950:Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.
\textsuperscript{77} M.C Mehta v. Union of India W.P(C) 4677/1985 Judgement dated 8\textsuperscript{th} May,2009
\textsuperscript{78} RLEK Case, Supra Note 1
\textsuperscript{79} M.C. Mehta v. Union of India AIR 1988 SC 1037; Vellore Citizens' Welfare Forum v. Union of India AIR 1996 SC 2721
\textsuperscript{80} Tarun Bhagat Sangh Alwar v. State of Uttar Pradesh AIR 1993 SC 293
\textsuperscript{81} A.P. Pollution Control Bd. v. M.V. Nayudu AIR 1999 SC 812
to life with human dignity. The Preamble of the National Food Security Bill, 2011 reads “An Act to ensure public provisioning of food and related measures to enable assured economic and social access to adequate food, for all persons in the country, at all times, in pursuance of their fundamental right to live with dignity.”

Jean Ziegler, the UN Special Rapporteur on the Right to Food stated conversion of food into biofuel is a crime against humanity. This signifies the necessity of food and restoration of the quantity of food so that there must not be direct competition of food with any other commodities. Article 47 of the constitution affirms that the state shall raise the level of nutrition and the standard of living.

As Per UPR National Report 2008, The Government of India noted that a number of essential services like education, health and public distribution of food have been kept in the public sector to ensure its reach across all sections of the population. Though, there are certain areas in North-Eastern region where some family being denied access to food through the Public Distribution System. There has to be thorough evaluation of the effectiveness of the existing legislation and programmes dealing with right to food so as to combat the defect and proper compliance of the existing scheme like MGNAREGA.

E. RIGHTS OF THE CHILD

The causes of trafficking of children in India are numerous. For example, Trafficking in the name of Inter-Country Adoption and girls are trafficked as a consequence of ancestral practices such as the Devadasi system and children are auctioned to men who believe that having sexual intercourse with them heals sexually transmitted diseases. It has been estimated that around 5,000 women are trafficked from Nepal to India each year and the majority of

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82 National Human Right Commission, Case No.37/3/97-LD; People’s Union for Civil Liberties v. Union of India W.P(c) No. 196/2001
83 This Bill have been referred to Standing Committee for scrutinization and review.
84 Extract from SwissInfo(2007), UN rapporteur calls for biofuel moratorium
85 The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
86 A/HRC/WG.6/1/IND/1, par.19
88 Ibid.
prostitutes in India are minors from Nepal and Bangladesh. Article 23 and 24 of the constitution forbid any kind of trafficking of human beings. Immoral Traffic Prevention Act, 1956 conceived to specifically address the issue, has many shortcomings including a lack of a comprehensive definition of trafficking and a clear distinction between trafficking and prostitution. Indian penal laws also deal with trafficking and criminalize such acts as procuring, buying and selling, importing or exporting human beings, and detaining people in slavery or slavery-like conditions but the reality of the situation on the ground reveals that these measures are insufficient.

The Government of India is a party to the Convention of the Right of Child which ensure for the welfare of children. It is the duty of the state to secure the rights of children and protect them from exploitation. Trafficking of children has become a common access in India. The Supreme Court through various judgement tried to highlight the significance of the welfare of children. The existing legislation also ensures for the protection of children without delay. In Laxmikant Pandey v Union of India also the apex court ensures that the welfare of children must be of paramount importance. It is to be taken into account that even unborn child is entitled to human right.

F. RIGHT TO EDUCATION

86th Constitutional Amendment to the constitution inserted new fundamental right to the Part-III and substituted Article 45 of the Constitution of India. Now, it the responsibility of state of

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89 Id.
91 Art.39(f) of the Constitution of India: that childhood and youth are protected against exploitation and against moral and material abandonment
93 Child Labour (Prohibition and Regulation) Act, 1986; Juvenile Justice (Protection and Care of Children) Act, 2005
94 AIR 1984 SC 469
95 Sec.316 of Indian Penal Code, 1860: Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
96 Art.45 of the Constitution of India, 1950: The state shall endeavour to provide, within a period of 10 years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years.
state to provide free and compulsory education to all the children of the age of 6-14 years\textsuperscript{97}. As per UPR National report, 2011\textsuperscript{98} there is huge increase in the drop-out rate of student till class 8. The main purpose of enactment has not yet fulfilled. The Government of India had to relook into the matter and sought alternative for strict compliance of the existing provision.

G. RIGHT TO HEALTH AND MEDICAL CARE

Once life is lost, status quo ante cannot be restored\textsuperscript{99}. It is duty of the state to raise the level of nutrition and improve public health\textsuperscript{100}. In Parmanand Katara v. Union of India\textsuperscript{101}, the Supreme Court considered the complex issue of medico-legal jurisprudence and taking the humanistic approach stated that immediate medical facilities need to be provided to the patients without creating hindrance with legal formalities. The Court has insisted the government hospital to extend medical assistance for the preservation of human’s life\textsuperscript{102}. Considering the patient emergency issues, in Common Cause v. Union of India\textsuperscript{103} the Court directed the Government to establish a National Council of Blood Transfusion as a registered society. Failure of the government hospitals to provide timely medical treatment to the petitioner denied him his right to health an integral part of the right to life\textsuperscript{104}. However, the Court did not stop there. It went on to list positive steps that the government needed to take up on a “time-bound” basis to improve emergency health care infrastructure and services\textsuperscript{105}.

