CHAPTER 2

Human Rights in India
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The term ‘Human Rights’ is comparatively recent in origin, but the idea of human rights is as old as the history of human civilization. The new phrase ‘Human Rights’ was adopted only in the 20th century from the expression previously known as ‘National Rights’ or ‘Rights of Men’. It can be said that Human Rights is a twentieth century name for what has been traditionally known as natural rights or in a more exhilarating phrase, the rights of man. These rights of human beings are not derived from being a national of certain state, but belong to them because of their very existence and are based upon the attributes of human personality. They are derived from the inherent dignity and worth of human beings. As rightly observed by Jacques Maritain: “The human person possesses rights because of the very fact that it is a person, a whole, master of itself and of its acts, and which consequently is not merely a means to an end, but an end, which must be treated as such.”1 The expression ‘dignity of human person’ means nothing if it does not signify that the human person has the right to be respected, is the subject of rights, possesses rights, to have human rights, one need not do anything special than be born a human being.

The rights of man have been the concern of all civilizations from time immemorial. These ‘rights of man’ had a place in almost all the ancient civilizations of the world. Human rights have existed, in however, nascent a form, ever since man, as a gregarious animal, has lived in communities, families, clan, tribe, village, town or nation and new in an independent world community.2

In the middle-east, the Babylonian laws, the Assyrian laws and the little laws provided for the protection of the rights of man. In India, the Dharma of

Vedic period and in China, the jurisprudence of Lao-Tze and Confucius protected rights. In the west, a number of rights, bearing some resemblance to what we call civil and political rights today, were available to a section of people. Cicero, the great Roman jurist, tells us that the Greek stoics, around 200-300 years B.C., developed, on the basis of what we now consider as basic human rights. Frankly speaking, though the philosophy of Human Rights in India has come a long weary way yet the progress though the historical path has always remained gradual and never lost its link with past. In recorded history and ancient scriptures, there have been references on the basic Human Rights, though they were not referred to by that name. The truth is that the concept of rights of human beings is neither entirely western nor modern. There are numerous thinkers who opine that the history of human rights and fundamental freedoms did not begin with the Magna-Carta signed by King John of England in 1215. Nor did the world come to know of them for the first time through the endeavours of like Rousseau and Jefferson or the proclamation of the declaration of Independence by the representatives of the thirteen North American Colonies in 1776, and the adoption of the declaration of the Rights of man and of the citizen by the National Assembly of France in 1789. The Indian history is warranted by the fact that human rights jurisprudence has always occupied a place of prime importance in India's rich legacy of historical tradition and culture. This is evident in the prevalence of different cultures, traditions faiths in India.3

The truth is that what the west has discovered about human rights now, India had embedded the same in its deep-rooted traditions since time immemorial. The philosophy of human rights in the modern sense has taken shape in India during the course of British rule. The Indian National Congress, which has in the vanguard of freedom struggle, took the lead in this matter. National struggle for freedom was truly an attempt of the Indians to secure basic human rights for all the people with the result that the promulgation of the constitution by the people

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of India in January 1950 ushered in the heroic development of the philosophy of human rights in India. The historical account of ancient Bharat proves it beyond doubt that the Human Rights were as much visible in the ancient Hindu and Islamic civilizations as in the European Christian civilization. Ashoka, Prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.

2.1 Human Rights in Ancient India

The quest for equilibrium, harmony, knowledge and truth inspired the ancient Indian minds more than their counterparts the Greeks and the Romans. About 5000 years ago, ancient Indian Philosophers and thinkers expounded a theory of higher moral law over and above positive law embodying certain values of universal validity like Dharma (righteousness), Artha (Wealth), Kama (desires) and Moksha (salvation), with a view to establish a harmonious social order by striking a balance between inner and outer, spiritual and material aspects of life. In ancient India, law, which was structured on the philosophy of Dharma, did not have much scope for religious discrimination. Law of Rita or Dharma in ancient India made a bold attempt of building an organized social life wherein each individual realized his goals within the parameters of social norms of morality. We learn from Mahabharata that dharma was ordained for the advancement of all creatures as well as for restraining creatures from injuring one another. In the Bhagavad Gita righteousness has been described as the essence of dharma. The Upanishads speaks of dharma as the foundation of the whole universe, through it one drives away evil. In the Vedic Era, King or monarch was not above law and on violation, he could be punished like any other citizen. The Vedas and Smritis have spoken highly of equality of brotherhood e.g. Vasudeva Kutumbakam (the whole world as one family). 

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4 Ibid., p. 9
(There is one race of human being) which shows the spirit of unity and universality in Indian tradition, similarly.

एक सदृ बिष्ट्र बहुधा व्यक्ति।

(Truth is one, the learned may describe it variously)

आ यो भद्र: कृत्यो वनू विविक्त:।

Let noble and positive influences come from all sides. The Pritivi Sookta speaks of harmony and benefit for all the people on the earth.

The idea of Equality was germane to the Vedas. Vedic ethics had idealized an equality of treatment among equals. All human beings are equal, and that conduct is moral which is based on the principle of equality.

स्मानी मन्न्यः सत्सिति समानी समानसम्म्यः दक समानी वा आकुँताः।

Were the tents of the Rigveda. In the whole eighteen Purans Vyasa has said two things: doing good to another is right, causing injury to another is wrong. The references with regard to equality can be in Vedas to the effect that “Ajeyeshthasak nisthas yetsa bhraterona sobhagaya” which means “no one is superior or inferior, all are brothers, all should strive for the interest of all and should progress collectively.” Manu states that it was the duty of the King to uphold the law as he was a much subjected to law as any other person. Panini also claims that it was the duty of the King to protect his subjects against disorder

8 Ibid.
9 Ibid.
11 S.N. Dhyani, Law, Morality and Justice, 1984, p. 89.
and anarchy. References are available in the Rigveda which speak of three civil rights viz. Tana (body), Skridhi (dwelling place) and Jibasi (life).

**B.A. Selector** points out that for the first time for the formulation of what may be termed rights even in the modern sense can be found from the time of Kautilya. He classified them as civil rights, economic rights and legal rights.

In the fourth century B.C. we find in Kautilya's Arthashastra a specific injunction to the effect that the King should provide the orphan, the dying, the infirm, the effected and the helpless with maintenance, he shall also provide subsistence to mothers as well as the children whom they give birth to.

**U.N. Ghoshal**, an eminent historian, point out a number of civil rights, enjoyed by the individual in ancient India. He says that they occupy an important place in the literature of the Smritis. These rights were enjoyed by ancient Indians either expressly knowing them or as comprehended in dharma or inferred from the concept of duties.

Whether it is Mahabharata or Arthashastra or Manu Dharmashastra or Narada, there is great emphasis on the institution of Kingship and Rajdharma in order to escape from political disorder, social chaos and injustice. Kings were required to a pledge never to arbitrary and always to act according to “whatever law there is and whatever is dictated by ethics and not opposed to politics”.

There was, however, a downfall of human rights jurisprudence in post-Vedic age. But with the rise of Buddhism and Jainism there was a revival of human rights jurisprudence. Influenced by the teaching of Buddha, Ashoka worked extensively for the protection of human rights. His chief concern was the

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14 Ibid.
15 Ibid.
17 Ibid.
18 Ibid.
happiness of his subjects. Torture and inhuman treatment of prisoners were prohibited under Ashoka's administration. The Study of Mudra-Raksha shows that dispensation of justice considered as one of the important duties of the rulers. No leniency was shown to criminal; and the whole system worked so efficiently that Magasthenese say: "Kings employed spies not only to detect violators of human rights but gathered public opinion on various important matters."

Harsha Vardhana was the last Emperor of Hindu India. He never forget that the aim of the government was the welfare of the governed. He devoted his whole time to promote the welfare of his people. It is for his commitment towards his people that he is often compared with Akbar and Ashoka.

Hence, it is clear that ancient Indian Jurisprudence stood for enlarging and encouraging human freedom, liberty and equality for all people. It has developed common ideals based on human unity and harmony which transcends diversities of race, colour, language, religion, etc.

2.2 Human Rights in Islamic Era

The concept of human rights got lost on its way in the dark and narrow alleys of the middle ages. During Muslim era in India, especially in the pre-Mughal period, there were series of cultural, social and political stresses and strain on the style and way of life of Hindu. The Muslim rulers in India were fundamentalist and despotic who forced upon the Hindus their own laws, customs and religious practices. Hindus were not treated in law on par with Muslims – the latter being the conqueror and the former being the Kafirs – the non-believers of Islam, special disabilities like jazia, were imposed on Hindus. Both in theory and
practice, there was discrimination against Hindus vis-à-vis Muslims. Muslim rule in India was not founded on the basic principles of human dignity, equality and justice, and was essentially autocratic, theocratic and irresponsible, devoid of the idea of rule of law, morality, justice, tolerance and social harmony. So the significance of Muslim rule in India from the point of view of human rights was counter productive to harmony, justice and equality and the concept of human rights got lost on its way, in the dark of narrow alleys of the middle ages. It is, however, at a later stage that Muslim state in India became considerably modified in its form.

Some of the Mughul rulers, especially Akbar the great brought about a basic change in the style of Mughul administration. He adopted a policy of tolerance and non-discrimination towards Hindus and saw that no injustice is committed in his realm. His justice-loving tradition was followed by his son Jehangir, too Akbar never used force to impose his Din Ilahi (divine religion) on his subjects (which he could have). In fact, Jains, Parsis, Hindus and Christians all took their share in the decision-making process of the Akbar administration. He followed the path of Sulh-i-Kul or universal toleration or peace with all.

