



# The Indian Journal for Research in Law and Management

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## SUPREME COURT - “THE SENTINEL ON THE QUI VIVE”

~ *Kundan Mishra*

*“Rights are those conditions of social life without which no man can seek, in general, to be himself.” — Harold Laski*

Fundamental Rights, encoded in Part III of the Indian Constitution, are the safeguard of our democracy. But why are these rights “fundamental”? What sets them apart from natural rights and legal rights? Did you know that the Democratic Republic of Korea (North Korea) also has fundamental rights, and they are much more elaborate than ours, which should intrigue us to inquire how the fundamental rights of a dictatorial State differ from the FRs of our democratic nation?

The answer to all these questions lies in the magical articles embedded in the constitution, Articles 13, 32, and 226. These articles make the fundamental rights *justiciable*. This means that if any of the fundamental rights given to you as per the Indian Constitution are violated, you can appear before the Supreme Court as per Article 32 and the High Court as per Article 226, and seek its protection. Thus, fundamental rights in our country are enforceable in the court of law.

*“The Supreme Court is the sentinel on the qui vive — the last refuge of the citizens against the violation of their fundamental rights.” Justice M. Patanjali Sastri*

**Over the years, what role has the Supreme Court played in the protection of fundamental rights?**

From establishing the basic doctrine of the constitution in the **Keswanand Bharti Case**, opening the 9th schedule for judicial review in the **I.R. Coelho**, protection of equal rights, life with dignity and prohibition of discrimination in case of the landmark **Shah Bano judgement** to the recent judgements such as decriminalisation of the Section 377 of the IPC in **Navtej**

**Singh Johar & Others v. Union of India** case and many more, the role of Supreme Court in the protection of Fundamental Rights has been magnanimous. Through PILs, suo moto cognisance and amicus curiae, the Supreme Court has ensured proactive protection, preservation and enforcement of the fundamental rights, making it accessible in the nooks and corners where, by the plight of poverty, social discrimination, or ignorance, the light of justice was failing to reach.

Right to Privacy recognised as the fundamental right under Article 21 in the **Justice K.S. Puttaswamy vs Union of India** (2017): The question of privacy that was raised with reference to the legal validity of the Aadhar database was considered as an intrinsic part of the right to live with dignity in this case. Such judgment is evidence not only of the Supreme Court's proactiveness in upholding fundamental rights but also reflects the evolutionary element, ensuring that the definition of justice does not remain stagnant and narrow, but rather grows with the advancing times. In the times of tech such as ours, privacy is a genuine concern. By recognising it as an inherent part of Article 21, its legitimacy has been legally established, shielding people's privacy and bringing it to light for future references and statutes.

On similar lines, often the right to freedom of speech and expression is always under debate. What is the extent of the right of expression? Often, for the wrong and right reasons, it has been asked if there should be any curbs on this right? In this light, the case of **Shreya Singhal v. Union of India** is significant. In its judgement, the SC struck down Section 66 of the Information Technology Act, which criminalised offensive and menacing content online.

And whose rights? Do prisoners have fundamental rights? What about the prostitutes? Transgenders?

In **Sunil Batra v. Delhi Administration**, the Court recognised the rights of prisoners and condemned inhuman treatment behind bars. Similarly, in cases such as **Hussainara Khatoon v. State of Bihar & Sheela Barse v. State of Maharashtra (1983)**, the right to live with dignity and legal aid have been recognised respectively.

In the **Gaurav Jain v. Union of India (1997)**, the Supreme Court addressed the rights of children of female sex workers and discussed their earlier protection and rehabilitation. The Court also highlighted that sex workers are not criminal offenders rather victims of social hardships.

Thus, the Supreme Court is definitely the last refuge of fundamental rights. And yet, even the court of justice is not error-free. The **ADM Jabalpur v. Shivkant Singh Shukla Case** is a blot in the history of the Supreme Court. The case is an example of the SC's fatal failure in protecting fundamental rights. It ruled that during an emergency, the High Court can not be moved for the enforcement of fundamental rights, curtailing the enforcement of the right to life also. However, the mistake was accepted and later rectified, arguing the significance of Article 21.

Still, there is room for improvement. There is an urgent need for a speedy trial. There are a plethora of cases (73.5% undertrial cases), unheard and yet the punishment borne by the undertrial prisoners often surpasses the sentence they would be imposed with, if convicted. Such pre-trial detention imposes de facto punishment. Cases such as the **Delhi Policy Excise Case** emphasise the need for speedy trial, yet the on-ground implementation continues to remain murkier and needs special attention.

Regardless, the role of the Supreme Court, with its proactiveness and creative skills of judicial inference, has been very significant in the protection of fundamental rights.

## REFERENCES

### I. Books and Articles

1. **Harold J. Laski**, *A Grammar of Politics* (George Allen & Unwin, 1925).
2. **M. Patanjali Sastri, C.J.**, Observation in *State of Madras v. V.G. Row*, AIR 1952 SC 196 (“The Supreme Court is the sentinel on the qui vive — the last refuge of the citizens against the violation of their fundamental rights.”)

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### II. Constitutional Provisions

- **Constitution of India**, articles. 13, 32 & 226.

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### III. Case Law

No.	Case Name	Citation
1.	<i>Kesavananda Bharati v. State of Kerala</i> ,	(1973) 4 SCC 225.

2. *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1.
  3. *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.
  4. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
  5. *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
  6. *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.
  7. *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.
  8. *Hussainara Khatoon (I) v. State of Bihar*, (1979) 3 SCC 463.
  9. *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.
  10. *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.
  11. *A.D.M. Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521.
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#### IV. Reports and Data

- **National Crime Records Bureau (NCRB)**, *Prison Statistics India 2022* (Ministry of Home Affairs, Govt. of India).
  - **National Judicial Data Grid (NJDG)**, *Data on Pending Criminal Cases and Undertrials* (accessed Oct. 2025)
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#### V. Additional References

- *The Indian Express*, “Nearly 76% of India’s Prisoners Are Undertrials, NCRB Data Shows” (Aug. 2024).
- *The Hindu*, “Undertrial Prisoners in India Spend Years Behind Bars Awaiting Justice” (Mar. 2024).
- *Delhi Excise Policy Case: Manish Sisodia v. Directorate of Enforcement*, (2024) SCC OnLine SC 178.