

ROLE OF JUDICIARY IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS IN INDIA

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Abstract: *This study examines the Indian judiciary's function in upholding and advancing human rights. The Indian judiciary is essential to advancing and defending the human rights guaranteed by the Indian Constitution. This study will examine the judiciary's many roles in upholding and advancing human rights through its constitutional authority, especially in relation to fundamental rights (Article 12–35). The judiciary acts as the ultimate guardian of the Indian Constitution, ensuring the protection of fundamental rights and the rule of law. The judiciary is regarded as a protector of civil liberties, which offer a forum for pursuing justice. People can now more easily knock on the door of the judiciary and obtain justice and now the judiciary proactively works to secure equality, dignity, and gender justice, often utilizing Public Interest Litigation (PIL). Indian judiciary faces numerous obstacles, such as overburdened courts that prevent it from timely disposal of cases. This study mainly focuses on the judicial trends in protection of human rights in India.*

Keywords: Civil Liberties, Indian Constitution, Judiciary, human rights violations, PIL.

I. INTRODUCTION

The state upholds the social order by making various rules, legislation, statutes without which the existence of state would be impossible. Numerous proponents of the social contract theory argued that upholding and defending individual rights is the primary goal of state formation. According to Aristotle, the state came into existence because of the basic necessities of humans, the State is a necessary condition of a good life. Locke opined that the end of state is to remove the obstacles that hinder the development of an individual. Therefore, it can be said that the motive of the state is to protect the rights of its citizens.¹

Human rights are a set of principles concerned with equality and fairness.² Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, colour,

religion, language, or any other status.³ They are about living a life free from fear, harassment or discrimination. In the early times, people had human rights because of their membership in a group such as family. Then, in 539 BC, Cyrus the Great, after conquering the city of Babylon, did something totally unexpected—he freed all slaves to return home. Moreover, he declared people should choose their own religion. The Cyrus Cylinder, a clay tablet containing his statements, is the first human rights declaration in history.⁴ At international level various efforts have been made for the protection of human rights. The United Nations through its charter represents a significant advancement in the direction for the promotion as well as protection of human rights. International bill on human rights has been incorporated in the UN Charter. The UN Charter contains various provisions for the promotion of human rights and

³Office of the United Nations High Commissioner for Human Rights. (2023). *What are human rights?* United Nations. <https://www.ohchr.org/en/what-are-human-rights>

⁴Youth for Human Rights. (2019). *Background, history of Universal Declaration of Human Rights: Youth for Human Rights video* [Video]. Youth for Human Rights International. <https://www.youthforhumanrights.org/what-are-human-rights/background-of-human-rights.html>

¹Dr. S.R. Myneni, *Political Science* (Allahabad Law Agency, Allahabad, 2023) P.No.26.

²An Introduction to Human Rights' (*Humanrights.gov.au*2024) accessed 28 November 2025

fundamental freedoms in the Preamble and in various Articles 1, 13(b), 55, 56, 62 (2), 68 and 76(c).⁵ Apart from UN Charter there are four international instruments created under the auspices of the United Nations known as International Bill of Human Rights, which include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social, and Cultural Rights 1966, the Optional Protocol to the International Covenant on Civil and Political Rights, 1966. The international human rights regime is continuously growing with the passage of time, it provides certain accepted legal standards which all the nations should accept and implement in their domestic laws. The Governments of all the nations must work to promote the welfare of people by eliminating all forms of discrimination and provide the right to equality and justice to all. Section 2(1)(d) of the Protection of Human Rights Act, 1993 defines the words "Human Rights" as under : "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."⁶

As the guardian of the Constitution and the defender of individual rights, the judiciary is essential to maintaining human rights in India. In addition to upholding the rights expressly stated in the Constitution, the court has broadened the scope of these rights to encompass unenumerated ones through a number of significant rulings and interpretations, guaranteeing complete protection of human dignity.

II. CONSTITUTIONAL PERSPECTIVES OF HUMAN RIGHTS IN INDIA

Part III of the Constitution of India contains a long list of fundamental rights. This chapter of the Constitution of India has very well been described as the Magna Carta of India.⁷ In the case of *Maneka*

⁵S. K. Kapoor, *International Law & Human Rights*, P.No.800(Central Law Agency, Allahabad, 17th edition 2009).

⁶The Protection of Human Rights Act, 1993, s. 2(1)(d).

