CHAPTER-IV
HUMAN RIGHTS LAW IN INDIA

4.1 Introduction

India is one of the few countries that protect Human Rights through its Constitution. The civil and political rights guaranteed as Fundamental Rights are enforceable through the Courts of law. The economic, social and cultural rights, though not enforceable, under Directive Principles, the States are mandated to promote them for equitable social order and betterment of quality of life for all sections of society. In addition, we have a strong and independent judiciary, which zealously protect the rights, an active Parliamentary system and a vigilant press.

India, being aware of the growing need to protect Human Rights, to join the international community in its effort to protect Human Rights, has acceded to various international instruments, chief among them are the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights, 1966. The Human Rights Law in India can be categorized into the following three heads:

(i) Human Rights and the Indian Constitution.
(iii) Other Measures for the protection of the Human Rights.

4.2. Human Rights and the Indian Constitution

The Constituent Assembly drafted the Indian Constitution and was adopted on 26th November 1949 and came into force on 26th January 1950. It is an elaborate document comprising 395 Articles divided into 22 parts and 9 Schedules. No Constitution of the world is so wide and comprehensive as Indian Constitution. It has made elaborate provisions relating to Human Rights and Fundamental Freedoms in


### 4.2.1. Preamble

The provisions of the preamble to the Constitution have been taken from clauses 1, 5 and 6 of the Objectives Resolution. The preamble states the aims and objectives laid down in the Constitution\(^2\). The expression “we, the people of India’ denotes that it is the Constitution of the people, for the people and by the people of India.

The Preamble proclaims India as an independent sovereign Republic. It lays down that sovereignty of the people. The government and its organs will get power from the people of India. The Preamble declares to secure to the people justice social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among the people of India fraternity, assuring the dignity of the individual and the unity and integrity of the nation.\(^3\) R.C. Lahoti C.J in P.A. Inamdar vs. State of Maharashtra\(^4\) has highlighted the preamble in the following words. “It is well accepted by thinkers, philosophers and academicians that if Justice, Liberty, Equality and Fraternity, including Social,

\(^2\) The preamble as amended by 42\(^{nd}\) Amendment is as follows:
We, the people of India, having solemnly, resolved to constitute into SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
Justice Social, economic and political;
Liberty of thought, expression, belief faith and worship;
Equality of status and of opportunity and to promote among them all;
Fraternity assuring the dignity of the individual and unity and integrity of the nation.
In our CONSTITUENT ASSEMBLY this twenty-sixty day of November, 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

\(^3\) Prof. V.N. Sukla has highlighted the incorporation of Human Rights Jurisprudence in the Preamble in very beautiful words as follows “The fundamentals of the Indian Constitution are contained in its preamble which secures to its citizens justice, Social, Economic and Political; Liberty of thought, Expression, Belief, Faith, and Worship; Equality of Status and Opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. The theme of these objectives permeates throughout the entire Constitution. It was to give effect to these objectives that Fundamental Rights and Directive Principles of State Policy were enacted in Part-III and Part –IV of the Constitution and through them it was sought to achieve and maintain the dignity of the individual (V.N. Sukla, “Constitution of India” revised by D.K. Singh, 7\(^{th}\) Edition, Eastern Book Co., Lucknow, 1982 at p. a-31)

\(^4\) 2005 6 SCC 537
Economic and Political Justice, the golden goals set out in the preamble to the Constitution, are to be achieved; the Indian polity has to be educated and educated with excellence. Education is a national wealth which must be distributed equally and widely, as far as possible, in the interest of creating an egalitarian society, to enable the country to rise high and face global competition”. The preamble of our 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\(^5\). The objectives specified in the preamble contain the basic structure of our Constitution which cannot be amended in exercise of the power under Article 368 of the Constitution\(^6\). The preamble may be invoked to determine the ambit of Fundamental Rights\(^7\) and Directive Principles of State Policy\(^8\). The expression social Justice used in the preamble enable the courts to uphold legislation\(^9\).

(a) To remove economic inequalities  
(b) To provide a decent standard of living to the working people  
(c) To protect the interests of the weaker sections of the society

The philosophy of the U.D H.R finds a proud place in the preamble of the Constitution. From the preamble it is quite clear that the two primary objectives before the Constituent Assembly were: (1) to constitute India into a Sovereign Democratic Republic and (2) to secure to its citizens the rights mentioned therein.

### 4.2.2 Fundamental Rights (Articles 12 – 35 of the Constitution of India)

The Constitution makers have laid down an elaborate list of Human Rights in the name of Fundamental Rights under part-III of the Constitution of India. The Fundamental Rights guaranteed in part-III of the Constitution of India are designed to ensure Human Rights and Article 13 of the Constitution of India declares that any attempt by the State to curtail or to infringe them as unconstitutional and void\(^10\).

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\(^5\) Kesavananda Bharati vs. state of Kerala AIR 1973 SC 1416  
\(^6\) ibid  
\(^7\) Kesavananda Bharati vs. state of Kerala AIR 1973 SC 1416 paragraphs 292, 599 682, 1164, 1437  
\(^8\) Chandra Bhavan vs. State of Mysore AIR 1970 SC 2042  
\(^9\) Nakara vs. Union of India AIR 1983 SC 130 paragraphs 33-34.  
\(^10\) Kesavan vs. State of Bombay AIR 1951 SC 128.
eminent scholar V.G. Ramachandran has called these provisions of the Constitution as the Magna Carta of India.\textsuperscript{11}

The Fundamental Rights guaranteed and enumerated in part-III are mostly consonance with Human Rights enumerated in the Universal Declaration of Human Rights, 1948 and International Covenant on Civil and Political Rights, 1966 and provide interalia, for the following.

