



Human Rights In India – After 50 Years Of India’s Independence

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ABSTRACT

The 50th anniversary of India's independence was celebrated on August 15, 1997. 1 It's a historic day not only for Indians, but for the rest of the globe, too. There may be no better indicator of global stability than India's democratic success and the strengthening of its foundations in Asia, the second most populous country in the world. Indians should be proud of their 50 years as a thriving, democratic, and secular nation with hundreds of millions of people representing an array of socioeconomic, religious, and ethnic groups. This is a major accomplishment for the country. But how well have they been developed?

Keywords: Independence, 50th anniversary, human rights violations, The Indian Constitution's, Article 21

INTRODUCTION

This event has been both motivating and contemplative at the same time. An chance to stop and assess India's half-century of experience in advancing human rights among her own inhabitants is provided by the country's 50th anniversary. Even though India has gone a great way since 1947, it would be dishonest not to acknowledge the number of serious mistakes that have marred the previous five decades. It's critical that we figure out what went wrong and why, so that we can avoid making the same mistakes again in the future. Those who are denied essential rights may suffer as a result of the inability to do so "Blow up the political democracy put up by the founding fathers after so much effort 2.

John Hart is a well-known figure in the That "constitutional law appropriately exists for those situations where the representative government cannot be trusted" is proof of the vital function of judges in defending human rights, according to Ely's statement. 3 Particularly in India, where the Supreme Court has been given wide-ranging powers and the obligation of preserving people' human rights, this is especially true. 4 The Court's substantial and contentious influence in Indian politics may be traced back to this. In spite of its many economic triumphs, India is nevertheless afflicted by widespread issues such as poverty, illiteracy, lack of access to health care facilities, environmental degradation and exploitation, and other serious injustices. As a result, judicial protection of human

rights takes on an urgent necessity. This is a monumental task for the Supreme Court, and its failure to uphold the rule of law may jeopardise the very foundation of the Indian democracy itself. In spite of the enormity of India's present difficulties, this article argues that the Supreme Court must continue to serve as a bulwark against human rights violations. The Indian Constitution's "life and liberty" provision is included in Article 21. 5 This article examines the Supreme Court's jurisprudence of human rights since independence, based on this important provision. India's international commitments and the international standards established by the International Covenant on Civil and Political Rights will serve as a framework for this examination. 6 The essay is broken into four sections. During India's first three decades of independence, the Supreme Court of India had a significant role in the formulation of the Indian Constitution, which is the focus of Part I. (1947-1977).

The Court's enlargement of Article 21 and its acceptance of several procedural innovations began in the late 1970s, and this section critically evaluates the Court's concepts and procedures. To what extent does Indian municipal law reflect international standards? Does the Indian judiciary have a thorough understanding of human rights law? When it comes to international law, what impact, if any, has the Court had on it? Third, "Creative Impact of International Human Rights Norms," deals with these challenges. The last section focuses on the areas most in need of the Court's activism.

THE FIRST HOUR OF FREEDOM IN INDIA II

A Constitutional Drafting Process An eight-month period before the official handover of power from British rule to Indian rule, a Constituent Assembly⁷ was held to design a constitution that all Indians could accept and that was tailored to the country's special circumstances. India's first hour of independence was celebrated on this historic day. According to Granville Austin, "perhaps the greatest political venture since that originated in Philadelphia in 1787." it was a monumental undertaking. 8 A legislative system of government with full sovereignty vested in "the people." was born out of 36 months of debate. It was more than just a political declaration outlining the foundations of a democratic, secular state. 9

10 The Constitution, as a social constitution, envisions a society devoted to the dignity and liberty of each individual, as described in its evocative Pre amble. A set of 12 "Directive Principles," which are not subject to judicial review but are still regarded "essential in the country's government," were established in the constitution, and the State was required to use them in crafting legislation." ' 13 Among the provisions included in Part IV are those that address the state's socioeconomic responsibilities to its citizens, such as ensuring that all citizens have access to safe, fair, and humane working conditions and maternity leave, as well as providing free and universal education for all children. 16 To protect their fledgling republic from the communal rioting and horrific slaughter that followed division, the architects included two severe safeguards.

The first allowed for pre-trial imprisonment even in times of peace, while the second allowed for the suspension of some basic rights in times of crisis. 19 B. Human rights as expressed by the Constitution When Lokmanya B. G. Tilak boldly said in front of the British government in 1895, "Swaraj mera janma sidh adhikar hai" he was considered one of India's greatest patriots. Indians' demands for assurance of fundamental human rights denied to them by British rule were succinctly expressed in Part 1 by Tilak and other liberation fighters. 20 During the thirty-eight days that the members of the Constituent Assembly considered basic rights, "the most criticised part of the constitution" they expressed enormous emotion. 21 For inspiration, they drew on the American Bill of Rights. 22 Hence, "the Potomac and not the Thames that fertilised the flow of Yamuna." in relation to Part III. 23 Fundamental Rights are protected by the Constitution, which includes a broad variety of rights in the realms of civil, political, cultural, economic, and social areas. There are certain restrictions to these rights, but they are not fictitious. This right to property and compensation for property seized by law was originally guaranteed in the Constitution, save for in the areas of agricultural reform. 24 In 1978, the Forty-fourth Amendment to the Constitution was introduced, which re-established property ownership as a basic right. The right to own property is now seen as little more than a formal legal entitlement. Equality before the law and equal protection under the law are both guaranteed under the right to equality. 25 Discrimination on the basis of religion, ethnicity, caste, gender, or place of birth is expressly forbidden under the Constitution. Those with "backward classes" and "scheduled castes and tribes" are given "special treatment" under the Constitution. 28 The Constitution also prohibits the practise of untouchability in any form. 29 Casteism and untouchability had been rampant in India, and these rules were aimed to put an end to it. The unfortunate reality is that they have not yet been completely exiled from the contemporary and liberated Indian community. Additionally, the right to free speech, the right to peacefully assemble without weapons, the right to form associations, freedom of movement, the right to acquire, hold, and dispose property, and the right to practise any profession, occupation, trade or business are all protected by the Constitution. "reasonable restrictions" may be imposed on the exercise of these freedoms if there are specific reasons for doing so. 36 A person's life or liberty may only be taken from him or her in accordance with procedures provided by law, according to Article 21 of the Constitution. Following the advice of American jurist Felix Frankfurter, the original "due process" phrase in this article was deleted. This wasn't an issue with due process itself, but rather with how it might be applied to the case at hand. 37 The word "due process" was substituted for the phrase "procedure established by law" which was taken from the Japanese constitution. 3 There are several protections in Articles 20 and 22 meant to ensure that all people are treated fairly in court.

Dr. B.R. Ambedkar requested the inclusion of these critical elements. 39 to They ensure that no one will be held responsible for crimes committed in the past. Fourth Amendment protections include the right to counsel at the time of arrest, the right to appear before a magistrate within twenty-four hours of arrest, and the right to magisterial supervision if

a person is imprisoned for more than twenty-four hours without being informed of the reason for their arrest. 47 People trafficking, "begar," and other types of forced labour are explicitly prohibited by the Constitution's authors, as is employment of minors under the age of fourteen in any dangerous profession or workplace. 50 Under the heading of "the right to be free from exploitation," these positive provisions are gathered together. The right to religious freedom extends to religious thinking, belief, practise and "institutional existence" 51

Interestingly, the State has been given broad authority to govern this freedom in the sake of "public order" and "morality," rather than only its secular features "52 but also to bring about social change and force public Hindu temples to open their doors to all Hindus, regardless of class. 53 Indian women's independence and the abolishment of untouchability were the goals of this action. The rights of minorities — any different religious, cultural, or linguistic minority — were further protected by additional laws. Establishing and administering organisations to maintain their culture, language, and script is permitted for these people

The constitutional restriction on the use of certain forms of discrimination in admission rules applies to institutions that receive state funding.

55 The final basic right is the right to legal action. For citizens and noncitizens equally, the right to bring a case before the Supreme Court's original jurisdiction is guaranteed. 56 As a result of this important provision, Part III will not become nothing more than an abstracted constitutional snobbery. Abolition of the Due Process Clause in the Constitutional Amendment Draft Due process is noticeably absent from the Indian Constitution's Third Amendment. The due process provision was first accepted in its basic form by the fundamental rights subcommittee 57. 58 A few powerful members of the Committee expressed their strong resistance to its inclusion in the Constitution as the writing process continued, however. 59 B.N. Rau, the Assembly's Constitutional Advisor, stated his anxiety that due process would impede social welfare measures including tenancy reform, price regulation, wage legislation, and working conditions for workers in the early 1900s. 60

There will be a "Courts manned by an irremovable judiciary not so sensitive to public needs in the social or economic sphere as the representatives of a periodically elected legislature, will, in effect, have a veto on legislation exercisable at any time and at the instance of any litigant." in courts staffed by an irremovable judiciary that isn't as sensitive to public needs in the social or economic realm as the representatives of a periodically elected legislature, he warned the members.

