ROLE OF JUDICIARY IN PROTECTING HUMAN RIGHTS

NAME: PRACHI NAIK

COURSE: HUMAN RIGHTS

S UBJECT: PAPER IV

"To deny people their human rights is to challenge their very humanity",

-Nelson mandela

Introduction

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The preamble of the Constitution of India encapsulates the objectives of the Constitution-makers to build a new Socio Economic order where there will be Social, Economic and Political Justice for everyone and equality of status and opportunity for all. This basic objective of the Constitution mandates every organ of the state, the executive, the legislature and the judiciary working harmoniously to strive to realize the objectives concretized in the Fundamental Rights and Directive Principles of State Policy.

The judiciary must therefore adopt a creative and purposive approach in the interpretation of Fundamental Rights and Directive Principles of State Policy embodied in the Constitution with a view to advancing Human Rights jurisprudence. The promotion and protection of Human Rights is depends upon the strong and independent judiciary. The major contributions of the judiciary to the Human Rights jurisprudence have been two fold: (1) the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and (2) the procedural innovation of Public Interest Litigation.

Writ Jurisdiction of the Supreme Court and the High Courts

The most significant of the Human Rights is the exclusive right to Constitutional remedies under Articles 32 and 226 of the Constitution of India. Those persons whose rights have been violated have right to directly approach the High Courts and the Supreme Court for judicial rectification, redressal of grievances and enforcement of Fundamental Rights. In such a case the courts are empowered to issue appropriate directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari. By virtue of Article 32, the Supreme Court of India has expanded the ambit of Judicial Review to include review of all those state measures, which either violate the Fundamental Rights or violative of the Basic Structure of the Constitution. The power of Judicial Review exercised by the Supreme Court is intended to keep every organ of the state within its limits laid down by the Constitution and the laws. It is in exercise of the power of Judicial Review that, the Supreme Court has developed the strategy of Public Interest Litigation.

The right to move to the Supreme Court to enforce Fundamental Rights is itself a Fundamental Right under Article 32 of the Constitution of India. This remedial Fundamental Right has been described as "the Cornerstone of the Democratic Edifice" as the protector and guarantor of the Fundamentals Rights. It has been described as an integral part of the Basic Structure of the Constitution. Whenever, the legislative or the executive decision result in a breach of Fundamental Right, the jurisdiction of the Supreme Court can be invoked. Hence the validity of a law can be challenged under Article 32 if it involves a question of enforcement of any Fundamental Rights.

The Right to Constitutional remedy under Article 32 can be suspended as provided under Articles 32(4), 358 and 359 during the period of promulgation emergency. Accordingly, in case of violation of Fundamental Rights, the petition under Article 32 for enforcement of such right can not be moved during the period of emergency. However, as soon as the order ceases to be operative, the infringement of rights made either by the legislative enactment or by executive action can be challenged by a citizen in a court of law and the same may have to be tried on merits, on the basis that the rights alleged to have been infringed were in operation even during the pendency of the presidential proclamation of emergency.

If, at the expiration of the presidential order, the parliament passes any legislation to protect the executive action taken during the pendency of the presidential order and afford indemnity to the execution in that behalf, the validity and effect of such legislation may have to be carefully scrutinized.

Under Article 226 of the Constitution of India, the High Courts have concurrent jurisdiction with the Supreme Court in the matter granting relief in cases of violation of the Fundamental Rights, though the High Courts exercise jurisdiction in case of any other rights also. The Supreme Court observed that where the High Court dismissed a writ petition under Article 226 after hearing the matter on merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same relief filed by the same parties will be barred by the rule of Resjudicata. The binding character of the judgment of the court of competent jurisdiction is in essence, a part of the rule of law on which, the administration of justice is founded [1] . Article 226 contemplates that notwithstanding anything in Article 32, every High Court shall have power, throughout the territorial limits in relation to which it exercises jurisdiction to issue to any person or authority including the appropriate cases, any government, within those territories, direction, orders or writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them for the enforcement of Fundamental Rights conferred by part-III and for "any other purpose". Hence, the jurisdiction of a High Court is not limited to the protection of the Fundamental Rights but also of the other legal rights as is clear from the words "any other purpose". The concurrent jurisdiction conferred on High Courts under Article 226 does not imply that a person who alleges the violation of Fundamental Rights must first approach the High Court, and he can approach the Supreme Court directly. This was held in the very first case Ramesh Thapper vs. State of Madras[2]

But in P.N. Kumar vs. Municipal Corporation of Delhi[3] the Supreme Court expressed the view that a citizen should first go to the High Court and if not satisfied, he should approach the Supreme Court. Innumerable instances of Human Rights violation were brought before the Supreme Court as well as the High Courts. Supreme Court as the Apex Court devised new tools and innovative methods to give effective redressal.

[1] Daryao vs. state of U.P (AIR 1961 SC 1457)
[2] AIR 1950 SC 124
[3] AIR 1989 SC 1285

Rule of Locus Sandi vis-à-vis Public Interest Litigation

The traditional rule is that the right to move the Supreme Court is only available to those whose Fundamental Rights are infringed. A person who is not interested in the subject matter of the order has no Locus Standi to invoke the jurisdiction of the court. But the Supreme Court has now considerably liberalized the above rule of Locus Standi. The court now permits the "**public spirited persons** to file a writ petition for the enforcement of Constitutional and statutory rights of any other person or a class, if that person or a class is unable to invoke the jurisdiction of the High Court due to poverty or any social and economic disability. The widening of the traditional rule of Locus Standi and the invention of Public Interest Litigation by the Supreme Court was a significant phase in the enforcement of Human Rights.

In S.P. Gupta vs. Union of India and others[4]

The seven member bench of the Supreme Court held that any member of the public having "sufficient interest" can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of their poverty or other disabilities. A person need not come to the court personally or through a lawyer. He can simply write a letter directly to the court complaining his sufferings. Speaking for the majority Bhagwathi, J. said that any member of the public can approach the court for redressal where, a specific legal injury has been caused to a determinate class or group of persons when such a class or person are unable to come to the court because of poverty, disability or a socially or economically disadvantageous position. While expanding the scope of the "Locus Standi", Bhagwathi, J. expressed a note of caution and observed "but we must be careful to see that the member of the public, who approaches the court in case of this kind, is acting bonafide and not for personal gain or private profit or political motivation or other consideration. The court must not allow its process to be abused by politicians and other".

Hence the court was aware that this liberal rule of Locus Standi might be misused by vested interests. As a result of this broad view of Locus Standi permitting Public Interest Litigation or Social Action Litigation, the Supreme Court of India has considerably widened the scope of Article 32 of the

[4] AIR 1982 SC 149

Constitution. The Supreme Court has jurisdiction to give an appropriate remedy to the aggrieved persons in various situations. Protection of pavement and slum dwellers of Bombay, improvement of conditions in jails, payment of Minimum Wages, protection against Atrocities on Women, Bihar blinding case, Flesh trade in protective home of Agra, Abolition of Bonded Labourers, Protection of Environment and Ecology are the instances where the court has issued appropriate writs, orders and direction on the basis of Public Interest Litigation.

In Peoples Union for Democratic Rights vs. Union of India,[5]

the Supreme Court held that Public Interest Litigation is brought before the court the court not for purpose of enforcing the right of one individual against another as happened in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of Constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantageous position should not go unnoticed and unredressed.

In Bandhu Mukti Morcha vs. Union of India,[6]

the Apex Court held that the power of the Supreme Court under Article 32 includes the power to appoint Commission for making enquiry into facts relating to the violation of Fundamental Rights. The Apex Court further held that Public Interest Litigation through a letter should be permitted, but expressed the view that, in entertaining such petitions, the court must be cautious so that, it might not be abused. The court suggested that all such letters must be addressed to the entire court and not a particular judge and secondly it should be entertained only after proper verification of materials supplied by the petitioner. This is known as epistolary jurisdiction. The advent of Public Interest Litigation (here in after referred to as PIL) is one of the key components of the approach of "Judicial Activism" that is attributed to the higher judiciary in India.

In M.C.Mehta vs. Union of India[7]

[5] AIR 1982 SC 1473
[6] AIR 1984 SC 803
[7] AIR 1987 SC 1087

The verdict of Bhagwati, J. opened the doors of the Apex Court of India for the oppressed, the exploited and the down – trodden in the villages of India or in urban slums. The poor in India can seek enforcement of their Fundamental Rights from the Supreme Court by writing a letter to any judge of the court even without the support of an Affidavit. The court has brought legal aid to the door steps of millions of Indians which the executive has not been able to do despite that, a lot of money is being spent on new legal aid schemes operating at the central and state level.

In Narmada Bachao Andolan vs. Union of India[8]

The Supreme Court of India held that Public Interest Litigation was an invention essentially to safeguard and protect the Human Rights of those people who were unable to protect themselves. In the recent past Public Interest Litigation has acquired a new dimension. Apart from securing several non–justifiable socio–economic rights as guaranteed under the Fundamentals Rights, the Supreme Court has frequently resorted to a novel feature in the field of Human Rights jurisprudence such as compensatory jurisprudence, judicial law making with a view to secure justice to the down–trodden and also to the oppressed people. Public Interest Litigation is a weapon which has to be used with care and caution. The judiciary has to be extremely careful to see that whether it contains public interest or private vested interest. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The strategy of Public Interest Litigation should not be used for suspicious products of mischief.