1. Right to Equality (Articles 14 to 18)
2. Right to Freedom (Articles 19 to 22)
3. Right against Exploitation (Articles 23 and 24)
4. Right to Freedom of Religion (Articles 25 to 28)
5. Cultural and Educational Rights (Articles 29 and 30)
6. Right to Constitutional Remedies (Articles 32 to 35)

The Constitution (forty-fourth amendment) Act 1978 has abolished the right to property as a fundamental right as guaranteed by Article 19 (1) (f) and Article 31 of the Constitution and hence, Article 19 (1) (f) and Article 31 have been omitted.

4.2.2 (a) Right to Equality (Articles 14 to 18)

Article 14 declares that “the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The first expression “Equality before the law” is of English origin and the second expression “Equal protection of laws” has been taken from the American Constitution. Both these expressions aim to establishing what is called equality of status as enshrined in the preamble of the Constitution.

Articles 14, 19 and 21 of the Constitution of India are described as “Golden Triangle”. Article 14 is based upon the principles of Natural Justice and also Dicey’s Rule of Law. The protection of Article 14 extends to both citizens and non-citizens and to natural persons as well as legal persons. In Indira Nehru Gandhi vs. Raj

Narain case Supreme Court held that the Rule of Law embodied in Article 14 is the basic feature of the Indian Constitution and hence it can not be destroyed even by any Constitutional amendment. This Article prohibits unreasonable discrimination between persons. The succeeding Articles 15, 16, 17 and 18 lay down specific application of the general rules laid down in Article 14.

Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth or any of them. This Article further empowers the state to make any special provisions for women, children and for the advancement of any socially and educationally Backward Classes of citizens or for Scheduled Castes and Scheduled Tribes. Article 16 guarantees to the citizens equality of opportunity in public employment. Article 17 abolishes Untouchability and Article 18 abolishes all titles other than military and academic distinctions.

4.2.2 (b) Right to Freedom (Articles 19 to 22)

Article 19 guarantees 1. Freedom of speech and expression. 2. Freedom to assemble peacefully and without arms. 3. Freedom to form associations or unions. 4. Freedom to move freely throughout the territory of India. 5. Freedom to practice any profession or to carry on any occupation, trade or business. These six fundamental freedoms are however not absolute, but are subject to restrictions under clauses (2) to (6) of Article 19.

Article 20 prohibits the legislature to make retrospective criminal laws. This Article further contemplates that no person shall be prosecuted and punished for the same offence more than once. Article 20 (3) provides that no person accused of any offence shall be compelled to be a witness against himself.

Article 21 guarantees protection of life and personal liberty. This Article is contemplated among all Human Rights, the most cherished right is the Right to Life.

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12 AIR 1975 SC 2299.
13 Article 20 (1) of the Constitution of India.
14 Article 20 (2) of the Constitution of India.
and Personal Liberty protected by Article 21 of the Constitution. Initially the Right to Life under Article 21 of the Constitution of India was restricted to the protection against any arbitrary arrest or to protection of life and liberty. But, now due to the new dimensions given by the judicial activism the right to Life includes a variety of rights which are very essential to live with human dignity. Article 21 (A) provides that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law determine.

Article 22 of Constitution of India provides certain safeguards against arbitrary arrest and detention. This Article deals with two separate matters (1) Persons arrested under ordinary laws of crime and (2) Persons detained under the law of preventive detention. According to Article 22 (1) and (2) a person who is arrested and detained by police have the following rights:

a. Right to be informed of the grounds of his arrest and detention as possible.
b. Right to consult and to be represented by a lawyer of his own choice
c. Right to be produced before a Magistrate within 24 hours.
d. Right to be detained beyond 24 hours only under an order of a Magistrate.

The protection under Article 22 (1) and (2) is available to both citizens and non citizens and not available to alien enemy and a person detained under a preventive detention law. According to 22 (5) and (7) a person who is detained under preventive detention law is entitled to the following rights:

a. Authority making the order of preventive detention must communicate to the detenu the grounds of detention as soon as possible.
b. The detaining authority must afford to the detenu the earliest opportunity of making a representation against the order of detention.

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15 Articles 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by the law.
16 Inserted by the Constitution (eighty sixth amendment) Act 2002, Sec. 2.
17 Article 22 (1) and (2) of the Constitution of India
18 Articles 22 (3), (4), (5) and (6) of the Constitution of India.
19 Article 22 (3) of the Constitution of India
4.2.2 (c) Right against Exploitation (Articles 23 and 24)

Article 23 of the Constitution of India prohibits trafficking in human beings and begar and other similar forms of forced labour and any contravention of this provision shall be an offence in accordance with the law\textsuperscript{20}. Article 24 of the Constitution of India, prohibits the employment of the Children below 14 years of age in factories and hazardous employment. This provision is certainly in the interests of public health and safety of life of children\textsuperscript{21}.

4.2.2 (d) Right to freedom of Religion (Articles 25 to 28)

The concept of secularism is implicit in the preamble of the Constitution of India. Articles 25 to 28 emphasis the concept of secularism. In a land mark judgement in S.R. Bommai vs. Union of India\textsuperscript{22} the Supreme Court held that secularism is a basic feature of the Constitution and it can not be amended even by Constitutional amendment. In Aruna Roy vs. Union of India\textsuperscript{23} the Supreme Court has said that secularism has a positive meaning that is developing, understanding and respect towards different religions.