61 Felix Frankfurter, a Supreme Court judge, was ultimately responsible for the repeal of the Due Process Clause. 62 The erudite judge advised Rau to remove the due process provision from the Indian Constitution because it was preventing social development and giving judges far too much authority. 63 Due to the broad interpretations that may be given to the due process provision when Rau returned from America, he was able to

convince the Committee to remove it from the Draft Constitution. 64 Due to the inherent dangers of the substantive interpretation of due process, it was never applied to the irreducible claims to life and liberty guaranteed by the Constitution's property provisions. However, a confluence of catastrophic events following independence can be credited with influencing its eventual demise. As a result of the partition and assassination of Mahatma Gandhi in early 1948, many members opted for "preventive detention" and "place the citizens' freedom at the disposal of a legislature for the sake of a public peace where social and economic reforms could be achieved," a draconian and harsh measure. 65

To avoid violating "due process," which protects the right to life and liberty, it was decided that "due process" should not be extended to life and liberty as well. 66 There was no Due Process Clause in the Draft Constitution submitted to the Constituent Assembly. Article 15 of the Draft Constitution, which is equivalent to Article 21 of the Constitution, reads as follows: "A person's life or liberty cannot be taken away from him or her without a proper legal process." 67 Article XXXI of the Japanese Constitution provided the inspiration for the term "procedure established by law," Return of Due Process: Infusing the Constitution with its "Substance" Because of India's unique political and socioeconomic circumstances, the Constitutional architects were forced to deviate from the U.S. Constitution's language and substance. Because of their belief in "due process," however, they purposefully integrated its "substance" into the constitutional fabric of the United States. According to the arguments in the Constituent Assembly and a careful examination of the basic rights articles, this is obvious There are a number of liberties outlined in Article 19 clause (1), including the right to free expression, the right to assemble, and so on. 70 There are specific reasons why "reasonable restrictions" 71 may be imposed on these numerous freedoms in Clauses (2) through (6) of the same article. Restriction's reasonableness will be determined by the court in the end.

Nothing except due process and police powers are guaranteed by these statutes. Since the court itself uses the criteria of reasonableness in judging the legitimacy of a statute limiting an individual's liberty, it follows that due process is synonymous with reasonableness. Articles 2272 (right to a fair trial) and 2073 (definition of the state's police authorities) do the same thing for defining the boundaries of individual rights guaranteed by due process. It's a shame that Supreme Court justices failed to notice this critical detail for over three decades. E. Judicial Review and Constitutional Supremacy Allegiance to the doctrine of judicial review is shared by India and the United States. judicial review⁷⁴ represents a major change from the central British constitutional doctrine of parliamentary supremacy with the unambiguous statement of basic rights paired with its introduction. A single, integrated judiciary exists in India, despite the fact that the country is a federation of 23 states. When a case goes to trial before a judge, then it goes to the Supreme Court of the United States of America. All courts in India's "Union" or federation are bound by the legislation it decides.

In the post-World War II era, the Indian Constitution was a result of the growth of human rights. The Universal Declaration of Human Rights, which was approved by the United Nations General Assembly in 1948, is also reflected in this section. 76 Universal Declaration and the International Covenant on Civil and Political Rights both identify a number of fundamental rights. Many of the International Covenant's rights were already in place in India twenty-one years before India became a party to the treaty. 77 The following table lists the rights included in the Indian Constitution as well as the International Covenant on Civil and Political Rights.

Some rights, such as the right to a speedy trial⁷, the right to free legal services⁸, the right to travel outside of one's country of residence, the right to privacy⁸, and the right to compensation for those who have suffered unlawful arrest or detention but are not explicitly mentioned in the International Covenant, are included in the document. Indian citizens' access to these rights will be determined by the way international treaty law is implemented domestically in India. In short, India believes in a dualist interpretation of international law, which holds that only domestic legislation may give international treaty provisions internal legal force. *Jolly George Varghese v. Bank of Cochin* reaffirmed this position in the Supreme Court's decision. 8 5 F. Restrictive Interpretation Of Article 21 In The Post-Independence Era (1947-77) However, despite the focus on individual liberty in the Constitution's Article 21, the Supreme Court first gave Article 21 an unfavourable meaning. An example of this is the Supreme Court's 1950 ruling in the classic case of *Gopalan v. State of Madras*^{8 6}.

Detained under the Preventive Detention Act, the petitioner claimed that his right to life had been infringed.

0 0 Each of the Constitution's basic rights was treated separately by the Supreme Court. 88 The Court argued that if a single article's prerequisites are met and the fundamental right protected by that article is not infringed, there is no need to turn to another article's fundamental right. 8 9 Article 22⁹⁰ was seen as an entirely separate code by the Court. 91 The Court concluded that since the process under the challenged statute did not contradict with the relevant requirements of Article 22, it may be sustained. 92 Other basic rights were not required to be met, as stated by the Court. Article 21 was read like any other piece of state legislation, rather than an abstract concept of natural justice, by the Court. 93

As a result, the Court ruled that the challenged statute, which Parliament had legally passed within its legislative authority, did not infringe Article 21.⁹⁴ of the Constitution. The Court's failure to use Article 21's procedural protections truncated the full meaning and extent of this historic privilege. As a result of considering the Fundamental Rights in a piecemeal fashion rather than holistically, the Court weakened their overall significance. More than two decades would elapse before this erroneous perspective gave way to an improved understanding. Several state legislatures implemented land reform laws, to the chagrin of the landed elite, as a first step toward creating an equitable society. It was the rights and complaints of aggrieved property owners, who were the most

common plaintiffs in the post-independence period, that were the most important matters before the Supreme Court.

Over the course of this time period, the Court showed an overzealous dedication to defending the property rights of people, sparking intense judicial and legislative debate. 96 The Court even declared that the Indian Parliament lacked the authority to modify any basic right under Indian law. 97 According to its reputation as a watchdog of the well-heeled, the Supreme Court also overturned a Presidential Order ending the pensions and other benefits of India's former princes. 98 Parliament sought to expand its amendatory powers in the face of a succession of resourceful judicial opinions denying full compensation. 99 In this way, the problem of implementing land reform measures became a contest between the Court's judicial review authority and the sovereign authority of Parliament. When *Kesavananda Bharathi vs. State of Kerala* came along, this issue was finally settled on. 100 Parliamentary authoritarianism was effectively halted by a precisely calibrated reaction from the Court. An novel notion of inviolability of the Constitution's "basic structure." was enunciated to achieve this. Simple and convincing reasoning underpins the Court's decision in this landmark case. The Supreme Court ruled that Parliament may change the Constitution, but it cannot use its amending authority to alter the Constitution's "basic structure," since Parliament is just a "creature" of the Constitution. 101

As a result, Parliament cannot even change the Constitution to limit the Supreme Court's ability to examine legislation that seem to follow directive principles but really infringe on the basic rights of people.

One hundred twenty-two In *Indira Gandhi v. Raj Narain*, the Supreme Court maintained and expanded this notion beyond the right to property. By striking down an amendment to Parliament's "basic structure" that made it impossible to overturn a PM's election to Parliament in a court of law, the Court upholds the fundamental principles enshrined in its "democratic setup" and the rule of law. 104 In an emergency, notwithstanding the Court's rejection of Parliament's claim to unlimited authority and reduction of its ability to suppress, it nonetheless allowed for constitutional rebellion. 50 For example, in the case of *Shiv Kant Shukla v. Additional District Magistrate*,⁰⁶ the Court failed to stand squarely between the public and the gulf of unrestrained authority. Because of the state of emergency and the Presidential Order suspending Article 21, the Constitution Bench of the Supreme Court ruled that the Court could not assess the constitutionality of any legislation requiring pre-trial detention. Over the course of three decades, the Supreme Court of India has shown little interest in the formation of a welfare state in the country. As a result, it had become a bulwark of property rights rather than human rights. On top of all that, it had neglected its critical responsibility as constitutional guardian amid India's worst domestic crisis since independence. After independence, the Supreme Court of the post-independence period made no lasting contributions to strengthening constitutionalism in the subcontinent, and left unfulfilled the aspirations of most citizens.

II.

