
TRANSFORMATIVE CONSTITUTIONALISM IN INDIA: PROMISES & PRACTICES OF THE HUMAN RIGHTS

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ABSTRACT

The Constitution of India represents a broad vision of human rights, which relies on such international human rights documents like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. The scheme of constitution has been greatly influenced by these world standards especially the clauses of Fundamental Rights in Part III and Directive Provision of State Policy in Part IV. Even though Fundamental Rights guarantee enforceable civil and political freedoms, the Directive Principles indicate that the State has the desire to promote social and economic justice by adopting progressive policy actions. This paper will discuss how international human rights standards have been incorporated into the constitution and discuss how the Indian judiciary has helped to broaden and enlarge their application. Particular attention is paid to the interpretation of Article 21 in the judicial sphere, as it is on the basis of this interpretation that the Supreme Court has changed the right to life and personal liberty into the wide-ranging guarantee of human dignity. The Court has through landmark judgments established a number of unenumerated rights such as the right to livelihood, to health, to shelter, to environment and privacy. The history of Public Interest Litigation has also helped courts to deal with a systematic form of violation and defend the interests of disadvantaged groups in the society. Simultaneously, the article shows that the implementation still faces the challenges, especially when it comes to the socio-economic rights that are not justiciable to a great extent. It claims that although judicial creativity has reduced the distance existing between the constitutional pledges and international undertakings, legislative intervention and successful rulemaking are basic to complete fulfillment of the human rights. This paper is conclusive in that the creation of an amicable relationship between constitutional law, international human rights norms and democratic institutions is relevance in ensuring maximum and inclusive human rights in India.

Keywords: Human Rights, Constitutional Law, Human Dignity and Fundamental Rights, Socio-Economic Justice, Transformative Constitutionalism

INTRODUCTION

Human rights are basic entitlements that any human being is entitled to by virtue of being a member of human family. These are rights of all people irrespective of their nationality, religion, language, gender, colour or any other attribute. The act of 1993, which describes the term, attributes the term to the fundamental rights of the Constitution: it states that human rights are the rights related to the life, liberty, equality and dignity of an individual which are guaranteed by the Constitution or by international treaties and which may be enforced by the Indian courts.

Safeguarding human rights will ensure that the interests of people are not only taken care of, but the nation as a whole will benefit. These fundamental freedoms are guaranteed to every citizen of India by the Constitution of India, which was a well-thought effort on the part of the framers. However, with the transformation of the society, the definition and scope of human rights are ever-growing. Parliament plays an important role in this process, issuing new legislation and modifying the current ones to respond to new needs and in order to save people in a better way.

STATEMENT OF PROBLEM

Although India has a robust constitutional promise towards human rights and has accepted some key international human rights instruments, there still seems to be an apparent disparity between the promise and the actual practice. The Constitution of India encompasses civil and political rights as Fundamental Rights enforceable and provided economic, social and cultural rights in the Directive Principles of State Policy. But even in reality, most of these rights are not equally guarded, not adequately enforced or made available to the majority of the population, especially the poor, marginalized and vulnerable group.

Although international documents like the UDHR, ICCPR and ICESCR have greatly impacted the constitutional system, there are still pertinent questions on their application at the domestic level. The international obligations are not necessarily converted into the enforceable rights under the Indian law, and the socio-economic rights, in turn, are frequently based on the policy decisions, but not on the legal ones. This leaves a lot of uncertainty over to what extent international human rights standards are truly effective in determining the way governance is conducted and whether it is at all effective in safeguarding the individual dignity in day to day life.

The courts have tried to fill this divide by broad interpretation of the constitutional requirements particularly the Article 21 and through innovative processes in the form of Public Interest Litigation. Even though these judicial actions have enhanced the protection of human rights, it has also resulted in disputes about judicial overreach, institutional balance, and judicial-led social reform boundaries.