Article 25 of the Constitution guarantees to every person freedom of Conscience and Right to Profess, Practice and Propagate Religion. However this Right to Religious Freedom is subject to public order, morality and health. Article 26 of the Constitution provides that subject to public order, morality and health every religious denomination or any section thereof shall have the right a) To establish and maintain institutions for religions and charitable purposes b) To manage its own affairs in matters of religion c) To own and acquire movable and immovable property d) To administer such property in accordance with law.

\textsuperscript{21} For the enforcement of this right the Government has enacted The Child Labour (Prohibition and Regulation) Act 1986.
\textsuperscript{22} AIR 1994 SC 1918.
\textsuperscript{23} AIR 2003 SC 3176.
Article 27 provides no person shall be compelled to pay any tax for the promotion or maintenance of any particular religion or religious denomination. Article 28 contemplates that no religious instruction shall be imparted in any educational institution wholly maintained out of state funds. But this restriction will not apply to any educational institution which is administered by state but has been established under endowment or trust which requires religious instruction to be imparted. In case of other institutions recognised and aided by the State religious instructions may be imparted only with the consent of the individuals.

**4.2.2 (e) Cultural and Educational Rights (Articles 29 and 30)**

Article 29 guarantees that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same\(^\text{24}\). This Article further says that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them\(^\text{25}\).

Article 30 contemplates that all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice\(^\text{26}\). Article 30 (1A)\(^\text{27}\) provides that if the property of a minority educational institution is acquired, the compensation paid would be proper and adequate. This Article further contemplates that the State shall not, in granting aid to the educational institutions, discriminate against any educational institution on the ground that it is under management of a minority, whether based on religion or language.

**4.2.2 (f) Right to Constitutional Remedies (Articles 32 to 35)**

Mere declarations of the Fundamental Rights are meaningless unless there is effective machinery for the enforcement of these rights. The framers of the Indian Constitution have provided for an effective remedy for the enforcement of the rights

\(^{24}\) Article 29 (1) of the Constitution of India.

\(^{25}\) Article 29 (2) of the Constitution of India

\(^{26}\) Article 30 (1) of the Constitution of India.

\(^{27}\) Which was added by the forty fourth Constitution Amendment Act 1978.
under Article 32 of the Constitution. Article 32 is itself a Fundamental Right. It is the very soul of the Constitution without which the Constitution would be a nullity. Article 32(1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights conferred by part-III of the Constitution. Article 32 (2) confers power on the Supreme Court to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari for the enforcement of any of the rights conferred by part-III of the Constitution. As per Article 32 (3) Parliament may by law empower any other court to exercise with in the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). Article 32 (4) further guarantees that the right guaranteed by Article 32 shall not be suspended except as otherwise provided for by the Constitution. The above stated powers are also granted to High Courts under Article 226 of the Constitution of India. The difference between Article 32 and Article 226 is, Article 32 itself is a Fundamental Right while Article 226 is not. The power of High Courts, under Article 226 to issue writs can not be in derogation of Supreme Courts. In other words an order under Article 32 will supersede the order of High Court previously passed.

Justice Gajendragadkar assessed Article 32 as “To move this court can be appropriately described as the corner-stone of the democratic edifice raised by the Constitution”. Article 32 is considered as the expeditious and inexpensive remedy for the protection of Fundamental Rights from legislative and executive interference.

The following table will show the comparative position of Civil and Political Rights with reference to Constitutional Law of India, Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

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Table – 1
Comparative Position of Civil and Political Rights

<table>
<thead>
<tr>
<th>The Constitution of India</th>
<th>Universal Declaration of Human Rights</th>
<th>Covenant on Civil and Political Rights</th>
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<tr>
<td>Article 14</td>
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<td>Article 4</td>
<td>Article (8)</td>
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<td>Article 32</td>
<td>Article 10</td>
<td>Article 14(1)</td>
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4.2.3 Directive Principle of State Policy (Articles 36-51 of the Constitution)

The Directive Principles of State Policy have been laid down in part IV of the Constitution from Articles 36-51 of the Constitution. They specify the aims and objectives to be taken up by the State in the Governance of the country.⁴⁹ They are guidelines for the state in the realization of civil and political rights and providing for social, economic and political justice to the people. They state the idea of economic democracy. These provisions have been laid down in the Constitution to provide

⁴⁹ Article 37 of the Constitution of India.
Economic, Social and Political Human Rights to the people. The object of Directive Principles of State Policy is to embody the concept of a welfare state\textsuperscript{30}.

The provisions of part-IV of the Constitution have two basic characteristics:
(A) They are not enforceable in any court. If the state is not implementing any directive, no action can be instituted for it\textsuperscript{31}. (B) They are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws\textsuperscript{32}.

Classification of the Directives:

The Directives may be classified into the following groups.

(A) Social and Economic Charter [Articles 38 and 39 of the Constitution]

(B) Social Security Charter [Articles 39 A, 41, 42, 43, 43A, 45, 46 & 47 of the Constitution]

(C) Community Welfare Charter [Articles 40, 44, 48, 48A, 49, 50 & 51 of the Constitution]

4.2.3(a) Social and Economic Charter (Articles 38 and 39 of the Constitution)

The essence of the Directive Principles of State Policy lies in Article 38(1) which provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice – social, economic and political shall include all the institutions of national life. This Directive only reaffirms what has been already said in the preamble according to which the function of the Republic is to secure to all its citizens social, economic, and political justice. Further, Article 38(2)\textsuperscript{33} directs the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people.