HUMAN RIGHTS JURISPRUDENCE

Suffering is taken seriously by the Supreme Court.¹⁰⁸ After the emergency ended, the Supreme Court took on a role in Indian politics that was quite different from anything it had done before. In the late 1970s, the paradigm of constitutional interpretation experienced a major shift. As a result of the Supreme Court's landmark judgement in *Maneka Gandhi v. Union of India*¹⁰⁹, this transition took place. Following its deference to the administration during an emergency, the Court resurrected judicial activism going forward. For the first time in its storied history, the Supreme Court of India took a stand for the most vulnerable and powerless sectors of Indian society, making constitutional rights a daily reality for them. From an executive-serving institution to one that is set to fulfil its serious constitutional responsibilities, the Court's transformation "was partly an aspect of the postemergency catharsis." that took place after Hurricane Katrina. Article 21's Creative Expansion in *11 B Traveling Abroad* is a fundamental human right. Fundamental rights are "weave together a pattern of human rights guarantees" by the Supreme Court in *Maneka Gandhi*, and they are not mutually incompatible.¹² Article 14's anti-arbitrariness and the basic freedoms clause's reasonableness must also be met in order for an act to infringe Article 21.¹¹³ There are a slew of rights explicitly and implicitly listed as basic rights under Article 21, according to the Court.¹¹⁴ In view of the constitutional ethos, the genuine extent of the word "personal liberty." was not only independence from physical limitations. It included a wide range of rights, including as the ability to travel abroad, that contributed to the development of a person's individuality.¹¹⁵ Furthermore, the Court did not limit itself to an individual's personal freedom. In a departure from previous precedent, the Supreme Court examined the essence of a method through which a person's life or liberty may be taken away. Following a thorough review of Anglo American case law, the Supreme Court ruled firmly that the procedure must be imbued with natural justice principles. "The number is six. It is critical that the process be correct, just, and fair. For this reason, it is forbidden to use language that is too "arbitrary, fanciful or oppressive."¹⁷ *Maneka Gandhi* laid the groundwork for Article 21's emergence. Later, when the philosophy of anti-arbitrariness and reasonableness began to permeate the Indian court, Article 21 became an effective tool for righting the severe and obvious wrongs of Indian society. Two. The right to secrecy

Kharak Singh v. State of Uttar Pradesh, decided in 1963, may have been the first case in which the Supreme Court addressed an aspect of Article 21's right to privacy.

¹⁰⁰ He argued that police monitoring, including visits to his home, violated his constitutional right to privacy.¹¹⁹ Furthermore, in view of an important value highlighted in our Constitution, the Court looked at what it means to have "life" and "personal liberty" in both its breadth and substance.¹²¹ The Indian Supreme Court determined that domiciliary visits infringed on a common law right to privacy after a careful examination of the facts and the absence of a constitutional prohibition on illegal searches and seizures.¹²² Article 21 said that the "ultimate essential of ordered liberty"

was the freedom from government intrusion into the private lives of citizens. 123 It has been reaffirmed by the Supreme Court in a 1991 ruling that Article 21 guarantees the right to privacy. 124 All individuals whose rights were restricted by the Court's historic finding that legislation under Article 21 had to be fair, just and reasonable in its procedural core had a humanising influence. As a result, inmates who had been denied some of their most basic rights were suddenly protected under the Constitution. The prohibition of torture, cruel, inhuman, or degrading treatment, or punishment (Article 25) Humane prison jurisprudence in India began with the case of Sunil Batra vs the Delhi Administration²⁶. The Court gave this phrase in Article 21¹²⁷ fresh meaning and depth by adopting a dramatic definition of life provided by an American jurist. While inside prison, "life" wasn't just "animal existence" to the judicially-adjusted, "it was more than that." Accordingly, the Court ruled that those on death row were entitled to the same basic necessities as non-death row inmates. 129 Torture of anyone in the custody of prison officials, whether mental or physical, was prohibited. 1,030

Humanizing the prison experience wasn't enough for the Court. It was found that inhumane prison practises, such as arbitrarily detaining inmates, 131 inflicting physical cruelty and torture on prisoners, and routinely handcuffing inmates were in violation of Article 21 of the European Convention on Human Rights (ECHR), 34 by applying Maneka Gandhi's fair procedure rule to the prison context. To illustrate the combined effect of fair process and anti-arbitrariness in prohibiting jail caprice and brutality, consider the following passage: Even if the VIII Amendment and the due process provision are absent from our constitution, the result remains the same after Maneka Gandhi. Articles 14 and 19 and article 21 prohibit arbitrary punishments that are punitive, scandalous, cruel, or rehabilitatively unproductive, as well as punishments that are unreasonably harsh or arbitrary. The prisoner is not separated from the rest of the constitution by the prison's gates. If the prison authorities violate, frown upon, or freeze a prisoner's basic rights, the judiciary will step in to preserve such rights. 135 As a result of this, the Court's work was not limited to crafting individual remedy for the petitioners. The Court took use of the opportunity presented by the horrific violation of inmates' rights to adopt corrective procedures to avoid a recurrence. An order issued by the Supreme Court mandated that all convicts be provided access to a "grievance box" where they could voice their grievances, as well as weekly inspections of the prisons in their jurisdictions by the local district judges. 136 Extensive rules for prisoner care were not the end of the matter. It even went so far as to give court authorities exclusive authority to restrict the liberty of detainees. Prior to withdrawing any benefit, they were required to conduct a hearing in accordance with the principles of natural justice. 137

RIGHT TO A PROMPT AND OPEN TRIAL.

In many ways, being held as a pretrial prisoner for an inordinately lengthy period of time while one awaits trial is torture. In the case of Hussainara Khatoon v. State of Bihar,¹³⁸ the Supreme Court was confronted with the condition of multiple convicts who had been imprisoned for years but whose trials had yet to begin. These people were detained for

longer lengths of time than they would have been had they been prosecuted and convicted, as a result of their denial of an expedited trial. 139 The Court had no problem rationalising that no process that did not assure a rapid trial could be considered reasonable, fair, or equitable, given the vast scope and substance of Article 21. As a result, Article 21 guarantees the right to a "a reasonably expeditious trial" 140 On personal bail, the Court ordered that all of the pre-trial detainees be released. 14 1 5. The right to free legal aid is a fundamental human right. To ensure equal treatment in criminal justice, the Court used the rights of fair process and equal protection. The Court sought to assure equitable treatment between affluent and poor defendants and to erase the inherent inequality between the prosecution and the defendant by defining the right to free legal assistance. According to the Court, free legal services are a "Gideon's trumpet had been heard across the Atlantic," implied in Article 21 because the "imperative procedural piece of criminal justice" 142 Court made a crucial clarification in *Khatri v. State of Bihar* 143 about the new constitutional right it had just enunciated. It is correct that the Supreme Court correctly pointed out that the excuse of financial and administrative inability that the state can use to avoid its constitutional obligation is valid "Law prohibits governments from denying citizens their constitutional rights on the pretext of economic hardship. 144 To ensure that every accused person is aware of his constitutional entitlement to free legal representation paid for by the state, the Supreme Court mandated that every magistrate and session judge do so. 145

Every prisoner has a justiciable right to free legal assistance and a fast trial under *Hussainara Khatoon and its descendants*. 146 Those remarks from the Supreme Court encapsulate the magnitude of these precedent-setting rulings. In this interpretation, Article 21 prohibits any kind of torture or cruel, inhuman, or humiliating treatment unless it is done in compliance with established legal process. A reasonable and non-arbitrarily criteria cannot be used to any statute that enables such torture or cruel, inhuman, or degrading treatment. Because of Articles 14 and 21, this is clearly unlawful and invalid. Consequently, it is clear that Article 21 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights both include the right to protection from torture, cruel, brutal, or degrading treatment or punishment. 147 Freedom from being imprisoned because of a contractual obligation that cannot be fulfilled. This was not the Court's final pronouncement on civil and political liberties. These and other critical civil and political liberties were yet to be established. A judgement debtor who could not afford to pay his debt or had money on which other pressing claims were based could not be imprisoned because of the humane imperative for a fair procedure set forth in Article 21 of the Constitution, according to the Supreme Court in *Jolly George Varghese v. Bank of Cochin* 48 149 Article 21's focus on human dignity necessitated this interpretation.

Article 11 of the International Covenant, which guarantees that no one may be imprisoned for failing to perform a contractual agreement, influenced the wording of Article 21. Right to life has a social, economic, and environmental component. Under international law Life, the oldest and most revered human right, is enshrined in Article 6

of the International Covenant on Civil and Political Rights and Article 3 of the Universal Declaration of Human Rights. Fundamental human rights have both positive and negative aspects when considered in their full context. It's important to remember that every human person has a fundamental right to life, as well as a fundamental right to an adequate quality of living. Even those who insist on seeing the right to life purely as a civil right must concede that the term has taken on such a wide interpretation. For the right to life to have any real value, one must have an appropriate quality of living, which includes access to healthy foods and medical services, as well as suitable living conditions. Thus, the right to a healthy and entire environment seems to be a logical extension of one's right to live. 151

There is a moral need for today's governments to adopt policies and programmes that guarantee equal access to the means of survival for everyone. India's social and environmental circumstances need a more broader view of the hazards to life, and the Supreme Court has done just that. 8. The right to work and support oneself In *Olga Telis v. Bombay Municipal Corporation*, the Supreme Court was confronted with an intriguing dilemma. 12 As the motorway was being modernised, the Municipal Corporation decided to expel pavement dwellers. The petitioner stated that evicting and deporting the pavement dwellers would be tantamount to depriving them of their right to life and hence unconstitutional since they would be deprived of their livelihood. 53 The Supreme Court listened to this argument with open ears. Although the state could not be forced to give means of sustenance to all of its citizens by affirmative action, it could not deprive a person of the means to his livelihood, according to the Court. 54 It was murder to deny someone their right to a living other than through a law that was just, reasonable, and fair. 155

In response to the writ suit, the Court stopped the eviction of sidewalk dwellers and the dismantling of shelters for four years. 156 The municipal authorities were ordered by the court to give slum and pavement residents with other locations or housing within a reasonable distance of their original places. 157 In addition, the Court used the occasion to call on the local authorities to put into action a planned housing programme for the needy. 158 *National Thermal Power Corporation Ltd. (NTPC)* recently evicted more than 150 tribals from their forest property in the case of *Banawasi Seva Ashram v. the State of Uttar Pradesh* for the construction of a massive thermal power plant. 160 The Court made the acquisition of land for NTPC conditional on NTPC's plans to provide certain Court-approved facilities to the ousted forest dwellers. "the tribals for generations had been using the jungles around for collecting the requirements for their livelihood - fruits, vegetables, fodder, etc." - the Court stated in its order. 161 It has relied on Article 21 of the Constitution to issue interim directives mandating that state entities assist tribals who have been displaced due to dam building. 162 A Clean and Wholesome Environment is a fundamental right. The Court acted on the implicit assumption that environmental deterioration affects quality of life in its first move toward moulding an environmental dimension to Article 21.