It is on this ground that the main issue is how effectively the constitutional law, judicial interpretation, and international human rights commitments can interrelate to promote human dignity in India. It is urgently necessary to discuss the question as to whether the current constitutional mechanisms are adequate to guarantee any meaningful implementation of the human rights, or whether more fundamental legislative, administrative and institutional changes are necessary to realize the constitutional promises into practical lives.

RESEARCH OBJECT

- To explore the application of the principles of the UDHR, ICCPR and ICESCR in Parts III and IV of the Indian Constitution and to determine the discrepancies between the global standards and the national ones.
- To determine the contribution of the judiciary, particularly landmark Article 21 jurisprudence and Public Interest Litigation towards increasing and implementing human rights in India.
- In order to examine whether or not a practical application of Directive Principles (Part IV) is enforceable, the particular aspect of legal, administrative resources and limitations on socio-economic rights needs to be considered.
- To interpret how the ratification of the international covenants by India has impacted the domestic legislation and policies and when the treaty norms are integrated.
- In order to recommend practical legislative, policy and institutional change to bring the disparity between constitutional commitments and actual human-rights performance in relation to vulnerable populations.

HISTORICAL DEVELOPMENT

The concept of human rights in India is also historic and has not come into being in the contemporary world. Its initial roots may be traced back to the ancient philosophical and religious tradition. The Buddhist and Jainism teachings were based on compassion, non-

violence, equality, and respect of human life. Likewise, Hindu texts and Vedas, Bhagavad Gita, Arthashastra and Dharmashastras, did contain values regarding justice, duty, dignity and moral behavior that are akin to the current human rights standards. During the medieval era, some of the Muslim rulers were particularly Akbar and Jahangir whose policy of tolerance, fairness and concern of justice further enhanced the culture of rights and humane administration.¹

But at the beginning of the British colonial rule, the common rejection and violation of the fundamental rights became a bitter experience of the Indian population. The colonial government was characterized by economic exploitation, political suppression and social discrimination that formed a powerful resistance against the colonialism. This was critical in the development of the contemporary human rights awareness and formed the foundation of constitutional safeguarding of rights in the independent India.²

A major step toward formal recognition of human rights was taken on 24 January 1947, when the Constituent Assembly resolved to establish an Advisory Committee on Fundamental Rights, with Sardar Vallabhbhai Patel as its Chairman. Eminent constitutional thinkers and leaders, including Dr. B. R. Ambedkar, B. N. Rau, K. T. Shah, Harman Singh, K. M. Munshi, and members of the Congress Expert Committee, contributed to drafting a comprehensive list of rights. Although some amendments were suggested, there was broad consensus on the fundamental principles to be adopted. The framers ensured that the spirit of the Universal Declaration of Human Rights was substantially reflected in the Constitution of India, either through the chapter on Fundamental Rights or the Directive Principles of State Policy. Earlier efforts, such as the Motilal Nehru Committee Report of 1928, had already proposed nineteen fundamental rights, many of which later found place in the Constitution as Fundamental Rights and Fundamental Duties.³

INTERNATIONAL HUMAN RIGHTS AND FUNDAMENTAL RIGHTS (PART III OF THE CONSTITUTION OF INDIA)

India's commitment to international human rights principles is reflected in its early association with global human rights instruments. The country endorsed the Universal Declaration of Human Rights in January 1942, and its influence is clearly visible in Part III of

¹ Dr. Archana Adhik Pawar, "Human Rights & Constitutional laws in International Scenario" 14 *INTERNATIONAL JOURNAL FOR RESEARCH PUBLICATION & SEMINAR* (2023)

² *Ibid.*

³ Priya Kant, "Human Rights under the Indian Constitution: A Comprehensive Legal Analysis" *SSRN* (2025).

the Constitution of India, which is often described as the *Magna Carta* of Indian democracy. Part III guarantees Fundamental Rights, which are enforceable in courts and operate as binding limitations on the power of the State. These rights provide individuals with direct remedies in cases where the State infringes upon constitutionally protected freedoms.⁴

