

## **HUMAN RIGHTS AND JUDICIAL ACTIVISM IN INDIA**

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**DOI : 10.36893.IJMIE.2018.V8I4.377-384**

### **Abstract**

Human Rights are those rights that are inherent in our nature and without which we cannot exist as humans. This paper attempts to analyse the role of Writs and Judicial Activism in the protection of Human Rights in India, as well as to analyse key Landmark Judgements issued by the Supreme Court. The Supreme Court of India was critical in protecting human rights and granting redress through Writs. Individual and state rights are frequently safeguarded in the existing state system in order to establish Rule of Law. When human rights are violated, it is the judiciary that plays a positive role in interpreting the rights and thus guiding or checking the state accordingly. The concept of judicial activism is fluid, allowing an Egalitarian society to become a reality. In some ways, judicial activism has been imposed on the judiciary by an insensitive and irresponsible administration that disregards the interests of the people. As a result, the judiciary should exercise restraint and develop a code of ethics for judges while engaging in Judicial Activism, and should only use it as a last resort.

Human rights are those that are inalienable to us as beings of humanity and without which we are unable to function as such. Because we are all human, there are claims that are made. Human rights in the Indian Constitution are discussed in the paper. The goal of the essay is to analyse how the Indian judiciary and judicial activism contribute to the protection of rights in that country. India has made a substantial contribution to the protection of rights since gaining its independence. Although India's constitution does not have a detailed Bill of Rights, efforts have been made to make them realities. The Indian judiciary was essential in making these rights a reality.

**Keywords:** Human Rights, Egalitarian Society, Judicial Activism, Faster Remedy.

## **Introduction**

Human rights are rights that are inherent in all people, regardless of gender, nationality, place of birth, sex, ethnicity, religion, colour, or other classification. Thus, human rights are non-discriminatory and universal in the sense that all human beings are entitled to them. Many governments and individuals disregard human rights and grossly exploit others. A strong, independent, and impartial judiciary is a requirement for any government system, including dictatorship. In each country, the judiciary plays a critical role in interpreting and applying the law and resolving disputes between citizens and between citizens and the state. Where there is a written constitution, the courts protect its supremacy by interpreting and applying its provisions and keeping all authorities within the boundaries of the constitution. Chowdhury, P. R. (2011). The judiciary is a great institution and a fundamental pillar of the system of checks and balances that no democracy can function without. The judiciary plays a critical role in protecting the constitutional values that the founding fathers bestowed upon us. In India, the Supreme Court of India has writ jurisdiction under Article 32, and the High Courts have writ jurisdiction under Article 226. During the Constituent Assembly debates in December 1948, a discussion on this fundamental right (in the draught, it is referred to as Article 25), Dr. B R Ambedkar had said, "If I was asked to name any particular Article in this Constitution as the most important- an article without which this Constitution would be a nullity-I could not refer to any other Article except this one. It is the very soul and heart of the Constitution..." He said the rights invested with the Supreme Court through this Article could not be taken away unless the Constitution itself is amended and hence it was "one of the greatest safeguards that can be provided for the safety and security of the individual". Deva, S. (2009).

With writs like "Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo warranto," Indian judicial activism has added to the writ nomenclature like never before. All of this points to two things: first, the state's inaction has increased public distrust in the positivist view of law, and second, the judiciary has resorted to activist tendencies, drawing the curtains open for the realist view of law to display the much-needed action on law enforcement. The Supreme Court observed in *Romesh Thappar vs State of Madras* (1950) that Article 32 provides a "guaranteed" remedy for the enforcement of fundamental rights. "This Court is thus constituted as the

protector and guarantor of fundamental rights, and it cannot, in accordance with the responsibility entrusted to it, refuse to entertain applications seeking protection against infringements of such rights," the court says. Meena Kumar Alok (2004).