\textsuperscript{30} Keshavananda Bharthi vs. State of Kerala (1973) 4SCC 225
\textsuperscript{31} Article 37 of the Constitution of India.
\textsuperscript{32} V.N. Shukla’s Constitution of India (1982) at p. 212.
\textsuperscript{33} It was inserted by the Constitution (Forty Fourth Amendment) Act, 1978.
residing in different areas or engaged in different vocations. This provision aims at equality in all spheres of life.

It is pertinent to mention that the Article 39 is said to be the character of Economic democracy which specifically requires the State to direct its policy towards securing the following principles.

(a) Equal rights of men and women to adequate means livelihood.
(b) Distribution of ownership and control of the material resources of the community to the common good.
(c) To ensure that the economic system should not result in concentration of wealth and means of production to the common detriment.
(d) Equal pay for equal work for both men and women\(^3^4\).
(e) To protect health and strength of workers and children in their tender age and to ensure that they are not forced by economic necessity to enter vocations unsuited to their age or strength.
(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.

Articles 38 and 39 of the Constitution of India embody the jurisprudential doctrine of “distributive justice”. The Constitution permits and even direct the state to administer what may be termed as distributive justice. The concept of distributive Justice in the sphere of law-making connote, interalia the removal of economic inequalities rectifying the injustice resulting from dealings and transactions between unequals in society\(^3^5\). Articles 38 and 39 are based on the concept of socio-economic justice which is enshrined in the preamble of the Constitution aims at protecting the socio-economic Human Rights.

\(^3^4\) Pursuant to Article 39(d), Parliament has enacted the Equal Remuneration Act, 1976
\(^3^5\) Central Inland Water Transport Corporation vs. Brohonath Ganguly (1986) 3 SCC 156
4.2.3(b) Social Security Charter (Articles 39A, 41, 42, 43, 43A, 45, 46 & 47 of the Constitution)

Article 39A\(^{36}\) mandates the state shall provide Equal Justice and Free Legal Aid by suitable legislation or schemes or in any other way\(^{37}\). Legal Aid is needed for the purpose of reaching social justice to the people\(^{38}\). Article 41 directs the state to ensure the people within the limits of its economic capacity and development (a) Employment, (b) Education (c) Public Assistance, in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

As per Article 42 State shall make provision for securing just and humane conditions of work and for maternity relief. Article 43 provides that the state shall provide living wage, conditions of work ensuring the decent standard of life and full enjoyment of leisure and social and cultural opportunities. The state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43A\(^{39}\) requires the state shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. Article 45\(^{40}\) provides the State shall provide early childhood care and education for all children until they completed the age of 6 years.

Article 46 enjoins the state to promote with special care the educational and economic interests of the weaker sections of the people and in particular scheduled castes and scheduled tribes and shall protect them from social injustice and all forms of exploitation. Article 47 contemplates that the state shall raise the level of nutrition and standard of living and to improve public health. The state shall prohibit the consumption of intoxicated drugs and drinks which are injurious to health except for medical purposes.

\(^{36}\) It was inserted by the Constitution (Forty Second Amendment) Act, 1978, 

\(^{37}\) For the implementation of this provision parliament had enacted the Legal Services Authority Act, 1987, to provide Legal Aid to the poor and needy persons.

\(^{38}\) Centre of Legal Research vs. State of Kerala AIR, 1986 SC 2195

\(^{39}\) It was inserted by Constitution (Forty-Second Amendment) Act, 1976.

\(^{40}\) It was substituted by the Constitution (Eighty Sixth Amendment) Act, 2002
4.2.3(c) Community Welfare Charter (Articles 40, 44, 48, 48A, 49, 50 & 51 of the Constitution)

Article 40 directs the state shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Article 44 requires the state to secure for the citizens a uniform civil code throughout the Territory of India. Article 48 provides the state shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milk and draught cattle.

Article 48A requires the state to take steps to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 49 contemplates it shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Article 50 mandates that the state shall take steps to separate the judiciary from the executive in the public services of the state. To promote the Rule of Law this is very essential. Article 51 provides that the State shall endeavour to

(a) Promote International Peace and Security.
(b) Maintain just and honourable relations between nations
(c) Foster respect for International law and treaty obligations in the dealings of organized peoples with one another and
(d) Encourage settlement of international disputes by arbitration.

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Pursuant to Article 40 parliament enacted the Constitution 73rd and 74th amendment Acts, 1992. The Constitution 73rd and 74th amendments Acts, 1992 provide Constitutional sanction to democracy at the grass root level by incorporating in the Constitution new parts – part IX and part IXA relating to panchayats and urban local bodies.