⁷Constitutional Law of India - Chapter 6 - Fundamental Rights' (*Manupatra.com*2024) accessed 28 November 2025

Gandhi v. Union of India,⁸ The Supreme Court of India speaks about the importance of fundamental rights "Fundamental rights represents the basic values cherished by the people of India and they are calculated to protect the dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent. In *M. Nagraj v. Union of India*⁹ the Supreme Court held that the fundamental rights are not gifts from the state to citizens but they are basic human rights that every human being possesses by reason of that they are humans.

Every Indian citizen is guaranteed the right to equality by Articles 14 through 18 of the Indian Constitution. Article 14 outlines the fundamental principles of equality before the law and forbids all forms of discrimination. The concept of equality stated in the Preamble to the Indian Constitution is embodied in Article 14. Discrimination on the grounds of religion, race, caste, sex, and place of birth is prohibited under Article 15. Equality of opportunity in public employment is guaranteed by Article 16. While Article 18 eliminates title, Article 17 eliminates "untouchability."

Article 19-22 provides with personal liberty as a basic right. Article 19 deals with the right to freedom of speech and expression, the right to freedom of assembly, the right to freedom of association or union, the right to freedom of movement, the right to freedom of residence, freedom of profession, occupation, trade or business. Article 20 protects against arbitrary arrest and detention. Article 21 safeguards the right to life and personal liberty. Article 22 protects against arbitrary or unlawful imprisonment. The Supreme Court has given Art. 21 of the Constitution new dimensions by ruling in the cases listed below that the right to live as guaranteed by Art. 21 include the right to live with human dignity in addition to bodily existence. There is more to the right to life than just being an animal. It's not only about surviving physically. The protection of any ability or limb that allows one to enjoy life or communicate with the outside world is not the only aspect of the right to "live." but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and

⁸ AIR 1978 SC 597

⁹ AIR 2007 SC 71

facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being. Anything which impedes the right to lead life with dignity and decency is violative of human rights.¹⁰

Articles 23 and 24 of the Indian Constitution talk about Right Against Exploitation, dignity and freedom of a person are inviolable. No one can be forced into labour against their will. This article also talks about other forms of forced labour and victims of human trafficking. Every Indian citizen needs to know about their rights enshrined in the constitution so that they can fight for their rights if violated Article 25-28 of the Constitution protects the right to freedom of religion. In 1976, by The Constitution (42nd Amendment) Act, 1976, inserted the word “secular” in the preamble. In *S.R. Bommai v. Union of India*¹¹ the Supreme Court held- held that secularism is a basic feature of the Constitution.

Indian citizens' rights to education and culture are covered under Articles 29 and 30. The goal of this fundamental right is to protect India's minority communities' cultures. One of the advantages of Indian society is its diversity, which is a composite of heterogeneity. The Constitution gives opportunities for all groups, even marginalized ones, to conserve, preserve, and spread their culture and guarantees these rights to minorities in order to maintain this nation's variety.

III. RIGHT TO CONSTITUTIONAL REMEDY (ARTICLE 32)

Dr. Ambedkar said about Article 32 in the Constitutional Assembly; “If I was asked to name any particular Article in this Constitution as the most important, an Article without which this Constitution would be a nullity -I could not refer to any other Article except this one(Article 32). It is the very soul of the Constitution and the very heart

of it”¹². “Ubi jus ibi remedium” states that there is a remedy for every right. It is true that without strong enforcement mechanisms, a statement of fundamental rights is useless. For this reason, the authors of the Indian Constitution included Article 32, which gave Indian citizens the ability to petition the Supreme Court to have any of the essential rights listed in Part III of the Indian Constitution restored. The Indian Constitution's Article 226 gives the High Courts the authority to grant writs to uphold basic rights.

While Article 32(2) gives the Supreme Court the authority to issue directives, orders, or writs, Article 32(1) protects the right to petition the Supreme Court in the event of a violation. Writs such as habeas corpus, mandamus, prohibition, quo-warranto, and certiorari are used to enforce rights protected by Part III of the Indian Constitution. By law, the Parliament may grant any other court the same authority as the Supreme Court under Article 32(2) to operate within local territorial boundaries. Public law remedies include writs. The rights granted to citizens through fundamental rights as outlined in Part III of the Constitution are a safeguard against state only. The writ can be issue against whoever comes under the definition of state mentioned in Article 12 of The Constitution of India.