During the reign of Aurangazeb, the concept justice was made less intricate and more expeditions than in the former reigns. Corruption is judiciary was made a crime for the first time. If delay in justice resulted in loss to a party, the aggrieved party could be compensated by the judge himself. The right of an accused to be released on bail did exit during Mughal rule in India. Similarly the right to benefit of doubt was known to Muslim jurisprudence in the administration

28 J.N. Sarkar, Mughal Administration, 1920, p. 107.
of criminal justice. The benefit of doubt was known as Shuba (doubt) which entitled an accused to be acquitted.\(^{29}\)

It cannot, however, be denied that the Aurangazeb was the most cruel, fanatic and despotic ruler. He made earnest efforts to convert Kashmiri Pandits to Islam with the use of his governmental machinery. The ninth Sikh Guru Teg Bahadur had to sacrifice his life, and in 1675 A.D. Guru Gobind Singh (tenth Sikh Guru) had to sacrifice his four sons in fighting against injustice and repression to save Hindu from conversion. Finally, the Bhakti movement evolved in later periods ultimately revived and regenerated the old Indian values of truth, righteousness, justice and morality.\(^{30}\)

The inalienable, immutable and everlasting natural law found its exponent in the great saints like, Sankara, Ramanuja, Madhava, Tulsidas, Kabir, Nanak, Swami Ram Kishan, Swami Dayanand Saraswati, Raja Ram Mohan Roy and others who reinterpret the Vedic Dharma to re-establish the supremacy of Indian Vedic values over alien ideals and philosophy. The philosophy of these social reformers and leaders was nothing but a reinstatement of natural law with religious fervour to enthuse people towards the path of Dharma, enlightenment and unity at a time when Hindu society was dominated and divided by foreigners. The cult of Avatara (divine descent) as expounded by Lord Krishna in *Bhagwad Gita* was revived by their saint and seers (devotees) who saw God in the form of Rama and Krishna to protect the righteous persons (Paritra naya Sadhunam) and punish the evil doer (vinashaya duskritam).\(^{31}\)

The Cult of Sufism prevalent in medieval India spread the message of secularism by the symbiotic synthesis of the core values of different religious to bind the pluralist society. Saints and holy persons propagated the message of the


Sufi saints to emphasize that the difference between human beings is man made, all being born equal.\textsuperscript{32}

It may be recalled that from time immemorial Indians have called their culture by the name of ‘human culture’ (Manav Dharam/Manav Samriti). No gain saying the fact that human dignity had universal appeal and Indian culture had tried to be so comprehensive as to suit the needs of every human being, irrespective of age, colour, sex or caste.\textsuperscript{33}

\section*{2.3 Human Rights in British India}

The modern version of human rights jurisprudence may be said to have taken birth in India at the time of British rule. Perhaps the first explicit demand for fundamental rights appeared in the Constitution of India Bill, 1895.\textsuperscript{34} The Bill envisaged for India a constitution guaranteeing to everyone of her citizen freedom of expression, inviolability of one’s house, right to equality before law, right to property, right to personal liberty and right to free education.\textsuperscript{35}

A series of Congress resolutions adopted between 1917 and 1919 repeated the demand for civil rights and equality of status with English men. The resolutions called for equal terms and conditions in bearing arms,\textsuperscript{36} for a wider application of the system of trial by jury and for the right of Indians to claim that no less than one-half the jurors should be their own countrymen.\textsuperscript{37} A further resolution to this effect stated the ‘emphatic opinion’, that parliament should pass a statute guaranteeing ‘The Civil Rights of His Majesty’s Indian Subjects’, which would embody provisions establishing equality before the law, a free press, free

\begin{footnotesize}
\begin{enumerate}
\item \textit{Article 16, 17, 20, 23, 19, 25 of the Constitution of India Bill}, 1895.
\item Ibid.
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speech, etc. The statute should, moreover, lay down that political power belonged to the Indian people in the same manner as to any other people or nation in the British Empire.  

By the mid-twenties, Congress and Indian leaders generally had achieved a new forcefulness and consciousness of their Indianness and of the needs of the people, thanks largely to the experience of World War I, to the disappointment of the Montagu-Chelmsford Reforms, to Woodrow Wilson's support for the right of self-determination, and to Gandhi's arrival on the political scene in India. These influences reflected the tone and form of demands for the acceptance of civil rights for the Indian people. 

Another major development in this direction was the drafting of 'Mrs Besant's Commonwealth of India Bill of 1925'. Article 4 of this Bill contained a list of seven Fundamental Rights.

The appointment of the Simon Commission by the British Government of November 8, 1927 to undertake a study of the constitutional reforms in India impelled the Indian National Congress to set up a committee to draft a Swaraj Constitution on the basis of a declaration of rights. This resolution was passed in 1927 at the 43rd Annual Session of the Indian National Congress held in Madras.

The committee called for by the Madras Congress Resolution came into being in May, 1928. Pt. Moti Lal Nehru was its Chairman, the Committee's report - known as Nehru Report. The Fundamental Rights incorporated in the Nehru Report were reminiscent of those of the American and post-war European Constitutions, and were in several cases taken word for word from the rights listed in the Commonwealth of India Bill, 1925.

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Another landmark in the development of the recognition of fundamental rights was the Karachi Resolution adopted by the Congress Session held in March, 1931. It held that 'in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions.\footnote{Chakarberty and Bhattacharya, \textit{Op. cit.}, p. 28.}

The demand for a declaration of Fundamental Rights in Constitutional document was again emphasized by Raja Narendra Nath, K. T. Paul, B. Shivo Rao, Dr. B.R. Ambedkar and several other Indian leaders at the 'Round Table Conference prior to the making of Government of India Act, 1935. The Secretary of the State for India submitted a report to Parliament after the Round Table Conference was over. The report observed that the Government recognizes the importance attached by the Indian leaders to the idea of making a chapter on fundamental rights in the new Indian Constitution.\footnote{Ibid.}

The further stage of the development of Fundamental Rights in India was 'Sapru Committee Report', published at the end of 1945. This committee was appointed by an “All Parties Conference in 1944-45 with Sir Tej Bahadur Sapru as its Chairman. Sapru Report gave a standing warning to all that what the constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civil rights, equality and liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of the ordinary application of life.\footnote{Sir Tej Bahadur Sapru and Others, \textit{Constitutional Proposals of the Sapru Committee}, Sapru Report, p. 260.}

The British Cabinet Mission in 1946 recognized the need for a written guarantee of Fundamental Rights in the Constitution of India in paragraph 19 and 20 of its statement of May 16, 1946, envisaging a Constituent Assembly for
framing the Constitution of India. It recommended the setting up of an Advisory Committee for reporting to the Assembly inter-alia on Fundamental Rights.46

The Constituent Assembly was formulated by electing its members by provincial legislatures. The members of three communal categories in the legislatures, Muslim, Sikh and General would elect separately, according to their percentage of the province’s population, their proportion of the provincial delegation.

Viceroy Wavell invited Congress to formed the Interim Government according to Cabinet Mission Plan. Pt. Nehru was appointed as Vice-President of Viceroy’s Executive Council, or defecto Prime Minister. The League continued to ignore the Assembly but later on joined the Indian Government. The meeting of the Assembly was convened on December 9, 1946 but Muslim League boycotted it. On June 3, 1947 Lord Mountbatten, Viceroy announced that on 15 August England would recognize the existence of two independent states on the subcontinent, India and Pakistan. Accordingly, the Indian Independence Act passed by the British Parliament came in to force on 15 August 1947, giving legally to the Constituent Assembly the status it had assumed since its formation.47

2.4 Human Rights and the Constituent Assembly

The Working Committee of the Congress drew up a resolution establishing the Advisory Committee at its meeting of 8 December 1946 as was suggested by Cabinet Mission Plan. After the denial of the Muslim League to enter the Constituent Assembly, the first meeting of India’s Constituent Assembly in New Delhi, on 9th December, 1946, was for many of its 296 members the fulfillment of a long-cherished hope.

47 The Indian Independence Act made Constituent Assembly as the Constituent Assembly (Legislative) the Dominion Parliament.
The Constituent Assembly on 24 January 1947 voted to form the Advisory Committee. It was originally to have been elected by the assembly, but the Congress leadership arranged that the members be chosen in off-the-floor conference held between Assembly leaders and the chief members of each minority group. Sardar Patel became the Chairman of the Advisory Committee. The duty of this Committee was to report to the Assembly on the list of Fundamental Rights. Advisory Committee in turn set up five Sub-Committees out of which one was the Sub-Committee on Fundamental Rights. Acharya Kripalani became the Chairman of this Sub-Committee.

The Fundamental Rights Sub-Committee met for the first time on 27 February 1947, it had before it draft list of rights prepared by B. N. Rao, K. T. Shah, K. M. Munshi, B. R. Ambedkar, Harnam Singh and the Congress Expert Committee, as well as miscellaneous notes and memorandum on various aspects of rights. These list contained both negative and positive rights taken from foreign constitutions and from the Indian documents of rights referred above.

The Fundamental Rights Sub-Committee was faced with a problem of balancing the individual liberty vis-à-vis social control. The former being necessary for fulfillment of individuals personality and the latter for the peace and stability of our society. The members quickly decided that the Fundamental Rights should be justiciable, that they should be included in the Constitution. The rights to freedom were drafted with only brief argument over the wording of the proviso to the right freedom of association. The Sub-Committee also adopted provisions abolishing untouchability, protection against double jeopardy, ex-post facto law very quickly. Equality before law, the right freely to practice religion and the protection of minorities were the other landmark of work Sub-Committee.