There have been in recent times, increasingly instances of abuse of Public Interest Litigations. Therefore there is a need to re–emphasize the parameters within which Public Interest Litigation can be resorted to by a petitioner and entertained by the court. The courts are now imposing moderate to heavy costs in cases of misuse of Public Interest Litigation which should be an eye opener for non–serious Public Interest Litigation mover. The Supreme Court of India in a number of important decisions has significantly expanded the scope and frontier of Human Rights. Public interest matters today focus more and more on the interests of the Indian middle classes rather than on the oppressed classes. PIL seeking order to ban Quran[9] transmission of T.V. Serials[10], implementation of Consumer

[8] (2000) 4 SCJ 261

[9] Chandanmal chopra Vs. State of West Bengal AIR 1986 Cal 104

[10] Oddessey Lok Vidyayana sanghatan Vs. Union of India (1988) ISCC 168

Protection Law[11], removal of corrupt ministers[12], invalidation of irregular allotment of petrol pumps[13] and government accommodation[14] prosecution of politicians and bureaucrats for accepting bribes and Kickbacks through Hawala

transactions[15], better service conditions of the members of lower judiciary[16] or quashing selection of university teachers[17] are some blatant examples espousing middle class interests. Some initial successes of PIL, however cannot certify that it shall always remain an effective instrument for protection of Human Rights. The future of PIL will depend upon who uses it and for whom.

Prisoners and the Human Rights

The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. In this area an attempt is made to explain the some of the provisions of the rights of prisoners under the International and National arenas and also as interpreted by the Supreme Court of India by invoking the Fundamental Rights. Article 21 of the Constitution of India provides that "No person shall be deprived of his life and Personal Liberty except according to procedure established by law". The rights to life and Personal Liberty is the back bone of the Human Rights in India. Through its positive approach and Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights. By giving a liberal and comprehensive meaning to "life and personal liberty," the courts have formulated and have established plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21.

In A.K.Gopalans Case[18]

[11] Common cause Vs. Union of India (1996) 2 SCC 752
[12] D. Satyanarayana vs Union of India

[13] Centre for public interest litigation vs. Union of india
[14] Shiv sagar tiwari vs.union of India
[15] Vineet Narayanan vs. Union of India(1996) 2 SCC 199
[16] All India Judges ass. Vs Dibrugarh university AIR 1991 GAU. 27
[17] Bishwajeet serisha vs. state of Madras A.I.R. 1950 SC p. 27
[18] AIR 1950 SC p. 27

The court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case[19] and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that "the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation" and also opined that the procedures prescribed by law must be fair, just and reasonable.

In the following cases namely Maneka Gandhi, Sunil Batra (I)[20], M.H.Hoskot[21] and Hussainara Khatoon[22], the Supreme Court has taken the view that the provisions of part III should be given widest possible interpretation. Every activity which facilitates the exercise of the named Fundamental Right may be considered integrated part of the Article 21 of the Constitution. It has been held that right to legal aid, speedy trail, right to have interview with friend, relative and lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment, right to travel abroad, right live with human dignity, right to livelihood, etc. though specifically not mentioned are Fundamental Rights under Article 21 of the Constitution. One of the most powerful dimensions that arose through Public Interest Litigation is the Human Rights of the prisoners.

The Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Supreme Court by its progressive interpretation made Article 21, which guarantees the Right to Life and personal liberty, the reservoir of prisoner's rights. Under the seventh schedule of the Constitution of the India, the prison administration, police and law and order are to be administered by the respective states. The states have generally given low priority to prison administration. In fact, some of the decisions of the Supreme Court on prison administration have served as eye–openers for the administrators and directed the states to modernize prison administration. The Human Rights savior Supreme Court has protected the prisoners from all types of torture. Judiciary has taken a lead to widen the ambit of Right to Life and personal liberty.

[19] AIR 1978 SC p. 597
[20] AIR 1978 SC 1675
[21] AIR 1978 SC 1548
[22] AIR 1979 SC 1089

The host of decisions of the Supreme Court on Article 21 of the Constitution after Maneka Gandhis case, through Public Interest Litigation have unfolded the true nature and scope of Article 21. In this thesis, an attempt is made to analyze the new dimensions given by the Supreme Court to Article 21 through Public Interest Litigation to safeguard the fundamental freedom of the individuals who are indigent, illiterate and ignorant. Public Interest Litigation became a focal point to set the judicial process in motion for the protection of the residuary rights of the prisoners. Judicial conscience recognized that Human Rights of the prisoners because of its reformistic approach and belief that convicts are also human beings and that the purpose of imprisonment is to reform them rather than to make them hardened criminals. Regarding the treatment of prisoners, Article 5 of the Universal Declaration of Human Rights, 1948 says "No one shall be subjected to torture or cruel treatment, in human or degrading treatment or punishment". While Article 6 of the Universal Declaration of Human Rights, 1948 contemplates that "everyone has the right to recognition everywhere as a person before law". Article 10(1) of the International Covenant on Civil and Political Rights lay down that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

Rights against Solitary Confinement and Bar Fetters

The courts have strong view against solitary confinement and held that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. The courts have taken the view that it could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners.

In Sunil Batra (1) vs. Delhi administration[23]

The Supreme Court considered the validity of solitary confinement. The Constitutional validity of solitary confinement prescribed under section 30(2) of the Prisons Act, 1894 was considered. Section 30(2) of the Act provides the solitary confinement when prisoner is under sentence of death, while section 56 of the said Act permits the use of bar fetters for the safe custody of the prisoners.

The Supreme Court while approving section 30(2) of the Prisons Act, 1894 declared that the imposition of solitary confinement on Sunil Batra was illegal on

[23] AIR 1978 SC 1675

the ground under sentence of death refers to a finally executable death sentence, which means that the sentence of death has become final and conclusive, and cannot be annulled by any judicial or Constitutional authority. Sunil Batra was not considered as a prisoner under sentence of death, since his appeal against the death penalty was pending before the Supreme Court and in the event of its dismissal, he retained the right to appeal for presidential clemency. The court held that Batra was put in statutory confinement and not solitary confinement. The Supreme Court has also reacted strongly against putting bar fetters to the prisoners. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India. The court while approving section 56 of the Prisons Act and declared that bar fetters can be used subject to the following procedural safeguards:

a. It must be absolutely necessary to use fetters;

b. The reasons for doing so must be recorded;

c. The basic condition of dangerousness must be well–grounded;

d. Principles of natural justice must be observed;

e. The fetters must be removed at the earliest opportunity;

f. There must a daily review of the absolute need for bar fetters;

g. Continuance of bar fetters beyond a day is subject to the direction of a District Magistrate or session's judge.

Rights against Hand Cuffing

In Prem Shanker vs. Delhi Administration[24]

The Supreme Court added yet another projectile in its armory to be used against the war for prison reform and prisoners rights. In the instant case the question raised was whether hand–cuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing jurisprudence. It is the case placed before the court by way of Public Interest Litigation urging the court to pronounce upon the Constitution validity of the "hand cuffing culture" in the light

[24] AIR 1980 SC 1535

of Article 21 of the Constitution. In the instant case, the court banned the routine hand cuffing of a prisoners as a Constitutional mandate and declared the distinction between classes of prisoner as obsolete. The court also opined that "hand cuffing is prima-facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict "irons" is to resort to Zoological strategies repugnant to Article 21 of the Constitution" [25] While deciding the Constitutional validity of hand cuffing, the Supreme Court specifically referred to Article 5 of the Universal Declaration of Human Rights, 1948 [26] and Article 10 of the International Covenant on Civil and Political Rights[27] and held that hand cuffing is impermissible torture and is violate of Article 21. In the instant case justice Krishna Iyer rightly emphasized hand cuffs should not be used in routine and they were to be used in extreme circumstances only, when the prisoner is a security risk, desperate, rowdy or involved in non–bail able offences. But in even such circumstances, the escorting authority must record the reasons for doing so. Otherwise, the court pointed out, under Article 21 of the Constitution the procedure will be unfair and bad in law. In spite of such clear ruling of the Supreme Court against hand cuffing, the high handedness of the police personnel came to the light in Delhi Judicial Service Association case.

In Delhi Judicial Service Association case [28]

Wherein the Supreme Court held that an extraordinary and the unusual behavior of police was not proper and the court laid down detailed guidelines which should be followed in case of arrest and detention of judicial officer. The Supreme Court took a serious note of whole incident and it amounts to interference with the administration of justice, lowering of its judicial authority and it amounts to criminal contempt. It is submitted that wherever any police official acts contrary to the clear directions against hand cuffing as laid down by the Supreme Court and

[25] Ibid at p 1541

[26] Article 5 of the Universal Declaration of Human Rights, 1948 provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment**.**

[27] Article 10 of the International Covenant on Civil and Political Rights stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"

[28] Delhi judicial service ass. Vs. State of Gujrat (1991) 4 SCC 406

thus violates the basic Human Right to human dignity, he should be made personally liable to pay the compensation and the Supreme Court had delivered many cases[29] against handcuffing as clearly established in state of Maharashtra vs.Ravikanth S.Patil[30] that it is violative of Article 21 of the Constitution.

In Citizen for Democracy vs. State of Assam,[31]

the Supreme Court said that it lays down as a rule that hand cuffs or other fetters shall not be forced on prisoner, convicted or under trail, while lodged in a jail any where in the country or while transporting or in transit from jail to another or from jail to court and back. The police and jail authorities, on their own, shall have no authority to direct transport from one jail to another or from jail to court and back". The court declared that if it is absolutely necessary for the jail or police authorities to hand cuff, permission of Magistrate is to be obtained. The Magistrate may grant the permission to hand cuff the prisoner in rare cases. Violation of the directions given by the Supreme Court by the authorities shall be punishable under the contempt of court Act, 1971.