It was added by the Constitution (Forty-Second Amendment) Act, 1976

Pursuant to Article 49, Parliament has enacted the Ancient and Historical Monuments and Archeological Sites and Remains (Declaration of National Importance) Act, 1951
The following table shows the comparative position of Economic, Social and Cultural Rights with reference to the Constitution of India, Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights:

**Table 2**
Comparative Position of Economic, Social and Cultural Rights

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<tr>
<th>The Constitution of India</th>
<th>Universal Declaration of Human Rights</th>
<th>Covenant on Economic, Social and Cultural Rights</th>
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<tr>
<td>Article 39(d)</td>
<td>Article 23(2) and (3)</td>
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<td>Article 17(1) and (2)</td>
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**4.2.3(d) Relationship between Fundamental Rights and Directive Principles of State Policy**

The Fundamental Rights and Directive Principles of State Policy together constituted the soul of the Constitution. Fundamental Rights are justifiable. While Directive Principles of State Policy are non-justifiable. According to Article 37 of the Constitution Directive Principles of the State Policy are not enforceable by the court on the other hand as per Article 32 Fundamental Rights are enforceable by the courts. Directive Principles of the State Policy are based on the concept of socio-economic justice.
Many Supreme Court verdicts like Kesavananda Bharati vs. State of Kerala\textsuperscript{44} and Unni Krishnan vs. State of Kerala\textsuperscript{45}. It is a decided fact now that both Fundamental Rights and Directive Principles of State Policy are supplementary and complementary to each other and there is no antithesis between two. Fundamental Rights are a means to achieve the goals indicated in Directive principles of State Policy. The need is that both Fundamental Rights and Directive Principles of State Policy should be harmoniously interpreted. It is also held that the Fundamental Rights must be construed in the light of directive principles of state policy.

In number decisions the Supreme Court has given many Directive Principles of State Policy the status of Fundamental Rights. In Minerva Mills Ltd vs. Union of India\textsuperscript{46} the Constitution Bench held that the Fundamental Rights and Directive Principles of State Policy are two wheels of the chariot in establishing the egalitarian social order. In fact these do constitute the conscience and true core of the Indian Constitution.

4.2.4 Fundamental Duties (Article 51-A)

Part IV-A which consists of only one Article 51-A was added to the Constitution by the 42\textsuperscript{nd} Amendment, 1976. This Article for the first time specifies a code of Fundamental Duties for citizens. Article 51-A says that it shall be the duty of every citizen of India –

(a) To abide by Constitution and respect its ideals and institutions, the National flag and National Anthem;
(b) To cherish and follow the noble ideals which inspired our national struggle for freedom;
(c) To uphold and protect the sovereignty, unity and integrity of India;
(d) To defend the country and render national service when called upon to do so;

\textsuperscript{44} AIR 1978 SC 1461
\textsuperscript{45} (1993) 1 SCC 645
\textsuperscript{46} AIR 1980 SC 1789
(e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of the women;
(f) To value and preserve the rich heritage of our composite culture;
(g) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;
(h) To develop the scientific temper, humanism, and the spirit of inquiry and reform;
(i) To safeguard public property and to abjure violence;
(j) To strive towards excellence in all spheres of the individual and collective activity so that the nation constantly rises to a higher level of endeavour and achievement;
(k) To provide opportunities for education of the children between the age of 6 and 14 years\textsuperscript{47}.

The Fundamental Duties are intended to serve as a constant reminder to every citizen that while the Constitution specifically conferred on them certain Fundamental Rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour. On behalf of the Government it is contended that what the framers of the constitution failed to do is being done now. The omission is being rectified by providing a chapter on citizens’ duties.

The provisions of the Fundamental Duties represent the basic principles of ancient Indian Human Rights jurisprudence. The ancient Human Rights jurisprudence was duty oriented and not right oriented. The basic principles of Indian culture and civilization have been represented in part-IV-A of the Constitution. Fundamental Duties though not enforceable by a writ of the court, yet provide a valuable guide and aid to the interpretation of the Constitutional and legal issues\textsuperscript{48}.

It is submitted that in developing a suitable Human Rights and fundamental model for modern India, the Constitution makers did not ignore the basic principles of ancient Human Rights jurisprudence as is very often contended by certain jurists, but

\textsuperscript{47} This fundamental duty inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002
\textsuperscript{48} AIIMS Students Union vs. AIIMS AIR 2001 SC 3262.
rather carried those principles and forward and presented a unique model in which Fundamental Rights, states duties and Fundamental Duties co-exist side by side in perfect harmony.

4.2.5 Other Rights not specifically Enumerated but Recognised

‘Other rights’ are those rights which have not been specifically enumerated but they have been recognized by the Supreme Court as part of the existing Fundamental Rights such as Article 21, 14 and 19. These rights are either subsumed under the existing Fundamental Rights or have been held to be part of or to emanate from the existing rights under the theory of emanation. For example, it has been held that right to life and personal liberty enshrined in Article 21 of the Constitution is of widest amplitude and several un-enumerated rights fall within Article 21. These rights include the following:

(i) Right to go abroad\(^{49}\);
(ii) Right to privacy\(^{50}\);
(iii) Right against solitary confinement\(^{51}\);
(iv) Right against bar fetters\(^{52}\);
(v) Right to legal aid\(^{53}\);
(vi) Right to speedy trial\(^{54}\);
(vii) Right against handcuffing\(^{55}\);
(viii) Right against delayed execution\(^{56}\);
(ix) Right against custodial violence\(^{57}\);
(x) Right against public hanging\(^{58}\);
(xi) Right to health care or doctor’s assistance\(^{59}\);
(xii) Right to shelter\(^{60}\);

\(^{49}\) Satwant vs. Asst. Passport Officer, New Delhi AIR 1967 SC 1836
\(^{50}\) Govind vs. State of MP AIR 1975 SC 1379
\(^{51}\) Sunil Batra vs. Delhi Administration AIR 1978 SC 1575
\(^{52}\) Charles Sobharaj vs. Supt. Central Jail AIR 1978 SC 1514
\(^{53}\) M.H. Hoskot vs. State of Maharatra AIR 1978 SC 1548
\(^{54}\) Hussainara Khatoon (No.1) vs Home Secretary, State Bihar AIR 1979 SC 1360
\(^{55}\) Prem Shankar vs. Delhi Administration AIR 1980 SC 1535
\(^{56}\) T.V. Vatheeswaran vs. State of Tamilnadu AIR 1981 SC 643
\(^{57}\) Sheela Barse vs. State of Maharatra AIR 1983 SC 378
\(^{58}\) Attorney General of India vs. Lachama Devi AIR 1986 SC 467
\(^{59}\) State of Punjab vs. Mohinder Sing Chawla AIR 1997 SC 1225
(xiii) Right to know\(^61\);
(xiv) Right to compensation for violation of Human Rights\(^62\);
(xv) Right to release and rehabilitation of bonded labour\(^63\);
(xvi) Right against cruel and unusual punishment\(^64\); and
(xvii) Right of Inmates of Protective Homes\(^65\).

