AWARENESS

OF

HUMAN RIGHTS THROUGH

JUDICIAL ACTIVISM
CHAPTER - III

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Every proceedings before the Court must reflect judicial initiative, involvement, resourcefulness and concern, all of which can be packed into a two-word phrase viz. JUDICIAL ACTIVISM. The judge without judicial activism can perhaps be described as a flower without colour and fragrance, a vehicle without fuel and wheels, for any Court to be worth the name of Court of Justice, must administer justice and that, too, speedy justice.¹ Law is interpreted by the judge in such a manner as to provide justice to the people and enable the individuals to enjoy the human rights guaranteed by the law. The judiciary not only

protects the human rights of the citizens but also grants relief to the victims of human rights violations.

In a democracy, the judiciary is instituted as the sole arbiter of the constitution and the sovereign protector of freedom and liberty. Human rights are secured and tyranny of the majority contained by judicial vigilance, that is to say, the legislative and the executive action is counterbalanced by judicial verdict. The device of judicial review has been enacted in clause (2) of Article 13. The clause runs—“The state is prohibited from making any law which takes away or abridges any of the rights conferred by Part-III. A law made in contravention of clause (2) shall, to the extent of the contravention, be void”.

What type of judiciary this should be is depicted in “The service rendered by judges demands the highest qualities of learning, training and character. These qualities are not to be measured in terms of pounds, shillings and pence according to the quantity of work done. A form of life and conduct far more severe and restricted than that of ordinary people is required from judges and, though unwritten, has been most strictly observed. They are at once privileged and restricted.

They have to present a continuous aspect of dignity and conduct."  

The Indian judiciary occupies a unique and exalted position. It stands in a high pedestal and must remain so. The judiciary is effective and essential machinery for the protection of the rights of the people. As a device, the High Courts were founded in 1860, which were the highest Courts of Appeal of each province and an appeal lay from the High Courts to the Privy Council in England. The Government of India Act 1935 created the Federal Court of India with an original jurisdiction in disputes between the provinces inter se and between the provinces and the federation. The jurisdiction of the Privy Council was abolished by the Abolition of the Privy Council Jurisdiction Act 1949, the appeals pending before the Privy Council before October 10, 1949 standing transferred to the Federal Court. Under the constitution of India, the Supreme Court of India became the highest Court of appeal for the whole of India. It has original jurisdiction in disputes between the Union and the States and between the states inter se: Its original jurisdiction under Article 32 for the protection of fundamental rights.

5. Ibid
Role of Judiciary in India:

The Indian judiciary, led by the supreme Court, is beginning to extend its judicial activism over increasing areas of executive as well as legislature. "Judicial activism is like a sharp-edged tool which has to be used as a scalpel by a skilful surgeon to cure the malady ; not as a Rampuri knife which can kill" -- Justice J.S. Verma on Jain Hawala Scam. It has to issue directions to the Government not only with regard to administration but also with regard to the functioning of local bodies and even other agencies of Government. No single institution or individual can assert itself in the system as much as the Supreme Court.

Justice V. Krishna Iyer in an interview with a national daily made a very significant comment in such a way that, when the executive fails to discharge its duties, the only remedy for the citizens is to go to court. But it is wrong to think, that the court is running administration. The court is only reminding the administration of its responsibilities. The limits of judiciary are that it cannot continuously be the watchdog of the executive.  

5. The Telegraph 19th Nov 2002, Article written by Mehta, Pratap Bhanu,(Professor of Philosophy, Law and Governance, Jawaharlal University, New Delhi) Spirit of moderation
India is almost unique in the unprecedented role judges are playing in our democratic system. It would be difficult to think of a single issue relevant to politics or policy on which the courts have not left their indelible marks; from waste management to clean air, from admissions policy to fee structure, from property right to religious liberty and many administrative matters as well. The Supreme Court has set itself up as the final arbiter of the constitution scrutinizing even parliamentary amendments. Judicial pronouncements are becoming a routine mode of governance. A jurist can bloom and blossom only when his ideas and ideals may find a fertile bed like the domain of constitutional interpretation by the highest court of the land.

Judiciary can protect our rights, clean our air, call politicians to account and so forth. At the present juncture, it would be difficult not to feel the pull of both sides of the argument. The judicial activism is justified to the extent that it helps preserve democratic institutions and values.

The judiciary at the apex of the country must cater to the needs of the society in such a manner as it can play its meaningful role

7. Ibid

by contributing towards the security and progress of the people.\(^9\)

Judiciary is the protector of the constitution. Judiciary plays a significant role in the administration of law and justice in the country. Under the constitution of India, the Supreme Court of India became the highest Court of Appeal for the whole of India. It has original jurisdiction under Article 32 for the protection of fundamental rights. Under Article 136 of the Constitution of India the Supreme Court is the highest Court of civil and criminal appeal. It has overriding powers to grant special leave to appeal from any judgement, decree determination, sentence or order in any cause or matter, passed or made by any court or tribunal in the territory of India except a court or tribunal constituted by or under any law relating to the Armed Forces.\(^{10}\)

In our country more than 80 percent of people are socially suppressed, economically depressed and educationally backward and are subjected to discrimination as a rule. In such an explosive situation causing adverse effect on society, when the executive and the legislature are apathetic and fail to discharge their constitutional duties and deliver the goods, the apex court which is the custodian of citizens' rights and liberties and which, in that capacity,

\(\footnotesize{9. \text{Ibid p.22}}\)
\(\footnotesize{10. \text{Supra No. 2 p.33}}\)
acts as sentinel on the *qui vive* has no other choice but to step in and direct these constitutional functionaries to discharge their obligations.

Under the Constitution, protection against impairment of the guarantee of fundamental right is determined by the nature of the right, the interest of the aggrieved party, and the degree of harm resulting from the State action.\(^1\)

“The remedial fundamental right is enshrined in Article 32 which was called by Dr. Ambedkar the “very soul and heart” of the constitution”.\(^2\) The Article confers a right on a person whose fundamental right is violated to move the Supreme Court directly. In *Ramesh Thapar vs State of Madras*\(^3\) the Supreme Court very aptly said that the remedial right contained in Article 32 is itself made fundamental thereby making the Supreme Court protector and guarantor of fundamental rights. Article 32 empowers the Supreme Court to issue any writ, order or direction for the enforcement of fundamental rights. A similar power is conferred on the High Courts under Article 226. Article 226 confers power on the High Court to issue

\(^{11}\) *Ibid* p.33


\(^{13}\) *AIR 1950 124*
to any person or authority, including in appropriate cases any
Government or its agency, department or office, any direction, order or
writ, including writs in the nature of habeas corpus, mandamus,
prohibition certiorari and quo-warranto for the enforcement of any of
the fundamental rights, and any other legal right or for any other
purpose.  