The Supreme Court directed the Union of India to frame rules or guidelines regarding the circumstances in which hand cuffing of the accused should be resorted to, in conformity with the judgment of the court in Prem Shankar case; and to circulate them among all the Government of the states and Union Territories for strict observance. It is important to mention that so as to put an end to hand–cuffing it is suggested that the parliament may make a suitable amendment to the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 where in, hand–cuffing should be made a cognizable offence so as to give effect to the ruling of the Apex Court of the land and also to preserve the right to live with Human Dignity, which is a important facet of personal liberty of the individuals

In Raghubir Singh v. State of Bihar[32]

[29] Sunil Gupta vs. State of M.P. 1990 (3) S.CC 119; Citizen for Democracy VS. State of Assam, 1995 (3) SCC 743; Khedat Mazdoor chetna sangath VS. State of M.P. AIR 1995 SC 31

[30] (1991) 2 SCC 373
[31] 1995 (3) SCC 743
[32] (1986) 4 SCC 481

the Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock – up.

In Kishore Singh VS. State of Rajasthan[33]

the Supreme Court held that the use of third degree method by police is violative of Article 21. The court also directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. In the instant case the Supreme Court brought home the deep concern for Human Rights by observing against police cruelty in the following words: "Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our Constitutional culture that a state official running berserk regardless of Human Rights."

It is pertinent to mention that the custodial death is perhaps one of the worst crimes in civilized society governed by the rule of law. The court promptly ruled that the inhuman treatment meted to the accused in police custody is the gross and blatant violation of Human Rights. In the absence of any legislative or executive guidelines the court has undertaken an activist role and ruled in plethora of cases and one such case is D.K.Basu vs. State of West Bengal

In D.K.Basu vs. State of West Bengal,[34]

The decision of the Supreme Court is note worthy. While dealing the case, the court specifically concentrated on the problem of custodial torture and issued a number of directions to eradicate this evil, for better protection and promotion of Human Rights. In the instant case the Supreme Court defined torture and analyzed its implications. The observations of the court on torture are valuable and worth quoting at length. With a view to curbing this menace, the Supreme Court laid down detailed guidelines as preventive measures as follows.

a. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with

[33] AIR 1981 SC 625
[34] AIR 1997 SC 610

their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

b. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

c. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock – up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as practicable that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or relative of the arrestee.

d. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through legal aid organizations in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

e. The person arrested must be aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

f. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

g. The arrestee should, where he so requests, be also examined at the time of his arrest for major and minor injuries, if any present on his/her body, must be recorded at that time. “Inspection Memo” must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.

h. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

i. Copies of all the documents including the memo of arrest, referred to above should be sent to the area Magistrate for his/her record.

j. The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.

k. A police control room should be provided at all district and state head quarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

In the instant case, the Apex Court made it clear that, custodial violence, including torture and death in the police lock–up, strikes a blow at the rule of law, which demands that the powers of the executive should not only be deprived from the law but also that the same should be limited by the law. The court also made it clear that failure to comply with guidelines should, apart from rendering the official concerned liable for departmental action and also render him liable to contempt of court[35]. The Supreme Court has made it clear beyond doubt that any form of torture of cruel, inhuman or degrading treatment is offensive to Human Dignity and is violative of Article 21 of the Constitution.

Right to have Interview with Friends, Relatives and Lawyers

The horizon of Human Rights is expanding. Prisoner's rights have been recognized not only to protect them from physical discomfort or torture in person, but also to save them from mental torture. The Right to Life and Personal Liberty enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to have interview with the members of one's family and friends is clearly part of the Personal Liberty embodied in Article 21. Article 22 (I) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This legal right is also available in the code of criminal procedure under section 30

The court has held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. The accused may refuse to have a lawyer but the court has to provide an Amicus Curie to defend him. When an accused is undefended it is the duty of the court to appoint a counsel on

[35] proceedings under the contempt of courts Act, 1971 can be started in any high court.

Government expenses for his defence[36]. In a series of cases the Supreme Court of India considered the scope of the right of the prisoners or detainees to have interviews with family members, friends and counsel. In Dharmbir vs. State of U.P43 the court directed the state Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions.

In Francis Coralie Mullin vs. Administrator, Union Territory of Delhi[37],

the petition under Article 32 of the Constitution raises a question in regard of the right of a detenu under conservation of Foreign Exchange and Prevention of Smuggling Activities Act, to have interview with a lawyer and the members of his family. In the instant case, the court considered the prisoners right to have interviews from the perspective of the Right to Life and Personal Liberty under Article 21. The court also observed that the Right to Life includes the right to live with Human Dignity and with this the right of a detenu to consult a legal advisor of his choice for any purpose not necessary limited to defence in criminal proceeding but also for securing release from preventive detention or filing a writ petition or prosecuting any claim or of any civil and criminal proceeding. In this case, the court also opined that the right to have interviews is clearly part of Personal Liberty and that "Personal Liberty" would include the right to socialize with members of family and friends subject to any valid prison regulations. Therefore any prison regulation or procedure regulating the prisoners right to have interviews with members of family and friends must be reasonable and non–arbitrary. Otherwise it would be liable to be struck down as invalid, being violative of Articles 14 and 21.

In Hussainara Khatoon vs. Home Secretary, Bihar[38],

the Supreme Court has held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the state and the state is under Constitutional

[36] Tara singh vs. state AIR 1951 SC 441

[37] AIR 1979 SC 1595

[38] AIR 1979 SC 1377

duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not provided the trail itself may be vitiated as contravening the Article 21.

In Sheela Barse vs. State of Maharashtra[39] case,

the petitioner, a Bombay based freelance journalist had sought permission to interview women prisoners in the Maharashtra jails and the letter of the petitioner was treated as writ petition under Article 32 of the Constitution. In the instant case the Supreme Court relying on Prabhu Dutts case[40], has held that the terms "life" under Article 21 covers the living condition prevailing in jails. The court observed that the citizen does not have any right either under Article 19 (1)(a) or Article 21 to enter into the jails for collection of information, but in order that the guarantee of the Fundamental Right under Article 21 may be available to the citizens detained in jails, it becomes necessary to permit the pressmen as friends of the society and public spirited citizens access to information as also interviews with prisoners. Those citizens who are detained in prisons either as under trials or as convicts are also entitled to the benefit of the guarantee subject to reasonable restrictions.

In Jogindar Kumar vs. State of U.P[41],

the court opined that the horizon of Human Rights is expanding and at the same time, the crime rate is also increasing and the court has been receiving complaints about violation of Human Rights because of indiscriminate arrests. The court observed that there is the right to have someone informed. That right of the arrested person upon request, to have someone informed and to consult privately with a lawyer was recognized by Sec 56(1) of the Police and Criminal Evidence Act, 1984 in England. For effective enforcement of the Articles 21 and 22 (1) of the Constitution of India which require to be recognized and scrupulously protected, the court issued the following requirements.

[39] 1987 (4) SCC 373

[40] Prubhu Datt vs. union of India (1982) 1 SCC 1, In this case, the court was considered the claim of a journalist to interview two condemned prisoners awaiting execution

[41] AIR 1994 SC1349

a. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as practicable that he has been arrested and where is being detained.

b. The police officer shall inform the arrested person of his right when he is brought to the police station.

c. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

Right to Legal Aid

The main object of the Free Legal Aid scheme is to provide means by which the principle of equality before law on which the edifice of our legal system is based. It also means financial Aid provided to a person in matter of legal disputes. In the absence of Free Legal Aid to the poor and needy, Fundamental Rights and Human Freedoms guaranteed by the respective Constitution and International Human Rights covenants have no value. Though, the Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and is not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution[42]. This is the most important and direct Article of the Constitution which speaks of Free Legal Aid .Though, this Article finds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article37 of the Constitution casts a duty on the state to apply these principles in making laws[43]

While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as possible a social order in which justice, social, economic and political, shall inform all the institutions of the

[42] Article 39-A provides that "the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular, provides Free Legal Aid by suitable legislation or scheme 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

[43] Article 37 of the Constitution of India reads as "the previsions contained in part IV shall not be enforceable by any court but the principles there in 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.

national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

In Madhav Hayawadan Rao Hosket vs. State of Maharashtra[44],

a three judges bench (V.R.Krishna Iyer, D.A.Desai and O.Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.PC together declared that the Government was under duty to provide legal services to the accused persons. Justice Krishna Iyer observed that Indian socio legal milieu makes free legal services, at trial and higher levels, an imperative procedural piece of criminal justice. The Supreme Court decided the point of Legal Aid in appeal cases as follows "If a prisoner sentenced to imprisonment is virtually unable to exercise his Constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the court under Article 142 read with Articles 21 and 39 A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice". The court further added that legal Aid in such cases is state's duty and not Government's charity. In the words of justice Krishna Iyer, "Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence of incommunicado situation, the court shall, if the circumstances of the case, the gravity of sentence and the ends of justice so require, assign competent counsel for the prisoners defence, provided the party does not object to that lawyer. The state which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum of as the court may equitably fix".