In a recent case *Skill Lotto Solutions (P) Ltd. v. Union of India*¹³ the Supreme Court of India held, “Article 32 confers a right to move to the Supreme Court for enforcement of the right conferred by Part III, which is guaranteed by clause (1) of Article 32 of the Constitution. Article 32 is an important and integral part of the basic structure of the Constitution. Article 32 is meant to ensure observance of rule of law. Article 32 provides for the enforcement of the fundamental rights, which is most potent weapon.” However, the Fundamental Rights are not absolute in nature. They are subjected to many other clauses of the Constitution of India. The six Fundamental Rights outlined in Article 19 are immediately suspended when a declaration of national emergency is made, in accordance with Article 358. Article 359 suspends all other Fundamental Rights enshrined in Part III

¹⁰“ Role of Judiciary in Protecting Human Rights” by S.S. Upadhyay retrieved from https://lawhelpline.in/wp-content/uploads/2024/01/Role_of_Judiciary_in_Protecting_Human_Rights1.pdf

¹¹*S.R. Bommai v. Union of India*, (1994) 3 SCC 1 at para 184.

¹²Constituent Assembly of India, *Constituent Assembly Debates (Proceedings)*, vol 7, 2 December 1948, p 953

¹³(2021) 15 SCC 667

during the period of emergency. The Parliament by The 44th Amendment Act of 1976 amended Article 359 and restricted its scope and put an exception for Article 20 and Article 21, hence Article 20 and 21 remain in force even during the emergency.

IV. JUDICIAL MECHANISMS:

a) Judicial Activism

In recent days, there have been many developments in the role and function of the Judiciary. Judiciary also evolves many new concept such as the concept of Judicial Review, Judicial Activism, Public Interest Litigation etc. Meeriam Webster defines judicial activism as “the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent”. It is the power of the Supreme Court for the protection of an individual's constitutional rights. In the case of Hussainara Khatoon (V) v. Home Secy., State of Bihar,¹⁴ the supreme court using the power of judicial activism held the right to speedy trial to be a fundamental right guaranteed under Article 21 of the Indian Constitution. In Sunil Batra v. Delhi Admn.¹⁵, the court held that the writ of Habeas corpus can not only be issued for releasing the person from illegal arrest but it can also be issued for the protection of prisoners inside jail. In D.K. Basu v. State of West Bengal¹⁶, the Supreme Court issued guidelines to prevent custodial violence, underscores the judiciary's role in upholding human dignity even within the confines of state authority. In D.S. Nakara v. Union of India,¹⁷ the court held that registered societies, NGOs, and voluntary organisations can also reach court under Article 32 for the enforcement of rights of large number of pensioners who cannot approach the court individually. In M.C. Mehta v. State of Tamil Nadu¹⁸ the court held that children can not be employed in match factories in the forefront as the ingredients used in the manufacturing of matches is hazardous within the definition of Employment of Children Act, 1938. However children can work for packing process but the work should be done at a

distant place. In M.C. Mehta v. Union of India¹⁹ the Supreme Court ordered the closure of leather tanneries at Jajmau in Kanpur, polluting the Ganga.

b) Public Interest Litigation (PIL):

In layman's language, public interest litigation is a type of petition that is filed by a person with bona fide intentions to avail justice for a group of people who cannot file the case themselves. It involves the legal rights of those groups of people who have been violated by the government, and public-spirited individuals wish to help them. A PIL is a petition filed by any individual or an organisation that works in the public interest to make justice accessible to every person for the violation of their rights. Most importantly, it doesn't concern itself with the personal or political interest of the petitioner himself. It should involve the violation of the legal rights of a large section of society. The phrase 'Public Law Litigation' was first used by an American scholar Abram Chayes to describe the effort of lawyers who seeks social change through decree of court that reform legal rules or existing laws etc.²⁰ Public law litigation concerns not only the parties, representing two sides of a disagreement but also the public interest. The efforts of Justice P.N. Bhagwati (17th CJI of India) is very commendable that he introduced the concept of PIL in Indian Judiciary and he rightly earned the title 'Father of PIL'²¹. Various judgments of the Supreme Court of India paved the way for PIL. The case of Kesavananda Bharati Sripadagalvaru vs. State Of Kerala And Anr (1973) gave the basic structure doctrine for protecting the rights fundamental to every human being, the case of Additional District Magistrate, Jabalpur vs. Shivkant Shukla (1976) which protected fundamental rights in case of emergency, the case of Maneka Gandhi vs. Union of India (1978) provided the golden triangle concept of Article 14 Article 19 and Article 21 of the

¹⁹1987 4 SCC 463

²⁰Abram Chaves, 'The role of the judge in 'Public law Litigation', 89 Harvard Law Review 1281 (May 1976)

²¹Katarki AV, 'Justice P.N. Bhagwati: A Active, Activist and Astute Judge Sorely Missed in These Dire Times – the Leaflet' (*The Leaflet – An independent platform for cutting-edge, progressive, legal, and political opinion.* 21 December 2023) accessed 28 November 2025

¹⁴(1980) 1 SCC 108

¹⁵(1978) 4 SCC 494

¹⁶(1997) 1 SCC 41

¹⁷(1983) 1 SCC 304

¹⁸AIR 1991 SC 417

Constitution of India.²²In the case of *M.C. Mehta v. Union of India*,²³ the Supreme Court for the first time examined the scope of Public Interest Litigation in the area of environmental laws.

