

# Judicial System: The Guardians of Fundamental Rights

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**Abstract:** Although primarily a court of appeals, the Supreme Court also has original jurisdiction over writs alleging violations of fundamental rights.<sup>1</sup> Supreme Court decisions are binding on India's lower courts.<sup>2</sup> Decisions by High Courts - the head of judicial administration for states - are binding in the respective state jurisdictions, but not on other High Courts.<sup>3</sup> India's district courts adjudicate civil and criminal cases.<sup>4</sup> The jurisdiction on criminal matters of district courts, referred to as Sessions Courts, depends upon the severity of the crime and punishment. Sessions courts usually have jurisdiction over rape and forced sodomy cases. The state government may also direct a Sessions Court to function as a human rights court for the purpose of trying offenses arising out of violations of human rights.<sup>5</sup> Subordinate courts of Judicial Magistrates have jurisdiction over "crimes against modesty." The jurisdiction on civil matters of the district courts depends upon territorial limitations and the matter's pecuniary value. Victims of violations of fundamental rights may seek redress through India's system of Public Interest Litigation (PIL) and writs. Out of the three organs of Government, the judiciary has become a vanguard of public life.

**Keywords:** Judicial System, India

## 1. Introduction

The Indian judiciary, a single integrated system, has three main hierarchical levels:

1. The Subordinate Courts,
2. High Courts with jurisdiction over one or more states, and
3. The Supreme Court, which is the court of last resort in constitutional, civil, and criminal matters.<sup>6</sup>

It performs this function mainly by innovative interpretation and application of the legislative provisions and of the Constitution. Though the Conviction rate in offences against women is still very low in the country but it is also true despite the odds the Judiciary in India plays a significant role in protecting human rights. The Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen. Of the three organs of Government, the judiciary has become a vanguard of public life. It performs this function mainly by innovative

interpretation and application of the legislative provisions and of the Constitution.

## 2. Court and the Fundamental Rights

The Supreme Court of India has in the case *Ajay Hasia vs. Khalid mujid*,<sup>7</sup> declared that it has a special responsibility, "to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence." In *Vishakha's case*<sup>8</sup>, referring the principles of independence of the judiciary the objective and function of the judiciary was stated as follows:-

- a) To ensure that all persons are able to live securely under the rule of law;
  - b) To promote within the proper limits of the judicial function, the observance an attainment of human rights; to administer the law impartially among persons and between persons and the State.
- in *Sheela Barse vs. State of Maharashtra*,<sup>9</sup> the Supreme Court observed that usually the most important encounter which the citizen has with the law is at the primary level. This

<sup>1</sup> Article 32. The Constitution of India

<sup>2</sup> Article 136. The Constitution of India

<sup>3</sup> Mohd. Hussain @ Julfikar Ali vs. The State (Govt. of NCT) Delhi. (2012) 9 SCC 408

<sup>4</sup> District Courts, Indian Courts. Available at <http://indiancourts.nic.in/districtcourt.html> (Last Retrieved on 15 Sep 2016)

<sup>5</sup>The Protection of Human Rights Act, 1993, No. 10 of 1994, available at [http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993\\_Eng.pdf](http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf). (Last Retrieved on 1 Oct 2016)

<sup>6</sup> Jurisdiction of the Supreme Court, Supreme Court of India, <http://supremecourtindia.nic.in/jurisdiction.htm>

<sup>7</sup> 1981 SCR (2) 79

<sup>8</sup> AIR 1997 SC 3011

<sup>9</sup> JT 1988 (3) 15 J

level, in fact, frightens many citizens, and has given a feeling of helplessness that the administration of law does not necessarily lead to justice in the predominance of Truth. Even the secondary and the Tertiary level courts i.e. the High Court and the Supreme Court to function, they too depend upon the impressions of the primary level courts. Thus, if an error creeps in there, it becomes an error which may not be perceptible of correction by the secondary and the tertiary levels.” In *Municipal Corporation of Delhi vs. Female Workers' Muster Roll*,<sup>10</sup> The Supreme Court observed the constitutional position vis-à-vis the Indian reality as under:-

“Not long ago, the place of a woman in rural areas has been traditionally her home; but the poor illiterate women forced by sheer poverty now come out to seek various jobs so as to overcome the economic hardship, they also take up jobs which involve hard physical labour. The female workers who are engaged by the Corporation on muster roll have to work at the site of construction and repairing of roads. Their services have also been utilized for digging of trenches. Since they are engaged on daily wages, they, in order to earn their daily bread, work even in advance stage of pregnancy and also soon after delivery, unmindful of detriment to their health or to the health of the new-born. It is in this background that we have to look to our Constitution which, in its Preamble, promises social and economic justice. We may first look at the Fundamental Rights contained in Chapter III of the Constitution. Article 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Dealing with this Article vis-a-vis the Labour Laws, this Court in *Hindustan Antibiotics Ltd. v. Workmen*, has held that labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis. Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. Clause (3) of this Article provides as :- (3) Nothing in this article shall prevent the State from making any special provision for women and children.