A possible recognition of the environment's fundamental worthiness of protection was also alluded to by the Court. The Court's response to Rural Litigation & Entitlement reflects this fresh and enlightened approach. According to Kendra, Dehradun, 163 was a first environmental complaint to be filed against it. According to the Supreme Court, protecting the environment and preserving the ecological balance is a responsibility that not only governments but all citizens share in. As incorporated in the constitution's Article 51a(g), it is a social responsibility and we should remind every Indian citizen of this commitment. 164 Limestone quarries in the Doon Valley, a lovely hill station in Himalayas, were halted by the Court on the grounds that mining had a detrimental effect on the surrounding ecosystem. 165 A deteriorating environment posed "non-violent" dangers to "life" even if the Court did not explicitly refer to Article 21 in this particular instance. According to the Supreme Court in Subhas Kumar v. State of Uttar Pradesh¹⁶⁶, severe pollution violates the right to life since it is gradual, constant, and subtle. A healthy ecosystem and clean air and water were cited by the Supreme Court as essential to living life to its fullest potential. 67

"any action that would cause environmental, ecological, air, water pollution etc., should be regarded as amounting to a violation of Article 21." This caused the Court to make an explicit pronouncement.

168 The Supreme Court reaffirmed in Virendra Gaur v. State of Haryana in 1995 that Article 21 includes a right to a healthy and clean environment in its decision. 169 C. Fundamental Rights: Their Inherent Universality Non-State Actors Can Be Held Accountable It is apparent from the examples above that India's government is the primary offender of people's human rights. Despite this, there are numerous exploitative connections between people in civil society because of extreme disparities and the maldistribution of income and resources. That's why private entities wielding control over human beings silently may do some of the most horrific crimes. Furthermore, it is notable that many of the basic rights clauses are universal in scope; they have not been targeted just to the government. 170 As a result of these realities, the issue naturally arises: Should the activities of non-state organisations that violate Part III's requirements be scrutinised by the Court? Several unfortunate workers were brought to the notice of the Supreme Court in People's Union for Democratic Rights v. Union of India¹⁷¹ because of the pitiful situation of contractors who underpaid them. 172

The city of Delhi had hired the contractors for the Asiad Games, which were being held in Delhi at the time. 173 Because of their failure to observe labour regulations, government contractors were not infringing on their constitutional rights, according to the Supreme Court's ruling. 174 As the Court correctly noted, many of the protections afforded to employees under the labour laws were enacted to ensure that they were treated with the dignity guaranteed by Article 21 of the Constitution. 175 As a result, even private contractors who violated labour rules were in breach of Article 21. 176 It was "forced labour" to deny workers the right to a minimum wage since doing so was tantamount to "enforceable against the whole world." a breach of their freedom from exploitation. ' 177

For their failure to adhere to labour regulations, Delhi officials were held accountable in court. 178 One of the first cases to deal with bonded labour in particular stone quarries was *Bandhua Mukti Morcha V. Union of India*¹⁷⁹. However, even though individuals who committed the infractions were lessees, the Court held the Union of India and the state of Haryana accountable for the implementation of the labour requirements and the rehabilitation of freed employees. 180 A more recent case, *Mohini Jain v. State of Karnataka*,⁸ held that private educational institutions might be subject to Part III's regulations. State governments are constitutionally obligated to give educational opportunities to their residents at all levels of government, the Supreme Court said. 182

Article 21 guarantees the right to a life of dignity for all citizens, but only if they are educated. Consequently, private educational institutions, which had governmental certification, could not charge an excessive tuition rate for educational courses. 8 3 Education commercialization was antithetical to Indian cultural values and thus unconstitutional. 185 Today, the Supreme Court is dragging "private governments into the tent of state action." as a result of these pronouncements. 186 Protection of human rights will never be relevant and complete without continuing to subject various discriminatory and exploitative behaviours and relationships between institutions and women in civil society to the discipline of Part III. Article 21: Right to Damages for Violations It would be interesting to observe how Article 21's rejuvenation is handled. One cannot help but think that preserving the right to life would be worthless if the Court only penalised a state official or a non-state business for its infringement.. Indeed, the magnificent assertion of the right to life and liberty would be reduced to a murmur, or perhaps a nullity, if there was no constitutional right to recompense for its infringement. When Article 21's rights were violated, the Court quickly ruled that it had the authority to require the payment of damages to the aggrieved. It was the Court's bold stroke in 1983 that gave Article 21 a fresh lease of life.

If those responsible for violating a person's right to life aren't made to pay compensation, the Court correctly acknowledged in *Rudul Shah v. State of Bihar*^{8 7}. The Court for the first time granted compensation to a petitioner who was tortured while in police custody. 188 It was yet another strong stroke of justice, when the Supreme Court ordered a privately-owned corporation, which had allowed the release of toxic gases, to pay compensation to those who had been affected. Legally speaking, the Supreme Court's ruling in *Nilabati Behera v. the State of Orissa* in 1993,¹⁹⁰ has made it clear that a constitutional entitlement to compensation for an Article 21 violation is firmly established. 191 It should be noted right away that an award of compensation in a proceeding under art. 32 by this Court... is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on an action based on an action based on a violation of a fundamental right. According to the court, this constitutional remedy should be made more accessible to the poor, who often do not have the resources to zealously seek their rights in private law, when it awarded compensation for a poor woman's son's death in police custody.

193 Theorizing Human rights are guaranteed by the Constitution, but judicial reasoning may either negate or preserve them, as shown by a contrast of the Court's judgement in the A.K. Gopalan case (194) with its subsequent judgements in the post-emergency period. The Supreme Court justices of the late 1970s deserve a lot of credit for injecting Article 21 with life and enhancing its substance. Perceptive judicial exegesis has made many international human rights a part of India's constitutional heritage today, including freedom from torture, cruel, inhuman and degrading treatment, or punishment, right to a speedy trial, right to free legal services, freedom from imprisonment on the basis of inability to fulfil a contractual obligation; right to compensation for unlawful detention; and right to education. It is possible that the founding fathers did not envisage the rights described by the Court in its wide reading of Article 21. In spite of this, its architecture is in direct accordance with constitutional ideals of individual dignity and a civilised society. In addition, these cases show that the state's obligation for the overall well-being of its residents has grown in tandem with the continuous extension of Article 21's scope.

The Supreme Court's wide interpretation of Article 21 is partly responsible for some underprivileged people's experience of the clause as a living reality. The consequence has been a major social justice movement that has never been accomplished using nonviolent methods before. Indeed, the revolution was headed by judges. P.N. Bhagwati, O. Chinnappa Reddy, D.A. Desai, and R.S. Pathak are just a few of the judges who have helped lead India's post-emergency judicial revival. These persons handed down a large number of the landmark judgments that were the subject of the previous section. D. The Aspect of Procedure The Supreme Court's juristic ingenuity was not limited to just dissecting Article 21's many elements. Newly enshrined rights by the Supreme Court did not originate in the 18th or 19th centuries. Rather, they were "meta-rights" or collective social rights, that made the old Anglo-Saxon legal techniques utterly inadequate for their successful implementation. 196 When new rights emerged, it was cognizant of the enormous hurdles that the poor faced in claiming their fundamental human rights, therefore it launched ambitious new judicial processes with imagination and realism in the face of these problems. A new kind of litigation, such as social action litigation or public interest litigation, was created and supported by the Supreme Court as a result of these procedural advances. 197 1. Locus Standi's Expansion The Supreme Court has made a significant step toward achieving the hopes of the underprivileged by making it easier for the public to contact the courts.