Besides the declaration of the above rights, within the expanding ambit of Article 21. Article 21 has been recognized as of widest amplitude and has been applied in various fields such as drugs\(^66\), hazardous chemicals\(^67\), insane persons\(^68\), passport\(^69\), atomic energy radiation\(^70\), and forests\(^71\).

4.2.6. Un-enumerated (and not yet recognized) Human Rights

This category consists of those Human Rights which are enumerated in the International Covenant on Civil and Political Rights and other International instruments but are neither enumerated in Indian Constitution as Fundamental Rights nor have yet been recognized by the Supreme Court as part of existing Fundamental Rights or emanating from the existing Fundamental Rights. However, it may be noted that it has been consistently recognized by the Supreme Court that the help of International Covenants on Human Rights, and for that matter all other International conventions on Human Rights which have been signed and ratified by India, can be taken in interpreting Constitutional provisions relating to Human Rights. If there is a conflict between the provisions of an International convention and the provision of Indian Constitution or Indian law obviously the provision of Indian Constitution or Indian law shall prevail. But if there is no conflict between the two and the relevant provision or provisions relating to Fundamental Rights are of widest amplitude and

\(^{60}\) Chameli Singh vs. Uttar Pradesh (1996) 2 SCC 549
\(^{62}\) Rudalshah vs. State of Bihar AIR 1983 SC 1107
\(^{63}\) Neeraja Chaudary vs. State of MP (1984) 3 SCC 243, 255
\(^{64}\) Prem Shankar Shukla vs. Delhi Administration (1980) 3SCC 526
\(^{65}\) Upendra Baxi (1) vs. State of Uttar Pradesh (1983) 2SCC 308
\(^{66}\) Vincent Parikuralangara vs. Union of India AIR 1987 SC 990
\(^{67}\) MC Mehta vs. Union of India AIR 1978 SC 597
\(^{68}\) Mrs. Veena Sethi vs. State of Bihar (1982) SCC 583
\(^{69}\) Maneka Gandhi vs. Union of India AIR 1978 SC 597
\(^{70}\) M.K. Sharma vs. Bharat Electricals Ltd., AIR 1987 SC 1792
\(^{71}\) Banwari Seva Ashram vs. State of Uttar Pradesh AIR 1987 SC 274
they encompass the provisions of the international convention relating to Human Rights, their help can be taken for interpreting Constitutional provisions or they can be read into Constitutional provisions. This has been held by the Supreme Court in several cases such as Jolly George Varghese vs. Bank of Cochin\textsuperscript{72}, Vishaka vs. State of Rajasthan\textsuperscript{73} and Apparel Export Promotion Council vs. A.K. Chopra\textsuperscript{74}.

4.3. The Protection of Human Rights under the Protection of Human Rights Act 1993

Apart from the Constitution, for the protection and observance of Human Rights, enactment of the protection of Human Rights Act, 1993 (herein after referred to as PHRA 1993), is an important milestone and should be welcome. The PHRA was enacted by the Govt. of India for a speedy and fair redressal to the victims of the violation of Human Rights and to discharge its Constitutional and international obligations\textsuperscript{75}. This Act was enacted in the context of International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966.

PHRA 1993\textsuperscript{76} extends to the whole of India provided that it shall apply to the state of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in list I or list III in the seventh schedule in the Constitution as applicable to that state\textsuperscript{77}.

\textsuperscript{72} AIR 1980 SC 4709: (1980) 2 SCC 360.
\textsuperscript{73} AIR 1997 SC 625.
\textsuperscript{74} AIR 1999 SC 625.
\textsuperscript{75} Act No. 10 of 1994 – Received the assent of the President on January 8, 1994 and published in the official Gazette of India, extra part II, Section I, date 10\textsuperscript{th} January 1994.
\textsuperscript{76} PHRA 1993 consists of 43 sections divided into eight chapters. Chapter-I containing sections 1 and 2 deals with Preliminary concepts. Chapter-II containing sections 3 to 11 dealing with the National Human Rights Commission. Chapter-III containing sections 12 to 16 dealing with functions and powers of the commission. Chapter-IV containing sections 17 to 20 deals with procedure. Chapter-V containing sections 21 to 29 deals with State Human Rights Commission. Chapter-VI containing sections 30 and 31 deals with Human Rights Courts. Chapter-VII containing sections from 32 to 35 deals with Finance, Account and Audit. Chapter-VIII containing sections 36 to 43 deals with miscellaneous matters.
\textsuperscript{77} Section 1 (2) of the PHRA 1993
PHRA 1993 sets out the legal framework of 1. The National Human Rights Commission\textsuperscript{78}. 2. The State Human Rights Commission\textsuperscript{79} and 3. Human Rights Courts\textsuperscript{80}. The PHRA 1993 also states that the Constitution of these institutions is for the better protection of Human Rights and for the matters incidental thereto\textsuperscript{81}. Subsequently PHRA 1993 has been amended in the year 2006 for the effective enforcement of Human Rights\textsuperscript{82}.