### **Writs under Indian Constitution**

The judiciary in India has been assigned a vital role in various areas such as upholding the federal principle, interpreting laws made by respective legislatures, testing the validity of such laws, and, most importantly, protecting citizens' fundamental rights. Since 1950, the Supreme Court of India, known as the protector of the constitution, has played an important role in protecting the fundamental rights granted to Indian citizens. It has adopted and implemented new dimensions of protection rather than limiting it to traditional aspects. Thus, the judiciary has made the statements true given by Dr. Ambedkar as he considered "Article 32 to heart and soul of the constitution". "The Indian Supreme Court is the most powerful Supreme Court in the world," Justice Krishna Iyer once said. Mohiti Biswaranjan (2010). The Supreme Court, as the nation's highest court, has various types of jurisdictions, including writ jurisdiction under Article 32 of the constitution. It is the Supreme Court's original jurisdiction because the aggrieved party has the right to directly petition the Supreme Court rather than going through a High Court. The High Courts have writ jurisdiction under Article 226 that is actually broader than the Supreme Court's Article 32. Article 226 cannot be suspended even during a national emergency because it is not a fundamental right, whereas Article 32, which is a fundamental right, is suspended during a national emergency.

### **The Habeas Corpus Writ**

The literal meaning of the Latin words 'Habeas Corpus' is to 'have the body'. The primary purpose of the writ of Habeas Corpus is to provide for judicial review of State action that results in the unlawful deprivation of a person's liberty. The purpose of the writ is not to punish the detaining authority, but to free a person who is being held illegally. It began with a command to a person detaining another to bring that person's body before a court, or, in some cases, to bring the accused person before a court. Narayan Laxmi (2015).

In *Bhavsar v/s State of Andhra Pradesh*, where the plaintiff was arrested in violation of the law, the Hyderabad High Court ordered immediate realisation and payment of 20,000 Rs in

compensation. In this case, not only was compensation awarded, but the case was decided by a simple post card sent by the arrestee's friends.

### **Shiv Kant Shukla v. Additional District Magistrate of Jabalpur (1976) SCC 521**

Four of the five judges on the Supreme Court ruled that all fundamental rights would be suspended during the emergency. Justice H.R. Khanna delivered a dissenting opinion that established the rule that the state cannot deprive anyone of their right to life and personal liberty without due process of law. In recent years, the courts have used the Writ of Habeas Corpus to protect convicts, under-trial prisoners, and suspects from torture, inhuman and degrading treatment, a lack of medical and health care, inadequate prison facilities, and so on.

Sunil Bhatra v. Delhi Administration 1979 SC and Rudal Shah v. State of Bihar AIR 1983 SC, It has been ruled that the writ of habeas corpus can be issued not only to free someone from illegal detention, but also to protect prisoners from inhuman and barbaric treatment. Citizens for Democratic Change v. State of Assam, AIR 1995 SC 743 Mr. Kuldeep Singh, an eminent journalist, has brought notice off the court in his capacity as president of Citizen for Democracy via a letter. The letter was treated as a petition by the court under Article 32 of the Constitution, and the court held that handcuffing in addition to teeing with ropes of the patient, prisoners who were lodged in the hospital is inhuman and a violation of Human Rights. Raut, A., & Kumary, S. (2018).

### **The Mandamus Writ**

Writ of mandamus is a prerogative command of the Judiciary upon the State anarchy, where civil, political, legal, and fundamental rights, despite being written in the Constitution, are just black-letters. However, they are frequently afflicted by the ills of corruption, red tape, excessive bureaucracy, and new forms of nepotism. A writ of mandamus directs or commands the person to whom it is addressed to perform the public duty that pertains to his office. Mandamus exists to compel any court, tribunal, authority, board, corporation, or other individual charged with performing a public duty to discharge that duty or perform the function as required by statute or common law.

In the case of Union of India v. S.B. Vohra, the Supreme Court of India held as follows: "A writ of mandamus may be issued in favour of a person who establishes a legal right in himself.

It can be issued to someone who has a legal obligation to perform but has failed or neglected to do so. A legal duty of this nature arises as a result of the operation of the law. In terms of its remedial nature, the writ of Mandamus is the most extensive. The purpose of mandamus is to prevent disorder caused by a failure of justice, and it must be granted in all cases where the law has not established a specific remedy". Sato, H. (2017).