In Hussainara Khatoon and others vs. Home Secretary, State of Bihar[45],

Bhagwathi and Koshal, JJ observed that the speedy trial, which means reasonably expeditious trial, is an integral and essential part of the Fundamental

[44] AIR 1978 SC 1548

[45] AIR 1979 SC 1360

Right to Life and Liberty enshrined in Article 21. However the Apex Court declared the speedy trial as a constituent of Legal Aid and directed the Government to provide Free Legal Aid service in deserving cases. This case reinforces the principles laid down in M.H Hoskot's case. Justice Bhagwathi observed that Article 39-A of the Constitution also emphasizes that free legal service is an unalienable component of reasonable, fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. In the instant case justice Bhagwathi emphasized upon the necessity of introducing by the central and state Governments, a dynamic and comprehensive legal services programme with a view to reaching justice to the common man.

In Sunil Batra vs. Delhi administration (II),[46]

justice Krishna Iyer observed that the free legal services to the prison programmes shall be promoted by professional organization recognized by the court. His lordship further added that the District Bar Association should keep a cell for prisoner relief.

In Khatri (I) vs. State of Bihar,[47]

a division bench of the Supreme Court held that the state is under Constitutional mandate to provide Free Legal Aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state.

In Kedra Pahadiya and others vs. state of Bihar,[48]

the Supreme Court once again reiterated the principles laid down in Hussainara Khatoons and Sunil Batra (I) cases, and observed that the court directed that the petitioners must be provided legal representation by a fairly competent

[46] AIR 1980 SC 1579

[47] AIR 1981 SC 928

[48] (1981) 3 SCC 671

lawyer at the cost of the state, since legal aid in a criminal case is a Fundamental Right implicit in Article 21, and the Fundamental Right has merely remained a paper promise and has been grossly violated. In the instant case, the Supreme Court directed the state Government to file a list of under trial prisoners who have been in jail, for a period of more than 18 months without their trail having commenced before the Courts of Magistrates.It is submitted that while making the above observations, the Supreme Court was more concerned with Article 39-A and least bothered to Article 21. Right to Free Legal Aid was raised to the status of a Fundamental Right in Hosk"s case as a part of fair just and reasonable procedure under Article 21 and this premise was reinforced in cases of Hussaniara, Khatra (I). Right of Free Legal Aid was included in under the protective umbrella of Article 21, which is a Fundamental Right under the Constitution. Though Article 39 A, a non – enforceable and non justiciable directive principle became an enforceable Fundamental Right . Hence Free Legal Aid is a Fundamental Right which can be enforced against the state as defined in Article 12 of the Constitution, if Free Legal Aid is denied for whatever reasons

Right to Speedy Trial

The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. It is therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that “delay in trail by itself constitute denial of justice” which is said to be “justice delayed is justice denied”. It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary. The right to speedy trial has become a universally recognized human right. In United States of America, the speedy trail is one of the constitutionally guaranteed rights. In India, the right to speedy trail is not specifically enumerated as one of the Fundamental Rights in the Constitution but since 1978; there have been sea - saw changes in the judicial interpretation of the Constitutional provisions.

In Maneka Gandhi vs. Union of India[49]

the Supreme Court has widened the concept of life and Personal Liberty under Article 21 of the Constitution. In this case, the court established that the law and procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Articles 14 and 19. It also establishes that the procedure established by law within the meaning of Article 21 must be right, just and fair but not arbitrary, fanciful or oppressive.

In Hussainara Khatoon (I) VS. Home secretary[50]

the Supreme Court held that "Obviously procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair, or just unless that procedure ensures a speedy trial for determination of the guilty of such person. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21. However, the main procedure for investigation and trial of an offence with regard to speedy trial is contained in the code of criminal procedure. The right to speedy trial is contained under section 309 of Cr.PC59. If the provisions of Cr.PC are followed in their letter and spirit, then there would be no question of any grievance. But, these provisions are not properly implemented in their spirit. It is necessary that the Constitutional guarantee of speedy trial emanating from Article 21 should be properly reflected in the provisions of the code. For this purpose in A.R.Antulay vs.R.S.Nayak the Supreme Court has laid down few propositions

In A.R.Antulay vs.R.S.Nayak ,[51]

the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners. The concerns underlying the right to speedy trial from the point of view of the accused are:

a. The period of remand and pre – conviction detention should be as short as possible. In other words, the accused shall not be subjected to unnecessary or unduly long detention point of his conviction.

[49] AIR 1978 SC 597

[50] (1980) I SCC 812

[51] AIR 1992 SC 170

b. The worry, anxiety, expense and disturbance to his vocation and peace resulting from an unduly prolonged investigation, in query or trial shall be minimal; and.

c. Undue delay may result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non–availability of witnesses or otherwise.

In the instant case the Apex Court held that the right to speedy trial flowing from Article 21 of the Constitution is available to accused at all stages like investigation, inquiry, trial, appeal, revision and retrial. The court said that the accused cannot be denied the right to speedy trial merely on the ground that he had failed to demand a speedy trial. Section 309 (1) of Cr.PC contemplates "In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds that the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Compensatory Jurisprudence and Human Rights

A significant contribution of judicial activism in the post Maneka Gandhi[52] period has been the development of compensatory jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution. The scope of writ jurisdiction has also been expanded to uphold the Human Dignity and other Fundamental Human Rights. Consequent upon the expansion of writ jurisdiction, the Compensation as a mode of redressel of violation of Human Rights gained importance. The Supreme Court made a departure from the ordinary civil law, where the right to claim compensation is only through a civil suit instituted by the aggrieved party before the court of first instance.Currently, the writ jurisdiction of higher judiciary and the original jurisdiction of the civil court regarding the award of compensation invoked upon infraction of Human Rights are based upon distinct Constitutional and legal principles.Judicially, it is well established that doctrine of sovereign immunity is not applicable against the Constitutional remedy under Articles 32 and 226 of the Constitution. The development of the remedy of monetary compensation as to Constitutional and civil law remedies for violation of Human Rights is analysed through the judicial pronouncements expanding their respective nature, extent and limitations.

[52] AIR 1978 SC 597259

Monetary Compensation and Human Rights

It is internationally recognized principle that right to compensation is not alien to the concept of enforcement of guaranteed right[53]. The development of the remedy of monetary compensation for the enforcement of Human Rights may be discussed with reference to writ jurisdiction of the higher judiciary and the ordinary original jurisdiction of the civil court. Compensation through writs is a recent development and an extension of the prerogatives of the Supreme Court and High Courts in the field of Constitutional remedies. Even though, there was much criticism on the payment of compensation under Article 32 of the Constitution, because of this Article as such it does not expressly empowers the courts to award such relief. It is important to mention here that the seed of compensation for the violation of the rights implicit in Article 21 is first sowed in Veena Sethi vs. State of Bihar63 and Khatri vs.State of Bihar (II)[54].

In both the cases, one of the questions raised was if the state deprives a person of his life or Personal Liberty on violation of the right guaranteed by Article 21, is the court helpless to grant relief to the persons who has suffered such deprivation?

To this question, Bhaghawathi, J in Veena Sethi case observed that "the question would still remain to be considered whether these prisoners are entitled to compensation from state Government for their illegal detention in contravention of Article 21 of the Constitution. Where in Khatri's case, the Supreme Court initiated the jurisdiction of payment of monetary compensation under Public Interest Litigation to the victims on violation of their life and personal liberty. Therefore a question of great Constitutional importance as to what relief could be given for violation of Constitutional rights was before the court. Bhagwathi .J., speaking for the court observed: "the court can certainly inject the state for depriving a person of his life or Personal Liberty except in accordance with the procedure established by law but, if life or Personal Liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared

[53] Article 9(5) of the International Covenant on Civil and Political Rights states that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

[54] AIR 1981 SC 928

to forge new and devise new remedies for the purpose of vindicating the most precious Fundamental Right to life and Personal Liberty? Otherwise Article21 would be reduced to a nullity, a "mere rope of sand". The court described this issue as of gravest Constitutional importance involving exploration of new dimension of the Right to Life and personal liberty[55].

The jurisdiction to award compensation for deprivation of Fundamental Rights of a person through writs was recognised by the Supreme Court in Rudal Shah VS.State of Bihar[56] case, wherein the petitioner was detained illegally in the prison for over fourteen years after his acquittal in full dressed trial. He challenged the said act in the court by filing habeas corpus petition and contended that he was entitled to be compensated for his illegal detention and that the court ought to pass an appropriate order for the payment of compensation. The Supreme Court in this case explained the jurisdiction to award compensation under Article 32 of the Constitution by observing;"It is true that Article 32 cannot be used as a substitute for enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts, civil and criminal. A money claim has therefore, to be agitated in and adjudicated upon the suit instituted in a court of lowest grade competent to try it. In the exercise of its jurisdiction under Article 32, the Supreme Court can pass an order for the payment of money in the nature of compensation consequential upon the deprivation of a Fundamental Right to Life and Liberty of the petitioner". The decision of the Supreme Court in Rudul Shah case made it clear that, through the exercise of writ jurisdiction, the Supreme Court or the High Courts have powers to award compensation for the violation of Fundamental Rights and this decision has been followed in a number of decisions by the Supreme Court and the High court's in the similar situations of violation of the Right to Life and liberty of a person.