Rule of Law – Regional and International:

Rule of Law is the basis for the governance of the
society. "Whenever we talk of upholding Rule of Law, we visualize a
system of justice which accepts and respects the basic rights of the
individuals".  

Human Rights; including civil, political, economic, social
and cultural, are inherent in human nature without which people cannot
think of living as human beings. This is because liberty as a concept
occupies a pivotal place in a democracy.

Judiciary enables the individuals to enjoy the human

14. Supra 10 p. 547
15. Human Rights in India – Problems and Perspectives, Edited by
Sehgal, B.P. Singh, Article written by Arora, K.K. Reader in Law,
University of Jammu on “Activist Role of Supreme Court in
Safeguarding Human Rights against custodial crimes. Deep and
Deep Publication 1999
rights guaranteed by the law. The court upholds the supremacy of the rule of law. The International Bill of Rights embodies the machinery of justice. Article 8 of the Universal Declaration of Human Rights, 1948 states that everyone has the right to an effective remedy that is enforceable by the competent national tribunal in the event of violation of the fundamental rights granted by the constitution or by law. It has been further strengthened by the International Covenant of Civil and Political Rights 1966.

Article 14(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1948 states that the State shall ensure, in its legal system, that the victim of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for rehabilitation as fully as possible.

The Declaration of Basic Principles of Justice for Victims of Crimes and abuse of Power, 1985 provides that the judicial and administrative mechanisms should be established and strengthened to enable victims to obtain redress through fair, inexpensive and accessible procedures.
The Declaration on the Protection of All Persons from Enforced disappearance, 1992, stipulates under Article 9(1) that the right to a prompt and effective judicial remedy is a measure for preventing the act of enforced disappearance, which has been caused by an agent of State.

Again, in the year 1998 Principle 32(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that every detained person or his Counsel shall be entitled to take proceedings according to domestic law before a Court or any other authority to challenge the legality of the detention in order to obtain his release without delay.

The European Convention on Human Rights, 1950 states that the arrested person shall have the right to a fair and public hearing before a competent court or tribunal under Article 6(1). The convention also makes the European people aware of the rights and liberty of the arrested person.

The American Convention on Human Rights, 1969 provides under Article 8 that every person has the right to fair hearing with due guarantees and within a reasonable time by a competent,
independent and impartial tribunal established by law. The convention also provides that every person has the right to be compensated in accordance with the law.

The African Charter on Human and People's Rights, 1981 states that every detained person shall have the right to be tried within a reasonable time by an impartial tribunal. The Charter makes the African people aware of the rule of law for the protection of human rights.

The Economic and Social Council has recommended to the United Nations the establishment of proper mechanism to curtail serious oppressions of individuals. The Council further stressed on the development of international means of recourse and redress for victims of human rights violations where national channels may be inadequate.\(^{16}\) The World Conference on Human Rights, Vienna, 1993 has reaffirmed that the administration of justice, including law enforcement and prosecuting agencies, should be strengthened.\(^{17}\)

\(^{16}\) ECOSOC Resolution of 24\(^{th}\) Mat 1990
These conventions and councils reaffirmed that every State should provide an effective framework for the victims of human rights violations. People all over the world have thus become aware, to some extent, that the prosecution by the State of the offenders by the state should be in accordance with law and procedure.

**Rule of Law in India:**

India is a welfare state and is viewed as a preserver of natural rights of her citizens. These rights belong equally to all governed under the Rule of Law.\(^{18}\)

Rights to life, liberty and dignity are inherent in human nature. The basic human rights are enforceable rights in every civilized and welfare state, because it is futile to talk about a right without a remedy. In India, the constitution ensures the right to life and liberty to every person as a fundamental right. "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".\(^{19}\)

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Article 253 of the Constitution empowers the Parliament to make law for implementing international treaties, agreements or conventions. The Courts in the Common Wealth Countries interpret their constitutions by relying on the Charter of the United Nations and other international human rights instruments.²⁰

The Supreme Court has observed in many cases that right to live under Article 21 including those which make life meaningful, and that personal liberty means something more than animal existence. There are different cases decided by the Supreme Court for the protection of human rights. These cases make the general people aware of their human rights. During the post constitutional era, there has been considerable development of Human Rights and their remedies through the creative and enlightened interpretation of the constitution by the judiciary. As a result of judicial activism adopted by the Supreme Court, especially in Maneka Gandhi²¹ and subsequent decisions in Hussainara Khatoon vs State of Bihar²² and Sunil Batras ²³ case, a number of unenumerated rights have been accorded constitutional status being implicit in the right to

²⁰ Human Rights in Constitutional Law, Basu, Durga. p.25
Prentice Hall of India, New Delhi, 1994
²¹ Maneka Gandhi vs Union of India AIR 1978 SC 597
²² AIR 1970 SC 1360, 1369, 1377, 1879
²³ Sunil Batra vs Delhi Administration AIR 1978 SC 1675, (Human Rights of convicts)
life and personal liberty. "It has become an accepted principle that when fundamental rights vital for the maintenance of Human Rights are at stake, the functional realism, and not the facial cosmetics, must be the diagnostic tool, for constitutional law must seek the substance and not the form"24. "A parallel constitutional remedy has developed for redressal of violation of Human Rights through monetary compensation which is different from the ordinary civil remedy for damages"25.

The courts of India have interpreted the text of the constitution liberally by using international documents and human rights treaties. In Keshavananda Bharti vs State of Kerala,26 Chief Justice Sikri has observed that the court must interpret article 51 of the constitution in the light of the Charter of the U.N., the Universal Declaration of Human Rights, and other international human rights documents.

In Jolly George Verghese vs Bank of Cochin27 the

27. AIR 1980 SC 470
Supreme Court has held that an individual cannot come to Court but may complain to the Human Rights Committee which, in turn, will set in motion the other enforcement proceedings. In people's Union and Civil liberties vs Union of India, the Supreme Court has observed in 1997 that the rules of existing international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law. The prevailing judicial approach of the apex court shows the progressive growth of International Human Rights treaty in relation to the domestic legal order. In the event of a possible conflict between the existing domestic law and the ratified international human rights covenant, the liberal interpretation of domestic law in matching with international law has been adopted so as to give effect to the binding international covenant.