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48 Other members of the Fundamental Rights Sub-Committee were: Raj Kumari Amrit Kaur, Hansa Mehta, Minoo Masani, K.T. Shah, A.K. Ayyar, K.M. Munshi, Sardar Harnam Singh, Maulana Azad, B.R. Ambedkar, J. Daulat Ram and K. M. Panikkar. K. T. Shah and K.M. Munshi were familiar with formal consideration of rights issue because both of these have been members of the Congress Experts Committee, which had drafted a list of rights for the assembly's guidance. Dr. B.R. Ambedkar had attended the Round Table Conference and taken a strong interest in rights issues.
After making the fundamental rights justiciable, the Sub-Committee included within the Rights the legal methods by which they could be secured. To do this they adopted the English device of prerogative writs, or directions in the form of writs. Munsi, Ambedkar and Ayyar strongly and actively favoured the inclusion of right to constitutional remedies and other members of the Sub-Committee agreed with them. Sardar Patel, Chairman of the Advisory Committee, presented the Committee’s Interim Report on rights to the Assembly on 29 April 1947, the second day of the third session, 189 amendments were proposed and a few were accepted but the content of rights and basic principles remained intact. It was decided that rights could be limited by attaching provision to the particular right and by providing for the rights to be suspended in certain circumstances. Accordingly individual liberty, right to equality, basic freedom etc., were passed with certain limitations. Therefore, Assembly passed Fundamental Rights which are divided into seven parts having close resemblance with human rights enshrined in various international human rights documents.

2.5 Human Rights and the Indian Constitution

A Constitution means a document having a special legal sanctity, which sets out the framework and the principle functions of the organs of the Government of state and declares the principles governing the operation of these organs. Constitution is a complex document and not to be construed as mere law. but as the machinery by which basis are made. A constitution is a living and organic thing which, of all instruments, has the greatest claim to be construed broadly and liberally.\footnote{Paramjit S., Jaswal and Nishitha Jaswal, \textit{Op. cit.}, p. 59.}

Constitution of India is a supreme lex. The Constitution of India was drafted by the Constitution Assembly, which had its first meeting in 9th December, 1946 and finally the Constitution was adopted by the people of India on 26 November, 1949 and it came into force w.e.f. 26 January, 1950. During
this whole period the Constituent Assembly took serious note of various national
as well as international developments, particularly in the area of human rights. On
10th December, 1948, when the Constitution of India was in the making, the
general assembly proclaimed and adopted the universal declaration of human
rights, which surely influenced the framing of India’s Constitution.50

In fact, the Indian desire for civil and political rights was very much
implicit in the formation of Indian National Congress in the year 1885.51 In the
other words of Austin: India wanted some rights and privileges that British master
enjoyed in India and that they had among themselves in England and wanted to
end the discrimination of colonial regime.52

The first explicit demand for fundamental rights appeared in the
Constitution of India Bill, 1895, which was issued under the inspiration of
Lokmanya Bal Gangadhar Tilak. The demand for declaration of fundamental
rights in the future constitution of India gained impetus at the hands of political
leaders with the passage of time. The Congress resolution of 1929 also
emphasized the theme of socio-economic reconstruction.53

After the Karachi Resolution of 1931, The Sapru Committee in its
“Constitutional Proposals” recommended that a declaration of fundamental
rights in the Indian Constitution was absolutely necessary. It envisaged two sets of
fundamental rights, one justifiable and the other non-justifiable. It was left to the
constitution framing body to make a division between them.

On 13 December, 1946, Jawaharlal Nehru, moved the historic objectives
resolution in the constituent assembly which was adopted by, it on 22 January
1947. This resolution formed the basis for the incorporation of various human
rights values not only in various provision of the constitution but also in its

51 Ibid, p. 44.
52 Granville Austin, The Indian Constitution: Corner Stone of a Nation, Oxford University
Press, New Delhi, 1976, pp. 52-53.
preamble. Nehru in his concluding speech remarked that the assembly was to free India through a new constitution, to feed the starving people and clothes the naked masses, and to give every Indian fullest opportunity to develop himself according to this capacity.\textsuperscript{54}

Dr. S. Radha Krishnan, also emphasized that there must be a socio-economic revolution not only to satisfy the fundamental needs of a common man but to bring about a fundamental change in the structure of Indian society.\textsuperscript{55}

Thus, it is evident that though the constituent assembly was mainly concerned with the welfare of the masses, yet there was considerable emphasis on the ameliorative role of the state. The tryst to make the India's constitution a viable instrument of Indian people's salvation, and to secure all persons basic human rights, is implicit from the preamble promise fundamental rights, directive principles and various other provisions of the constitution. Most of the articles of the UDHR, 1948, and two International Covenants are building blocks of any Indian's Constitutional Rights.\textsuperscript{56}

2.5(i) Preamble

The Preamble is the basic structure of the Constitution. The preamble says that people are the ultimate authority and the constitution emerges from them. The Preamble may be invoked to determine the ambit of the fundamental rights and directive principles of state policy. The Preamble contains a specified objective that is the basic structure. It is the soul of the Constitution and as such is the precious part of the Constitution. Preamble says that the Constitution was adopted on 26\textsuperscript{th} November, 1949 which is observed as the Law Day though it came into force from 26\textsuperscript{th} January, 1950.\textsuperscript{57} The words of the Preamble to the Constitution of

\textsuperscript{54} Ibid, p. 62.
\textsuperscript{55} Ibid, p. 62.
\textsuperscript{56} Ibid, p. 63.
\textsuperscript{57} P.M. Bakshi, \textit{The Constitution of India}, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2007, p. (a)
India have been taken from clauses 1, 5 and 6 of the objective resolution. The Preamble of the Constitution reads:

We, the people of India having solemnly resolved to constitute India to 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

FATERNITY assuring the dignity of the individual and the (Unity and integrity of the Nation);

IN OUR CONSTITUTENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Thus, the preamble concisely sets out quintessence of human rights which represents the aspiration of the people, who have established the Constitution. The Preamble to the Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble.

The world "sovereign" means that the state has power to legislate on any subject in conformity with constitutional limitations; Synthetics & Chemicals Ltd. V. State of Uttar Pradesh, AIR 2000 SC 2695, This is in consonance with Article I of the International Covenant on Civil and Political Rights, 1966.

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58 Subs. By the Constitution (42nd Amendment) Act, 1976, Sec. 2, for "Sovereign Democratic Republic"; w.e.f. 3.1.1977.
59 Subs. By the Constitution (42nd Amendment) Act, 1976, Sec. 2, for "Unity of the Nation" (w.e.f. 3.1.1977).
The word “Socialist” was added in the preamble by the Constitution (42nd Amendment) Act, 1976. Although the amendment does not add anything new to the already existing constitutional commitment to the goal of socio-economic justice, it is significant in that it emphasizes the urgency of the achievement of the goals of socialism. According to Justice Chinnapa Reddy, “Through the word ‘Socialist’ was introduced into the preamble by late amendment of the Constitution, the socialism has always been the goal is evident from directive principles of state policy.”

The Constitution (45th) Amendment Bill, 1975 sought to define the expression “socialist” to mean “a republic in which there is freedom from all forms of exploitation, social, political and economic”, but the amendment was not accepted by the Council of States.

All the directive principles of state policy in Part-IV of the Constitution are aimed at achieving this objective of socialism.

The world “secular” was also added in the preamble by the Constitution (42nd) Amendment Act, 1976. This expression highlights that the state has no religion of its own and all person shall have the right to profess, practice and propagate religion of their own and they shall be equally entitled to freedom of conscience. This has been further guaranteed by the fundamental rights in articles 25 to 28. This is in consonance with the spirit of article 18 of the UDHR, 1948, and also article 18 of the international covenant on civil and political rights, 1966.

This term “democratic” indicates that the Constitution has established a form of government which gets its authority from the will of the people. It means government of the people, by the people, for the people. Justice, liberty, equality and fraternity, which are essential characteristics of a democracy, are declared in the preamble to the Constitution.

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60 Subs. By the Constitution (42nd Amendment) Act, 1976, Sec. 2, for “Socialist” (w.e.f. 3.1.1977).
61 Sanjeev Coke Manufacturing C., V. Bharat Cooking Coal Ltd.
62 Definition of Democracy by Abraham Lincoln.
The Constitution of India, to achieve the above stated objectives, has given a special place to the chapter of fundamental rights in Part-III and Directive Principles of State Policy in Part-IV of it. Fundamental Rights guarantees certain rights to the individuals, whereas, the Directive Principles gives direction to the State to provide some other rights to its people in specified matters. These together constitute the conscience of the Constitution. These rights also have conformity with the Universal Declaration of Human Rights, the international covenant on civil and political rights and covenant on economic, social and cultural rights due to the fact that India had voted for the declaration and ratified the covenants. Hence, it becomes the “duty of India to provide these rights to all of us which are enshrined in these international instruments.”

2.5(ii) Fundamental Rights

The fundamental rights are guaranteed in Part-III of the Indian Constitution consisting of articles 12 to 35. Since these rights are a guarantee against “State Action”, they have to be distinguished from violation of such rights by the private parties. Private action is protected by ordinary law of the land. Article-12 defines the expression “State” as under:

Article 12 Definition: In this part, unless the context otherwise require, “the state” includes the Government and Parliament of India and the Government and the Legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India.

The Supreme Court of India has further expanded the scope of the expression “State” by holding that any agency or instrumentality of the government will also be covered in the expression “other authorities” under Article 12 of the Constitution. The Supreme Court has held that with the changing role of the state from merely being a police state to a welfare state it is necessary to widen the scope.
Article 13 makes any law inconsistent with or in delegation of the fundamental rights as void to the extent of inconsistency.