To force the government to fulfil its "public spirited individuals" the Court overturned the Anglo-Saxon locus standi norms, allowing "public duties." to sue on behalf of numerous unfortunate citizens whose rights had been infringed. Locus standi in public interest matters is the subject of the Court's approach as outlined in the next paragraph. Any member of the public can bring a lawsuit for a proper direction order or writ in cases where a person or group of people has been wronged legally due to the violation of a constitutional or legal right... and the person or group has been wronged legally due to the violation of a constitutional or legal right but is unable to bring a lawsuit for relief due to poverty, helplessness, or disability... 198 Consequently, in a single stroke, the Court had

widened the scope of its jurisdiction and the spectrum of topics it might decide on. Nevertheless, the Court made it plain in dismissing public interest petitions that the public spirited litigant was required to behave bona fide and not for personal advantage or other indirect reason in rejecting these petitions. 199

Many public-spirited people, NGOs, journalists, social workers, environmental organisations, ecological groups, and activist attorneys benefited from this procedural innovation, which allowed them to raise issues with a public-interest focus. There are petitions about the harrowing prison scene; 200 torture of children and women in custody; 201 the existence of bonded labour and forced labour; 202 eviction of pavement dwellers; 203 protection of India's cultural heritage; 204 the pollution of the sacred river Ganges; and 205 petitions about the destruction of the Taj Mahal's beautiful marble facade by pollution; There was an immediate influx of petitions to stop the Tehri Dam's construction, as well as those protesting the state government's dishonest strategy of issuing ordinances in an attempt to usurp legislative authority, as well as those calling for an end to the disingenuous strategy of issuing ordinances by the Bihar State government. When a social action organisation was granted standing to sue the Indian government in 1993 in *Tarun Bharat Sangh, Alwar v. Union of India*,²¹¹ they sought to stop mining activities in the Sariska Tiger Park. the jurisdiction over epistles and other documents The Court's "Epistolary jurisdiction" is another significant procedural innovation. Citizens, non-governmental organisations (NGOs), and public-spirited individuals may petition the highest court for the protection of the fundamental rights of any person or group of persecuted people by submitting a letter.

Instead of going through the usual process of filing an official complaint (which required a summons and complaint form), courts began treating such letters as writs of petition, investigating the complaint, providing legal help where appropriate, and passing interim or other orders as it saw fit. An innovative new procedural rule helped to bring a wide range of cases to court that were previously overlooked, such as torture of prisoners, 213 women in state-run welfare homes,²¹⁴ mental institution patients,²¹⁵ the degradation of the environment,²¹⁶ bondage labor,²¹⁷ and the evictions of pavement dwellers 218. Social-Legal Commissions Of Fact-finding And Investigation Due to their limited resources, many petitioners in Public Interest Litigation cases had difficulty establishing and proving violations of rights by the states in court because of their desire to help others. 219 Aside from that, their other difficulties included strong rejection by state governments of their well-founded charges, as well as a condemnation by state governments of their reputable sources of information. 220 However, it is a testament to the Supreme Court's artistry that it utilised its broad powers creatively to devise novel but uncommon methods to aid plaintiffs in the costly work of collecting evidence. The practise of appointing commissioners to collect facts and data on alleged breaches of people' basic rights has developed as a result of the Court. 22 1 All parties are then given a copy of the commissioners' reports, which they may contest by submitting affidavits. The Court next analyses the commissioner's report and any affidavits that may have been submitted, and continues to rule on the issue. 222

The panel of commissioners includes social activists, teachers, researchers, and journalists, as well as government administrators, technological specialists, and judicial authorities. 223 Public interest litigation proceedings are apparent examples of situations where the Court "assumes a more positive attitude in determining the facts." 224 To determine the true state of affairs and provide a detailed report on which it issued far-reaching orders for the release and rehabilitation of the Pradesha, the Court appointed a judge-led commission to evaluate the negative effects mining in the "Sariska Tiger park" had on the environment, wildlife, and forests and to make appropriate adjustments. In this case, which concerned bonded labour in stone quarries. 226 4. New and Improved Treatments Several Public Interest Litigation cases dealt with blatant abuses of human rights, which made typical remedies such prerogative writs issued by the courts ineffective. To achieve "distributive justice," a "affirmative action" has to be taken. 227 In yet another instance, the Court showed no reluctance to devise its own unorthodox solutions. Interim relief was granted when the matter necessitated immediate action, but the ultimate judgement on factual concerns and legal culpability was deferred for a considerable period of time. To provide one example, the Court ordered the state of Bihar to provide medical and rehabilitation treatment to blind inmates after the police-inflicted blindness of many pretrial detainees. Even before the criminality of the police officers had been established, the Court issued orders for such remedies. 228

Many teenage pre-trial detainees languish in jail without their trials beginning in the case of Hussainara Khatoon v. State of Bihar²²⁹. Prior to the trial, pre-trial inmates on personal bond²³⁰ were ordered to be released immediately, and free legal aid was made available to all those charged as a result of the Court's interim decisions. 231 Pretrial detainees must be informed of their right to bail and legal assistance by their judges, according to the Supreme Court, which ruled that a fast trial constituted a fundamental right.²³² 23 3 Despite this, the matter languished before the Court for eight years until a decision was rendered. Ombudsmen are also appointed by the Court to ensure and monitor the efficient implementation of its wide-ranging rulings. People's Union for Democratic Rights v. Union of India²⁴ established an ombudsman, made up of three persons who were responsible for monitoring the enforcement of labour regulations by contractors and the Delhi government. 235 5. "Creeping Jurisdiction" or "Detailed Administration" 236 A large number of human rights violations may be traced back to a lack of public accountability for government officials in India, where the execution of laws is slow, government officials are corrupt, and the notion of "public accountability" for advisors has been largely absent (lawless disregard of statutory or constitutionally imposed duties).

A desire on the Court's part to ensure that public obligations are enforced and "distributive justice" is administered effectively has led to the Court's participation in the field of administrative implementation. As an example, the Court decided how much

money should be spent on meals for patients in a mental institution, and it ordered the elimination of a restriction established by the hospital authorities on the cost of medications that may be supplied to them. 237 India is a society where justice frequently demands action from the state, and this has been a driving force behind the Supreme Court's decision to get more involved in administrative minutiae. 238 The Supreme Court has received some criticism from those who want a more conservative view of the Constitution and a mechanistic understanding of the rule of law, despite its substantial victories in advancing human rights in the subcontinent.

Some have criticised the Court's system for selecting commissioners to aid public interest plaintiffs in collecting evidence. For this reason, some lawyers believe that the people appointed to serve on the commission by judges are just as likely to be prejudiced as the judges who have previously been excited about Public Interest Litigation. 241 There are also accusations that judges are biased when it comes to selecting cases and "picking their litigants." 239

For its unreserved incursions into execution of its rulings, it has been claimed that "court is factually (not merely virtually) taking over the administrative function" and breaking separation of powers concept. 241 The government "cannot decide to start settling legal cases just because the judiciary has not been able to clear the piled up cases at every level," the executive said. Some members of the bar believe that the court should relegate itself to its given sphere, as shown in 242. According to a previous Attorney Solicitor-General, the court has a specific function in our (India's) constitutional structure. Conflict settlement and constitutional interpretation are the roles of the Supreme Court, while policymaking belongs to the legislative and executive branch. The judiciary is not tasked with ensuring that democracy is running properly. 243 Concerns have also been made that the Court may get involved in political issues brought to the judicial agenda as "public interest litigation" without the Court's knowledge. 244

As a result, the "floodgates argument" - the danger that Public Interest Litigation presents to regular legal actions in India's Supreme Court and High Courts - has been raised by critics. 245 These are valid issues that need careful consideration. Public Interest Litigation's challenges are not insurmountable. To say that it should be banned is to toss aside all of its usefulness in legal terms. Public Interest Litigation (PIL), as advocated by Justice Kuldip Singh (a former Supreme Court justice who just departed), "is doing more good than harm," he correctly concludes. 246 It is true that Public Interest Litigation has been abused in the past, but since then, the Court has made it clear that the person bringing the suit must be a "acting bona fide" advocate for the public interest and has strongly condemned the practise of using Public Interest Litigation to settle personal scores. 248 This is neither a combative tone or an attempt to seize administrative power, but rather one of protecting individuals' freedoms. 249

For example, the Court's suggestion for the construction of environmental courts with a professional judge and two environmental scientists 250 demonstrates a mature contemplation and realistic appraisal by the judges of what they can achieve in their drive for social justice for the ordinary man. As a result, India's judicial activism does not represent an excessive or uncontrolled level of involvement. "We live in an age where this Court has demonstrated while interpreting Article 21 of the Constitution that every person is entitled to a quality of life consistent with his human personality," Justice Pathak said. Every Indian person has the fundamental right to live a life of dignity. ' 25 1 To respond to the Court's healthy criticism of its approach to Public Interest Litigation, an open mind is required. Ex-Attorney General Soli Sorabjee's recommendation that post-judgment surveillance and the cautious use of the Court's contempt authority to ensure compliance with its orders and directives in the future merits serious consideration. More than 250,000 people have obtained the Court's protection in recent decades to ensure that they have access to fundamental human rights. This is a significant achievement. Public Interest Litigation can have its downsides, but "in a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken." 253

In this section, we will examine the creative impact of international human rights norms.

It may be time for US courts to start turning to international standards as sources of domestic law on human rights concerns, said American jurist Jack Greenberg fifteen years ago.