The term Human Rights is defined in section 2(d) of the PHRA 1993 which means “the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India\textsuperscript{83}. This definition has been intentionally made expansive enough to accommodate within its ambit, all Human Rights known, recognized and protected, all over the civilized world. The role of judiciary has been remarkable to interpret the various enactments and the provisions giving a brighter spectrum and a new dimension to the various provisions of the Act. Recent landmark verdicts of the Hon’ble Supreme Court, High Courts and various Commissions and Tribunals have raised the scope of various provisions of the Act.

4.4 The Protection and Promotion of Human Rights under Other Legislations

The Parliament has enacted various legislations which seek to protect and promote the rights of the vulnerable sections of the society like disabled\textsuperscript{84}, The Scheduled Castes and Schedule Tribes, Women and Children\textsuperscript{85}. In addition, a number of legislations have been enacted which seek to create an institutional framework for the protection of the rights of minorities and backward classes. The following are the

\textsuperscript{78} Chapters II, III and IV sections 3 to 20 of the PHRA 1993.
\textsuperscript{79} Chapter V sections 21 to 29 of the PHRA 1993.
\textsuperscript{80} Chapter VI section 30 and 31 of the PHRA 1993.
\textsuperscript{81} PHRA 1993, preamble
\textsuperscript{82} Act No. 43 of 2006 received the assent of the President on September 13, 2006 and published in the Gazette of India, Extra-Part-II, Section 1 dated 14\textsuperscript{th} September, 2006 – p.p 1 to 7, S.I. No. 50
\textsuperscript{83} Section 2 (f) of PHRA 1993 contemplates International Covenants means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations 16\textsuperscript{th} December, 1966 and such other Covenant or convention adopted by the General Assembly of the United Nations as the Central Government may by notification specify.
\textsuperscript{84} The persons with disabilities (Equal opportunities, Protection of Rights and Full participation) Act 1995.
various legislations directly or indirectly rendering a signal service for the promotion and protection of Human Rights.

1. The Child Labour (Prohibition and Regulation) Act, 1986:
   This legislation has been enacted with a view to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. It prohibited the employment of children as domestic servants. Employing children in domestic work will be liable to fine up to Rs. 20000/- or imprisonment up to one year.

2. The Contract Labour (Regulation and Abolition) Act, 1970:
   It was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. This Act provides for abolition of contract labour where ever possible and practicable and regulation of their employment where it can not be abolished altogether.

3. The Equal Remuneration Act, 1976:
   It is the principal legislation providing for equal pay to men and women for equal work.

4. The Employees State Insurance Act, 1948:
   This Act aims at bringing about social and economic justice to the poor labour class of the land. It promotes labour welfare. The main objective of the E.S.I Act, 1948 is to provide to the workers medical relief, sickness cash benefits, maternity benefits to women workers, pensions to the dependants of deceased workers and compensation for fatal and other employment injuries including occupational diseases in an integrated form through a contributory fund.

5. The Maternity Benefit Act, 1961:
   This statute was enacted to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits.

6. The Minimum Wages Act, 1948:
   It is an Act providing for fixing minimum rates of wages in certain employments.

7. The Beedi and cigar workers (Conditions of Employment) Act, 1966:
The Act has been enacted to provide for the welfare of workers in Beedi and Cigar establishments and to regulate the conditions of their work and for matters connected therewith.

8. **The Workmen Compensation Act, 1923:**
This legislation providing for the payment of compensation by certain classes of employers to their workmen, who sustain personal injury by accidents arising out and in the course of their employment.

9. **The Employees Provident Fund and Miscellaneous Provision Act, 1952**
It was enacted to providing for the institution of provident funds, family pension funds and deposit linked insurance fund for the employees in the factories and other establishments.

10. **The Apprentices Act, 1961**
This is the principal legislation providing for regulation and control of training of apprentices and for matters connected therewith.

11. **The Payment of Wages Act, 1936**
It is an Act to regulate the payment of wages of certain classes of employed persons.

12. **The Industrial Employment (Standing Orders) Act, 1946.**
This is an Act to require employers in industrial establishments formally to define conditions of employment under them.

13. **The Trade Unions Act, 1926**
This legislation providing for the registration of Trade unions and in certain respects to define the law relating to Registered Trade unions.

14. **The Factories Act, 1948**
It is enacted for occupational safety, health and welfare of workers at work places.

15. **The Bonded Labour System (Abolition) Act, 1976**
It is the principal legislation which prohibits the practice of bonded labour in the light of spirit contained in Article 23 of the Indian Constitution. The main objective of this Act is to prevent the economic and political exploitation of the weaker sections of the people.

In order to eliminate the dehumanising practice of employment of manual scavengers and for protecting and improving the human environment to make it obligatory to convert dry latrines into water-seal latrines or to construct water–seal latrines in new constructions, the legislature enacted the employment of manual scavengers and construction of dry latrines (prohibition) Act, 1993. The aim of the Act was to abolish the practice once for all, by declaring the employment of manual scavengers to remove human excreta an offence and to prohibit the construction of dry latrines.

17. The Motor Transport Workers Act, 1961
This legislation provides for the welfare of motor transport workers and to regulate the conditions of their work.

18. The Mines Act, 1952
It is an Act to amend and consolidate the law relating to the regulation of labour and safety in mines.