The traditional rule of locus standi that a petition under Article 32 can only be filed by the aggrieved party has been completely relaxed by the Supreme Court of India by giving many judicial decisions. In the Case of *S.P. Gupta & Ors. v. President of India & Ors.*²⁴ (popularly known as Judges Transfer Case), a 7 judge bench of the Supreme Court of India established a rule of public interest litigation and held that any member of the public having sufficient interest can approach the court for enforcing the right of another person. In numerous cases, the court has safeguarded and advanced human rights by utilizing these newly created instruments. The Indian Supreme Court in the *People's Union for Democratic Rights v. Union of India & Others* (1982) case, held that the petitioner, the state, and the court are all working together to achieve the goals of justice when they file a PIL. It emphasises providing the underrepresented with a voice in order to defend broader public interests. Therefore, in order to protect the legal or constitutional rights of the weakest segments of society, we must prioritise legitimate PILS. This ruling well captures the non-adversarial character of public interest cases. The judiciary performed these functions in accordance with Article 226 for High Courts and Article 32 for the Supreme Court. Following the implementation of these measures, the courts have increased their capacity and extended their reach to safeguard and advance human rights.

V. JUDICIARY - THE CUSTODIAN OF HUMAN RIGHTS

The Indian Constitution is referred to be a "living document" since it changes periodically to accomplish the stated objective. This unique characteristic sets our constitution apart from that of other nations. The Indian Supreme Court is regarded as the Constitution's defender. The judiciary occasionally issues historic rulings to protect constitutional principles. The judiciary has

frequently taken the lead in defending individual rights, which are essentially natural rights guaranteed by the Indian Constitution. They have rendered outstanding rulings that not only uphold these rights but also establish a standard that must be adhered to in the event of similar violations. The court plays an important role in upholding human rights by interpreting constitutional laws, conducting judicial review, protecting fundamental rights, adjudicating human rights cases, and establishing checks and balances within the legal system.

The Supreme Court interprets the Constitution whenever required and ensure that the right to citizen is protected. The judicial review allows the Supreme Court to safeguard fundamental rights and struck down legislations which are violative of Constitutional provisions. Under Article 13, 32, 131-136, 143, the Supreme Court and under Article 226 and 246 the High Court can review any law and therefore, these courts are known as constitutional courts.

Judicial review is the power of the court under which a government's executive, legislative, or administrative actions are subject to review by the judiciary. In a judicial review, a court may invalidate laws, acts, or governmental actions for being unlawful. Under Article 32 of the Constitution of India the court can issue 5 forms of writ for the protection of fundamental rights given under Part III of the Constitution. The court entertain pleas filed by anyone other than interested parties when the matter is of public importance. By virtue of this mechanism the voice of marginalised groups who are incapable of knocking the door of justice reaches the apex court of India and hence their right is protected.

Important Judgments: From time to time the apex court gives landmark judgement for the protection and promotion of fundamental rights. This judgement is applicable throughout the territory of India by virtue of Article 141 of the Constitution of India.

The court also protects the interest of the minorities, children, women, transgenders etc. When their right is at stake the court interferes and protects their right. National Legal Services

²²<https://blog.ipleaders.in/public-interest-litigation-3/> visited on 28 November 2025

²³ AIR 1987 SC 1086

²⁴ AIR 1982 SC 149

Authority v. Union of India,²⁵ This was a landmark decision where the apex court legally recognised “third gender”/transgender persons for the first time and discussed “gender identity” at length. The Court recognised that third gender persons were entitled to fundamental rights under the Constitution and under International law.²⁶ Recently the Kolkata High Court ordered 1% reservation for transgender persons in public employment.²⁷ In this case the court declared that Hijras, Eunuchs are to be treated as the “third gender” and come within the scope of Indian Constitution thus are fully entitled to the rights guaranteed therein. Article 14 guarantees equality to “any person” which means man, woman, and third gender. They are equal in terms of employment, health care, education, and civil rights. Discrimination on grounds of sexual orientation is violation of Article 14.

The woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman’s right to refuse participation in sexual activity or alternatively insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilization procedures. Taken to their logical conclusions, reproductive rights include a woman’s entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a ‘compelling State interest’ in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the

²⁵(2014) 5 SCC 438

²⁶Menon S, ‘The Transgender Community to Be Formally Recognised as the Third Sex and Also to Avail the Benefits Of...’ (*Livelaw.in* 15 April 2014) accessed 28 November 2025

²⁷Singh R, ‘Calcutta High Court Orders 1 per Cent Reservation for Transgender Persons in Public Employment’ (*Bar and Bench - Indian Legal news* 18 June 2024) accessed 13 November 2024

MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.²⁸

In the case of M.C. Mehta & Anr. vs Union Of India & Ors²⁹ the Supreme Court held that the right to clean environment is a fundamental right guaranteed by Article 21 of the Indian Constitution. The Supreme Court can examine the action taken by both state and centre government, and if they are found violative of constitutional values, the Supreme Court can declare it unconstitutional. The Supreme Court keeps the values of the Constitution at supreme priority. In K.Gopalan v/s State of Madras³⁰, the court upheld that it is the constitution that is supreme and a statute law to be valid, must in all cases be in conformity with the constitutional requirements.

In order to balance the rights of individuals with public interest and the goal of the state to achieve any comprehensive solution, the Supreme Court of India came up with a new concept of ‘golden triangle’, to understand what a successful democracy requires. Golden triangle constitutes Article 14, 19, and 21 of the constitution of India. Article 14 guarantees equality and equal protection of law. This treats citizens and non-citizen alike. Article 19 guarantees ‘freedom of speech and expression’ except for some reasonable restrictions mentioned in the same Article for maintaining public order, health and morality. This promotes the healthy functioning of democracy. Article 21 guarantees ‘right to life and personal liberty’. No one shall be deprived of their life except according to the procedure established by law. The main component of this Article is life, liberty and dignity. The harmonious coexistence of these is necessary for the purpose of maintaining the position of equilibrium.³¹

The Supreme Court in this laid down a elaborate guideline to deal with the fear of sexual violence at work place. The apex court observe that sexual violence is a gender centeric offence due to deep-rooted inequality in our society and also deprives

²⁸Suchita Srivastava vs. Chandigarh Administration, AIR 2010 SC 235

²⁹(1986) 2 SCC 176

³⁰AIR 1950 SC 27

³¹Maneka Gandhi Vs Union of India(1978) 1 SCC 248

a women of his life, liberty and dignity, which is a clear cut violation of fundamental right guaranteed by Article 14 & 21 of the constitution of India. After 14 years of this judgment the Parliament of India passed the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013.³²

VI. CHALLENGES FACED BY THE JUDICIARY:

There are several challenges faced by the judiciary which result in inefficient and ineffective in the functioning. The Indian judiciary faces a big hindrance in the performance of its function in the form of judicial delays. It is due to overburden of pending cases, insufficient infrastructure, deficient judicial resources and an unfavourable ratio of judges to population. These all result in prolonged waiting time for pending cases. At the end of the October 2025, there are 90,250 cases pending in the Supreme Court. This milestone marked a critical point in the judicial backlog, breaching the 90,000-case threshold for the first time in recent years³³ As of now, the judge - population ratio in the country is approximately 21 Judges per million population. In order to ensure justice and safeguard the entitlements of individuals, it is crucial that stakeholders, comprising the judiciary, legal professionals, and the government should act jointly to tackle these problems.

VII. CONCLUSION

According to the social contract theory, the state's main duty is to uphold and defend citizens' rights. Every person has rights due to the universality of human rights, and these rights ought to be protected by both national constitutions and international agreements like the United Nations Declaration. In India, the judiciary plays a protective role by interpreting the Constitution's provisions and enacting progressive laws that uphold equal rights and human dignity. Through judicial review, writ jurisdiction, and public interest litigation, among other mechanisms, the courts safeguard

fundamental rights and change with society. These developments strengthen the role of the judiciary in protection of human rights which is reliable with the rationale that the Constitution is dynamic and modifies itself where necessary to dispense equity to all its subjects especially the vulnerable. It is through these interventions that the judiciary promotes the values of liberty, equality and justice enshrined in the Constitution.

³²Vishaka vs. State of Rajasthan(1997) 6 SCC 241

³³Vora, A., 2025. *October 2025: Is the Supreme Court approaching a pendency crisis?* [online] Supreme Court Observer. Available at: <https://www.scobserver.in/journal/october-2025-is-the-supreme-court-approaching-a-pendency-crisis/> visited on 28 November 2025