Even the Indian courts can see the logic in 254. In fact, domestic courts in a number of common law nations look to international treaties that their countries have accepted for advice in interpreting their constitutions and statutes. It is also vital that we should not "turn completely inward in judicial attitude in a way that denies the rich traditions of the rule of law beyond our borders" because of the "vast array of international human rights norms now available." 255 It examines how international human rights law's normative component has influenced Indian Constitutional requirements. An overview of the link between Indian municipal law and international law is required here.

Indian law and international law are intertwined in the country's municipal system.

It is possible that Indian courts may accept custodial international law liberally. During British control in India, common law ideas were used in a wide range of cases. Despite the fact that Article 372(1) of the Constitution mandates "the continued operation of the law in force immediately preceding its commencement." this approach has not changed. The municipal courts of India may, therefore, use well-known rules of customary international law on the basis that they constitute the law of the country, like the English common law. India is a dualist when it comes to international treaty or ordinary law. However, until it has been implemented by legislation, international treaty law has no binding force in India. In *Jolly George Varghese v. Bank of Cochin*, the Supreme Court reaffirmed this stance. 256 As a further requirement, Part IV of the Constitution mandates

that the state, as well as the Supreme Court, adhere to the Directive Principles in the formulation of legislation. When it comes to constitutional and statutory interpretation, using the directive principles is a must because of the Supreme Court's authority to establish binding legislation under the Constitution 257. "State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another." states Article 51 of Part IV. As a result of this approach, it might be claimed that the Supreme Court should seek to interpret the Constitution in conformity with India's international duties. *Jolly George Varghese v. Bank of Cochin*, 258 B. "Indirect Incorporation" Of International Human Rights Norms in the Indian Code of Civil Procedure and Article 21. As previously mentioned, Indian courts have the authority to give effect to custodial international law principles since they are part of domestic law.

This means that customary international law, such as the prohibition of torture,²⁵⁹ may be applicable to Indian courts. The Supreme Court, on the other hand, has never focused on the binding impact of customary international law in any case involving the rights of prisoners. A remedy for petitioners under domestic law was secured instead by relying on the Constitution alone. The Court's unwillingness to acknowledge that Indian constitutional ideals fall short of international norms is a major factor in this approach. According to its approach, the Supreme Court specifically said that torture violated the petitioners' basic rights and was inconsistent with the Constitution's intrinsic spirit. However, the fact that the Court did not develop an independent rule of determination in its cases based on principles of customary international law or other international human rights standards does not imply that it was insulated from their beneficial influence. India's international commitments and its attitude to taking international human rights legislation seriously are both reflected in the Supreme Court's frequent references in its rulings to rules spelled down in treaties and declarations. 260

"The Court must not forget the core principle found in Article 5 of the Universal Declaration of Human Rights. . . and ... Article 10 of the International Covenant on Civil and Political Rights." the Supreme Court said before beginning its examination of the case. 261 United Nations General Assembly Declaration 8 and 9 have been used in the Court's standards for the treatment of detainees in the development of its extensive guidelines for prisoner care. 262 According to the Court, as India is a member to the International Covenant on Civil and Political Rights, it is obligated to execute the requirements of this treaty. 263 In a more recent case, the Court cited the International Covenant while reaffirming that the award of monetary compensation for the unlawful deprivation of Article 21 constituted its enforcement. 264 It is obvious that, despite the Court's decisions being based on Indian constitutional law, it has also sought to follow international human rights norms and standards in defining the meaning and scope of basic rights. Indian Supreme Court's "indirect incorporation" of human rights legislation may be seen by some as a hesitant and cautious approach on its side.

However, a look at other countries' courts shows that this method is not uncommon. Human rights legislation produced outside of domestic law-making procedures will be seen as insufficient by domestic courts all over the globe when their own constitutions are considered to be enough. 265 States' sovereignty and a preference for domestic law are other hurdles to the adoption of ideas formed outside the scope of domestic law making procedures. It has been acknowledged in the formulation of international lawmaking instruments that this issue exists. A high degree of respect for state sovereignty is seen in both of the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ESCR). 266 This is a solid and pragmatic way to incorporating international human rights rules. 267 As a result, it assures that internationally recognised rights are not only a figment of the imagination for people throughout the world. C. International Environmental Norms Have An Impact According to the Court's findings, international environmental rules were also referenced as evidence.

Court in *MC. Mehta v. Union of India* dwelt extensively on the 1972 UN Stockholm Conference on Human Environment and the Indian delegation's leadership involvement in that event, chaired by the late Mrs. Indira Gandhi, the Indian Prime Minister at the time.

There was an emphasis on the need for states to do all in their power to prevent marine pollution. 269 A basic right to an appropriate environment for health and well-being was reaffirmed by the Court in the case of the *Law Society of India v. Fertilizers and Chemicals, Travancore Ltd.*, in which it alluded to the 1984 UN resolution. 270 Clearly, this shows that the Supreme Court is open to international environmental principles and has utilised them as an interpretive tool in expanding the Constitution's rules.

A "definitional manner." of using human rights and environmental rules has been employed by the Court. To further enforce environmental justice, the Supreme Court has empowered people and environmental organisations to protect the environment and to be free of the repercussions of environmental injury or destruction. 271 Rio Declaration Principle 10 on effective access to judicial and administrative processes (including recourse and remediation by member states for the preservation of the environment) takes on particular significance in this context. Finally, Supreme Court judgements on basic rights are significant milestones in the domestic execution of international human rights law. According to international human rights and environmental law standards, the Court's reading of the Constitution is more enlightened than ever before.

When judges and lawyers have access to the texts of the most important international and regional human rights treaties, the lengthy path toward universal respect for fundamental civil liberties would be expedited, a 1989 colloquium found. Human rights jurisprudence is becoming more and more international, and judges and lawyers have a responsibility to keep up with it. To the extent that they can, they are obligated to represent the fundamental principles of human rights in their tasks. These international tools will be converted into law for the benefit of the people we serve as well as those in other countries. 272 An ancient Vedic prayer asks, "Let noble thoughts come to us from

all sides" With this beautiful invocation and the Harare Declaration as a guide, we can only hope that the Indian court would continue to learn from other countries' jurisprudence.

WHAT'S IN STORE FOR US IN THE FUTURE?

This author has supported and welcomed the Supreme Court's wide interpretation of Article 21, its innovative procedural innovations, and its unique technique of incorporating international human rights rules into the constitutional fabric since its independence. Aside from the Court's post-emergency decisions, she must point out that this does not imply her support for all of them. She must stress that judges sometimes go wrong in their efforts to advance human rights, and she is aware of this. Nevertheless, one has to question what the human rights environment would look like today if the Court's sensitivity to the harsh realities of Indian culture and its juristic action had not been present. It is evident from the previous study that the judicial process may make a distinctive contribution to the work of realising the constitutional objectives of those who are oppressed and marginalised. In its function as a "social auditor,"²⁷³ the Court has taken "suffering seriously" and has made a substantial contribution to the genuine protection of human rights in India, according to this analysis. Much progress has been made, but there is still a long way to go. After three decades of denial, one can't help but question whether this new dedication to the poor and disadvantaged, which was demonstrated during India's 50th anniversary of independence, will be kept? The question is whether it will continue to grow and prosper. Human rights in India would be in a state of melancholy if the Court were to abandon its new role as an activist and instead only preside over adversarial procedures and issue an order to the parties. Indian society, which is known for its diversity, cannot support an overly reactive and overburdened court.

As the world's constitutions continue to evolve, the idea of judicial activism and the necessity for a judiciary to protect citizens' rights against legislative and executive overreach are becoming more apparent.

²⁷⁴ It is not a new revelation that judges construct legislation and determine political problems in the course of interpreting and administering the law. Instead, the emphasis is on when, where, and how far they should act. In this last section, I'll point out a few areas where a fresh infusion of constitutional angst will be especially needed in the future. Assuring the Strength of the Constitution Among the "correlative elements of Constitutionalism" are "the legal limits of arbitrary power and a complete political responsibility of government to the governed." argues Charles Mc.Lewan. ²⁷⁵ That India's political system is gradually disintegrating into a show of naked political power without accountability to the genuine sovereigns of land—the people—is very terrible. Constitutional mechanisms used by Parliament for their own partisan political goals are well-documented throughout the history of the amendment process.

