

Role of Human Rights in the Indian Judicial System

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Abstract

Human rights in India derive their force not from a single code but from a constitutional architecture — Part III's fundamental rights, Part IV's directive principles, and an independent judiciary empowered under Articles 32 and 226 to enforce them. This review article examines the role that Indian courts, particularly the Supreme Court, have played in transforming a modest textual guarantee of “protection of life and personal liberty” under Article 21 into an expansive charter covering dignity, privacy, livelihood, health, a clean environment, and protection from custodial abuse. It traces the doctrinal journey from *Maneka Gandhi v. Union of India* (1978) through the era of public interest litigation to contemporary jurisprudence on privacy and sexual autonomy, and situates this judicial trajectory alongside the institutional architecture of the National Human Rights Commission and the State Human Rights Commissions. The article further examines the human rights dimensions of the 2023 overhaul of India's criminal statutes, the persistent challenges of custodial violence, prison overcrowding, and judicial delay, and the emerging frontier of digital-age rights. It concludes that while Indian courts have been remarkably innovative in expanding the substantive content of rights, the realisation of those rights on the ground continues to depend on institutional capacity, executive compliance, and sustained public vigilance.

Keywords

Human rights , Article 21 , judicial activism , public interest litigation , National Human Rights Commission , fundamental rights , constitutional law ,custodial justice ,Indian judiciary

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1. Introduction: Human Rights and the Constitutional Promise

Human rights — the entitlements that inhere in a person by virtue of their humanity, irrespective of nationality, caste, gender, or belief — occupy a distinctive place in the Indian constitutional order. Unlike jurisdictions where human rights are treated primarily as a matter of international obligation, India constitutionalised many of these guarantees at the outset, embedding them as justiciable fundamental rights in Part III of the Constitution and as aspirational directive principles in Part IV. The judiciary, vested with the power of judicial review and the extraordinary writ jurisdiction under Articles 32 and 226, has functioned as the primary institutional guarantor of these rights.

This review article surveys the role the Indian judicial system has played in giving content and force to human rights over more than seven decades of constitutional practice. It examines the textual foundations, the judiciary's creative and often controversial expansion of those foundations through public interest litigation, the institutional architecture built around the Protection of Human Rights Act, 1993, and the human rights implications of India's most recent wave of legal reform — the 2023 overhaul of its criminal statutes. It closes with an assessment of the gap between the elaborate doctrine developed by the courts and the lived experience of rights-holders, particularly the most vulnerable.

1.1 Why This Review Matters

- Human rights adjudication in India has produced one of the most extensive bodies of rights jurisprudence among common law jurisdictions, largely through judicial interpretation rather than fresh legislation.
- The judiciary's role has expanded well beyond adjudication of individual disputes to encompass structural remedies, continuing mandamus, and monitoring of executive compliance.
- Recent developments — privacy jurisprudence, criminal law reform, and the digital rights debate — make a consolidated review timely.

2. Constitutional Foundations of Human Rights in India

Part III of the Constitution guarantees a set of fundamental rights enforceable directly against the State, including equality before law (Article 14), protection against discrimination (Article 15), freedom of speech and expression and other freedoms (Article 19), protection of life and personal liberty (Article 21), and the right to constitutional remedies (Article 32) — described by Dr. B.R. Ambedkar as the “heart and soul” of the Constitution. Part IV's directive principles, while non-justiciable, articulate the social and economic dimensions of human dignity — adequate livelihood, humane working conditions, and equal justice — and have increasingly been read into Part III rights by the judiciary rather than treated as a separate, lesser category of entitlement.

2.1 The Basic Structure Doctrine

In *Kesavananda Bharati v. State of Kerala* (1973), a thirteen-judge Bench held that Parliament's power to amend the Constitution does not extend to altering its “basic structure,” a category later held to include the fundamental rights architecture itself. This doctrine has operated as a structural safeguard, insulating core human rights guarantees from erosion by ordinary parliamentary majority.

2.2 India's International Human Rights Obligations

India is a signatory to the Universal Declaration of Human Rights and a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. While these instruments are not directly enforceable as domestic law absent implementing legislation, Indian courts have repeatedly invoked them as interpretive aids in giving content to constitutional guarantees, particularly Article 21.

3. Judicial Activism, PIL and the Expansion of Article 21

The single most consequential development in Indian human rights jurisprudence has been the judicial transformation of Article 21 from a narrow procedural guarantee into a substantive charter of rights. In *A.K. Gopalan v. State of Madras* (1950), the Supreme Court had read “procedure established by law” literally, holding that any procedure enacted by a competent legislature, however unfair, would satisfy Article 21. This position was decisively overturned in *Maneka Gandhi v. Union of India* (1978), which held that the procedure depriving a person of life or liberty must itself be fair, just and reasonable, and must satisfy the tests of Articles 14 and 19 as well — effectively importing a substantive due process requirement into Indian constitutional law.