19. The Merchant Shipping Act, 1958
This legislation ensures the efficient maintenance of All Indian mercantile marine in a manner suited to the national interests and for that purpose to establish a National Shipping Board and a shipping development, to provide for the registration of Indian ships and generally to amend and consolidate the law relating to merchant shipping.

20. The Children (Pledging Of Labour) Act, 1933:
This is the cardinal piece of legislation prohibiting the making of agreements to pledge the labour of children and the employment of children whose labour has been pledged

Aims at to protect the dignity of women and prevent violence against them as well as their exploitation.

22. The protection of women from Domestic violence Act, 2005
This Legislation provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring with in the family and for matters connected therewith or incidental therewith.
23. The Mental Health Act, 1987:
   An Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental therewith.

24. The Environment (Protection) Act, 1986:
   This is the principal green legislation providing for the protection and improvement of environment and for matters connected therewith.

25. The Juvenile Justice (Care and Protection Of Children) Act, 2000:
   It is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection by providing for proper care, protection and treatment by catering to their development needs and by adopting a child friendly approach in the adjudication and disposition of matters in the best interests of the children and for their ultimate rehabilitation through various institutions established under this enactment.

26. The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995:
   This legislation aims at preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and man power development, creation of barrier-free environment, rehabilitation of such persons, employment allowance, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability.

27. The Commission for Protection of Child Rights Act, 2005:
   It is an Act to provide for the Constitution a National Commission and State Commissions for protection of child rights and children courts for providing speedy trail of offences against children or of violations of child rights and for matters connected with or incidental thereto.

28. The Dowry Prohibition Act, 1961
   This legislation prohibits the evil practice of giving and taking of dowry.

29. The Immoral Traffic (Prevention) Act, 1956
   This Act aims at prevention of immoral traffic

30. The Child Marriage Restraint Act, 1929
   An Act to restrain the solemnization of child marriage

This legislation provides for the payment of compensation and rehabilitation grant to displaced persons and for matters connected therewith.

32. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

An Act to provide for the regulation of the use of pre-natal diagnostic technique for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female feticide and for matters connected there with or incidental thereto.

33. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

In order to redeem the Constitutional pledge incorporated in Article 46 of the Constitution of India an Act known as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989 was passed. The Act is a special legislation in the field of criminal law and procedure which aims at prevention of atrocities against the members of scheduled castes and scheduled tribes.

34. The Protection of Civil Rights Act, 1955

It is an Act which prescribes punishment for the preaching and practices of untouchability and for the enforcement of any disability arising there from and for matters connected therewith.

35. The National Commission for Minorities Act, 1922:

An Act to constitute a National Commission for minorities and to provide for matters connected therewith or incidental thereto.


This legislation is intended to constitute a National Commission for women and to provide for matters connected therewith or incidental thereto.

37. The National Commission For Safaikaramcharis Act, 1993

This legislation has been enacted to constitute a National Commission for Safai Karamchanris and to provide for matters connected therewith or incidental thereto.

38. The National Rural Employment Guarantee Act, 2004
This is enacted to safeguard the Right to work by providing guaranteed employment at the statutory minimum wage at least one adult per household who volunteers to do causal manual labour in rural areas. The effective provision for safeguarding the Right to work is a duty of the State. Safeguarding the Right to work is also essential for the realization of other Constitutional rights such as the Right to life, the Right to food and the Right to education. This legislation was enacted in the light of Constitutional spirit under Article 41 of the Constitution of India.


This legislation is enacted to provide for free and compulsory education to all children of the age of 6 to 14 years.

40. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The object of the legislation is to provide for more effective provisions for the maintenance and welfare of parents and Senior Citizens. The Act imposes legal obligations upon children are a relative if he is to inherit the property of the Senior Citizen.

4.5. Summary

Thus the philosophy of Human Rights and Fundamental Freedoms were incorporated in the Constitution of India in the Preamble and in the chapters of Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. The Hon’ble Supreme Court on its part has widened the ambit and the scope of Human Rights and Fundamental Freedoms. It has also included in its ambit of Human Rights, the right to speedy trail, the right to legal aid, the right to compensation, the right to education, the right to environment, the right to shelter, the right to health and many more.

These Human Rights provisions are a complex amalgam of civil and political rights, economic, social and cultural rights, religious rights, minority rights, educational rights etc. The classification of civil and political rights and economic social and cultural rights in the name of the Fundamental Rights and Directive Principles of State Policy under the Constitution is probably the first attempt in the world history. The makers of the International Covenant on Civil and Political Rights
and International Covenant on Economic, Social and Cultural Rights, 1966 and classification of Human Rights Jurisprudence into two categories connote that they were influenced by the provisions of the Constitution of India. Moreover Indian Constitution was amended from time to time for the better promotion and protection of Human Rights and Fundamental Freedoms.

Pursuant to the direction enshrined in Article 51 of the Constitution and International commitments, the parliament has passed the protection of Human Rights Act, 1993. It is the principal legislation for the promotion and protection of Human Rights in India. The Act provides for the setting of a National Human Rights Commission, State Human Rights Commission and Human Rights Courts, for the better protection of Human Rights and for matters incidental thereto. This Act was amended in the year 2006 for effective enforcement of Human Rights in the context of the present scenario.

The parliament has enacted various legislations which seek to protect and promote the Human Rights of vulnerable sections of the society like Disabled, Women, Children, Minorities, Scheduled Castes, Scheduled Tribes and Backward Classes and many more.