Kesavananda Bharathi v. State of Kerala²⁷⁶ was all about Parliament's claim to unrestricted control over not only constitutional amendments but constitutional amendments.²⁷⁷ ²⁷⁷ "a Republican India into a hereditary monarchy, a secular India into a theocratic state, a federal India into a unitary state, an India with citizens into a [sic] India consisting only of subjects." could not be achieved by any party in power. ²⁷⁸ The Supreme Court justices were able to do this by formulating the "basic structure." doctrine. Tyranny and tyranny can no longer pass for constitutional government in India as a result of their efforts, and all Indians should express their gratitude to them. For the *atisudras*, the social and economic proletariat, the reaffirmation of the unchangeable basic structure not only marks the limits of the state's power, but also the maintenance of civil and political space within which they can continue to articulate their struggle against the dominating groups, according to Dr. Baxi's analysis of the case. ²⁷⁹

Corrupt public officials and the unholy trinity of Indian bureaucrats, politicians, and businesspeople have recently come to light in the wake of many scandals. ²⁸⁰ The judiciary is once again brought into the spotlight, even if only in a limited capacity, to bring about responsibility in the institutions of government.. To have the Supreme Court instruct the Central Bureau of Investigation ²⁸¹ to "to investigate every accusation made against each and every person irrespective of his status" and not close any investigation until it has satisfied the Court is a positive development in the Jain Diaries or Hawala cases. ^{28 2} For India's political system to be able to combat a new and more pernicious internal threat - corruption - it has to show some degree of "correlative elements of Constitutionalism" or judicial assertiveness. If the Court's duty is limited to that of a watchdog, it's not enough to prevent the executive and legislative branches from acting arbitrarily. In order to ensure that India's democracy is solidified, constitutional processes must be involved in issues of political repression, political rights, social and environmental justice, and the protection of the most vulnerable sections of society, such as ethnic groups, Scheduled Castes and Tribes, women, and children. Equality for Women In every community, women are generally the most defenceless and exploited. Even in India, where the constitutional guarantors have had little effect, this is true. When it comes to marriage, divorce, inheritance, and other family law issues, Indian citizens of various religious backgrounds are each subject to the rules of their own religion. In many ways, these laws discriminate against women and violate their human rights. ^{3 0} A constitutional challenge against polygamy, an odious Muslim practise, was defeated because it entailed discrimination against women based on both religion and gender. ⁴ ²⁸ For as long as there isn't a Uniform Civil Code, women have no way to break free of the suffocating grip of their country's individual laws.

A "custom" ^{28 5} should be held to the same rigour as Article 21 and the Equality Clauses of Part III, but the Court failed to do so for repressive personal religious regulations. It is true that the Constitution provides religious freedom. As a result, it undermines the individual's self-worth. Any conduct that disparages women should not be able to avoid constitutional scrutiny because it is disguised as "personal religious law." For the sake of

women's equality and national cohesion, the Supreme Court has ruled that the government must implement a Uniform Civil Code (UCC). Twenty-eight

Additionally, the Court highlighted with favour the United States' policy against polygamy on the basis of public morality, and chastised the practise of polygamy in India. Twenty-eight This improved attitude toward women's rights is welcomed as an essential step toward judicial activism. In the future, we can only hope that the Court will interpret Article 21 as requiring gender equality and justice inside the family. Inmates and the mentally ill are protected in C. As the Supreme Court was confronted with in *Veena Sethi v. State of Bihar*,^{28 9} it was frightening to find that people who had been jailed for years on account of their supposed insanity were still being held in state-run homes, despite having been certified as having returned to their senses. As a last example, the case of *Tomar v. State of Bihar* ²⁹⁰ reveals the subhuman circumstances of "care home" There were many people living in a "Care Home" that denied them their basic humanity, as revealed in the district magistrate's report about the "crowded hovel, in which a large number of human beings had been thrown together, compelled to subsist in animal survival conditions which blatantly denied their basic humanity." ²⁹¹

Indian society's treatment of the mentally sick and destitute is shown by these examples. It doesn't get much better in Indian prisons when it comes to conditions. Overcrowding, unsanitary and understaffed physical facilities, inadequate medical and mental health services, and deplorable material conditions have made rehabilitation of the inmates nearly impossible in ²⁹² penal institutions and state-run welfare homes for the poor and the mentally ill. The Supreme Court has in its judgments hauled up the government for this horrible state of affairs, provided extensive guidelines on how to fix it. For example, the court has effectively operated the Agra Protective Home for Women for well over 10 years. ²⁹³ Legislative apathy, bureaucratic indifference, and economic limits are all to blame for the dismal and harsh circumstances disclosed and contested in these instances. Part III is just as relevant to the wealthy as it is to those in jails and welfare facilities. That's why when it comes to protecting any group of Indian citizens, the judiciary should intervene to safeguard those most at risk. "The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of civilization in any country," Winston Churchill reminded us many years ago. ²⁹⁴ One of the most shameful aspects of Indian politics is the fact that the legislative and executive branches have on several times essentially abdicated their constitutionally established roles.

A failure to defend human rights is a breakdown of the Constitution's substantive structure when certain defaults take place. The Court had no option but to fill the vacuum under these circumstances. As a result, it has found itself entwined with the formation and execution of broad social policies, frequently including contentious issues. Here are only a few such instances: Only in 1976 was a Bound Labor Prohibition Act passed, despite the fact that the Constitution stated that the practise of bonded labour was a violation of the fundamental rights of its citizens. As a result of this blatant disregard for

their duty by the elected representatives of the nation, freedom of expression, a fundamental human right, was just a dream for roughly 25 years. A provision in Part IV of the Constitution that requires the state to give free legal assistance to those in need has been blatantly disregarded by successive governments for more than five decades. When free legal services were declared a justiciable right by the court, the government was tasked with enforcing it.

Supreme Court Justice Ahmadi, who just departed from his post, said that the Court has no option but to act in accordance with its constitutionally mandated duty when individuals raise significant constitutional problems and exercise their basic rights in claiming its authority. As a result, the Supreme Court has had to enlarge its authority by issuing innovative orders to the administration, something it would never have done had the other two democratic institutions worked well. 295 In a democracy, long-term systematic unfairness can only last so long. To ignore the government agencies' "lawlessness" or abandonment of their constitutional obligations would have grave ramifications for the Supreme Court. In this scenario, the state would be allowed to flout the law, resulting in a breakdown of the rule of law. "it is essential that rule of law must wean the people away from the lawless street and win them for the Court of law." so the saying goes. 296 Failure to do so would put our constitutional system in jeopardy, putting it at risk of being overthrown by a cunning, brutal, and nearby foreign enemy.

This is a critical reason why the Supreme Court must stay at the forefront of human rights enforcement. In addition, judicial activism has additional positive outcomes. The Court serves as a "teacher of the community." in this regard. Individuals and institutions²⁹⁷ can have an impact on constitutional values when the Supreme Court issues directives and appoints commissions of inquiry, which raises awareness about human rights violations, spurs legislative action, and gives the public a better understanding of the gravity of the problem. When it comes to the Indian Supreme Court, what Eugene Rostow said about the United States Supreme Court holds true: When it comes to shaping public opinion in the United States, there are a lot of people involved - from the press to political parties to academics to pressure organisations - who all play a role. The communal experience through which American policy is produced relies critically on the Court's consideration of problems and statement of broad principles. This court is an educational institution and its judges are necessarily professors in a critical national seminar. 298

I like this view of the Court's role in human rights issues and think it's compelling. It is not unusual for judges in India to assume the robes of high priests, academics and ecological and social reformers when they are articulating new rights and enshrining them in the constitutional protection of various claims. An unpopular group may be able to suppress a legitimate claim because its collective wisdom decides that it is not constitutionally protected. A few discriminatory parts of the Indian Penal Code, such as those that criminalise specific sorts of sexual behaviour, have been called for the repeal by gay males in India. When it comes to constitutional interpretation of human rights, "constitutional interpretation by the judges must view the definition of human rights

with an expansive wisdom to interpret the text purposively so as to preserve the right of all human beings to mutual respect and concern." 299

Conclusion:

A strong role for the Supreme Court is critical to ensuring that the Constitution is translated into actionable promises. I am not implying that the Supreme Court is the only agency in a democratic country like India that is responsible for protecting and advancing human rights. Because of a corrupt and errant government and an irresponsible parliament in India, it is a critical agency that may be essentially necessary for the preservation of human rights. Even if current Indian constitutionalism may be traced back to the Supreme Court, the Indian Constitution does not have many of the features that have come to characterise Indian constitutionalism in the last several decades. As a result, I see no compelling reason for the Supreme Court to abandon its current activity and return to a more restrained and passive position in the future. The founding fathers of the United States were visionary and morally upright individuals. They have both given us (their descendents) a wonderful legacy and shown their underlying conviction in our capacity to address the most complicated problems via democratic procedures by creating our national charter infused with a socialistic spirit.

Part III's protections were to be defined and enforced by the Supreme Court because of their belief in it as a stronghold for rights and justice. There was an acknowledgment of the government's unique ability to undertake such critical duties. Our constitutional framework for justiciable Fundamental Rights is built on these kinds of assumptions. To guarantee that their confidence was not misplaced, the court has a duty to do so. The 50th anniversary of India's independence presents us with an opportunity to devote ourselves to a mission that is more important than any other. We face a difficult challenge, but one that is not insurmountable. The success or failure of a national project of this size is largely determined by the confidence in the country's future grandeur that spurs hard labour and perseverance. Thompson's moving comments could motivate us in our united effort and provide a sense of the monumental destiny that India must achieve.

