

## Role of Judiciary to Protect the Democratic Rights and Human Rights of Individual in India



Law

KEYWORDS:

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### Introduction:

In a democratic country like India judicial review authority is highly essential to protect the interest of the Constitution and human rights of individuals. Even though separation of powers are guaranteed among executive, Legislature and judiciary is considered as the guardian of the constitution. if the executive or legislature commit any error or exceeds their limitation due to over anxiety, the judiciary can check the irregular activities of the executive and legislature as a learned member under judicial review authority. Some writers says the we have borrowed the judicial review authority from America constitution from the leading case of marbury Vs. Medicine. But this statement is not correct. We have not borrowed the judicial review authority from any constitution of any country. It is the inherent power of the Indian judiciary which has been extended by Article 113 of the Indian constitution. Human rights are natural rights which are essential for the existence of a human being in any society of any country. Fundamental rights which we have incorporated in Part III of our Indian constitution, are part of Human rights. If fundamental rights are violated or infringed any citizen can move judiciary for appropriate relief. If other human rights are infringed the judiciary can protect the individual as a guardian of the constitution and human rights. In the recent time to protect the human rights of individuals relating to different matters, the judiciary exercised this judicial review authority in many instances on executive and legislative authorities.

### Case Study:

Justice Krishna Ayar of Supreme Court of India, Exercised this power to protect the human rights of prisoners of that jail. Even in odisha the High Court exercised this power to protect the interest of journalists from political harassment. In M.C. Mehta Vs. union of India the supreme court has issued appropriate directions for the prevention of employment of children in match Factories which are directly connected with manufacturing process as it is a hazardous employment which infringes their human rights and within the meaning of employment of children Act,1938. In Vishaka Vs. state of Rajasthan, the Supreme Court has laid down detailed guidelines for preventing sexual harassment to working women in places of their work until a law is enacted for that purpose to protect their human rights. In nilabati behera Vs. State of Orissa , it has been laid down that the supreme court has power , under Article 32 and 226 of the Indian Constitution to award compensation for violating of fundamental rights by state actions.

In subhas kumar Vs. state of Bihar it has been laid down that the public interest litigation can be filed for ensuring enjoyment of pollution free water which is included in the right to live under Article 21 of the constitution. To protect the interest of a common man and to protect the human rights of individuals from the negligence of political and executive authorities, judicial review authority to judiciary (High Court & Supreme Court) is highly essential. This power cannot be curtailed or removed by the parliament.

In I.R. Coelho Vs. state of Tamil Nadu the 9 judge constitutional bench of the Supreme Court has unanimously held that any law placed in the 9<sup>th</sup> schedule under Art.31-B after 24<sup>th</sup> April,1973, when Kesavananda Bharati judgement was delivered, will be open to challenge on the ground that it destroys or damages the

basic structure of the constitution, or if fundamental rights are taken away or abrogated pertaining to the basic feature of the Constitution. The 9<sup>th</sup> schedule laws are subject to judicial review and if it violates any basic features of the constitution, it can be declared invalid. In the worst tannery disaster in Tamil Nadu, 10 workers are drowned in Toxic sludge in the early hours of Saturday (31.01.2015) at the tannery unit in the SIDCO Industrial Estate in Ranipet. The flood caused by a breach in the concrete wall of the sludge storage tank of the adjacent common Effluent Treatment Plant, caught the workers who were asleep unawares. The human rights of the worker are highly infringed and the families of the workers must be properly compensated. Only judiciary can award damages to the families of the deceased workers and other injured workers like union carbide case of Bhopal. In many occasions the fine imposed by the executive authorities are very low and not deterrent nature. The Industrialists are not caring for the damages awarded by the executives and negligence acts are repeated by the industrialists.

In Maneka Gandhi Vs. Union of India , when executive acted arbitrarily by the directions political leaders, justice Bhagwati, said Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Art.14 like brooding omnipresence. In this case the petitioners passport was impounded without any reason. It was held by Supreme Court that the Government was not justified in withholding the reasons for impounding the passport from the petitioner. In A.K.Gopalan Vs.State of Madras the supreme court exercised the power of Judicial Review authority by abundant caution and care,in the event of personal liberty.In Triveni Bar Vs.State of Gujarat, the supreme court has held that under long delay in execution of the death sentence will entitle the court to continue the death sentence into life imprisonment.Although there is no fixed period,but undue long delay will entitle the conveyance to approach the court,for the conversion of death sentence into life imprisonment.In R.Rajgopal Vs. State of T.Nadu the supreme court has held that the "Right to Privacy" is a fundamental right under Art.21 of the constitution.In Gian Kaur Vs. State of Punjab,the supreme court held that "Right to life " under Article 21 of the constitution does not include "Right to Die".The right to life is a natural right embodied in Art.21, which means die a natural death and does not include the right to suicide,which is an unnatural extinction of life and inconsistency with the concept of right to life.In Parmananda Katra Vs. Union of India the Supreme court held that it is the professional duty of a doctors,whether working in Government or private hospitals to extend medical aid to the injured immediately to save their life without waiting for legal formalities to be complied with by the police under Crpc to protect human rights of the injured person.

### Conclusion:

In the light of above facts and leading cases it is essential that the judicial review authority is essential to the judiciary to protect the interest and human rights of a common man.In many occasions the Supreme court has taken initiation to protect the human rights of working class women, child labour, Labour in Unorganised sectors like bangle industries,stone crushing industries,motor industries,casu industries etc.The Supreme court stressed that to protect the human rights of individuals and to protect the com-

mon man from the poltical and excutive authorities,judicial review authority is highly essential and this power cannot be courtailed or removed from judiciary.