This reorientation, combined with the relaxation of standing rules to permit public-spirited citizens and organisations to petition courts on behalf of those unable to approach them directly, gave rise to the phenomenon of public interest litigation (PIL) from the late 1970s onward. Through PIL, courts extended Article 21 to encompass the right to a livelihood (*Olga Tellis v. Bombay Municipal Corporation*, 1985), the right to a speedy trial (*Hussainara Khatoon v. State of Bihar*, 1980), protection against custodial torture (*Sunil Batra v. Delhi Administration*, 1978; *D.K. Basu v. State of West Bengal*, 1997), the right to a healthy environment (*M.C. Mehta v. Union of India*, 1987), and, more recently, the right to privacy (*Justice K.S. Puttaswamy v. Union of India*, 2017).

3.1 Critiques of Judicial Activism

This expansive approach has not been without critics. Some scholars argue that the judiciary's willingness to fashion detailed guidelines and continuing-mandamus oversight in PIL matters blurs the separation of powers and risks converting courts into quasi-legislative or quasi-executive bodies with limited democratic accountability. Others contend that PIL has, at its best, filled a vacuum left by executive inaction on matters of basic dignity, and that judicial restraint in the face of systemic rights violations would itself represent an abdication of the judiciary's constitutional role.

4. Landmark Judgments Shaping Human Rights Jurisprudence

Figure 2: Milestones in the Judicial Development of Human Rights in India



Figure 2. Selected milestones in the judicial development of human rights in India, from the constitutionalisation of due process to the most recent phase of criminal law reform.

4.1 Table of Landmark Judgments

Year	Case	Human Rights Significance
1978	Maneka Gandhi v. Union of India	Read fairness and reasonableness into Article 21's "procedure established by law," founding substantive due process in India
1978	Sunil Batra v. Delhi Administration	Extended Article 21 protections to prisoners, condemning solitary confinement and custodial cruelty
1980	Hussainara Khatoon v. State of Bihar	Recognised the right to a speedy trial as part of Article 21, prompting release of thousands of undertrials
1985	Olga Tellis v. Bombay Municipal Corporation	Held the right to livelihood to be an integral facet of the right to life
1997	Vishaka v. State of Rajasthan	Laid down guidelines against workplace sexual harassment in the absence of legislation, later codified in 2013
1997	D.K. Basu v. State of West Bengal	Issued binding safeguards against custodial torture and arbitrary arrest
2014	NALSA v. Union of India	Recognised the right of transgender persons to self-identify their gender as a facet of dignity and equality
2017	Justice K.S. Puttaswamy v. Union of India	Unanimously held privacy to be a fundamental right intrinsic to life and liberty under Article 21
2018	Navtej Singh Johar v. Union of India	Read down Section 377 IPC to decriminalise consensual same-sex relations between adults

Year	Case	Human Rights Significance
2019	Joseph Shine v. Union of India	Struck down the offence of adultery under Section 497 IPC as violative of dignity and equality

5. Institutional Mechanisms: NHRC, SHRCs and Beyond

Alongside judicial enforcement, India established the National Human Rights Commission (NHRC) under the Protection of Human Rights Act, 1993, as a statutory body empowered to inquire into complaints of human rights violations, intervene in court proceedings, review safeguards under the Constitution, and recommend remedial and compensatory measures. State Human Rights Commissions (SHRCs) perform an analogous role at the state level, and specialised bodies — the National Commission for Women, the National Commission for Protection of Child Rights, and the National Commission for Scheduled Castes/Scheduled Tribes, among others — address rights concerns of specific constituencies.