H. RIGHT TO SHELTER

Right to food, cloth and shelter are the essential requirement of any human being in a civilized society. The Supreme Court has emphasized that right to shelter is an inbuilt right to life under Article 21 of the Constitution of India\textsuperscript{106}. It is generally noticed that many people in the cities

\begin{thebibliography}{99}
\bibitem{97} Art.21-A of the Constitution of India,1950
\bibitem{99} Prof. M.P.Jain,"Indian Constitutional Law",(6\textsuperscript{th} Edn.2011),LexisNexis Butterworths Wadhwa,Nagpur at p.1231
\bibitem{100} Art.47 of the Constitution of India.1950: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
\bibitem{101} AIR 1989 SC 2039
\bibitem{103} AIR 1996 SC 929
\bibitem{104} Parmanand Katara v. Union of India AIR 1989 SC 2039
\bibitem{105} Khatri v. State of Bihar AIR 1981 SC 928 at Para 10-14
\bibitem{106} Shantisar Builders v. Narayan Khimlal Totame AIR 1990 SC 630
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sleep and take shelter on the pedestrian at night. In Famous BMW case, the accused negligently killed the six people who were sleeping on the pedestrian\textsuperscript{107}. The Government of India have introduced Indira Awaas yojana and other scheme for the needy people but these seems to be insufficient. The Government of India needs to reflect more harshly into the matter and look in the welfare of the people of state.

The National Housing and Habitat Policy, 2007 while stating ‘shelter for all’ as a goal does not consider housing to be a human right but focuses more on a market approach to housing. The proposed national urban scheme Rajiv Awas Yojana that aims to provide security of tenure for residents of slums/informal settlements also needs to focus on incorporating a strong ‘human right to adequate housing’ approach in order to be successful\textsuperscript{108}.

I. INNOVATIVE SOCIAL JUSTICE

The Indian Judicial system has acted as the Guardian of Mankind in relation to protection of Human Right. But, there are still other human rights challenges knocking the door of the judiciary. Some of the social mystery in context to human rights which still need to be solved by the judiciary are Surrogacy, Extra-Judical killing, Inter-Country Adoption, Euthanasia, Same Sex Marriage etc. Though, The Court have also designed socially sensitive procedural innovations. First, by relaxing the stern Anglo-Saxon principle of locus standi, it began to allow public spirited citizens to approach the Court on behalf of those who, by reason of “poverty, helplessness or disability or social or economically disadvantaged position were unable to do so\textsuperscript{109}.” The recognition of “epistolary jurisdiction” allowed many helpless persons to use the plain postcard or telegram to ring the constitutional bell of justice\textsuperscript{110}. Where it has been difficult for public-spirited citizens and organizations to establish or prove effectively violations of rights, the Court has come to their assistance by appointing social activists, teachers, journalists, and judicial officers as commissioners for fact and data gathering purposes and to make appropriate

\textsuperscript{107} State v. Sanjeev Nanda Criminal Appeal No.1168 /2012 Judgement Date 3\textsuperscript{rd} Aug,2012


\textsuperscript{110} Sunil Batra v. Delhi Admin. [II] AIR 1980 SC 1579 (conversion of a postcard written by a death-row convict into a petition); Nilabeti Behera v. State of Orissa AIR 1993 SC 1960 (acceptance by the Court of a letter written by a poor widow complaining of the disappearance of her son). Beginning in the late seventies, a “Public Interest Cell” for receiving and culling out bona fide postal complaints for further judicial attention has become an integral part of the Court.
recommendations under judicial supervision\textsuperscript{111}. The recent addition of \textit{Wardship Jurisdiction}\textsuperscript{112} may also act as a boon for the welfare of the child so as to curb their exploitation. The Court's zeal to dispense distributive justice and enforce the performance of “public duties” by the monolithic state bureaucracy has also led to its involvement in administrative implementation. For example, in a case involving the pitiable conditions in a mental institution, the Court went to the extent of determining the amount to be allocated for providing meals and scaling up the official limit placed on the purchase of drugs\textsuperscript{113}.

\textbf{CONCLUSION}

"\textit{Human rights belong to People, Human rights are about People on the ground and their rights}"

........Mary Robinson (2\textsuperscript{nd} UN High Commissioner for Human Rights)

India is the world’s most populous democratic nation and having significant human rights problem despite their commitment to tackle the problem. It would not be unjust to say that Public Interest Litigation is the \textit{modern effective tool emerged for the protection of Human Right through judiciary}. It is just one way of protecting human rights\textsuperscript{114}. Indian Constitution has laid down some of the ingredients of Human Rights in the nature of Fundamental Rights which are rather absolute. The dynamism in human society has reflected that the extent of human rights in India is confined only to Part III of the constitution of India. One of the main purpose of insertion of seminal clause i.e Article 21\textsuperscript{115} of the constitution signifies the broader scope of human freedom, necessities and it’s conceiving according to the need of the society.

Issues are directly proportional to the challenges. Issues and challenges are the sign of progressive Social Engineering Theory. India has impressive bulk of legislation aiming at regulating human right issues and challenges. It is cited for deteriorating human rights situation


\textsuperscript{112} Arushi Dashmana v. Union of India W.P(C) No.232/2012 Judgement Date:10/04/2013 (The Supreme Court applied the \textit{Wardship Jurisdiction} considering the welfare of the child.)


\textsuperscript{114} Supra Note 1

\textsuperscript{115} Supra Note 27
by the global watchdog and possess 134 rank out of 187 in the Human Development Index. Human Rights issues and challenges are augmenting in geometrical order but regulatory mechanism is still progressing at arithmetical order. The Government of India has to take some extraordinary step to keep an eye on the Human Right Issues.

I really appreciate the work of Indian Judicial System in highlighting the Human Rights Issues. Indian Judicial System work in this regard is impeccable and adorable even by the Foreign Court. There has to be proper coordination between all the wings of government in order to curb the social evil existing in the civilized society so that even in ‘Kalyuga’ we can have the glimpse of ‘Ramrajya’.