In this regard it is relevant to note that the language of Article 13(2) which provides: The state shall not “make any law which takes away the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void;

In fact, this clause provides “judicial review” of all legislations in India. The main object of Article 13 is to secure the paramounty of the Constitution in regard to fundamental rights which represent the basic human rights of the people. However, article 13 does not apply to the constitutional amendment and the validity of the constitutional amendment cannot be challenged under Article 13. But any constitutional amendment which violates the ‘basic structure’ of the constitution can be challenged.

(I) Right to Equality

1. Article 14-18 of the Indian Constitution guarantee the right to equality to every citizen of India. The right to equality is the faith and creed of our democratic republic. It form the foundation of socio-economic justice. It embodies the idea of equality expressed in the Preamble.

Article 14 of the Indian Constitution guarantees that the “State shall not deny to any person equality before the law or equal protection of the laws”.

The first expression ‘equality before law’ is of English origin and the second expression has taken from the American Constitution. Both these phrases may seem to be identical but they convey different meaning. This was aptly put by Justice Suba Rao in the case of State of U. P. V. Deoman Upadhayay when he remarked:

63 The theory of basic structure came in Keshavananda Bharti V. State of Kerala, AIR 1973 SC 1461.
Equality before law in a negative concept; equal protection of law is a positive one. The former declares that everyone is equal before law, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land, the latter postulates an equal protection of all alike in the same situation and under like circumstances.\(^{64}\)

This provision is like the provisions of Article 7 and 10 of the Universal Declaration of Human Rights, 1948, Articles 2(2) and 3 of the International Covenant on Economic, Social and Cultural Rights, 1966. Articles 14 of International Covenant on Civil and Political Rights also mention about equal rights of men and women and equality before law and equal protection of law respectively.

(II) No Discrimination on Grounds of Religion, Race, Caste Etc. (Article-15)

Article 15 provides for a particular application of the general principle, embodied in Article 14. Clauses 1 and 2 of Article 15 prohibit discrimination on grounds of religion, race, caste, sex or place of birth only and clauses 3 and 4 are exceptions to clauses 1 and 2, thus permitting some discriminatory treatment in favour of women, children and socially and educationally backward classes, scheduled castes and scheduled tribes. The guarantee under Article 15 is available to citizens and not to every person.

Article 15(3) permits special protection to women and children. Maternity benefit Act of 1961 has been enacted to provide maternity benefit to women employees. Article 15(4) makes special provision for the protection of interests of socially and educationally backward classes as well as of scheduled castes and tribes. This clause was added by the first Amendment in 1951. In India this provision has been exploited by the politicians from time to time by making reservations in various educational and professional educational institutions. The

\(^{64}\) AIR 1960 SC 1134.
issue of reservation saw many young students immolating in 1990 when the Government of India implemented the Mandal Commission Report granting 27% of reservation to the other backward classes.

Article 15(1) of the Indian Constitution can be found in Article 2 of the UDHR, 1948, Article 2(1) of the ICPR, 1966 and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, 1966.

(III) Equality of Opportunity in Public Employment (Article 16)

Article 16 is in fulfillment of the promise made in the preamble to secure equality of opportunity. Article 16(1) and (2) guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the state. No citizen can be discriminated against or be ineligible for any employment or office under the state on grounds only of religion, race, caste, sex, descent, place of birth or residence. Article 16(3), (4) and (5) are the three exceptions to this general rule of equality of opportunity.

It is to be noted that under Article 16 the guarantee against discrimination is limited to 'employment and appointment' under the state. Article 15, however, is more general and deals with all cases of discrimination which do not fall under Article 16 which embodies the particular application of general rule of equality laid down in Article 14 with special reference for appointment and employment under the state.65

In the case of General Manager, Southern Railway V. Rangachari, the Supreme Court has held that equality of opportunity of employment does not only apply to initial appointments but subsequent promotions or dismissals as well.66

Parliament passed the Public Employment (Requirement as to Residence) Act in 1957 which permitted requirement of residence in erstwhile centrally administered states of Himachal Pradesh, Manipur and Tripura.67

65 Sukhnanndan Thakur V. State of Bihar, AIR, 1957, 6
66 AIR 1962, SC 41.
Clause 4 of Article 16 permits the state to make provision for reservation of some appointments in favour of backward classes. This clause also be used in reservation in selection post.\textsuperscript{68}

Article 21(2) of the UDHR, 1948 says that “everyone has the right to equal access to public services in his country.”

(IV) Abolition of Untouchability (Article 17)

Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “untouchability” shall be an offence punishable in accordance with law. Untouchability is neither defined in the Constitution nor in the act but as understood by practice developed historically in India.

The Parliament of India, in exercise of the powers conferred by Article 35(II) has enacted the Untouchability (offences) Act, 1955. This Act of 1955 was amended in 1976 by the Untouchability (offences) Amendment Act, inorder to make the law more stringent for removing untouchability from the society. This Act has now been renamed as “The Protection of Civil Right Act, 1955”.

In Asiad Project workers case, the Supreme Court has held that the fundamental rights under Article 17 are available against private individuals and it is the constitutional duty of the state to take necessary steps to see that these fundamental rights are not violated.

This article is on the lines of the provision of article 2 of the UDHR.

(V) Abolition of Titles (Article 18)

Article 18 prohibits the state to confer titles on anybody whether a citizen or a non-citizen. However, military and academic distinctions are exempted from


\textsuperscript{68} Ibid, p. 36.

\textsuperscript{69} People’s Union for Democratic Rights V. Union of India, AIR 1982 SC 1473.
the prohibition because they are incentives to further efforts in the perfection of
the military power of the state so necessary for its existence, and for the scientific
endeavours so necessary for its prosperity. Article (18)(2) prohibits a citizen of
India from accepting any title from any foreign state. Clause (3) provides that a
foreigner holding any office of profit or trust under the state cannot accept any
title from any foreign state without the consent of the President Clause 4 provides
that no person holding any office of profit or trust under the state shall accept,
without the consent of the President any present, emolument or office of any kind
from or under any foreign state.

It is also to mention here that there is no penalty prescribed for
infringement of the above prohibition. Article 18 is merely directory only.
However, it is open for the Parliament to make law for dealing with such persons
who accept a title in violation of the prohibition prescribed in Article 18. No such
law has been passed by Parliament so far.

2. Right to Freedom (Article 19)

Article 19 of the Indian Constitution originally contained what has been
described as the seven lamps of freedom. They were seven rights, but in the year
1978, by forty-fourth Amendment of the Constitution, the right to acquire, hold
and dispose of property was taken out from the chapter of fundamental rights. It is
now provided in Article-300A of the Constitution that no person shall be deprived
of his property save by the authority of law. These freedoms reflect man's feeling
on the political fabric of the society of which he is a member.

(I) Freedom of Speech and Expression

This Article says that all citizens shall have the right to freedom of speech
and expression. But this right is subjected to limitations imposed under Article
19(2) which empowers the state to put 'reasonable' restrictions on the following
grounds, i.e. security of the state, friendly relation with foreign states, public
order, decency and morality, integrity and sovereignty of India etc.
Freedom of speech includes the expression of one's ideas through any communicable medium or visible representation, such as gesture, signs and the like. The expression connotes also publication and thus the freedom of press is included in this category. Indeed, freedom of speech will be insignificant if what one says is not printed and disseminated. The freedom of press is the foundation of a free Government of the people.

The Article also corresponds to Article 19 of the UDHR, 1948. Similar provision is also found in Article 19 of the ICPR, 1966.

(II) Freedom of Assembly

Article 19(1)(b) of the Indian Constitution guarantees to all citizens of right "to assemble peacefully and without arms". The right of assembly includes the right to hold meetings and to take out processions.

All these rights are valid so long as the assembly is peaceful. Such assembly should not threaten to disturb public order. Thus any demonstration, which cause inconvenience to general public has been considered as unconstitutional.70

The corresponding provision is found in Article 20(1) of the UDHR, 1948. The right of peaceful assembly is also recognized in Article 21 of the ICPR. The right of peaceful assembly is also implied in the very idea of the democratic government.

(III) Freedom to Form Association

Article 19(1) (c) of the Constitution of India guarantees to all its citizens the right "to form associations and unions". Under clauses (4) of this Article, however, the state may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India.

70 M. Ramu and others V. Government of India, & Other, AIR1970, Madras, 333.
The right of association permits the formation of professional and trade unions, including the union formed by government servants. Since professional unions are permitted, traders as well as industrialists can form their own associations.\textsuperscript{71} The freedom to ‘form’ association implies also the freedom to form or not to form, to join or not to join.\textsuperscript{72} Association may be discouraged in sensitive jobs like military, intelligence and police establishments where there is likelihood of security of states or public order within the territory being adversely affected.\textsuperscript{73} The right to form union does not carry with it the right to achieve every object. Thus the trade unions have no guaranteed right to an effective bargaining of right to strike or right to declare a lock-out.\textsuperscript{74}

This right corresponds to Article 23(4) of the UDHR. Such a provision has also been incorporated in Article 22 of the ICPR and Article 8 of International convent on Economic, Social and Cultural Rights, 1966.

\textbf{(IV) Freedom of Movement}

Article 19(1)(d) guarantees to all citizens of India the right “to move freely through the territory of India”. However, this right is subject to reasonable restrictions mentioned in Article 19(15). No Indian can be prevented from going to any part of the country or from making residence at any place of his liking within the country. A person, may however, be prohibited from entering a given town or state if his pressure is likely to cause a problem of law and order or his security is endangered. Any reasonable restriction on any person in such circumstances would be permissible under the constitution and would indeed be justifiable.\textsuperscript{75} The right of a citizen to move freely may also be restricted for the protection of the interest of “Scheduled Tribes”.