He claims that India isn't only an essential nation for the future of the planet; it may be the most important. One may find Hinduism, Muslimism, Christianity and Secularism in this culture as well as the likes of Stalinism and the Maoists. Every notion that is being contemplated in the East or West has an Indian counterpart. It would be one of the greatest triumphs of human history if that subcontinent was wrapped up into tyranny, if that diversified brilliance and creativity were sunk into conformist darkness.

Reference:

See Kenneth J. Cooper, Free but Bound by their Past - Fifty Years After Independence, India and Pakistan Face Same Ills, WASH. POST, Aug. 14, 1997 at A1, A27; John F. Burns, India's Five Decades of Progress and Pain, N.Y. TIMES, Aug. 14, 1997 at A1, A10-All; India at 50, N.Y. TIMES, Aug. 14, 1997 at A26.

2. Sou SORABJEE, Equality in the United States and India, in CONSTITUTIONALISM AND RIGHTS 100 (Louis Henkin & Albert J. Rosenthal eds., Columbia University Press) (1990).
3. JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW 146 (1980).
4. The Supreme Court heads the unified judicial system in India. Article 32 of the Constitution confers on every citizen the right to invoke the Court's original jurisdiction for the enforcement of his fundamental rights.
5. Article 21 confers the fundamental right to life and personal liberty.
6. International Covenant on Civil and Political Rights, GA Res. 2200, 21 U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) [hereinafter International Covenant].
7. Once it became clear that independence for India was imminent, the British Government created a semi-sovereign Constituent Assembly for India in the Cabinet Mission Plan of 1946. The Constituent Assembly consisted of 296 elected members and was truly a representative body. See P. MISRA, THE MAKING OF INDIA'S REPUBLIC 56 (1966).
8. GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 308 (1966) [hereinafter AUSTIN].
9. India has a Parliamentary form of government with a bicameral Legislature: Lok Sabha - (House of people or the lower house) and Rajya Sabha (House of States or the Upper house). The Lok Sabha is the principal legislative body. The executive wing of the government is headed by the Prime Minister who is a member of the Lok Sabha. The President is merely a titular head. Each of the federal states that comprises the Indian union has its own government on a parliamentary model similar to that of the Central (federal) Government. The Indian Constitution provides for a strong Central (federal) Government.
10. We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens-JUSTICE, social economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them

all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEARBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

11. Part III of the Constitution enumerates six fundamental rights.

12. Part IV of the Constitution contains Directive Principles of State Policy [hereinafter Directive Principles]. It is interesting to note that many rights enshrined in the International Covenant on Economic, Social and Cultural Rights find mention as Directive Principles in Part IV of the Indian Constitution.

13. See INDIA CONST. art. 37.

14. Id. at art. 42.

15. Id. at art. 45.

16. Id. at art. 51.

17. On being granted independence, India was partitioned into two sovereign states: Pakistan and India by the British Government. What ensued was a panicky exodus of Muslims fleeing to Pakistan and Hindus fleeing to India and a communal carnage in which about a million lives were lost.

18. See INDIA CONST. art. 22 cl. 4-7.

19. Id. at arts. 352-360. The Constitution provides for three types of emergencies: National Emergency; State Emergency and Financial Emergency.

20. See 1 THE FRAMING OF INDIA'S CONSTITUTION 3-122 (B. Shiva Rao ed., Delhi 1968) (containing various documents relevant to the discourse of human rights before independence).

21. SORABJEE, supra note 2, at 96-97.

22. Id. at 97. See generally M. Abel, American Influences on the Making of the Indian Constitution, 1 J. CONST. PARLIAMENTARY STUDIES 35 (1967). Many of Part III's provisions correspond to the substance of one provision or the other in the United States Bill of Rights. In fact, almost every fundamental right in the India Constitution has its counterpart in the United States Bill of Rights. Id.

23. Shamsheer Singh v. State of Punjab, A.I.R. 1974 S.C. 2192, 2212.

24. See INDIA CONST. at art. 31 (Forty-fourth Amendment) Act, 1976.

25. Id. at art. 14 [hereinafter Equality Clause].
26. Id. at art. 15 cl. (1).
27. Members belonging to Scheduled castes are the untouchables who suffered grave indignities prior to independence and who comprise the most oppressed minorities in the world. Mahatma Gandhi called them "Harijans" meaning children of God.
28. See INDIA CONST. at art. 15 cl. 4. For an authoritative discussion of the Equality Clause and Compensatory Discrimination in India see also MARK GALANTER, *COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES OF INDIA* (India 7 Gala 1984).
29. See INDIA CONST. at art.17.
30. Id. at art. 19 cl. (1) (a).
31. Id. at art. 19 cl.(1) (b).
32. Id. at art. 19 cl. (1) (c).
33. Id. at art. 19 cl. (1) (d) - (e).
34. Id. at art. 19 cl. (f).
35. Id. at art. 19 cl. (g).
36. Id. at art. 19 cl. (2) - (6).
37. See infra notes 60 and 63.
38. See SORABJEE, *supra* note 2, at 96-97.
39. Chairman of the Drafting Committee in the Constituent Assembly and the chief architect of India's Constitution.
40. See infra note 69 and corresponding text.
41. See INDIA CONST. art. 20 cl. (1).
42. Id. at art. 20 cl. (2).
43. Id. at art. 20 cl. (3)
44. Id. at art. 22 cl. (1).
45. Id.
46. Id. at art. 22 cl. (2).
47. Id.

48. Id. at art. 23 cl. (1).

49. Id.

50. See id. at art. 24. See generally Lee Tucker, *Child Slaves in Modern India: The Bonded Labor Problem*, 19 HUM. RTS. Q. 572 (1997) (exposing the Indian Government's lackadaisical approach in dealing with the problem of children caught in the death trap bonded labor in India).

51. See INDIA CONST. at arts. 25-26.

52. Id. at art. 25 cl. (1) - (2) (a).

53. Id. at art. 25 cl. (2) (b).

54. Id. at art. 29 cl. (1).

55. Id. at art. 29 cl. (2)

56. Id. at art. 32.

57. The provisions concerning fundamental rights in the Draft Constitution were mainly the product of the fundamental rights sub-committee. This committee began its task in February 1947. It submitted the Draft Consideration for the approval of the Constituent Assembly in February 1948.

58. AUSTIN, *supra* note 8, at 84-85. The classic statement of the right to due process is that of the Fifth Amendment of the U.S. Constitution. See U.S. CONST. amend. V.

59. AUSTIN, *supra* note 8, at 85-87; 101-03.

60. Id. at 86-87.

61. Id. at 87.

62. Id. at 103. See SORABJEE, *supra* note 2, at 96-97.

63. Id. at 96-97.

64. Id. at 102-04.

65. Id. at 102.

66. Id. at 86-87, 101-04.

67. See 1 THE FRAMING OF INDIA'S CONSTITUTION, 523 (B. Shiva Rao ed., 1967).

68. Id.

69. As noted earlier, the Draft Constitution submitted to the Constituent Assembly

contained no due process clause.

70. See supra notes 30-35, at 65 and accompanying text, at 6.

71. Article 13 of the Draft Constitution corresponds to Article 19 clauses (2)-(6), of the Indian Constitution

72. See supra notes 44-47 and accompanying text.

73. See supra notes 41-43 and accompanying text.

74. INDIA CONST. at art. 13.

75. Id. at art. 141. T

76. Universal Declaration of Human Rights, G.A. Res. 217A (III) U.N. GAOR Res. 71 U.N. Doc. A1811, (1948).

77. India ratified the International Covenant in 1978.

79. Id. at art. 14 (3)(d).

80. Id. at art. 11.

81. Id. at art. 12.

82. Id. at art. 7.

83. Id. at art. 17.

84. Id. at art. 9(5).

85. A.I.R. 1980 S.C. 470, 473-74.

86. A.I.R. 1950 S.C. 27, 31-32 (Judgment of Kania, J.).

87. Id.

88. Id. at 34-38.

89. Id.

90. See supra note 18 and accompanying text.

91. A.I.R. 1950 S.C. 32.

92. Id.

93. Id

94. Id.

95. INDIA CONST. arts. 31 and 19 cl. (f).

6. The very first Amendment to the Constitution in 1951 resulted from the controversy over the Bihar Land Reforms Act of 1950.

97. See *L.C. Golaknath v. State of Punjab*, A.I.R. 1967 S.C. 1643.

98. See *Madhava Rao Scindia v. Union of India*, A.I.R. 1971 S.C. 530.

99. Parliament enacted two Constitutional Amendments: Constitution (Twentyfourth Amendment) Act, 1971, and Constitution (Twenty-fifth Amendment) Act, 1971

100. (1973) 4 S.C.C. 225. See generally U. BAXI, *COURAGE, CRAFT AND CONTENTION: THE INDIAN SUPREME COURT IN THE EIGHTIES* 65-110 (N.M. Tripathi Pvt. Ltd. 1985) (analyzing and discussing the significance of the decision) [hereinafter BAXI.]

101. (1973) 4 S.C.C. 486.

102. See *id.* at 366, 454, 486.

103. (1975) Supp. S.C.C. 1.

104. See *id.* at 87-93.