In Sebastian M.Hongray VS. union of India[57] case,

The Supreme Court through a writ petition of habeas corpus awarded exemplary costs on failure of the detaining authority to produce two missing persons, on assumption that they were not alive and had met unnatural deaths at the hands of security forces. In the instant case D.A.Desai and O.Chinnappa Reddy JJ. Observed that the respondents would beguilty of civil contempt because of their wilful disobedience to the writ. The Supreme Court keeping in view the torture, the

[55] Ibid at P 930 Para 3
[56] AIR 1983 SC 1086261
[57] AIR 1984 SC 1026

agony and mental oppression through which the wives of the persons directed to be produced has to pass, instead of imposing a fine, awarded exemplary cost of Rs. 1,00,000/- to each of the wives of the persons.

In Bhim Singh vs. state of Jammu & Kashmir,[58]

the Apex Court followed Rudul Shah and Sebastian cases, by observing that "when a person comes to the Supreme Court with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his Constitutional legal rights were invaded, the mischief or malice and invasion may not be washed away or wished away by his being set free. In appropriate cases, the court has the jurisdiction to compensate the victim by awarding suitable monetary compensation. In this case, the illegal detention of the petitioner was held to constitute violation of rights under Articles 21 and 22 (2) of the Constitution by the Supreme Court. The duty of the police officers is only to protect and not to abduct. Exercising its power to award compensation under Article 32, the court directed the state to pay monetary compensation of Rs. 50,000/- to the petitioner for violation of his Constitutional right by way of exemplary costs.

In Saheli, A women"s Resource Centre vs. Commissioner of Police, Delhi[59]case,

the police officers raided the house of Mrs. Kamalesh Kumari. The Victim was staying in a house with her three children. The landlord of that house took the help of Police to forcibly evict them from the house. During the police raid, the police rampled upon nine years child of Kamalesh Kumari resulting the death of the child. It is well settled that the state is responsible for the tortuous acts of its employees. In the instant case court observed that "in the matter of liability state is liable for tortuous acts committed by its employees in the course of their employment. On these facts, the Supreme Court ordered for payment of Rs. 75,000/- as compensation to the mother of the deceased child. In this case, the court ordered to recover the amount of compensation from the concerned police officer.

[58] AIR 1986 SC 494

[59] 69 AIR 1990 SC 513262

In Nilabeti Behara vs. state of Orissa and others[60] case,

the Supreme Court struck down the doctrine of sovereign immunity in the arena of public law. This is the case of the custodial death of a person. In the instant case one youth by name Suman Behara was taken into police custody in connection with the investigation of a theft on 1st December, 1987, and on the next day, his dead body was found on the railway track. There were multiple injuries on the body of Suman Behara. The petitioner Nilabati Behara, addressed a letter to the Supreme Court under Article 32 of the Constitution of India. The police took the plea that the deceased was taken to custody but he managed to escape from the custody and that they could not trace him. The police denied the custodial death. It this context, the Supreme Court ordered enquiry by the District Judge of Sundergarh, Orissa. The report of the District Judge reveals that there is a torture of the deceased with eleven external injuries and as a result of these injuries inflicted by the police, the report confirmed that the death is in the nature of custodial death. The Supreme Court awarded Rs. 1,50,000/- as compensation to the mother of the deceased.

In the instant case, the court further held and clarified that "public law proceedings" are different from private law proceedings" and the award of compensation in proceedings for the enforcement of Fundamental Rights under Article 32 and 226 of the Constitution is a remedy available in public law. It was rightly observed: "the court is not helpless and wide powers given to the Supreme Court by Article 32, which itself is a Fundamental Rights, imposes a Constitutional obligation on the court to invent such new tools, which may be necessary for doing

complete justice and enforcing the Fundamental Rights guaranteed in the Constitution which enable the award of monetary compensation in appropriate cases". To support the above observation, the court rightly referred to Article 9 of the International Covenant on Civil and Political Rights, 1966 and held that the state is liable to pay compensation for police atrocities. The court further held that the said provision indicates that an enforceable right to compensation is not alien to the concept of a guaranteed right. It is also pertinent to mention that the provision of compensation to the crime victims is crying need of the honour. The International Covenant on Civil and Political Rights, 1966 indicates that an enforceable right to compensation is conceptually integral to Human Rights.It

[60] AIR 1993 SC 1960263

would suffice to state that the provisions of the covenant which elucidate and go to effectuate the Fundamental Rights guaranteed by the Constitution under part III can certainly be relied upon by courts as facets of those Fundamental Rights and hence enforceable as such. It is doubtful whether it was right on the part of the court to reach such a conclusion without ensuring authority of such covenants and leaving it for the decisions of a later forum. It is also to be noted that the covenant on civil and political rights, 1966 was ratified by India with a reservation that Article 9 (5) of the said covenant is not applicable in India.

Nature of the Constitutional Remedy

A perusal of the above judicial panorama makes it clear that, at present, the power to grant compensation through the writs is an established remedy. Compensation has been awarded by the Supreme Court by referring to its different concept like “Exemplary costs”, “palliative measures”, solarium or “exemplary damages”.On the basis of the above discussion it can be inferred that the development of Constitutional remedy affords an effective remedy in the form of monetary compensation on infraction of Human Rights. However this remedy is a distinct remedy and not a substitute of the remedy under civil law. The Constitutional remedy is only an additional remedy and an aggrieved person avail other remedy available to him under law.

In Nilabetis case, a distinction is made between the remedy of compensation available under the public law i.e., Constitution and the private law, i.e. civil law of Tort. In this case Anand J, in his concurring judgment further explained the distinction by observing that “the payment of compensation in such cases not to be understood, as it is generally understood in a civil action for damage under the private law, but in the broader sense of providing relief by an order of making “monetary amends”, under public law for the wrong done due to breach of public duty of not protecting the Fundamental Rights of the citizen. The compensation is in the nature of exemplary damages awarded against the wrongdoer for the breach of its public law duty and it is independent of the rights available to the aggrieved party to claim compensation under the private law in action based on tort through a suit instituted in a court of competent jurisdiction or to prosecute the offender under the penal law.

Therefore, the monetary compensation through the writs for violation of Human Rights and fundamental freedoms is an acknowledged remedy to uphold the Constitutional guarantee unlike civil law remedy, though Constitutional remedy is not in the nature of damages, for the loss suffered, yet affords monetary

relief to an aggrieved person. The very nature of the Constitutional remedy suggests that it is subject to certain inherent limitations viz., precise amount of compensation to make good the loss and Personal Liberty of the concerned officials are the issues which can only be properly adjudicated in a civil suit. The Constitutional and civil law remedies being supplementary to each other also require a discussion on the question of applicability of doctrine of sovereign immunity in their respective forums.

Sovereign Immunity and Violation of Human Rights

The Indian History reveals that the concept of sovereign immunity did not exist in any point of time. In ancient times also the king was subjected to the rule of law and the will of the people. In India, the absolutism of king was never accepted. It was the primary duty of the king to protect the people, administer justice and there by maintain order and protecting people in enjoyment of their property. While discharging this mandatory duty, the king was not immune from liability to compensate his subjects. It is note worthy that the obligation on the part of the king was entirely absent under the English system. During the British rule in India neither section 65 of the Government of India Act, 1858[61] nor Sec 176 of the Government of India Act, 1935 extended immunity to the company or the secretary of state which the Crown in England enjoyed in respect of Torts committed by its servants. In India, the doctrine of Sovereign Immunity is purely a judicial creation having its origin in Judicial pronouncements which can be traced back to 1861 when the question of state liability in tort came before the Supreme Court of Calcutta in peninsular and oriental steam Navigation Company vs. The Secretary of State forIndia[62],

In peninsular and oriental steam Navigation Company vs. The Secretary of State for India Lord Peacock made a distinction between sovereign and nonsovereign function of the state to determine the tortuous liability. The only point for consideration was whether in case of a tort committed in the conduct of business, the secretary of state was liable to pay compensation. It is evident that the

[61] Sec. 65 of the Government of Indian Act, 1858 reads as follows: the secretary of state in council shall and may sue and be sued as well in India as in England by the name of the secretary of State in council as a body corporate and all persons and bodies politic shall, and may have and take the same suits, remedies and proceedings, legal and equitable, against the secretary of state in council of India as a they could have done against the East India company.

[62] 1868-1869 5 Bom HC Reports;

court intended to include only acts of state within the ambit of sovereign power. The law relating to the liability of the state for the wrongs committed by its servants is laid down in Article 300 of the Constitution[63].

The theory of sovereign Immunity with regard to the liability of state was applied in India by virtue of Article300 propounded. In many cases, the Supreme Court rejected the compensation on the ground that discharge of police functions are sovereign functions and the state is not liable for the wrongful acts of its servants while discharging the sovereign functions. Subsequent to the attainment of Independence, the Supreme Court of India got an opportunity for discussing the liability of the State in case of tortuous acts committed by its servants in state of Rajasthan vs. Vidhyawathi case[64], in which the court held that the state was liable for the torts committed by its servants. On the question of sovereign immunity of state in paying compensation of the tort of negligence of its servants, the court observed that after adoption of republican Government under the Constitution there is no justification for granting immunities to the state and held the state is vicariously liable for the acts of its servants and refused to concede the defence of sovereign immunity. Though the court criticized sovereign immunity, it never clarified whether the defence of immunity is available now in India or not. This paved the way for the unfortunate decision in the case of Kasturilal vs.State of U.P[65].