During the Emergency, when a sweeping order was issued and publisher to submit all material intended for publication to an officially appointed Censor for clearance before publication, the Bombay High court in *Binod Rao vs. Minocher Rustom Masani*<sup>11</sup> held: “it is not for the censor to inject (into this) lifelessness of forced conformity.” In *Romesh Thappar vs. State of Madras*,<sup>12</sup> and *Brij Bhushan vs. State of Delhi*,<sup>13</sup> the Supreme Court took it for granted that the freedom of the press was an essential part of the right to freedom of

speech and expression. It was observed by Justice Patanjali Sastri in *Romesh Thappar* that the freedom of speech and expression included propagation of ideas, and that freedom was ensured by the freedom of circulation.<sup>14</sup> Thus the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and other views with complete freedom and by resorting to all available means of publication. This view was reiterated in *Sakal Papers (P) Ltd. vs. Union of India*<sup>15</sup> and regarded as settled in *Bennett Coleman & Co. v. Union of India*,<sup>16</sup> as the right to freedom of speech and expression is guaranteed to a citizen, and not to a person, a non-citizen running a newspaper, is not entitled to the benefit of freedom of the press. Moreover, freedom of the press in India stands on no higher footing than the freedom of speech and expression of a citizen and no privilege attaches to the press as such as distinct In *Printers (Mysore) Ltd. vs. CTO*<sup>17</sup> the Supreme Court has reiterated that though freedom of the press is not expressly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression. Freedom of the press has always been a cherished right in all democratic countries and the press has rightly been described as the fourth chamber of democracy. In *R. Rajagopal v. State of T.N.*<sup>18</sup> the Supreme Court of India has held that freedom of the press extends to engaging in uninhabited debate about the involvement of public figures in public issues and events. But, as regards their private life, a proper balancing of freedom of the press as well as the right of privacy and maintained defamation has to be performed in terms of the democratic way of life laid down in the Constitution. In *Life Insurance Corporation of India vs. Consumer Education and Research Centre*<sup>19</sup>, the Supreme Court has observed that social security has been assured under Article 41 and Article 47 and it imposes a positive duty on the State to raise the standard of living and to improve public health.

In *Samal Chand Tiwari Son of Late Prem vs. State Of U.P., Through Secretary*, the Allahabad High Court has stated that the quantum of retiral benefits although is governed by statutory rules but it is clear that Government servant has a legal right to receive his retiral benefits as soon as he retires. Because after retirement a Government servant is not paid any salary only some amount is paid in the form of retiral benefits to provide him monetary assistance to sustain himself and his dependents with honour and dignity. Retiral benefits are not bounty but a right earned by the employer and thus it is deferred wages payable to a Government servant in lieu of considerable length of service rendered by an employee to the employer. Nonpayment of pension, therefore, amounts to denying right to earn livelihood which includes his deferred wages in accordance with rules. And the nonpayment of the

<sup>10</sup> AIR 2000 SC 1274

<sup>11</sup> (1976) 78 BOMLR 125

<sup>12</sup> AIR 1950 SC 124

<sup>13</sup> AIR 1950 SC 129

<sup>14</sup> AIR 1950 SC 124, 127

<sup>15</sup> AIR 1962 SC 305

<sup>16</sup> AIR 1973 SC 106

<sup>17</sup> (1994) 2 SCC 434

<sup>18</sup> (1994) 6 SCC 632

<sup>19</sup> 1995 SCC (5) 482

same will amount in violation of fundamental right under Article 21 of the Constitution of India.<sup>20</sup> Another broad formulation of theme of life with dignity is to be found in case of *Bandhua Mukti Morcha v. Union of India*,<sup>21</sup> where the Supreme Court observed that “to live with human dignity, Free from exploitation. It includes Protection of health and strength of workers, men and women. In *Chameli Singh vs. State of Uttar Pradesh*,<sup>22</sup> the Supreme Court while dealing with Article 21 has held that for a decent and civilized life includes the right to food, water and decent environment. The court has observed that in any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. Again in *Board of Trustees of the Port of Bombay vs. Dilipkumar R. Nandkarni*,<sup>23</sup> the court came to hold that ‘the right to life’ includes the ‘right to livelihood.