In the Constitution of India the preamble sets out the principle of Rule of Law which lays down the objectives of social, economic and political justice, equality of status and opportunity, and fraternity and dignity of the individuals. Part III of the Constitution which enshrines fundamental rights to the citizens of India are enforceable under Article 32 and 226 of the Constitution. The rule of

law depends on the provisions of adequate safeguard against abuse of power by the executive as well as safeguard for maintaining law and order for social and economic conditions of life in the society. It ensures that every man is bound by the ordinary laws of the land.

**Major Contribution of the Judiciary:**

Article 32(2) of the Constitution provides that the Supreme Court shall have the power to issue directives or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the fundamental rights. Article 226(1) of the Constitution confers similar power on the High Courts to issue directions or orders or writs for the enforcement of any of the fundamental rights and for any other purpose. The judiciary acts as the final interpreter, protector, guardian and guarantor of the fundamental rights of every citizen.

The Supreme Court has laid down the need for just, fair, reasonable procedure and adequate safeguards against the encroachment by the State on personal liberty of citizens, free legal aid to the poor and speedy trial in several decided cases.30

30. **Gramophone Co of India vs Birendra Bhadur. AIR 1984 SC 667, p. 6**
The role of judiciary has widened with the corresponding shift in the attitude of modern science of law from the analytical to functional.31 The court stands between the individuals and the State. It protects the human rights of the individual from any unjustified interference.32

For the existing judicial process Public Interest Litigation is a new approach. The traditional rule of locus standi has been liberalized by the Supreme Court while invoking Article 32 of the Constitution. Writ of Habeas Corpus may be filed by a person other than the victim. However, the petitioner shall not be a complete stranger.33 Even the court has relaxed the traditional rule of locus standi which allowed exclusively the aggrieved person who had suffered a specific injury. The Supreme Court has even taken cognizance of letters from individuals complaining of the infraction of fundamental rights and has treated such letters as writ petitions.34

34. i) Sunil Batra (II) vs Delhi Administration (1980) 3 SCC 488
   ii) Rakesh Kaushik vs V.L. Vig 1980 Supp. SCC 183
   iii) Veena Sethi vs Bihar AIR 1983 SC 339
Bandhua Mukti Morcha\textsuperscript{35} Justice Bhagawati has said that when a member of the public acting bonafide moves the court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the court for relief may move the court even by just writing a letter.

In S.P. Gupta vs Union of India\textsuperscript{36} the Supreme Court has held that any public spirited individual can move the court in case where the victim requires to seek judicial redress.

The judiciary has granted relief to prisoners, women, bonded labourers and workers and has passed verdicts for protection of environment, among others. The development of human rights promotion and protection has also been evolved by the judicial verdict that has facilitated the public interest. The High Court also entertains public interest litigation under Article 226 of the Constitution which can be regarded as a strategic arm of the legal aid movement.

Public Interest Litigation is intended to bring justice to the poor masses who constitute the low visibility area of humanity. The

\textsuperscript{35} (1984) 3 SCC 712
\textsuperscript{36} AIR 1982 SC 149
State or public litigation machinery should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court.\textsuperscript{37}

Thus the legal aid movement and public interest litigation seek to bring justice, feeling of humanity and awareness to the poor and ignorant mass of India about their human rights.

The major contribution made by our Apex Court in safeguarding human rights of persons in the police lock-up are highlighted in the following cases:

In Rubhubir Sing vs state of Haryana\textsuperscript{38}, theft had been committed in some officers' houses. Some suspects had been picked up by the police. Suspects were tortured and one of them died. Trial Court convicted the Sub-Inspector of Police for life imprisonment and the Supreme Court confirmed the decision of the trial court.

In State of Uttar Pradesh vs Ram Sagar Yadav\textsuperscript{39}, one

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\textsuperscript{37} Administrative Law; Thakker, C.K. Forwarded by Hidayatulla M.J. Eastern Book Company Publishing Pvt Ltd (Lucknow) 1992, p. 589
\textsuperscript{38} AIR 1980 SC 1087
\textsuperscript{39} AIR 1985 SC 416
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Brijlal made a complaint to the Superintendent of Police that a police constable had demanded bribe from him. Brijlal was brought to the police station and then tortured to death for having dared to make such a complaint. Supreme Court convicted the policeman under section 302 of IPC. Similar decision was pronounced by the Supreme Court in Gaurishankar Sharma's case 40, where one Ram Dhiraj was beaten to death in police lock-up.

In Woman Resources Centre vs Commissioner of Police, Delhi 41, the Supreme Court awarded Rs.75,000 to be recovered from the erring police officer as compensation to Mrs. Kamlesh Kumari whose 9 year old son was beaten to death by the Delhi police officials.

In Nilabati Behra vs Union of India 42, the Supreme Court held that the real threat to rule of law came from the growing lawlessness of the state functionaries, particularly the police, and wherever there was contravention of Human Rights and fundamental rights, there was an enforceable right to compensation.

In this case Mr. Suman Behra was taken into police custody on December 1, 1997 by the personnel of Bishra Police

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40. AIR 1990 SC 709
41. AIR 1990 SC 513
42. AIR 1993 SC 1960
Station in Bihar in connection with the investigation of a theft case. On the very next day, the detenue was found dead near the Jaraikela Railway Station. The mother of the victim, Nilabati, claimed for compensation for her son died in police custody and she also contended that it was a case of deprivation of life under Article 21 of the Constitution. The Supreme Court held that the State Government of Bihar was liable to pay Rs.1,50,000/- as compensation to the family of the victim. The Apex Court observed that an enforcement of the right to compensation, as provided in Article 9(5) of the International Covenant of Civil and Political Rights 1966, is not alien to the concept of enforcement of fundamental right of the citizen.

In Smti Kamini Bala Talukdar vs State of Assam 43, Gauhati High Court directed the State Government of Assam to pay Rs.1,00,000/- as compensation to the family of the victim who was killed by police. The Court held that the right to life with human dignity enshrined in Article 21 of the Constitution of India should be given due protection by the State, otherwise the very fabric of the democratic society could easily crumble to fragments. The Court also observed that police shall make bonafide attempt to apprehend the suspect in the course of arrest.