In Kasturilals case the Apex Court approved the distinction made in the steam navigation case between sovereign and non-sovereign functions of the state. Gajendragadkar, C.J said: "If a tortious act committed by a public servant gives rise to a claim for damages, the question to ask is: was the tortious act committed by a public servant in discharge of statutory function which is referable to, and

[63] Article 300 of the Constitution of India contemplates: Suits and proceedings (1) the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of parliament or of the legislature of such state enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the dominion of India and the corresponding provinces or the corresponding Indian states might have sued or been sued if this Constitution had not been enacted.(2) If at commencement of this Constitution-(a) any legal proceedings are pending to which the Dominion of India is a party, the union of India shall be deemed to be substituted for the dominion in those proceedings; and(b) any legal proceedings are pending to which a province or an Indian state is a party , the corresponding state shall be deemed to be substituted for the province or the Indian State in those proceedings.

[64] AIR 1962 SC 933

[65] AIR 1965 SC 1039267

ultimately based on the delegation of the sovereign powers of the state to such public servant. If the answer is in the affirmative the action for damages will not lie. On the other hand, if the tortious act has been committed by a public servant in the discharge of duties assigned to him not by virtue of the delegation of any sovereign powers, and action for damages would lie. The court held that the tortious act of the police officers was committed by them in discharge of sovereign powers and the state was therefore not liable for the damage caused to the appellant. The Apex Court however made a strong plea for enactment of a legislation to regulate and control the claim of the state for immunity on the lines of the Crown proceedings Act of England. In Nilabeti"s case, the Supreme Court made observations regarding the applicability of doctrine of sovereign immunity in a Constitutional remedy under law of torts as "Award of compensation in proceedings under Article 32 by this court or by the High Courts under Article 226 of the Constitution is a remedy available in public law based on strict liability for contravention of Fundamental Rights to which the principle of Sovereign immunity does not apply, even though, it may be available as a defence in private law in an action based on tort". In the instant case, the Supreme Court made reference to its earlier decision in Sahelis case as "the state was held liable to pay compensation payable to the mother of the deceased who dies as a result of beating and assault by the police. However the principle indicated there in was that the state is responsible for the tortuous acts of its employees". In Sahelis case no reference has been made to the decision of Kasturi Lals case, wherein, the sovereign immunity was upheld in the case of vicarious liability of the state for tort of its employees. The decision is therefore more in accord with the principles indicated in Rudul Shah Case. The Supreme Court through this reference appears to have pointed out that doctrine of sovereign immunity is still applicable in law of tort but not available, where the remedy is sought through the writ as a Constitutional remedy.

However in state of A.P Vs. Challa Rama Krishna Reddy[66] case, the Supreme Court held that in the process of Judicial advancement Kastuilal"s case has placed into insignificance and no longer of any binding value. In this case a prisoner who had a informed the jail authorities that he apprehended danger to his life but no action was taken on this information and no measures were taken for his safety and he was killed by a prisoner as a result of conspiracy which was hatched in prison. The court held that in case of violation of Fundamental Right the defence of Sovereign immunity which is an old and archaic defence cannot be accepted and the government and the police are liable to compensate the victim. The Apex Court held that the personal liability should be given Supremacy over sovereign

[66] AIR 2000 SC 2083268

Immunity. There are catena of cases delivered by the Supreme Court and the High Courts with regard to the payment of compensation concerning custodial violence. Thus, the courts adopted the technique of giving a narrow interpretation to the concept of Sovereign functions while granting the compensation in the interest of justice.

In recent past, the Supreme Court started awarding compensation whenever the Human Rights are violated and thus developed a new compensatory jurisprudence. It is universally recognized that right to life, liberty and dignity are inherent in the human nature. These basic Human Rights are enforceable rights in every civilized and welfare state. Monetary compensation as a mode of redressal and enforcement of Human Rights , in the event of their violation, is an established remedy of great significance.

The activist approach of the Supreme Court not only added to the list of Human Rights guaranteed under the Constitution, but also expanded the jurisdiction of the court to grant monetary relief on their infraction. A significant contribution of Judicial activism in the post – Maneka Gandhi period has been the development of compensatory jurisdiction of the Supreme Court and the High Courts under Article 32 (2) and 226(1) of the Constitution and these courts have ample powers to grant monetary compensation in appropriate cases.

Environmental Protection and Human Rights

The protection and improvement of human environment has become a world wide concern. A clean and healthy environment is the basic need of the existence oflife. The ecological imbalance contributes to the environmental hazards like acid rains, noise pollution, air pollution, water pollution. The depletion of ozone layer causes skin cancer, cataracts, damage to body’s immunity system, mutation, loss of productivity. Environmental law is an instrument to protect and improve the environment and to control or prevent any acts or omissions likely to pollute the environment. There are hundreds of environmental laws in India, directly or indirectly dealing with the subject of environment. In the world the Constitution of India is the first which made provisions for the protection of environment which are Articles 21, 47, 48-A, 51 (A)(g) and sections 227 and 278 of Indian Penal Code, sections 133 and 134 of the code of Criminal Procedure. These provisions contain clear mandate on the state and to the citizens to protect and improve the environment.

Though, India was a party to the Stockholm declaration, had initiated legislative measures for the prevention of the pollution of environment by enacting specific legislation and also incorporated the Stockholm principles by an amendment to the Constitutions of India in 1976. It incorporated Article 48A and 51 A (g). It is to be noted that these provisions though not enforceable in court of law, directs the state to enact legislations and frame policies towards the promotion and protection of Environment. Thus the state is under a moral duty to take measures to prevent ecological imbalances resulting from modern industrialization. The Constitution has also cast a duty on the citizen to take steps for maintaining ecological balance.

In accordance with the mandate of the Stockholm Declaration, the government of India enacted the Water (Prevention and Control of Pollution) Act, 1974 Air (Prevention and Control) Act 1981, and Environmental (Protection) Act, 1986, Public liability Insurance Act, 1991, National Environmental Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997. 270

Judicial Contribution to Protection of Environment

The Apex judiciary in India has been demonstrating its commitment for the protection of environment from time to time and it has given prime importance to the environmental promotion and protection through a serious of trend setting judgments. The Supreme Court is also trying to bring an awareness of the massive problems of pollution and filling the gap between the legislation and its implementation by using its extraordinary powers. The higher Judiciary in India delivered many environmental conscious judgments. By constructive interpretation of various provisions of the law, the Supreme Court in particular has supplemented and strengthened the environmental law. The cases relating to each and every aspect of environment have come up before the Supreme Court of India. The court has relaxed rigid and purely technical rules in admitting many cases involving the protection of the environment.

The Supreme Court has played an activist and creative role in protecting the environment. Most of the actions in the environmental cases are brought under Articles 32 and 226 of the Constitution. The environmental litigations are generally based on the notions of violation of Fundamental Rights.

The Supreme Court widened the horizons of environmental protection. It is a new innovation of Indian judiciary was of Judicial Activism. The Apex judiciary made it clear that Public Interest Litigation is maintainable for ensuring pollution

free water and air which is involved in right to live under the Article 21 of the Constitution. The higher judiciary has always endeavored to strike a balance between conservation of environment on one hand and the economic development on the other hand. The adverse effect of industrialization on human life has caught the attention of Indian judiciary and it is perhaps with this view, in mind it has shown deep concern for prevention of pollution of environment and asked the authorities concerned to take immediate necessary steps to safeguard the society against the ill effects of industrialization.

The expansive and creative judicial interpretation of the word "life" in Article21 has lead to the salutary development of an environmental jurisprudence in India. The Right to Life is a Fundamental Right under Article 21 and since the Right to Life connotes "quality of life" a person has a right to the enjoyment of pollution free water and air to enjoy life fully. According to many environmentalists and jurists "The latest and most encouraging of all developments in India is the "Right to a clean and wholesome environment" and the "Right to clean air and water". These rights have been included in the Right to Life under Article 21 of the Constitution. The boundaries of the Fundamental Right to life and Personal Liberty guaranteed in Article 21 were expanded elevating it, to a position of brooding omnipresence and converting it into a sanctuary of human values for more environmental protection.

In Ratlam Municipality vs. Vardhichand[67] case,

the Supreme Court for the first time treated an environmental problem differently from and ordinary Tort or public nuisance. In the instant cases the Apex Court compelled the M.P. Municipality to provide sanitation and drainage despite the budgetary constraints, there by enabling the "poor to live with dignity". The Supreme Court expanded the principle of "Locus Standi" in environmental cases and observed that environment related issues must be considered in a different perspective. This development in judicial delivery system brought a new dimension and is considered as a silent "legal revolution" and it has cast away all the shackles of technical rules of procedure and encouraged the litigation from public spirited person. The Court not only complemented petitioners who filed environment protection litigation but also awarded money to the petitioners. The

[67] AIR 1980 SC 1623

Supreme Court gave an expansive meaning to right to environment in Rural Litigation and Entitlement Kendra, Deharadun vs. State of UP[68].

In Rural Litigation and Entitlement Kendra, Deharadun vs. State of UP

the representatives of the rural litigation and entitlement Kendra, Dehradun wrote a letter to the Supreme Court alleging that illegal limestone quarries in the Mussore – Dehraddun region was devastating the fragile ecosystem in the area. The court treated the letter as a writ petition under Article 32 of the Constitution. In the instant case the court presupposes the violation of Fundamental Right. The court ordered the closure of certain lime stone quarries on the ground as that there were serious deficiencies regarding safety and hazards in them. The court stated "the right of the people to live in healthy environment with minimum disturbance of ecological balance and without avoidable hazard to them and to their cattle, house and agriculture, land and pollution of air, water and environment".