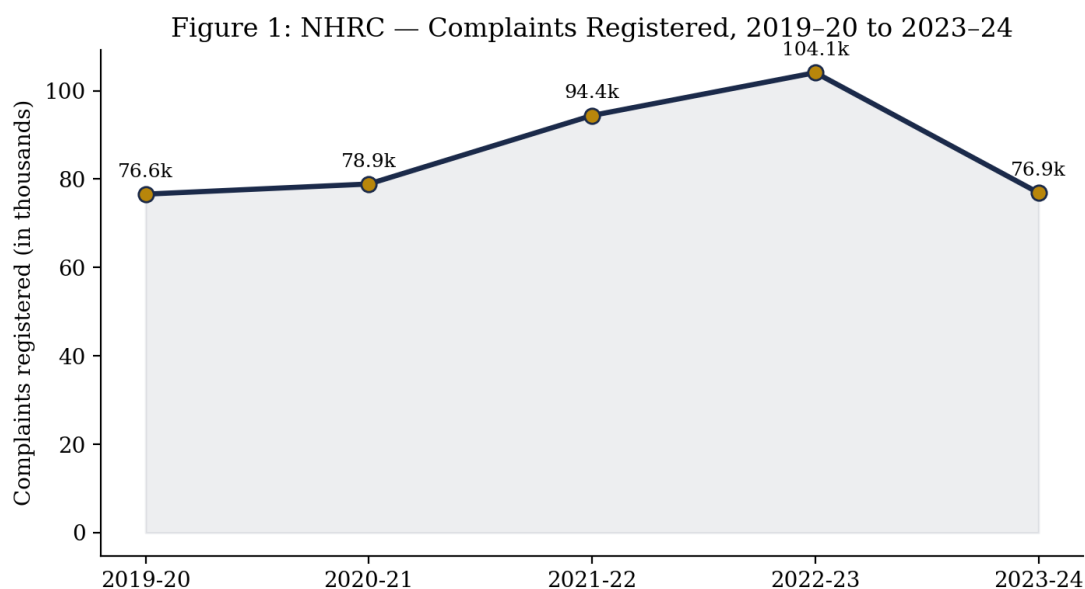


Figure 1. Complaints registered annually with the NHRC, illustrating fluctuation driven by awareness levels, reporting practices, and institutional capacity.

The NHRC's own data illustrates both the scale of its workload and the limits of its powers: in 2023–24 it registered 76,891 complaints and disposed of 73,958, awarding over Rs. 18.2 crore in compensation, while processing 2,556 cases of judicial custodial deaths and 436 cases of police custodial deaths during the same period. Because the Commission's recommendations are not by themselves binding and enforcement ultimately depends on governmental compliance, commentators have long debated whether the NHRC functions as a genuine check on state power or primarily as a recommendatory and moral authority.

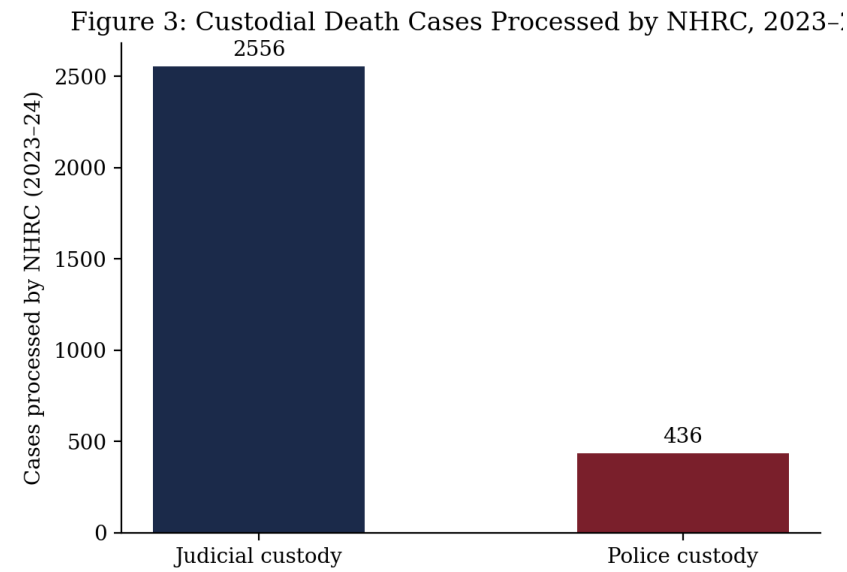


Figure 3. Custodial death cases processed by the NHRC in 2023–24, underscoring the continuing scale of custodial justice concerns.

6. Human Rights of Vulnerable and Marginalised Groups

6.1 Women and Children

Judicial intervention has been instrumental in advancing the rights of women, from the Vishaka guidelines on workplace harassment to the recognition of marital and domestic rights under the Protection of Women from Domestic Violence Act, 2005 (as interpreted by the courts). The rights of children are protected through a combination of constitutional guarantees (Article 21A, right to education), specialised legislation (the Juvenile Justice Act and the POCSO Act), and judicial oversight of institutional care.

6.2 Prisoners and Undertrials

India's prisons continue to house a disproportionately large undertrial population, a concern the courts have repeatedly addressed — from Hussainara Khatoon's recognition of the right to speedy trial to the Supreme Court's continuing oversight of undertrial release under Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which consolidates and updates the earlier undertrial detention provisions of the Code of Criminal Procedure.

6.3 Transgender Persons and Sexual Minorities

The recognition of transgender identity in NALSA (2014) and the decriminalisation of consensual same-sex conduct in Navtej Johar (2018) mark significant judicial contributions to the rights of sexual and gender minorities, though the courts have thus far declined to extend constitutional protection to same-sex marriage, leaving that question to the legislature.

6.4 Scheduled Castes, Scheduled Tribes and Other Marginalised Communities

Constitutional protections against untouchability (Article 17) and discrimination (Article 15) are reinforced by specialised legislation such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, with courts playing an important role in ensuring that procedural safeguards under the Act are neither diluted nor misused.