43. (1997) IGLT 333
The same problem arises in Sudhangsu Das vs State of Assam 44, a mentally retarded youth was arrested and subjected to torture by police. The victim was not served even food and water while in police custody. Gauhati High Court directed the State Government of Assam to pay Rs.1,00,000/- as exemplary compensation to the victim. The Government of Assam paid Rs.75,000/- and the rest of Rs.25,000/- was paid by the two guilty police officers who were involved in the case. Gauhati High Court not only directed the responsible government to pay the exemplary compensation to the victim of human rights violation but also compelled the guilty officials to bear a proportionate amount of the compensation to the family of the victim who was allegedly killed by the security forces after his arrest.

In Kinjimbou Langmei vs Union of India 45, Gauhati High Court held that the armed forces including the State police are the custodians of law and order in the state. They should maintain the greatest respect for personal liberty of citizens and they should not flout the laws by perpetrating acts of lawlessness. The Court directed the Government of India to pay Rs.1,00,000/- as compensation to the

44. (1999) 2 GLT 84
45. (1998) 4 GLT 139
victim who was found to have been arbitrarily arrested and tortured by the Assam Rifles personnel in their camp.

There are numerous other cases wherein the Supreme Court and different High Courts have shown a lot of judicial awareness towards protection of individual rights and liberties.

In Sunil Batra vs Delhi Administration 46 the Supreme Court has observed that to fetter a prisoner in irons is inhuman and unjustified. The routine resort to handcuffs and irons bespeaks a barbarity hostile to our ethos of human dignity and social justice. Such acts of torture to the prisoner shall make serious inroads into the limited personal liberty under Article 21 of the Constitution. The prisoner shall not have the liberty to move, mix, talk, share company with co-prisoners unless personal liberty has been sanctioned by the authority of law in a dispensable situation.

The Olga Tellis vs Bombay Municipal Corporation 47 which is also known as the "pavement-dweller case", a five judge

46. AIR 1978 SC 1675
47. AIR 1986 SC 180
bench of the court has finally ruled that the word "life" in Article 21 includes the "right of livelihood" also.

In Bandhua Mukti Morcha vs Union of India 48, a public spirited organization filed a suit for the release of bonded labourers working in stone quarries. Here, the Court allowed locus-standi to an anti-bonded labourer social organisation which petitioned against the inhuman and intolerable conditions of the labourers hailing from different states. The same incident happened in Neerja Choudhury's case 49(i) and also in Mukesh Advani's case 49(ii).

These bonded labourers lived under inhuman conditions, and faced serious occupational risks and disease, even death. They were subjected to open exploitation of the Cedars i.e. the middlemen in violation of the various provisions of the constitution, social legislation and, most importantly, the Bonded Labour System (Abolition) Act, 1976.

The Khatri and others vs state of Bihar 50 is a pathetic and

48. (1984) 3 SCC 161
49(i). AIR, 1984 SC 1099
49(ii). AIR 1985 SC 1363
50. AIR 1981 SC 928 (The Bhagalpur Blinding case)
most tragic death case. The Supreme Court was intimated by some of the undertrial prisoners through the Superintendent of the Bhagalpur District Jail that they were treated brutally and were subjected to police atrocities, so much so that some had been blinded cruelly. Earlier, their complaints were invariably ignored by the authority, even by the District and the Session Judges, and the Chief Judicial Magistrate. Their helpless cry was in vain before the Home Department. But Mrs. K. Hingorani, a social action lawyer made a PIL before the Supreme Court. The Hon'ble Court was shocked by the non-action of the concerned authorities because of which the undertrials were deprived of their eye-sight and thus were deprived of their right to life. The court issued directions to the State to arrange for human treatment of the blinded prisoners and also for compensation and rehabilitation.

An act of torture is not only an offence to human dignity but is also a violation of the principles of Charter of United Nations, 1945. It also violates the human rights and fundamental freedom of individuals and persons embodied in the Universal Declaration of Human Rights, 1948. Torture means infliction of severe physical and mental pain upon a person by the detaining authority. The detaining authority compels the detenue to act against his will and interest. Torture is considered to be a heinous violation of human rights of
citizens and persons and it also constitutes the denial of the essence of human rights. Article 21 of the Constitution guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. In Charles Shobhraj vs Superintendent, Central Jail, Tihar, New Delhi 51 the Supreme Court held that right to life is more than mere animal existence. The prisoners are even entitled to enjoy the rights and freedoms enshrined in Articles 19 and 21 of the Constitution. It was held by the Supreme Court in Francis Coralin Mullen vs Administrator, Union Territory of Delhi52 that even a convicted person is entitled to the precious rights guaranteed by Article 21 of the Constitution.

In Prem Shankar Shukla vs Delhi Administrator 53, the Supreme Court has observed that hand cuffing an undertrial during the transit between the jail and the court for the trial of the case was unconstitutional.

The Supreme Court observed in Madhu Limaye vs State of Punjab 54 that when an arrested person is produced before a
magistrate must not act mechanically. It is the duty of the magistrate to apply his judicial mind to determine whether the arrest of the detenue has been lawful or not. The said procedural norm has become a part of personal liberty of the detenue under Article 22(2) of the Constitution.

The Supreme Court held in C.B.I. vs Aupam J. Kulkarni that the detaining authority can take the remand of the detenue for a period of fifteen days. However, further remand shall be granted to judicial custody only, which may extend to 90 days.

The violation of human rights has been reflected in many other cases where the judiciary played a vital role for the protection of human rights of the common people and thus the general people become aware of their rights.

The judge interpretes law in such a manner as to provide justice to the people. A creative function of the judiciary enables the

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55. (1992) 3 SC 141
56. (i) Apparel Export Promotion Council vs A.K. Chopra 1999 (I) SCC 759. 1993 (3) Supreme Court Reported Judgement 105. AIR 1999 SC 625
individuals to enjoy the human rights guaranteed by the law. The judiciary acts as the final interpreter, protector, guardian and guarantor of the fundamental rights of every Indian citizen. The judiciary not only protects human rights of the citizens but also grants relief to the victims of human rights violation.

In Rudul shah vs State of Bihar \(^{57}\) the petitioner was detained illegally in the prison for over fourteen years after his acquittal on the ground of insanity in a full dressed trial. The petitioner filed a *habeas corpus* writ for his release and further contended that he was entitled to be compensated for his illegal detention. The court passed order of release from illegal detention and awarded Rs.35,000/- as compensation to the petitioner for deprivation of his liberty.