In Govind Singh vs. Shanthi Swarup[69] case,

The Supreme Court has taken microscopic view on the contours of the law of public nuisance. In the instant case the Supreme Court held that the effect of running bakery was injurious to the people, as it was polluting the environment by emitting smoke from chimney and ordered the closure of Bakery. The court said that "in a matter of this nature what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large".

In M.C. Mehta vs. Union of India[70]

The Supreme Court observed "The Precautionary Principle" and "polluter pays Principle" have been accepted as part of the law of the land". In this case, a Public Interest Litigation was filed alleging that due to environmental pollution, there is degradation of the Taj Mahal, a monument of International reputation. According to the opinion of the expert committees, the use of coke/coal by the industries situated within the Taj Trapezium Zone (TTZ) were emitting pollution

[68] (1986) 2 SCC 431272

[69] AIR 1979 SC 143

[70] AIR 1997 SC 734

and causing damage to the Taj Mahal, as also people living in that area. In the instant case the court ordered the re-location of polluting industries.

In Consumer Education and Research Centre vs. Union of India,[71]

the Supreme Court has delivered a historic judgment and held that the right to health and medical care is a Fundamental Right under Article 21 of the Constitution, as it is essential for making the life of the workmen meaningful and purposeful with dignity of persons.

In M.C. Mehta (II) vs. Union of India,[72]

the Supreme Court directed all the Municipalities located on the banks of the river Ganga to take preventive measures for water pollution. The Court held that the Municipality was primarily responsible for the pollution in the river and was not only obliged but also bound to take steps to decrease as well as control the pollution.

In M.C. Mehta vs. Union of India,[73]

The Supreme Court had given direction to the Delhi city authorities to take effective steps for streamlining vehicular pollution in the city. The order of the Supreme Court prohibiting the use of twenty years old vehicles in the city roads of Delhi and its implementation is a welcome step in prevention of the vehicular pollution, avoiding the accident and protecting health of the Delhi Police. While treading the path of judicial innovation, the Supreme Court has invented an impressive range of concepts and principles. The principles of Strict and Absolute liability, the principle of Sustainable Development, the Polluter Pays principles, the Precautionary principle and the Public Trust doctrine have thus found firm footing in Indian Jurisprudence. The Supreme Court has firmly held the view that law should not remain static and that it has to evolve to meet the changes arising out of new situations. Law has to grow in order to satisfy the needs of the fast changing

[71] (1995) 3 SCC 42

[72] (1998) 1 SCC 471273

[73] AIR 1991 SC 1132

society and to keep abreast with the economic development taking place in the country.

In M.C Mehta and other vs. Shriram Food and Fertilizers industries and Union of India,[74]

the Supreme Court unanimously held in case that "where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate to all those who are effected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortuous principle of Strict Liability under the rule in Rylands vs. Fletcher".

Thus, the Apex court, by departing from the rule of strict liability as laid down in Ryland vs. Fletcher, took an epoch-making decision having wide ramifications. It is to be noted that this judgment opened a new frontier in the Indian jurisprudence by a new concept of Absolute liability standard, which is not subject to any exception, for industries engaged in hazard activities. In series of path-breaking judgements towards the end of 1996, the Supreme Court incorporated some of the important environmental norms notably principle of sustainable development, the polluter-pays principle and the precautionary principle as part of the land.

While rejecting the old notion that development and environmental protection cannot go together, the Apex Court held the view that sustainable development has now come to be accepted as "a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems". Thus the court further held that the polluter-pays principle and the pre cautionary principle are essential features of sustainable development86. It is to be noted that the practice adopted so far by the Supreme Court and the High Courts in Judicial Review of complex issues relating to the protection of Environment has been conspicuous. Before taking a decision they used to refer the matters to professional and technical bodies or commissions for advice.

In A.P Pollution Control Board vs. Prof M.V. Naidu (Retd.,) and others,[75]

[74] AIR 1987 SC 965274

[75] AIR 1999 SC 812

the Supreme Court held that monitoring of such investigation process may also be difficult, Formulationof alternative procedure, expeditious, scientific and adequate is necessary and the court thought that "National Environmental Appellate Authority (NEAA) with adequate combination of both Judicial and Technical expertise is the appropriate authority to go into the question in the instant case.The National Environmental Appellate Authority is the creature of the statute. The question is whether the statutory limitation can tie the hands of the Supreme Court. The jurisdiction is confined to hearing appeals filed by a person aggrieved by an order of environmental clearance.

The court relied on Paramjith Kaur vs. State of Punjab case[76] wherein though barred by limitation under the law, the National Human Rights Commission could be directed under Article 32 to probe into Human Rights Violations alleged to have occurred long before. The powers of the Supreme Court under Article 32 of the Constitution of India to issue direction to a statutory authority can never be curtailed by statuary limitations. Thus, the NHRC can act sui Juris, free from, any conditions circumscribed by the statute that created the commission. The emerging environmental Jurisprudence should take all aspects into consideration in order to render Justice and ensure sustainable development. For this prupose, the court can refer to scientific and technical aspects for investigation and opinion by such expert bodies as the National Environmental Appellate Authority whose investigation, analyses of facts and opinion, on objections raised by parties, could give adequate help to the Supreme Court or the High Courts for adjudication. It is pertinent to mention that the right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean Drinking Water to its Citizens.

In APPCB vs. M.V. Naidu,[77]

the court ruled that "Drinking water is of Primary importance in any country. In fact India is a partly to the resolution of the UNO passed during the United Nations water conference in 1977 as "All people", whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of quality equal to their basic needs". The court observed that "water is the basic need for the survival of human beings and is

---

[76] AIR 1999 SC 430275

[77] 2001 (2) SCC 62.276

part of the Right to Life and Human Rights as enshrined in Article 21 of the Constitution of India. The judiciary reasserted the right to pollution free environment as an integral part of the Right to Life under Article 21 asserting that Human Rights are to be respected. The Supreme Court has during the course of various decisions emphasized that the protection of environment is a Constitutional objective. The growing menace of environmental pollution is a formidable challenge to the human race since it affects the lives of billions of people across the world.

Child Labour and Human Rights

The evil of employment of children in agriculture and industrial sectors in India is a product of economic, social and among others, inadequate legislative measures. The founding fathers of the Constitution, being aware of the likely exploitation by different profit makers for their personal gain specifically prohibited employment of children in certain employment.

Article 24 of the Constitution deals with the Child Labour directly, where as Articles 15(3), 21A, 39 (e), 39 (f) and 47 deal with Child Labour indirectly. Article 24 of the Constitution prohibits the employment of children below the age of Fourteen years in any factory or mine or engaged in any other hazardous employment. Article 15(3) of the Constitution enables the State to make special provisions for the welfare of children. The directive principle of State policycontained in Article 38 (e) directs the state to safeguard the tender age of children from entering into jobs unsuited to their age and strength forced by economic necessity. Article 38(f) imposes a duty on the state to secure facilities for the healthy development of children, and to protect childhood and youth against exploitation as well as moral and material abandonment. Where as Article 21 A directs the state shall provide free and compulsory education to all children of the age of 6 to 14 years. Article 47 imposes a duty upon the state to raise the levels of nutrition and standard of living of its people and improve public health.

The government of India has enacted various welfare legislation for the working children from time to time. The basic aim of the legislation is to prohibit the employment of children in certain employments and regulate the conduct of the employers of child workers in such a way that, these poor innocent child are not exploited any more. The protective provisions of the enactments do not cover children employed in smaller establishment. However, the Government of India enacted the Child Labour (Prohibition and Regulation) Act, 1986 which prohibits the employment of children in hazardous work and also regulates the conditions of

work in certain other employment where the employment is not prohibited. The Act has many provisions to be welcomed, but at the same time, it has lacunas and its own limitations.

Response of the Judiciary on Child Labour

The role and concern of the Supreme Court of India has been a profound concern in making better the lives of children, who were objects of exploitation.

In Bandhua Mukthi Morcha vs. Union of India,[78]

The Supreme Court held that "The right to live with Human Dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Article 39(e)(f) and Articles 41 and 42 and at the least, therefore it must include protection of health and strength of workers, men and women and of tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity.

In Sheela Barse vs. Union of India,[79]

the Supreme Court found that though several states have enacted children Acts for the fulfillment of Constitutional obligations for the welfare of children under Article 39(f), yet it is not enforced in some states. In view of this it directed that such beneficial legislation be brought into force and administered without delay. Justice Bhaghawathi made a suggestion to formulate and implement a national policy for the welfare of children. Further, the Hon"ble justice observed that the children's programme should find a prominent part in our plans for the development of resources, so that our children grow up to become citizen, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society.

[78] (1984) 3 SCC 161

[79] AIR 1986 SC 1773278

In L.K. Pandey vs. Union of India,[80]

the Supreme Court observed that welfare of the entire community, its growth and development depends upon the health and well-being of its children and that children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves.

In Vishal Jeet vs. Union of India,[81]

the Supreme Court held that it is the duty of the state to see that Article 39(e) and Article 23 of the Constitution are strictly adhered to and every step is ensured to safe guard the interest of the child worker and save them against all forms of exploitation.