\textsuperscript{72} Surya Pal Singh \textit{V. State of U.P.} \textit{AIR 195 SC 19}.
\textsuperscript{74} All India Bank Employees Association \textit{V. The National Tribunal}, \textit{AIR}, 1962.
This article also corresponding to Article 13 of the UDHR and 12 of the ICPR.

(V) Freedom of Residence

Article 19(1)(e) guarantees to every citizen of India the right "to reside and settle in any part of the territory of India".

It is to be noted that the right to reside and to move freely throughout the territory of a state are complementary and often go together. Therefore, international instruments of human rights refer to the right of freedom of residence under the same article which provides the freedom of movement.

The freedom of residence is included in the freedom of movement under Article 13 of the UDHR and ICPR includes under Article 12.

(VI) Freedom of Profession, Occupation, Trade or Business

Article 19(1)(g) guarantees that all citizens shall have the right "to practice any profession, or to carry on any occupation, trade or business". It can be restricted and regulated by authority of law. Thus the state can under clause (6) of the Article (19) make any law: (i) imposing reasonable restrictions on this right in the interest of public, (ii) prescribing professional or technical qualification necessary for practicing any profession or carrying on any occupation, trade or business, (iii) enabling the state to carry on any trade or business to the exclusion of citizens wholly or partially.

The right to carry on a business includes the right to close it at any time the owner likes. Therefore, the state cannot compel a citizen to carry on business against his will. But it can be restricted, regulated or controlled by law in the interest of public. If one does not start a business at all them, under the circumstances, he cannot be compelled to start one. But if one has started or been carrying on a business, he has no absolute right to close it. He can be compelled

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not to close down his business in the interest of general public. This Article also corresponding to Article 23(1) of the UDHR.

**Protection in Respect of Conviction for Offences**

Generally, there are three safeguards provided to the persons accused of crime.

**I Protection against Ex-post Facto Laws**

It is a fundamental rule of natural justice that no one may be punished for an act or omission which was not a crime at the time of its commission. This was the common complaint of war criminals of Second World War. No act can be termed as criminal retrospectively. This is called as rule against ex-post facto law. In other words no punishment is to be awarded without prior existing laws.

Article 20(1) of the Indian Constitution says that, “No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

Article 11(2) of the UDHR and Article 15 of the ICPR also provide similar protection against ex-post-facto laws.

Article 20(1) of the Indian Constitution imposes a limitation on the law-making power of the legislature. Therefore, a legislature can make prospective laws, but Clause (1) prohibits the legislature to make retrospective criminal laws. However, it does not prohibit imposition of civil liability retrospectively, i.e., with effect from post date. So, a tax can be imposed retrospectively.

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77 Excel Wear V. Union of India, AIR 1979 SC 25.
78 Hathi Singh Manufacturing Co. V. Union of India, AIR 1960 SC 923.
(II) Protection Against Double Jeopardy

The Cardinal Principle of natural justice is that a person cannot be tried twice for the same offence.

Clause (2) of the Article 20 of Indian Constitution provides that "No person shall be prosecuted and punished for the same offence more than once." This clause embodies the common law rule of nemo debet vis vexari which means that no man should be put twice in peril for the same offence. If he is prosecuted again for the same offence for which he has already been prosecuted, he can take complete defence of his former acquittal or conviction.

Article 14(7) of the ICPR and Article 20(2) of the Indian Constitution have some difference. While in the ICPR the protection against double jeopardy is given for the second prosecution. But in Indian Constitution protection against double jeopardy is given only when the accused has not only been 'prosecuted' but 'punished' also. However, Section 300 of the Criminal Procedure Code of India bar any further trial of a person who has already been tried and convicted or acquitted. This provision is in accordance with 14(7) of ICPR.

(III) Prohibition against Self-Incrimination

English and American jurisprudence embodies the general principle that no one shall be compelled to give testimony which may expose him to prosecution for crime.

Article 20(3) provides that no person accused of any offences shall be compelled to be a witness against himself. This guarantee extends to any person accused of an offence and prohibits all kinds of compulsions to make him a witness against himself.

Article 14(3) of the ICPR provides the same.

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Maqbool Hussain V. State of Bombay, AIR 1953 SC 325.
(IV) **Protection of Life and Personal Liberty**

The right to life and liberty is the most fundamental of all the rights guaranteed in the Constitution of the states because none of the other rights would have any value or utility without it. Thus, the right to life and personal liberty is the basic and most fundamental of all the rights that man can aspire for. He needs to be sure that he cannot be derived of his life and liberty arbitrarily. Protection against arbitrary deprivation of life and personal liberty must be considered as an imperative norm of national as well as international law which means that the non-derogatability of the right to life and personal liberty has a peremptory character at all times, circumstances and situations.

Article 21 says that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Article 3 of the UDHR and Article 6 of the ICRR declares the same.

(V) **Safeguards against Arrest and Detention**

Liberty of a person is as important as the person himself is, he cannot be arrested or detained unless there is some charge against him or he is suspected to be involved in anti-national or anti-social activities. This means that a person can be deprived of his life or personal liberty provided his deprivation was brought about in accordance with procedure prescribed by law. Therefore, law provides certain procedural safeguards against arrest and detention.

Clause (1) and (2) of Article 22 of the Indian Constitution, guarantees four rights to the persons who are arrested under an ordinary law i.e. right to be informed ‘as soon as may be’ “Right to consult a lawyer, Right to be produced before a magistrate with 24 hours and freedom from detention beyond the said period except by the order of the magistrate. These rights are available to both citizens and non-citizens.

Clause 3 is an exception to Clause (1) and (2). It says that the rights given to arrested person under Clause (1) and (2) are not available to an enemy alien or a person arrested and detained under the Preventive Detention laws.

Article 22 of the Constitution of India provides the same safeguards to arrested and detained persons as are provided by the Article (9) of the UDHR.

3. Right against Exploitation

Slavery, slave-trade, servitude, traffic in human labour, forced labour, traffic in women and children and hazardous employment were some of the evils of 21st century. UN did a commendable job when numbers of conventions were concluded to eradicate these practices.

Indian Constitution under Article 23 and 24 provides that:

**Article 23(1):** Traffic in human beings and begar and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence, punishable in accordance with law.

**Article 23(2):** Nothing in this Article shall prevent the state from imposing compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste of class or any of them.

**Article 24:** No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Traffic in human beings’ means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes. Though slavery is not mentioned in Article 23, it is included in the expression ‘traffic’ in human being. Under Act 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this
Article. In pursuance of this Article Parliament has passed the suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing acts which result in traffic in human beings. Article 23 protects the individual, not only against the State but also against private citizens.

After a long struggle of Bandhu Mukti Morcha and other NGO's, it is only in 1976 that Parliament enacted the Bonded Labour System (Abolition) Act, 1976.

Article 24 prohibits the employment of children below 14 years of age in factories and hazardous employment. Article 39 of the Constitution imposes upon the state an obligation to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.


The UDHR in its Article 4 and ICPR in its Article 8 directs the same.

4. Right to Freedom of Conscience and Religion

The term “religion” is hardly susceptible to any rigid definition. Broadly speaking religion is a matter of faith with individuals or communities, and it is not necessarily theistic. A religion has its basis in “a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being”, but it will not be correct to say that religion is nothing else but a doctrine of belief. A religion may only lay down a code of ethical rules for its followers to accept, it may prescribe rituals and observances, ceremonies and

84 Now, "The Immoral Traffic (Prevention) Act, 1956."
modes of worship which are regarded as integral parts of religion, and those forms and observances might extend even to matters of food and dress.\textsuperscript{85}

Article 25 guarantees to every person the freedom of conscience and the right to profess, practice and propagate religion. This right is also subject to restrictions. Thus, this right is, subject to public, order, morality and health and to other provisions of Part-III of the Constitution.

Article 26 deals with freedom to manage religious affairs, to establish and maintain institutions for religious and charitable purposes, to own and acquire movable and immovable property; and to administer such property in accordance with law.

Article 27 relates to freedom from taxes for promotion of any particular religion. It provides that: No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion of religious denomination.

Article 28 deals with prohibition of religious instruction in state aided institutions. Therefore, no religious instructions shall be imparted in any educational institution wholly maintained out of state funds.

In the case of Aziz Basha V. Union of India,\textsuperscript{86} it was held by Supreme Court that right of maintaining a particular institution by a minority community cannot be claimed unless the institution has been created by it. Similarly it was held by the Supreme Court in the case of Ratilal V. State of Bombay\textsuperscript{87} that the religious bodies can administer their properties but in accordance with law.

Article 18 of the UDHR and Article 18 of the ICPR provides similar provisions to safeguard freedom of conscience and religion.

\textsuperscript{85} S.P. Mittal V. Union of India, AIR 1983 SC 1
\textsuperscript{86} AIR 1968 SC 674.
\textsuperscript{87} AIR 1954 SC 392.
5. Cultural and Educational Rights

Cultural rights refer to a variety of aspects of the rights to education, to participate in cultural life, to communication and to information. Therefore, they are essential to the relationship between people and their society and to the question of whether one is able to develop his or her full human potential within that of society. Moreover, these rights are interdependent and closely connected to other economic and social right, as well as to certain civil and political rights.

Articles 29 and 30 provide as under:

**Article 29(1):** Any section of the citizens residing in the territory of India or any part there of, having distinct language, script or culture of its own shall have the right to conserve the same.