The Supreme Court held in Bhim Singh vs State of Jammu and Kashmir \(^{58}\) that the police officers acting in a most high handed manner in arresting the petitioner and in not producing him before the magistrate within the requisite period of time which were a gross violation of the constitutional rights under Articles 21 and 22 (2) of the Constitution. The court awarded monetary compensation of Rs.50,000/- by way of exemplary cost to the petitioner.

\(^{57}\) AIR 1983 SC 1036

\(^{58}\) AIR 1986 SC 494
In the People's Union for Democratic Rights vs Union of India ⁵⁹ which is known as Asiad case the Supreme Court entertained petition from a public spirited human rights organization on behalf of labourers belonging to socially and economically weaker section and employed in the construction work of various projects connected with Asian Games 1982 complaining violation of various labour laws including non-payment of minimum wages and granted relief.

In Charan Lal Sahu vs Union of India ⁶⁰ (Bhopal Gas Disaster Case) in order to provide immediate relief to the Bhopal gas tragedy, on a PIL petition, the Court upheld the validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.

The Supreme Court in A.S. Mittal vs State of Uttar Pradesh ⁶¹ directed the State Government to pay certain amount by way of interim relief to the victims who had suffered irreparable damage to their eyes at the eye camp.

⁵⁹. (1982) 3 SCC 235
⁶⁰. (1989) 3 SCC 223; AIR 1989 SC 1570
⁶¹. (1989) 4 SCC 286
The Public Interest Litigation or Social Action Litigation is an exclusive device of judiciary in order to achieve justice for the weaker sections of the society. In order to spell out the real sense of the rule of law, Public Interest Litigation has a very significant role in our downtrodden society, as it is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the court ensure the security umbrella of constitutional, legal or human rights, so that they can have the social justice. By having a PIL petition in Banwasi Seva Ashram vs State of Uttar Pradesh\(^2\), the Supreme Court granted relief to the Adivasis and other backward people using forest as their habitat as well as means of livelihood against their eviction from the forest land by the Government and thus the Adivasis became aware of their right.

In the State of Punjab vs Ajaib Singh \(^3\), the Supreme Court directed the respondent to deposit a sum of Rs.5,00,000/- which was to be paid to the dependents of the victims of human rights violations committed by the law enforcing agencies of the State.

\(^2\) (1993) 2 SCC 612

\(^3\) (1995) 1 SCC 433
In Bodhisattwa Gautam vs Subhra Chakravorty\textsuperscript{64} the Apex Court has held that rape is a grievous offence committed against the basic human rights. Such an offence violates Article 21 of the constitution and the victim should be entitled to get compensation, and the offender punished under the existing criminal law.

In R. Jalimeran vs State of Nagaland\textsuperscript{65} Gauhati High Court directed the State Government of Nagaland to pay an exemplary damages to the family of the victim who died in police custody and in Arun Ch. Bhowmik and others vs State of Tripura\textsuperscript{66}, Gauhati High Court directed the State Government of Tripura to pay Rs.1,00,000/- as an exemplary damages to the victim who was arbitrarily arrested and tortured in police custody.

\textsuperscript{64} AIR 1996 SC 922

\textsuperscript{65} (1994) 1 GLR 19

\textsuperscript{66} (1997) 1 GLT 55
Though people were not aware of the concept of rights and liberties in ancient times, from the observation of many cases it is clear that most of the people come forward to fight against the violation of human rights now. It is observed that people from the developed areas become aware of their rights to some extent which is not the same case with villagers or ignorant people of remote places. It is the duty of the court to expound the true meaning of the concept of life and liberty of the individual. The right to life has been interpreted very widely by the courts so as to encompass citizens' rights to live with human dignity. Such rights include those aspects of life that make a man's life meaningful and complete. Every individual is entitled to a quality of life consistent with his or her personality. The State is responsible constitutionally to protect and safeguard the

67 (i). Jagruti vs S.G. Chaudhari, PI, 1998 Cr LJ 3251 at 3254, 3255 (Guj)
(ii). G. Picheswara Rao vs S.I. of police 1997 Cri LJ 1145 at 1148 (AP)
(iii). Praful Kumar Sinha vs State of Bihar 1994 Supp (3) SCC 100, quoted in 1997 Cri LJ 874 at 877 (Gau)
(v). Harbans Kaur vs Union of India 1995 (I) SCC 623
(vi). Rama Murthy vs State of Karnataka 1997 Cri LJ 1508 at 1510 (SC)
(ix). Nandini Satpathy vs P.L. Dani, AIR 1978 SC 1025

68. India's Third Periodic Reports on ICCPR, CCPR/C/76/Add 6, June 1986, p 17
disadvantaged people. The families and relatives of the missing persons shall also be entitled to enjoy the protection to be provided by the State as they enjoy the right not to live forced life under article 21 of the Constitution. The right to life and personal liberty as provided in Article 21 of the Constitution covers the right to privacy, the right against solitary confinement, the right against custodial violation, the right to doctor's assistance, the right to legal aid, the right against handcuffing, and protection against use of third degree method by police. These are nothing but natural or the fundamental rights of the people. Such rights are available against the State. Any act of the State, which is found repugnant to such rights, must be invalid.

The judiciary has exhibited an enlightened judicial creativity and foresight in deciding issues relating to environment. Now a days, every human being is aware and realizes that the health, well

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69. Vikram Deo Singh Tomar vs State of Bihar, AIR 1987 SC 1426
70. P. Rathinam vs Union of India, (1994) 3 SCC 394
71. Bondhua Muki Morcha vs Union of India AIR 1984 SC 802
72. Sunil Batra vs Delhi Administration (1983) 4 SCC 494
73. Sheela Barse vs State of Maharashtra (1983) 2 SCC 96
74. Paramand Katra vs Union of India (1989) 4 SCC 286
75. M. Hoskot vs State of Maharashtra (1978) SCCS 46
76. Prem Shanker Shukla vs Delhi Administration(1980) 3 SCC 526
77. Kishore Singh vs State of Rajasthan AIR 1981 SC 628
78. Goloknath vs State of Punjab AIR 1967 SC 1643 SC 1461
79. Vidya Verma vs Shivarin (1955)2 SCC 983
80. Mahendra vs State of U.P. Air 1963 SC 1019
being and the fate of the future generations depend on their action to avert environmental crisis. "The green, blue, white and gray revolutions will be a myth, not truth, unless we realize the deadly portents of pollution." Here is the dawn of a new age, where perception towards the global environment has developed. Various national and international efforts to avert an environmental catastrophe, and above all judicial activism, and a legal crusade by some environmentalists to wipe out the sin of polluting the natural environment and living free from pollution, are emerging as a new civil right.