In Peoples Union for Democratic Rights vs. Union of India,[82]

the Supreme Court held that the employment of children below 14 years of age was being hazardous, ultra-vires of the Article 24 of the Constitution. The court took a serious note of the construction industry being kept out of the ambit of employment of Children Act, 1938. Expressing concern about the "sad and deplorable omission" the court advised the state Government to take immediate steps for the inclusion of construction works in the schedule of the Act and to ensure that the Constitutional mandate of Article 24 is not violated in any part of the country. The aforesaid view was reiterated in laborers working on Salal Hydro-Project vs. State of Jammu and Kashmir[83] case

In laborers working on Salal Hydro-Project vs. State of Jammu and Kashmir,[84]

[80] (1984) 2 SCC 244 at 249
[81] 1990 Sc 1412
[82] AIR 1982 SC 1473

[83] 95 AIR 1984 SC 177

[84] AIR 1984 SC 177

the Supreme Court held that construction work being hazardous employment, no children below the age of 14 can be employed in such work because of Constitutional prohibition contained in Article24. In the instant case the Supreme Court has travelled beyond its traditional job, that is directing the central government to persuade the workmen to send their children to nearby schools and arrange not only for schools but also provide free of charge, books and other facilities such as transportation etc.,

There are numerous cases where the judiciary has made significant contribution to the cause of child workers. The Apex Court has given a new dimension to several areas such as Locus Standi, Minimum Wages, and Employment of Children, the glaring decision that deal with the payment of Minimum Wages to the children and the protection in flesh trade, employment of children in hazardous occupation, reflect the judicial creativity in the field of the welfare of the children including child workers. The court also expressed its hope that the state Government would direct its policy towards securing that the children are given opportunities and facilities to develop in a better manner and in condition of freedom and dignity, exploitation and against moral and material abandonment.

The Constitution of India provides Dignity, Equality, Liberty and Freedom and the International law through conventions and declaration has tried to stop the abuse of violation of rights of the child exists at various levels unless a vibrant social movement along with the liberal legal culture is built up, the plight of the children and flagrant violation of their rights can not be stopped. A radical change in the social outlook coupled wider dissemination of legal literary is required to promote the Human Rights of the child. For, the promotion and protection of child rights, the National Commission for protection of child rights, and State Commissions for Protection of Child Rights and children's courts were constituted in accordance with mandate of the commissions for protection of Child Rights Act, 200596

Despite an active role played by the judiciary, there seems hardly any improvement in the working conditions of Child Labour in India. The Supreme Court has introduced a new method in the form of PIL to provide Justice to the children, poor and weaker sections of the society. In number of cases, the Supreme Court directed the government to carry out the measures for the welfare of the child workers but those pronouncements seem to have made a little alert on the working conditions of children. In the context of the present socio-economic conditions, the evil of Child Labour can not be totally eliminated but only be regulated. The Government should take serious steps to overcome the difficulties

in implementing the law and ensure effective implementation of prohibition of child labour.

Bonded Labour and Human Rights

In India the Bonded labor system continues to be the most pernicious form of human bondage. under such system a worker continues to serve his master in consideration of debt obtained by him or his ancestors. Bonded labour can be intergenerational or child bondage or loyalty bondage or bondage through land allotment. Most of these labourers come from lowest strata of the society such as the untouchables, Adivasis, or agricultural labourers. Bonded labour became a mere play thing in the hands of few privileged persons. Attempts have been made both at National and International Level from time to time to eradicate forced labour. Every International instrument dealing with the Human Rights has prohibited the use of Forced or Compulsory Labour.

The Constitution of India guarantees Fundamental Rights against exploitation. Article 23 of the Constitution of India prohibits "Traffic in human beings and begar and other similar forms of forced labour. The contravention of this Constitutional provision is made an offence punishable in accordance with the law. To give effect to this Constitutional mandate parliament has enacted Bonded Labour System (Abolition) Act, 1976. Efforts were thereafter initiated for identification, release and rehabilitation of bonded labourers in different states. The rehabilitation of Bonded labour has been included as one of the important items in the 20 point Economic programme. The system however is still prevailing in some other many parts of India.

Keeping in view the seriousness of the problems of Bonded Labour System in India, the Supreme Court has endeavored to play an important role in recognizing the right to live with human dignity, a reality for millions of Indians and has protected them from exploitation. The court has not only given the widest possible meaning to the Fundamental Rights enshrined in Articles 21 and 23, but also taken into its consideration, the various factors which were responsible for the failure of various other social welfare legislations.

In People"s Union for Democratic Rights vs. Union of India97 case and Bandhua Mukthi Morcha vs. Union of India[85] case

[85] AIR 1984 SC 802

the Supreme Court of India recognized the value of field work and socio-legal research by social scientists and social action groups as the basis of factual data for the exercise of its writ jurisdiction under Article 32 of the Constitution for effectiveenforcement of Fundamental Rights of Socially and economically disadvantaged group of the society.

Judicial Response on Bonded Labour System.

The latest judicial trend reveals that Indian courts are quite enthusiastic in using the law as a tool of social revolution. The judiciary is expected to act as catalytic agent of social control. In India higher judiciary have been endeavoring to shield the cause of poor, Bonded labour and other deprived sections of the society. A number of writ petitions were filed before the Supreme Court by way of Public Interest Litigation for the enforcement of Article 23 of the Constitution and the Bonded labour system (Abolition) Act, 1976.

Most of the Public Interest Litigation proceedings on the bonded labour seek to implement the Bonded Labour System (Abolition) Act, 1976. The first major Public Interest Litigation on this issue was "Bandhua Mukti Morcha vs. Union of India99 filed in 1981.

In Bandhua Mukti Morcha vs. Union of India,[86]

action was brought for the identification, release, and rehabilitation of hundreds of Bonded labours working in the stone quarries of Haryana. The opinion of Justice P.N. Bhagawati going beyond the said Act, defined Bonded labour was forced by economic hardship. The Supreme Court issued 21 directions and appointed member of commissions of inquiry. Unfortunately, most of the direction remained unimplemented for many years. The court acknowledged its limited capacity in monitoring the schemes or rehabilitation. Ultimately, in 1992 the court recounted the history of the case and was shocked that there was not the slightest improvement in the conditions of the workers of the stone quarries[87]. This litigation ended up with one more warning to the government to be responsive to judicial directions

[86] (1984) 4 SCC 161283

[87] Bandhua Mukthi Morcha vs. Union of India, AIR 1992 SC 38

In Neeraja Choudhary vs. State of M.P, case,[88]

the Supreme Court felt that it is not enough merely to identify and release of bonded labourers but it is equally, perhaps more important that after identification and release they must be rehabilitated because without rehabilitation, they could be driven by poverty and helplessness and they may once again turn to Bonded labour. It is the plainest requirement of Articles 21 and 23 of the Constitution that the bonded labourers must be identified and released and on release they must be suitably rehabilitated. The Bonded labour system (Abolition) Act, 1976 has been enacted pursuant to the mandate of the Constitutional spirit with a view to ensuring basic Human Dignity to the bonded labourers and any failure of action on the part of the state Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart form Article 23 of the Constitutions.

The decisions of the Supreme Court in the above cases set a new trend to ameliorate the plight of Bonded labourers. In these, the Supreme Court highlighted the importance of the involvement of voluntary agencies in the process of identification and release of bonded labourers. While finally reposing confidence in social action groups, the Apex Court in both the cases observed "it is primarily through social actions groups and voluntary agencies alone that it will be possible to eradicate the Bonded labour system". In both the cases the court expressed its faith in the inclusion of the members of voluntary groups in the vigilance committees as a remedy for identification of Bonded labourers. However their achievement can not be much unless the states create the proper climate for this purpose.

A close observation of a series of cases shows that the courts in India are earnestly busy to actualize the dream of Human Rights philosophy and make Indian Constitution a workable proposition for the poor people in India. It has reprimanded the labour enforcement Agencies of the Governments for the non-enforcement of Minimum Wages Act, 1948, Employment Of Children Act, 1938, the Contract Labour (Regulation and Abolition) Act, 1972 the Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979 and the various Constitutional provisions namely Articles 21 and 24 intended to secure monetary benefits as well as Human Dignity to the workman. The Supreme Court has quite successfully elaborated the meaning of "beggar" and held that Article

[88] AIR 1984 SC 1099

23 of the Constitution is designed not only to protect the individuals against state but also against other private citizens.

Conclusion

In the recent past the judges of the High Courts and the Supreme Court have from time to time given far reaching and innovative judgments to protect the Human Rights. Public Interest Litigation has heralded a new era of Human Rights promotion and protection in India. The greatest contribution of Public Interest Litigation has been to enhance the accountability of the Governments towards the Human Rights of the poor. Public Interest Litigation has undoubtedly produced astonishing results which were unthinkable two decades ago. Public Interest Litigation has rendered a signal service in the areas of Prisoner's Rights, development of compensatory jurisprudence for Human Rights violation, Environmental protection, Bonded labour eradication and prohibition of Child Labour and many others.

A review of the decisions of the Indian Judiciary regarding the protection of Human Rights indicates that the judiciary has been playing a role of saviour in situations where the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. However while taking note of the contributions of judiciary one must not forget that the judicial pronouncements can not be a protective umbrella for inefficiency and laxity of executive and legislature. It is the foremost duty of the society and all its organs to provide justice and correct institutional and human errors affecting basic needs, dignity and liberty of human beings. Fortunately India has pro-active judiciary. It can thus be aspired that in the times ahead, people's right to live, as a true human beings will further be strengthened.

From the perusal of the above contribution it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. It has, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious of the precious Human Right to Life and Personal Liberty.

Bibliography:

1. Dr. Agarwal H. O, Human rights,central law publication, ninth edition (2006)
2. http://www.researchjournals.in
3. http://www.supremecourtofindia.nic.in