7. Human Rights Dimensions of Criminal Justice Reform

The replacement of the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act with the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam, effective 1 July 2024, carries direct implications for human rights in the administration of criminal justice. The introduction of statutory timelines for investigation, charge-framing and judgment is intended to address the chronic delay that Hussainara Khatoon identified as a human rights concern nearly half a century ago. The new codes also formalise community service as a sentencing option for minor offences, reflecting a more restorative approach to punishment, and criminalise mob lynching as an aggravated form of homicide, giving legislative effect to directions the Supreme Court issued in *Tehseen Poonawalla v. Union of India* (2018).

At the same time, human rights scholars have raised concerns regarding the breadth of the new Section 152 (the successor to the sedition offence under Section 124A, IPC), the extended permissible period of police custody under the BNSS, and the retention of a gendered and incompletely reformed definition of sexual offences — concerns that mirror, in a contemporary register, the long-running tension in Indian constitutional law between state security interests and individual liberty.

8. Persistent Challenges: Custody, Delay and Enforcement

- Judicial delay and case pendency: despite constitutional recognition of the right to a speedy trial, pendency across Indian courts remains high, with human rights implications for undertrials, particularly the poor and marginalised who cannot secure bail.

- Custodial violence: NHRC data continues to record thousands of custodial death cases annually, indicating that the safeguards laid down in D.K. Basu have not been fully internalised in police and prison practice.
- Implementation gap: NHRC and SHRC recommendations are not binding, and compliance depends on the political will of the executive, limiting the practical force of an otherwise elaborate institutional architecture.
- Resource and capacity constraints: understaffed police forces, forensic laboratories, and the subordinate judiciary constrain the practical realisation of both older due-process guarantees and the newer statutory timelines under the BNSS.
- Uneven access to justice: legal aid schemes exist under the Legal Services Authorities Act, 1987, but awareness and quality of representation for the poorest litigants remain inconsistent across states.

9. The Digital Frontier: Privacy and Emerging Rights

The recognition of privacy as a fundamental right in *Justice K.S. Puttaswamy v. Union of India* (2017) has become the doctrinal anchor for a growing body of jurisprudence on data protection, surveillance, and digital autonomy. This has coincided with the enactment of the Digital Personal Data Protection Act, 2023, and the statutory recognition of electronic and digital evidence under the Bharatiya Sakshya Adhiniyam, 2023, both of which raise novel human rights questions — the balance between law enforcement's need for digital evidence and the individual's right to informational privacy, the human rights implications of facial recognition and AI-assisted policing, and the adequacy of safeguards against non-consensual data use, including deepfake-enabled harassment, which the BNS addresses for the first time as a specific category of offence.

10. Critical Analysis and the Way Forward

The Indian judiciary's contribution to the development of human rights doctrine is, by most comparative measures, extraordinary: a textually modest guarantee of life and personal liberty has been transformed, through eight decades of interpretation, into a comprehensive charter touching dignity, livelihood, health, privacy, and sexual autonomy. Yet a purely doctrinal assessment risks overstating the practical realisation of these rights. Several structural gaps persist.

- A widening gap between the substantive rights articulated in judgments and the administrative and financial capacity to enforce them at the level of the police station, the prison, and the trial court.
- The non-binding character of NHRC and SHRC recommendations, which limits the institutional architecture's coercive force relative to its investigative and moral authority.
- Continuing legislative ambivalence on politically sensitive rights questions — marital rape, same-sex marriage, and the precise contours of state security exceptions — which courts have addressed unevenly, sometimes deferring to the legislature and at other times intervening directly.
- The need for periodic, independent, and rigorous empirical assessment of rights realisation — not only case law analysis — to inform future reform of both substantive and institutional frameworks.

A realistic path forward requires sustained investment in police, forensic, and judicial infrastructure; stronger statutory teeth for human rights institutions; continued judicial vigilance calibrated to respect the separation of powers; and legislative engagement with the rights questions that courts have flagged but cannot, consistently with their institutional role, resolve alone.

11. Conclusion

The Indian judicial system has played a foundational role in the development, articulation, and enforcement of human rights since the Constitution's adoption in 1950. Through an evolving and often bold interpretation of Article 21 and allied provisions, courts have given practical content to the abstract promise of dignity contained in the Constitution's text. The establishment of the NHRC and SHRCs has added an institutional layer of investigation and moral accountability, while recent reforms to the criminal law reflect a legislative attempt to internalise several judicially articulated human rights concerns. The central challenge for the coming decade is not the further elaboration of rights doctrine — which is already extensive — but the closing of the gap between that doctrine and the everyday experience of the ordinary litigant, prisoner, and citizen who depends on the credibility of India's human rights guarantees for their practical, not merely textual, protection.

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