The judiciary has played a vital role in recognizing the right to live in a healthy environment as meaningful for all persons, because everyone likes to live in a healthy environment, which is a basic human right. Human beings cannot survive for a moment without air. So air should be pollution free. Pollution of air and water is man-made which is more serious than natural pollution. Serious sources of

pollution are human and animal excretion. The slum dwellers live in an unhealthy environment as well as make other to live in the same. In Part IV of the Constitution, Article 48 A which was added in 1976 vide 42nd Amendment Act contains the directions for States to protect and improve the environment and safeguard the forests and wild life. Even a fundamental duty is imposed on every citizen of India vide Article 51-A (g) of the Constitution to protect and improve the natural environment including forests, lakes, river and wild life and to have compassion for living creatures.

The landmark judgement of the Supreme Court in Ratlam Municipality vs Vardhichand testifies to new outlook of the judiciary on environment. In this case the Supreme Court lays down guidelines for environmental protection and this direction of the Apex Court depicts a revolutionary leap forward on the path of human rights and personal liberty in India.

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82. AIR 1980 SC 1622
Right to healthy environment has been made and construed as a fundamental right by the Apex Court of the country while deciding various public interest cases filed by the Enviro-Legal expert Mr. M.C. Mehta. Article 21 which gives right to 'life' includes all attributes which are necessary for the enjoyment of life 83.

In some decided cases 84 it was pointed out that by the term 'life' something more is meant than mere animal existence. Pollution causes permanent disabilities leading to malfunctioning or non-functioning of the vital organs of the body which reduces a person to mere animal existence thereby denying him the right to life 85, which is the basic right of human beings.

In India, where people lack environmental knowledge and

83. Supra No. 15, p 430


85. Supra No. 17, p 431
information, the judiciary has to come forward to perform the educative function of bringing an awareness through judiciary and make enforcement agencies realize their real role under the law. In a recent decision, the Supreme Court has also ordered all States and Central Government to make circulation/syllabi for the purpose of introducing environment as a compulsory subject in schools and colleges. An effective role is thus being played by the judiciary to overcome pollution and to give the basic human right i.e. right to live in a peaceful and healthy environment.

The Universal Declaration of Human Rights and Convention of Human Rights also define human rights so as to provide measures for their protection and preservation at the international level. Declaration of Human Rights is a common standard of achievement for all people and all nations with the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, secure their universal and effective recognition and observance both among the people of ember states themselves and among the people of territories under their jurisdiction.

86. AIR 1992 SC 382 M.C. Mehta vs Union of India
Article 1 of the Universal Declaration of Human Rights 1948 provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood as Article 3 gives to everyone the right to life, liberty and security of person.

According to Article 5 no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 8 provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

In addition to these Articles, the Universal Declaration of Human Rights 1948 provides 30 articles regarding different rights of human beings.

But judicial safeguard or activism and the Universal Declaration of Human Rights are not sufficient to bring effective implementation of human rights. No judicial action, no social organizational action can be wholly successful until there be enough cooperation by the government and governmental agencies for the proper implementation of human rights.
It is in view of this that the President of India promulgated an Ordinance on September 28, 1993 with a view to setting up National Human Rights Commissions in the States, and Human Rights Courts for better protection of Human Rights and for matters connected therewith. Later on, Parliament embodied the provision of the Ordinance into the Protection of Human Rights Act 1993 (Act No. 10 of 1994).

The National Human Rights Commission under the Chairmanship of Sri Ranganath Mishra, former Chief Justice of India, has been constituted. The Commission has been empowered to hear and inquire into all complaints regarding violation of human rights. All complaints received by the Commission are registered and a number is given. These are then placed for admission before a Bench of two members of the Commission within two weeks. But ordinarily, the Commission will not entertain a complaint

(1) on a matter that occurred more than one year earlier than the date of complaint,

(2) with regard to sub-judice matters,

(3) with regard to vague, anonymous or pseudonymous matters,

(4) matters which are frivolous, and

(5) matters which are outside the ambit of the Commission.
As a watchdog body the National Human Rights Commission has so far done a creditable job in not only promoting human rights in the country, but also raised the image of the nation in the community of states 87.

With the formation of the National Human Rights Commission, the civil liberties movement in India had the expectation that the Commission would ameliorate human rights situation. In its initial activities, the Commission visited a number of troubled regions and other parts of the country, i.e. Assam, Meghalaya, Punjab, Jammu and Kashmir, Andhra Pradesh, Bihar, Madhya Pradesh, Uttar Pradesh etc. to familiarize itself with the situation prevailing there 88.

The important mission which it has taken is in relation to human rights awareness. It has emphasized upon the inclusion of Human Rights curriculum at school and university levels.

The Commission has its own investigating machinery headed by an officer of the rank of Director General of Police who is appointed by the Commission itself. According to the inaugural speech

87. Supra No. 53 p 29
88. Human Rights in India Problems and Perspectives by Sehgal, B.P. Singh
of the Chairman on the occasion of the inauguration of the Orissa Human Rights Association, April 14, 1995, the Commission received about 7800 complaints from different States in regard to violation of human rights. Of these 2500 complaints has been disposed of so far after investigation. The Commission receives about 300 complaints per week from all over the country.

When the inquiry Commission comes to the conclusion that violation of human rights has occurred, it cannot by itself take any step to get the wrong mitigated but may take the following steps:

1. Where the inquiry discloses the commission or violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority to initiate proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons.

2. Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that court may deem necessary.
3. Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary.

The Commission may give a copy of its report to the complainant or his representative. The Commission is also required to publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

The Indian National Human Rights Commission cannot impose its decision the way a court of law can. Nor can its recommendations be enforced like judgements of the courts. Yet the Commission is not impotent; its recommendations have been respected. Section 30 of the protection of Human Rights Act contemplates establishment of human rights courts with a view to providing speedy trial of offence arising on the violation of human rights. For that purpose the State Government may, with the concurrence of the Chief Justice of the High Court, by notification specify for each district a court of sessions to be a Human Rights Court to try the offences.
State Human Rights Commission:

Section 21 of the Protection of Human Rights Act states that a state Government may constitute a body known as the State Human Rights Commission. Due to increase of work load, it is not possible for the National Human Rights Commission to concentrate on each and every complaint received by the Commission. The burden of the National Human Rights Commission will be reduced by establishing State Human Rights Commission in every State.