**Article 29(2):** No citizen shall be denied admission into any educational institution, maintained by the state or receiving aid out state funds on grounds only of religion, race, caste, language or any of them.

**Article 30(1):** All, minorities based on religion or language, shall have the right to establish and administer educational institution of their choice.

**Article 30(2):** The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a majority, whether based on religion or language.

This article fulfils the spirit of the UNESCO Declaration of Principles of International Cooperation which proclaim in Article 1.

6. Right to Constitutional Remedies

It is a fact that a declaration of fundamental or human right is meaningless unless there is an effective machinery for the enforcement of the right. It is the remedy which makes the right real and substantial.
Article 32 provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the right conferred by this part is guaranteed. The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of Habeaus corpus, Mandamus, prohibition, Quo warranto and Certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by this part.

Article 32 and 226 of the Indian Constitution are a step ahead to the international human right law. Article 226 also empowers all the high courts to issue the writs for the enforcement of fundamental rights.

Traditionally, the right to move the Supreme Court is only available to those whose fundamental rights are infringed. The power vested in the Supreme Court can only be exercised for enforcement of fundamental rights. The writ under which the remedy is asked under Article 32 must be correlated to one of the fundamental rights sought to be enforced. The remedy must be sought through appropriate proceedings.88

The traditional rule of Locus standi that a petition under Article 32 can only be filed by a person whose fundamental rights are infringed has now been considerably relaxed by the Supreme Court in its recent rulings. The court now permits public interest litigations or social interest litigations at the instance of ‘Public spirited citizens’ for the enforcement of constitutional and legal rights of any group of persons who because of their poverty or socially or economically disadvantages position are unable to approach the court for relief.89

Our alert judiciary, on the initiative of socially active groups, has issued appropriate writs, orders and directions e.g. Bihar Blinding Case, Flesh trade in Protective Home of Agra, Injustice done to children in jails, Protection of Pavement and Slum-dwellers of Bombay, Payment of Minimum wages and other

89 Ibid.
benefits to workers in various state projects, Abolition of Bonded labours, Protection of Environment and ecology etc. 90

The jurisdiction conferred on the Supreme Court by Article 32 is an important part of the ‘basic structure’ of the Constitution because it is meaningless to confer fundamental rights without providing an effective remedy for their enforcement when they are violated. 91 But the power of the High Court to issue writs cannot be in derogation of the Supreme Court under Article 226. In other words an order under Article 32 will supersede the orders of the High Court previously passed. An application under Article 32 may always be made directly to the Supreme Court since Article 32 is itself a fundamental right. 92

2.5(iii) Other Civil Rights

There are two more such rights which are Civil Rights but we do not find their place in the category of the Fundamental Rights in India. However, these rights are the Constitutional rights in India.

(I) Right to Citizenship

Normally, every person should have some rights in society where he is born and brought up. The most important in this connection may be the right to citizenship. Right to citizenship is the right to whom any child may acquire by birth. By virtue of citizenship, a person becomes subject of that state.

(i) Constitutional Law of India (Articles 5-11)

In India, citizenship is governed by Article 5 of the Constitution and Indian Citizenship Act, 1955. Article 5 of the Indian Constitution provides that:

At the commencement of this Constitution, every person who has his domicile in the territory of India and —

91 Fertilizer Corporation Kamgar Union V. Union of India AR 1956 SC 124.
92 Ramesh Thaper V. State of Madras, AIR 1856 SC 124.
(a) who was born in the territory of India; or
(b) either of whose parents was born in the territory of India;
(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Article 6 deals with rights of citizenship of specified persons.

(ii) International Law of Human Rights

The UDHR in Article 15 provides that:
15(1) Every has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

(iii) Jurisprudence

Citizenship or Nationality is character of quality by which a person is attached to the State. A person is recognized on international level through nationality only. A State is under obligation to protect its nationals abroad. Wherever he may go, he is subject to the jurisdiction of that state whose national he is. A state cannot refuse to receive back on its territory its own nationals. Generally, extradition of own nationals is not granted. Therefore, Article 5 of the Indian Constitution grants Indian citizenship to any person who is domiciled in India and fulfils one of the three other requirements as given in Clause (a), (b) and (c) of this Article. This Article is devoid of any discrimination on any ground. Hence, the basis of citizenship in India is not the caste or religion but presence on the territory of India.

Domicile is an essential element to acquire citizenship under Article 5 according to Dicey domicile can be defined as follows:
The nation which lies at the root of the concept of domicile is that of permanent home. A person may be said to have his home in a country if he resides in it without any intention at present of moving from it permanently or for indefinite period. But a person does not cease to have his home in a country merely because he is temporarily resident elsewhere; and a person who has formed an intention of leaving a country does not cease to have his home in it until he acts according to that intention.93

The Supreme Court of India held that it is impossible to give any absolute definition of domicile. It further said that domicile had two essential constituents of residence and intention which may be called as factum and animus. Residence need not be continuous but it must be definite, not purely fleeting. The intention must be a present intention to reside for ever in the country where the residence has been taken up.94

As directed by international human rights, law, there is no provision for arbitrary deprivation of nationality in India. Therefore, Indian Constitutional provisions are in conformity with that of international directions. No doubt, Arts. 5-11 are not fundamental rights but still Indian laws are in accordance with international human rights laws.

(II) Right to Franchise

Right to franchise is the most important right in a democratic legal system. Democracy in other words is true reflection of this very right.

(i) Constitutional Law of India (Article 325 and 326)

According to Article 325, there shall be one general electoral roll for every territorial constituency. Article 325 says that no person shall be ineligible for inclusion in any such electoral roll on grounds only of religion, race, caste, sex or any of them. The elections to the Parliament and State Legislature are to be held

94 Central Bank of India V. Ram Narain, AIR 1966 SC 38.
on the basis of adult suffrage. Every person who is a citizen of India and who is not less than 18 years of age, and is not otherwise disqualified under this Constitution or any law (Representation of Peoples Act, 1950) made by the Legislature on the ground on non-residence, unsoundness of mind, crime or corrupt or illegal practice, has a right to be registered as a voter (Article 326).

(ii) International Law of Human Rights

The UDHR under Article 21(iii) says that:

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedure.

Similarly Article 25(b) of ICPR provides that:

To vote and to elected at genuine periodic elections which shall be by universal and equal suffrage shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

(iii) Jurisprudence

Indian Constitution provides for the appointment of an Election Commission to superintendent, direct and control elections. The Election Commission is an independent autonomous body, and the Constitution ensures, as in the case of the Supreme Court and High Courts, that it may be able to function freely without any Executive interference. There is right to vote for every Indian citizen who has attained the age of eighteen years. There is no political minorities, or second class citizens in India. Every Indian citizen has equal rights, irrespective of his race, religion, caste or sex. Hence Articles 325 and 326 maintain secular character of elections and equality of status in elections. No doubt, some seats have been reserved for Scheduled Castes and Tribes and Anglo-Indian

95 Article 324 of the Constitution of India.
communities in Parliament and State Legislatures but it is within the framework of Indian Constitution.

Therefore, Indians have the right to vote and to participate in political institutions of the State thereby fulfilling the international obligation undertaken by India. By virtue of these provisions in our Constitution, India is considered the largest democracy in the world.

Table 2.1

Comparative Position of Civil and Political Rights

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<td>Article 32</td>
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Source:*UDHR, 10-12-1948, **ICCPR, 1966

2.5(iv) Economic, Social and Cultural Rights

Economic, social and cultural rights now occupy an increasingly important place in the legal systems and political aspirations of different countries of the world. They are given much attention in the activities of the United Nations and other international organizations. Constitutions and legislative acts adopted in the 18th and 19th centuries chiefly enumerated civil and political rights. Economic and
social rights were considered at the time as a by-product of the development of civil and political rights. Only in the beginning of the 20th century did the constitutions of a number of States begin to place an increasingly greater emphasis on Socio-economic rights.96

There are two opposing views regarding the importance, utility and implementation of economic, social and cultural rights. One view is that the human rights could not be clearly divided into different categories, not could they be so classified as to represent a hierarchy of values. All rights should be promoted and protected at the same time. Without economic, social and cultural rights, civil and political rights might be purely nominal in character; without civil and political rights, economic, social and cultural rights could not be long ensured. Second view is that civil and political rights are enforceable, or justiciable, and immediately applicable, while economic, social and cultural rights are to be progressively implemented. It is argued that, generally speaking, civil and political rights are rights of the individual against the State; i.e. against unlawful and unjust action of the State whereas economic, social and cultural rights which the State would have to take positive action to promote. Further, civil and political rights, being legal rights, required different means and methods of implementation (namely through complaints procedure) than economic, social and cultural rights, which were “programme” rights and could best be implemented through a system of periodic reports.97

Although two separate Covenants were enacted but there was wide agreement that “the enjoyment of civil and political freedoms and of economic, social and cultural rights are inter-connected and interdependent” and that “when deprived of economic, social and cultural rights man does not represent the

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human person whom the Universal Declaration regards as the ideal of the free man” (General Assembly Resolution 421(V) and 543(VI)."

Therefore, it is necessary here to examine the Constitutional recognition, protection and implementation of economic, social and cultural rights in India. For this purpose, on the basis of these rights, various provisions of Part-IV of the Indian Constitution have to be closely analyzed. Before this analysis, it is to be kept in mind that Part-IV is ‘Directive Principle of State Policy’. This part of the Indian Constitution contains a list of directives and instructions to be followed by the Government of the country irrespective of their political complexion. They reflect the ambitions and aspirations of the framers of the Indian Constitution regarding the Welfare State in India based on social, economic and political justice. They contain the aims and objectives which are required to be achieved by the government. Therefore, the Directive Principles deal with positive duties cast upon the States to achieve them because they are fundamental in governance of the country. Thus, the Directives have been incorporated in the Constitution to supplement Fundamental Rights in achieving a Welfare State in India based upon social, political and economic justice.