Nuruddin v. State of West Bengal (1998) 8 SCC 143 The Supreme Court ruled that a writ of mandamus is a personal action where the respondent has failed to perform the legal duty. The applicant has the right to perform the duty. Kerr v. U.S. District Court (1976) SC The Court upheld the district court's denial of a writ of mandamus sought by prison officials to prevent the district court from ordering them to turn over personnel and inmate files to seven prisoners who had sued the prison for alleged constitutional violations. The officials claimed that releasing the records would jeopardize prison communications and confidentiality.

### **The Writs of Prohibition**

A writ of prohibition, also known as a 'stay order,' directs a lower court or a body to refrain from acting beyond its authority. The primary goal is to ensure that an inferior court or tribunal's jurisdiction is properly exercised and that it does not usurp jurisdiction that it does not have. Thus, a writ of prohibition is available while the proceedings are pending and before the order is issued.

The Supreme Court held in the case of Calcutta Discount Co. Ltd. v. ITO AIR 1961 SC that when a subordinate court or tribunal is shown decisively to have acted in excess of their jurisdiction, the court will issue a writ of prohibition regardless of whether an alternative remedy exists or not. In East India Commercial Co. Ltd v. Collector of Customs, a writ of prohibition was issued, directing an inferior Tribunal to stop the proceeding on the grounds that it is without or exceeds jurisdiction, or is in conflict with the laws of the land, statutes, or otherwise.

### **The Writ of Certiorari**

The Supreme Court issues a Writ of Certiorari to an inferior court or tribunal to transfer the matter to it or another superior authority for proper consideration. The Supreme Court or any High Court can issue a Writ of Certiorari to overturn an order made by a lower court. The Writ

of prohibition is also available during the pendency of proceedings before a subordinate court, whereas Certiorari can be used only after the order or decision has been announced. Satyanarayana. B.H (2015)

### **Ahmad Ishaque v. Hari Vishnu Kamath AIR 1955 SC 233**

The scope and grounds for filing the writ are established in this case. When there is a jurisdictional error. When the court fails to provide adequate time for both parties to be heard and when natural justice principles are violated. Because this writ is only supervisory in nature, the High Court cannot review the lower courts' findings.

### **The Writ of Quo Warranto**

The writ is issued to the person who is being removed from a public office to which he is not entitled. It is used to test the civil right to hold a public office. Quo Warranto is Latin for 'by what authority'. A person holding a public office or governmental privilege may be served with a writ of quo warranto. As a result, the writ is used in cases of usurpation of a public office and removal of the usurper. It also protects citizens from being denied public office to which they may be entitled. A petition for a writ of Quo Warranto may be filed by anyone, even if he is not an aggrieved party.

In *Jamalpur Arya Samaj v. Dr. D. Ram*, the writ was denied on the grounds that a writ of quo warranto cannot be issued against a private office. Furthermore, the office must have a substantive character. *Mysore University v. Govinda Rao*, The Supreme Court observed that the quo Warranto procedure gives the judiciary the jurisdiction and authority to control executive action in making appointments to public offices in violation of relevant statutory provisions; it also protects a citizen from being denied public office to which he may be entitled. Singh, V. K. (2018).

### **Conclusion**

In India, judicial activism has taken on multiple dimensions. With the arrival of legal activism, letters, paper reports, dissensions by openly active people, and social activity groups bringing to the Court's attention violations of major rights. The Constitution's Writ Jurisdictions, on the other hand, have privilege controls and are optional in nature, but they are unbounded in their breaking points. In any case, the care is exercised in accordance with legal standards. As a

result, the Judiciary ensures the Rule of Law and appropriate checks and balances between the three branches of government. The logic of writs is very much synchronised in our Constitutional arrangements to ensure that nationals' rights are not suffocated by self-assertive authoritative or judicial activity. Writs protect citizens' rights by providing a faster remedy, thereby upholding democratic principles by providing quick justice. The importance of writs cannot be overstated, and the courts must exercise this power with caution because they have been given such broad authority.

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