Under Section 30, the State Government, with the approval of the Chief Justice of the High Court, is to specify for each District a Court of Session to be a Human Rights Court to provide speedy trial of offences relating to violation of human rights. But this section does not apply to a Special Court which is already specified as a special court and for a special court which is already constituted for such offences under any other law in force.

It is not clear in the Act whether the purview of the human rights courts is the same as that of the National Human Rights Commission and State Human Rights Commission. The Human Rights Courts are not conferred with the power to grant or recommend immediate interim relief to the victim or the members of his family
unlike National Human Rights Commission and State Human Rights Commission. Section 36 sub clause (1) states that the Commission should not inquire into any matter pending before a State Commission or any other Commission duly constituted under any law. The intention of the Parliament behind this provision is that there should not be two conclusions on one issue and that nothing should weaken the progress of the inquiry. Because of this restriction, if a grave human rights violation occurs, the Government may appoint a judicial inquiry, and at the same time if there is any inconvenience caused to the concerned government, it may make deliberate attempts to avoid the placing of the said report before the Assembly or Parliament. Due to this restriction, the Commission may not inquire into the alleged grave violation of human rights. Hence, it is desirable to empower the Commission to call for the said inquiry report and subsequent publication of the same.

The Protection of Human Rights Acts 1993, came into force with effect from the 1st day of May 1996 in Assam. The Act provides that the State Government shall have its own investigating staff under an officer not below the rank of an Inspector General of Police and may, for the purpose of conducting any investigation pertaining to the enquiry, utilize the services of any office or
investigating agency of the Central Government as the case may be. The Commission shall have its own team of investigation under the I.G.P. and such other categories of officers as the Commission from time to time decides. The Commission may, in any given case, appoint an appropriate number of outsiders to be associated with the investigation either as investigators or observers. Accordingly, the State Government had sanctioned the following staff for investigation wing –

1. One Inspector General of Police.
2. One Superintendent of Police.
3. Two Inspectors of Police.

But due to financial constraint, Assam Human Rights Commission could not entertain the sanctioned posts and had to run with officers on deputation from the Police Department except for the post of Superintendent of Police being filled in by appointing a retired IPS Officer on contract basis w.e.f. 13.4.198. Two Inspectors of police from the Border Organisation and two constables from the City DEF are on deputation to the Investigation Cell. They are paid by the concerned organizations. (Sri B.P. Rao, IPS, IGP, CID has been functioning as the Director of the Investigation Cell of the Commission.)
Approximately 1700 cases have so far been registered by Assam Human Rights Commission till February 28, 1998 out of which nearly 200 are on written complaint and the rest are suo-motu. Nearly 600 cases have been disposed of so far. Cases relate mostly to custodial death, medical negligence in Government hospitals, environmental pollution, discontinuation of supply of piped and pure drinking water, attack on teachers and doctors, mysterious death, kidnapping of children, activities of village quacks and unqualified persons rendering medical treatment, death due to contact with live road-side electric wire lying on the road, killing of journalists and assault on journalists by police and others. Few complaints received concerning the Armed Forces have been forwarded to National Human Rights Commission as the State Commission has no jurisdiction to deal with them.

Altogether 3181 number of cases have been registered by Assam Human Rights Commission up to 8.3.2000 of which 2351 cases have been disposed of and 830 cases are pending with the Commission.

The Investigation wing was entrusted with the investigation of 234 number of cases out of which 135 number of cases have been investigated and the remaining cases are pending for investigation. Out of 181, 49 cases were custodial death cases. In addition to 181 cases entrusted for investigation, 73 cases were endorsed to the Investigation cell for comments, out of which comments on 57 number of cases have been furnished.

The following are a few of the cases where punishments as mentioned below were awarded by the Honourable Commission:

Assam Human Rights Commission case No. 7/96 – The case is about threat to life of the inmates of the Man Vikash Kendra, Guwahati, which is a special school for mentally retarded children with facilities for education and with scope for physiotherapy, speech therapy yoga with personal guidance and research training. There was also threat of illegal dispossession of property of this Institution. Police and Revenue authorities took necessary steps as directed by the State Commission. 90

AHRC case No. 107/96 – A girl student of Mirza College

90. Ibid, p. 4
near Guwahati died due to medical negligence. Assam Human Rights Commission recommended due disciplinary action against the negligent medical staff. 91

AHRC case No. 145/96 – A complaint of custodial torture of Sri Amlan Biswas in Silchar Police Station of Cachar District was filed on the basis of observations of Gauhati High Court in Civil Rule No. 4162/96 that AHRC is the most appropriate forum with its independent investigating set up. Director, Investigation of AHRC having taken up investigation, the Commission recommended treatment of the victim in the Institute of Neurological Science at Guwahati at the cost of the State Government. 92

AHRC case NO.379/97 – Compensation to Dimbeswar Bhumiz father of Rita Bhumiz, a minor girl, was recommended for violation of human right to the dignity of the girl by Bakul Das and Smti Simul Rani Das of Guwahati by beating and torturing the victim girl who was a maid servant in their house. The victim was handed

91. Ibid
92. Ibid vol 1 NO. 3 published by AHRC
over to her father. 93

AHRC case No. 624/97 – Compensation recommended for payment to Purneswar Bora, Dharmeswar Saikia and Munin Sarma for violation of their human rights to life and dignity by the Black Panther Policemen of Samguri Police Station of Nagaon District by committing atrocities on the victims. 94

AHRC case No. 1146/97 – Disciplinary proceedings were recommended by AHRC against a Sub-Inspector of Police of Jamugurihat P.S. of Sonitpur District for violating human rights to the dignity of Smti Nomita Hazarika as her husband Babul Hazarika had to call her out from the residence on the insistence of the Sub-Inspector of Police that the husband should spare one of his wives to sleep with the Sub-Inspector of Police for the night.

Disciplinary proceedings were also recommended

93. Ibid vol 1 No. 3, p 42.
94. Ibid H.R. 86
against the officer-in-charge, Jamugurihat P.S. for refusing to accept the first information and to register a case relating to the motor accident of his daughter, unless a bribe of Rs.100/- was paid by the informant Meghnath Pathak. A police case was registered by the police officer only on the direction of the Chief Judicial Magistrate, Sonitpur.

AHRC case No. 1187/97 – Compensation was recommended for violating the human right to life by police officials of Dispur P.S. for assaulting Bipul Kalita resulting in his admission to Dispur Polyclinic and Nursing Home, Guwahati where the victim had to be given three units of blood.  