According to Article 37, the Directive Principles, though they are fundamental in the governance of the country, but they are expressly made non-justificiable. On the other hand Fundamental Rights are enforceable by the courts of law and the courts are bound to declare as void any law which is inconsistent with any of the Fundamental Rights. However, the courts are required to interpret the laws in the light of the economic, social and cultural values set out by these Directives. Parliament can amend Fundamental Rights for implementing the Directives, so long as the amendment does not touch the basic feature of the Constitution. No doubt, these Directives are devoid of direct legal sanction, but they have the sanction of the people which is basis of the democracy. If any Government will not implement these Directives, the public opinion would go

98 Ibid, p. 50
against that Government and people may in election oust that Government. Thus extra-legal force makes them important as far as their implementation is concerned.

Table 2.2

Comparative position of Economic, Social and Cultural Rights

<table>
<thead>
<tr>
<th>The Constitutional Law of India</th>
<th>Universal Declaration of Human Rights*</th>
<th>Covenant on Economic, Social &amp; Cultural Rights**</th>
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<tr>
<td>Article 300A</td>
<td>Article 17(1) and (2)</td>
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Source: *UDHR, 10-12-1948, ** ICESCR, 1966

I. Right to Fair Wages and Equal Remuneration for Work

It is a principle of natural justice that for equal work everyone must get equal remuneration. This is, in other words, a principle of fair conditions of work.

Article 39(d) provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women.

Article 38 and 39 of the Indian Constitution embody the jurisprudential doctrine of "distributive justice". The concept of distributive justice in the sphere of law-making connote, inter-alia, the removal of economic inequalities rectifying in injustice resulting from dealings and transactions between unequals in society.99

99 Central Inland Water Transport Corpn. V. Brojo Nath Ganguly, 1986, 3 SCC, 156.
To give practical shape to Article 39(d), Parliament has enacted the Equal Remuneration Act, 1976. The directive contained in Article 39(d) and the Act passed there to can be judicially enforceable by the court. The Supreme Court has held that the principle of equal pay for “equal work, though not a “Fundamental Right” is certainly a constitutional goal and, therefore, capable of enforcement through constitutional remedies under Article 32 of the Constitution. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work.

Similarly, the UDHR under Article 23 provide for fair wages and equal remuneration for work.

II. The Right to Protect Childhood and Youth from Exploitation

Every State has taken special measure for the care of the child because the future of a State depends upon the healthy growth of its children.

According to Article 39(f):

The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 23 of the Indian Constitution prohibits traffic in human beings, including children and Article 24 prohibits engagement of children below 14 in hazardous jobs. Complementary to these provisions Article 39(f) seeks to protect the child and youth against exploitation and moral and material abandonment.

In spite of the above stated provisions children have not been well protected in India. More than 50% children suffer from hunger, malnutrition and disease. There is a high rate of infant mortality. Due to poverty, parents are

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100 Randhir Singh V. Union of Indian, AIR 1982 SC 879.
101 Ibid.
compelled to seek employment for their small children in all sort of jobs where the children are maltreated.

The UDHR under Article 25(2) provides special protection to children.

**III. Right to Work**

The right to work is the mother of all economic rights. Developed states have happily incorporated this right in their respective legal systems whereas the developing countries, even after their sincere efforts, due to the lack of resources, are unable to make this right as Fundamental Right.

Right to work is one of the Directives under Part IV i.e., Directive Principles of State Policy. There has been a strong opinion to include, this right to work, under Fundamental Rights but it has not yet materialized. No doubt, Government promised to include this right in the Chapter of Fundamental Rights in 1989, but due to financial constraints it was unable to fulfill this promise. Full employment of jobs for everyone is an ideal for which every civilized country strives, but this is a goal which is far from easy to attain. In India the problem of unemployment is a formidable one. Millions of people remain unemployed almost throughout the year and millions of others are only part time employee. A legal Right to Work would require unemployment allowance or doles to all the jobless people. No doubt, some State Governments are paying unemployment allowance but it is to less to survive on this basis. Therefore, Indian provisions regarding right to work are less than international obligation. However, in India to abolish unemployment greater stress is being paid to cottage and small scale industries to create more jobs and self-employment opportunities.

Article 23 of UDHR provides the same.

**IV. Right to Medical Care**

The Socialist countries have guaranteed the right to free medical care because they are somewhat economically sound. But developing countries are
unable to provide free medical care but are able to provide limited free medical care only to downtrodden, strata of our society.

Article 41 provides that “The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right....to public assistance in cases of....sickness and disablement...

Article 47 states that “The State shall regard the raising of the level of nutrition and the Standard of living of its people and the improvement of public health as among its primary duties....”

The cumulative effect of Articles 41 and 47 stresses for medical care and improvement in public health. No doubt, with advanced medical technology and sophisticated diagnostic techniques medical treatment is becoming very costly. Even then in view of resource restraints the States have tried their best to give medical aid by opening hospitals and other public health centres where free medical assistance is provided to the people. In some cases, only a nominal fee is charged from the patient in respect of medical assistance rendered in relation to the individual’s gross income. So much so that no income tax is charged on medical reimbursement bills.

Article 25(1) of the UDHR provides similar rights to medical care and public health.

V. Right to Social Security in Old Age

Old age may be considered either as the age at which a worker ceases to be useful or as that age at which a worker has earned a final holiday with pay. At this age person is not treated as fit to play a normal and effective part in the productive process. However, old persons need more protection than young ones and, therefore, they should be given due respect for their age, experience and expertise.

Article 41 requires the State to give public assistance to persons of old age.
Old age needs protection like children. Therefore, most of the States have made some provisions for old age like old-age pensions for indigent persons. Some States have also opened old-age homes for old and homeless people. Some facilities should be extended to old people in the form of discounted fares in transport, subsidized food or discount rates in canteens and other utility services as is being done in other countries.

VI. Right to Secure just and Human Conditions of Work

Article 42 provides that “the State shall make provision for securing just and humane conditions of work....”

Not only that right to work has been included in Directive Principles of State Policy but the right to secure just and human conditions of work is also included in the list of these Directives which are not enforceable. The Central Government has enacted Factories Act, 1948; the Mines Act, 1961; the Plantation Labour Act, 1951; The Motor Transport Workers Act, 1961 and the Industrial Employment (Standing Orders) Act, 1966 to implement right to secure just and human conditions of work.

Article 23(1) of the UDHR says that “Everyone has the right to just and favourable condition of work.”

VII. Right to Secure Maternity Relief

The need of maternity benefits for woman workers has always been very great. Majority of the woman workers are married and on account of poverty, ignorance and lack of medical facilities, the maternal mortality is very high. It necessitates the right to secure maternity relief.

Article 42 embodies that the State shall make provision for securing for maternity relief.

The importance of maternity benefits was not sufficiently realized by the Central Government of India in spite of child-birth Covenent adopted by ILO in
1919. In pursuance of Article 42 Central Government passed Central Maternity Benefit Act in 1961. This Act was brought into force in mines from 1 November 1961 in the plantations with effect from 16th December 1961. All State Governments have now brought this Central Act into force. Therefore, India has fulfilled the international obligation with respect to maternity relief.

VIII. The Right to Decent Standards of Life

Article 43 states that:

"The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, condition of work ensuring a decent standard of life......"

The decent standard of living refers to the amount of necessaries, comforts and luxuries, which a person requires or consumers. The articles of necessities, comforts and luxuries, to which a man becomes habituated, constitute his standard of living. However, necessaries, comforts and luxuries are relative terms, and they differ from place to place, from time to time and from person to person. Hence, a person's status in society, social environment, climatic conditions, etc., have all to be taken into account in order to form an idea of the standard of living.

In the light of above stated facts, the workers in India do not lead a life which can be called as decent standard of living in the modern civilized world. Worker does not get sufficient food or clothing and conditions of housing are such that one even cannot imagine that human beings can live in such surroundings.

IX. Right to Rest and Leisure

For improving the efficiency in the work, the right to rest and leisure is very important indeed. It has to be recognized that the employees are human beings, and not merely as instrument of production. No human being, in any walk
of life, can continue working year after year without intermission. Therefore, it was necessary to grant the right to rest and leisure which in turn can also improve the relationship between employer and employees.

The health and efficiency of workers depend mostly on the number of hours they have to work. In pursuance of Article 43, Indian Government has enacted various Acts containing provisions in respect of hours of work, rest and leisure, health, safety and welfare i.e., Factories Act, 1948; The Mines Act, 1961; The Plantation Labour Act, 1951; The Motor Transport Act, 1961; and the Industrial Employment (Standing Orders) Act, 1946.

Therefore, India is doing much in this direction to give effect to international human rights law as well as ILO standards in this direction. Workers in India are not a neglected lot but an illiterate lot. They are not aware of the usefulness of such like rights.

Article 24 of the UDHR embodies everyone’s right to rest and leisure similarly Article 7(d) of ICES confers right to rest and leisure.

**X. Right to Free and Compulsory Education for Children**

Literacy means enlightenment and awareness, more so in a developing country which has a low rate of literacy. People have the right to know about their country and the world that they live in. They should also know as to what are their rights and social duties. This cannot be done without education.