In *Olga Tellis vs. Bombay Municipal Corporation*,<sup>24</sup> the Court has observed that one aspect of the right to life an equally important facet of that right is the right to livelihood because no person can live without means of living, that is, the means of livelihood in *Apparel Export Promotion Council vs. A.K Chopra*<sup>25</sup>. The Supreme Court for the first time upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Article 21 of the Constitution.

A way back in *Ram Jawaya Kapur vs. State of Punjab*<sup>26</sup>, Bijon Kumar Mukherjea, a scholar and Judge of great distinction, said that a modern State is expected to engage in all activities necessary for the promotion of the social and economic welfare of the community. In the instant case, the question which arose was the width of the executive power and it was held that the limits within which the Executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution though federal in its structure, is modelled in the British Parliamentary System where the executive is deemed to have the primary responsibility for the formulation of the governmental policy and its transmission into law though the

condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on of supervision of the general administration of the State. It further went to say that the executive governments are bound to conform not only to the law of the land but also to the provisions of the Constitution. The Indian Constitution is a written Constitution and even the Legislature cannot override the fundamental rights guaranteed by it to the citizens.

Consequently, even if the acts of the executive are deemed to be sanctioned by the legislature, yet they can be declared to be void and inoperative if they infringe any of the fundamental rights of the petitioners guaranteed under Part III of the Constitution.

In *C. RavichandranIyer vs. Justice A.M. Bhattacharjee*<sup>27</sup>, the Court said that the role of the judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality. The society demands active judicial roles which formerly were considered exceptional but now a routine. The Apex Court in *Budhadev Karmaskar vs. State of West Bengal*,<sup>28</sup> dismissed an appeal against the conviction for murder of a sex-worker. In this case the Supreme Court has very sensitively declared that even the sex-workers being the citizens of the country are entitled to right to life and dignity. The role and position of sex-workers in the society was noted by a bench of Justice Markandey Katju and Justice Gyan Sudha Misra of the Supreme Court in the following terms:-

“This is a case of brutal murder of a sex worker. Sex workers are also human beings and no one has a right to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty. Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Constitution.”

The Supreme Court further directed the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India.

In *National Legal Services Auth vs Union of India & Ors*,<sup>29</sup> in this case, the Court is concerned with the grievances of the members of Transgender Community who seek a legal

<sup>20</sup> Samal Chand Tiwari Son of Late Prem v. State Of U.P., Through Secretary, Allahabad High Court , 6, Dec 2005

<sup>21</sup> 1984 SCR (2) 67

<sup>22</sup> (1996) 2 SCC 549

<sup>23</sup> AIR 1983 SC 109

<sup>24</sup> AIR 1986 SC 180

<sup>25</sup> AIR 1999 SC 625

<sup>26</sup> AIR 1955 SC 549

<sup>27</sup> 1995 SCC (5) 457

<sup>28</sup> (2011) 10 SCR 577

<sup>29</sup> (2014) 5 SCC 438

declaration of their gender identity than the one assigned to them, male or female, at the time of birth and their prayer is that non-recognition of their gender identity violates Articles 14 and 21 of the Constitution of India. Hijras/Eunuchs, who also fall in that group, claim legal status as a third gender with all legal and constitutional protection. Dealing with the core issue in hand the Supreme Court has pointed out that Recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution. And Concluded that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community. The Court further declared that

- (1) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- (2) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
- (3) We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
- (4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues.
- (5) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.
- (6) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
- (7) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
- (8) Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

- (9) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

### 3. Conclusion

If constitution of India is the soul of the nation, then there is no doubt that the judicial system of the country is the body of it. It has been held and declared that Indian Constitution is a living document if it is so then it will not be wrong to say that it breaths through the judicial system through its interpretation. The Judicial system and Courts in India have proven to be a game changer for the entire development to the country specially in protecting the human race and their Rights, the examination, observation, declarations and remarks of the Supreme Court and the High Court's along with the Lower Courts has shown the true picture of a welfare State. The unbiased and independent judiciary has always played the role of a true guardian of justice.