AHRC case No. 1363/97 – Compensation to Smti Mausumi Begum was recommended for violating the human rights to dignity by outraging her modesty by the officer-in-charge of Jajori Police Station of Nagaon.

95. Ibid AHRC News Letter, p. 8
96. Ibid
AHRC case No. 169/98 Compensation was recommended for violating Human Rights to life and dignity by unlawfully confining Smti Deepanjali Kalita for a night in Dispur Police Station, Guwahati, though she was not an accused in any police case and was brought for examination as a witness. ⁹⁷

As directed by AHRC, the Director General of Police, Assam has issued a circular for police personnel of Assam that sect. 160 of the Code of Criminal Procedure should be strictly complied with and a male under the age of 15 and a woman should not be required to attend a police station as a witness.

AHRC case No. 173/96 — Compensation of Rs. 1 lac was recommended by AHRC for the custodial death of Bibhuti Malakar because of custodial torture by policemen of Malugram Town out-post under Silchar Police Station. ⁹⁸

AHRC case No. 313/97 — This case was registered on a

⁹⁷. Ibid
⁹⁸. Ibid
W.T. message received from Deputy Commissioner, Karbi Anglong District. The information was that prisoner Hareswar Nath Sahani died in Diphu Civil Hospital as blood was not given to the patient. A token compensation of Rs. 10,000 was recommended to be paid to the next of kin as a reprimand to the officials whose responsibility was to arrange for blood transfusion. It was recommended further that circulars should be issued by the authorities concerned that proper efforts should be made to procure blood to save the life of U.T.P. and the I.G prisons, Assam has issued a circular as directed. 99

AHRC case No. 1635/98 – This case was registered Suo-Motu on the basis of a news published in a newspaper The news stated that Himan Haloi, a minor girl aged 15 years, was raped by a college student in the residence of a nurse in the third floor of M.M.C. Hospital, Guwahati when the victim was alone, which is violative of the right to live with human dignity. 100

99. Ibid vol. 2 No. 1
100. Ibid vol. No. 3 p.5

The general rule is that any person, whose fundamental right is violated, can invoke the jurisdiction of the Supreme Court under Article 32. The traditional rule of standing was evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress. But the rule of locus standi has undergone a fundamental

101. Ibid vol. No. 3 p. 5
change. It is in the case of a writ of habeas corpus that a petition can be filed by a person whose fundamental right is infringed or by any other person on behalf of an imprisoned or detained person.

In public interest litigation, any person or organization may move the Supreme Court if a breach of fundamental right of any person or group of persons is alleged.

**Conclusion:**

The present position is that wherever a person or class of persons to whom legal injury is caused or legal wrong is done who, by reason of poverty, illiteracy and ignorance, disability or socially and economically disadvantageous position, is not able to approach the court for judicial redress, any member of the public or any public organization may move the court on his or their behalf for judicial redress. Thus the public interest litigation is essential for maintaining the rule of law, furthering the cause of justice and for acceleration of the pace of realization of the constitutional objectives. According to Bhagwati J the court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to
whom freedom and liberty have no meaning. "Thus, whether it is blinding of under-trial prisoner or flesh-trade or languishing children in jails or poor houses, pitiable situation in so-called women's home which have become virtual brothels, protection of pavement and slum-dwellers, payment of minimum wages, or equal pay for equal work, freeing of bonded labour, protection of environment and ecology and the like have found a sympathetic judicial forum in the Supreme Court and the Supreme Court has not hesitated in taking appropriate action.\textsuperscript{102} Atrocities on the scheduled castes, criminalisation of politics, corruption in public life, custodial violence, forced prostitution and child abuse, environmental pollution and a horde of other issues are attracting remedial attention of the courts. Thus the right to work, shelter, pure drinking water, low-cost housing, minimum income, food, pollution-free environment and a horde of other basic human needs are claimed as guaranteed legal rights.

Vishal Jeet vs Union of India (1990 13 sec 318) \textsuperscript{103} brought to the notice of the Supreme Court the miseries of women and children being exploited for sex. The devadasi and jogin tradition is utilized to give legitimacy to the sex industry. Article 23 and Article 39

\textsuperscript{102} Human Rights and the Law Universal and Indian by Paras Diwan and Peeyushi Diwan, p. 467
\textsuperscript{103} Vishal Jeet vs Union of India (1990) 13 SCC 318
clauses (e) and (g) make it mandatory for the Indian states to prevent child abuse and traffic in human beings. Use of women and children for immoral purposes is nothing but traffic in human beings. The Supreme Court issued directions to all State Governments and Union Territories that (1) law-enforcing authorities take speedy action under the law in eradicating child prostitution, and (ii) a separate advisory committee to suggest remedies for the eradication of child prostitution and Devadasi and Jogin tradition be set up; and (iii) steps in providing adequate rehabilitative homes manned by well-qualified and trained social workers, psychiatrists and doctors be taken.

Through the settlement of different cases, the judiciary and the Human Rights Commission ensure that any person whose rights or freedom as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State and to develop the possibilities of judicial remedy.
Through judiciary, Human Rights Commission, and judicial activism the people of different corners of India have become aware of their human rights and also are able to understand about the judicial remedy. Public interest Litigation has today become a byword for judicial involvement in social, political and economic affairs of the Indian society and State. Through legal activism, the judges are seeking to take a leading part in prescribing the goals of a just society and new patterns of behaviour. In fact, the judicial creativity and judicial activism are two sides of the same coin and the real protector of basic human rights of the people. Judicial activism has proved a boon for common men. Judiciary should always act independently but not dominantly and a new jurisprudence ensuring free and fearless justice to all community at all levels and judicial obligation to obey a code of conduct has become a great and modern source of legal education. The notable decisions of the human rights cases stand as the formal and non-formal methods of legal education which can build right culture.

The different decisions given by the Supreme Court, Human Rights Commission or Human Rights Courts are themselves protectors of human rights, and safeguards against any violation of them. Most of the basic human rights have been evolved by the judiciary. Because the violation of human rights by the organised authority is not
only a personal problem but it also affects the society, the Supreme Court has observed in many cases that right to life as well as personal liberty means something more than animal existence. Judicial activism is one of the most activating topics among the socially conscious citizens in general and the law knowing community not also in India but in the world. So the Indian judiciary can be considered an effective means for creating awareness among the common people.