Article 45 states that:

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

The Indian Constitution does not guarantee a fundamental right to education but Article 41 which falls under Directive Principles of State Policy,

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102 Ibid
directs the state to make effective provisions for securing the right of education. Under Article 45 State is further obliged to endeavour to provide free and compulsory education to the children up to the age of 14 years. In India, most of the States have introduced free and compulsory education to the children up to the age of 14 years. In India, most of the States have introduced free and compulsory primary education and a few have also introduced free High School education. Now, most of the States have succeeded in imparting free and compulsory education upto 14 years. More so efforts are also being made to popularize adult education.

In spite of price hike, the tuition fees of students have remained static. Deserving students are awarded freeships and scholarships. Some States have provided free mid-day meals for primary students. In higher education hostel facilities have been provided on nominal rent basis. Therefore, India is doing much in this direction to make children as future good citizens of India.

Article 26(1) of the UDHR states that:

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Art. 13(2)(a) of the ICES also provides that “primary education shall be compulsory and available free to all.” Article 13(1) recognizes the right of everyone to education.

XI. Right to Raise the Level of Nutrition and the Standard of Life

To raise the level of nutrition and to take care of health of the people, the World Health Organization is doing commendable job. Good health can be attained only by raising the level of nutrition.

Article 47 imposes a duty upon the State to raise the level of nutrition and the standard of living of its people.
The Indian Constitution imposes a duty upon the State to raise level of nutrition and the standard of life. Adequate supply of food which must by hygienic is required for physical and mental health of the individuals. Prosperity of a State can be judged from the health of its citizens. Various Agricultural Universities are doing commendable job to raise level of nutrition.

Article 25(1) of the UDHR enumerates everyone’s right to standard or living adequate for the health including food, clothing etc.

The ICES under Article 11(1) recognizes the right to an adequate standard of living including food, clothing etc. Article 11(2)(a), further imposes a duty upon States to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge.

XII. Right to Property

There has been fair emphasis on the right to private property. It is said that it develops man’s personality and is the fountain of all rights. The industrial revolution towards the end of the 18th Century added a new dimension to the concept of private property. Locke championed the right of life, liberty and property for a citizen. This process continued until first quarter of the present century. There was a thinking that government has to protect life, liberty and property of its citizens, chief amongst them being property. Since then, the State has changed its role from that of maintaining law and order to that of an agency for the social welfare of its people. It is realized that private property cannot be used as an instrument of oppression. These vicissitudes in thinking on the concept of private property are clear even in international documents.

Article 300 A provides that “no person shall be deprived of his property save by authority of law.

103 Ibid.
104 Ibid.
Before 1978, the right to property was a fundamental right under Article 31 of the Indian Constitution. By the Forty-Fourth Amendment Act of 1978 this right was repealed and it was made only a Constitutional right under Article 300A. Thus the only condition to be complied with for the acquisition of private property under the new Article 300 A is a law of the legislature. There was also controversy regarding the inclusion of this right in the Covenants. It was embodied in Article 17 of the UDHR but Covenants after 18 years omitted this right. This shows the shift of emphasis from right to property to the other rights.

There is a doctrine of eminent domain which means the inherent power of a sovereign State to acquire private property for public purposes. The effect of the amendment is that for violation of his right to property under Article 300-A a person will not be entitled to invoke the writ jurisdiction of the Supreme Court under Article 32. However, he will be entitled to invoke the jurisdiction of High Courts under Article 226. There are two views regarding the grant of compensation in case of compulsory acquisition of property by the State. One view is that now it is not a fundamental rights, therefore, it can be acquired without adequate compensation. But the other view is that now the right to property of both, the citizens as well as non-citizens, is more firmly and comprehensively secured under the Constitution, than ever before. The State will not now be able to acquire private property without showing public purpose and without paying full compensation or the market value of the property. Under new Article 300-A the only requirement is that there must be a law for depriving a person of his property. This law must be a valid law, and no law of acquiring a private property can be valid unless it provides for acquisition or requisition of property for a public purpose and unless there is a provision in such a law for paying compensation.105

However, it must be admitted that no person can be deprived of his property without due process of law. And law must be fair, reasonable and just.

105 Ibid.
Otherwise there was no use to introduce a new Article in 300-A. No law will be construed as fair, just and reasonable if it does not give adequate compensation for the property acquired by the Government for any public purpose or in furtherance of its social welfare programmes. It may not be prevailing market price but it cannot be just a sham. It must be fair and appropriate as envisaged under the Charter of Economic Rights and Duties of States, 1974.\footnote{Ibid.}

The UDHR provides under Article 17(1) that “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.

2.6 Indian Reservations to the Covenants

The Indian Government had made certain reservations while acceding to the two Covenants, on 27 March 1979. These reservations have been laid down in the instrument of Accession by way of “Declaration”.\footnote{Ibid.} The effect of reservations would be that the provisions of the Covenants would be applied to India in modified form. India made reservations in respect of the applicability of Articles 1, 9, 12, 13, 19(3), 21 and 22 of the Civil and Political Rights Covenant and Articles 1, 4,7(c) and 8 of the Covenant on Economic Social and Cultural Rights. The implications of reservations are as under:

1. Right to Self-Determination

Article 1 of both of the Covenants provides the right of self-determination. Clause 1 of Article 1 of both the Covenants states that:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

No doubt, the international community is clear on the point that this right of self-determination is applicable only in respect of colonies and trust territories.
It is not applicable to any part of the territory of an independent State. It means that the right of self-determination cannot be invoked by any section of the people of any part of the independent State by virtue of this stipulation in the Covenants. To be doubly sure about above interpretation and to avoid any misinterpretation of this Article India by Para 1 of the ‘Declaration of Accession has made it clear that Article 1 shall “apply only to the people under foreign domination and these words do not apply to sovereign independent States or to a section of a people or nation – which is the essence of national integrity”.

Therefore, as far as India is concerned, the right to self-determination is not application even by any stretch of imagination.

2. Protection against Arbitrary Arrest and Detention

Article 9 of the Covenant on Civil and Political Rights provides various safeguards against the arbitrary arrest and detention of a person. The position of the India in respect of Article 9 is that it shall be so interpreted as to be in consonant with Article 22 of the Indian Constitution which deals with preventive detention. Rule against arbitrary arrest is already in Article 21 of the Constitution. The combined effect of Articles 21 and 22 will be just the same as is given in Article 9 of this Covenant.

However, Article 9(5) of the Covenant on Civil and Political Rights has provided for enforceable right to compensation in case of unlawful arrest or detention. Here India has made very clear in Para II of the Declaration that “under the Indian Legal System,, there is no enforceable right to compensation for persons claiming to victims of unlawful arrest or detention against the State”. Therefore, the provisions relating to preventive detention stipulated in the Covenant (in spite of the fact that they may be identical with Articles 21 and 22 of the Constitution) including that of compensation would not be applicable to India.

3. Right of Aliens

Article 13 of the Covenant on Civil and Political Rights lays down that:
An alien lawfully in the territory of a State Party to the present Covenant may be lawfully expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Therefore, this Article only prohibits arbitrary expulsion of an alien which is normally the practice of all States (including India) to avoid adverse public opinion. Even then India under Par III of the Declaration has reserved its right to apply its laws relating to foreigners.

4. Right to Freedoms

Article 19(1) of the Indian Constitution embodies various rights of a person which includes the freedom of speech and expression; right to assemble peacefully; right to form associations or unions; the right to movement; the right to reside and to settle; and freedom of profession, occupation, trade or business. But these rights are subject to restrictions. These rights have also been recognized in the Covenant on Civil and Political Rights under Articles 12, 19, 21 and 22 and in the Covenant on Economic, Social and Cultural Rights under Articles 4 and 8 which are in a few cases different from those provided in the Indian Constitution. To cover up this situation Para IV of the ‘Declaration of Accession’ states that:

With reference to Articles 4 and 8 of the International Covenant on Economic, Social and Cultural Rights, and Article 12, 19(3), 21 and 22 of the International Covenant on Civil and Political Rights, the Government of the Republic of India declares that the provisions of the said Articles shall be so applied as to be in conformity with the provisions of Article 19 of the Constitution of India.
5. Equality of Opportunity in Public Employment

Article 7(c) of the Covenant on Economic, Social and Cultural Rights had laid down that, “equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.”

No doubt this equality of opportunity in public employment has been guaranteed under Article 16 of the Indian Constitution but Article 16(4) empowers the State to make special provisions for the reservation of appointments of posts in favour of any backward class of citizens which in the opinion of the State are not adequately represented in the services under the State. Therefore, India has also modified the operation of Article 7(c) of this Covenant by Part V of the Declaration as under:

With reference to Article 7(c) of the International Covenant on Economic, Social and Cultural Rights, the Government of the Republic of India declares, that the provisions of the said Article shall be so applied as to be in conformity with the provisions of Article 16(4) of the Constitution of India.

2.7 Conclusion

The above analysis of comparative study of various provisions of the Indian Constitution, the Universal Declarations of Human Rights, 1948 and the two Covenants on Human Rights, 1966, are indicative of the fact that in India many rights provided in the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights are available to a person because these rights are enumerated in Part III of the Constitution as Fundamental Rights which are enforceable by the Courts and the Courts are bound to declare as void any law which is inconsistent with any of the Fundamental Rights. However, economic and social rights have placed under Part IV ‘Directive Principles of State Policy’ which are not justiciable. Therefore, these rights have not been adequately
protected in India due to their non-enforceable character. Overall application of international law of human rights in the Indian Constitution is encouraging in spite of reservations made by India to the application of the Covenants in the Indian Legal System.