Article 13(2) of the Constitution places a clear restriction on legislative power by prohibiting the State from enacting laws that violate Fundamental Rights. Any law, or portion of a law, found to be inconsistent with these rights is rendered void to the extent of such inconsistency. Where the offending provision cannot be separated from the rest of the statute, the entire law may be struck down. This constitutional safeguard ensures that Fundamental Rights remain supreme and inviolable.⁵

The relationship between international human rights norms and domestic constitutional law has also been emphasized through judicial interpretation. In *Kesavananda Bharati v. State of Kerala*,⁶ the Supreme Court observed that although the Universal Declaration of Human Rights is not legally binding, it reflects India's understanding of human rights at the time of framing the Constitution. Similarly, in *Chairman, Railway Board v. Chandrima Das*,⁷ the Court acknowledged the Universal Declaration as a model code of conduct adopted by the United Nations General Assembly and held that its principles may be relied upon where necessary in the development of domestic legal principles.

A close comparison of the Universal Declaration of Human Rights and the Constitution of India reveals substantial harmony between the two. The principle of equality and equal protection before law under Article 7 of the Declaration corresponds⁸ with Article 14 of the Constitution.⁹ The right to an effective remedy for violation of rights under Article 8¹⁰ of the Declaration finds its counterpart in Article 32, which empowers individuals to directly approach the Supreme Court.¹¹ The right to life and personal liberty recognized under the

⁴ Prasoon Shekhar, "Human Rights and Constitution of India" *Ipleader*, available at: <https://blog.ipleaders.in/human-rights-constitution-india/> (last visited on January 15, 2026).

⁵ The Constitution of India, art 13(2).

⁶ AIR 1973 SC 1461

⁷ AIR 2000 SC 988

⁸ Universal Declaration of Human Rights, art. 7.

⁹ *Supra Note 5*, art 14.

¹⁰ *Supra Note 8*, art 8.

¹¹ *Supra Note 5*, art 32.

Declaration is reflected in Article 21 of the Constitution,¹² while protections relating to conviction for offences under Article 11(2) correspond with Article 20(1).¹³

Other important parallels include the right to property, which was earlier guaranteed as a Fundamental Right under Article 31; freedom of conscience and religion under Article 18 of the Declaration and Article 25(1) of the Constitution; freedom of speech under Article 19 of the Declaration and Article 19(1)(a) of the Constitution; and equality of opportunity in public employment under Article 21(2) of the Declaration and Article 16(1) of the Constitution. Protection of minority interests under Article 22 of the Declaration aligns with Article 29(1), while the right to education, reflected in the Declaration, now finds constitutional recognition under Article 21A.

Thus, Part III of the Constitution not only secures enforceable rights for individuals but also demonstrates India's effort to harmonize international human rights ideals with its constitutional framework.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) AND FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION OF INDIA

A substantial number of civil and political rights guaranteed under the International Covenant on Civil and Political Rights, 1966 (ICCPR) also find place in Part III of the Constitution of India. India has signed and ratified the ICCPR, reflecting its commitment to internationally accepted human rights standards.¹⁴ However, the incorporation of international covenants into domestic law is subject to constitutional limitations. In *Jolly George Varghese & Anr. v. Bank of Cochin, Justice Krishna Iyer*¹⁵ clearly observed that the mere existence of a right in the ICCPR does not automatically make it enforceable in India unless it is also recognized by the Constitution or incorporated through legislation. Thus, while international covenants serve as guiding principles, they do not by themselves form an enforceable part of the Indian legal system.

¹² *Id.* art. 21.

¹³ *Supra Note 8*, arts. 11(2), 20(1).

¹⁴ the International Covenant on Civil and Political Rights, 1966.

¹⁵ AIR 470, 1980 SCR (2) 913.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) AND DIRECTIVE PRINCIPLES OF STATE POLICY (PART IV OF THE CONSTITUTION OF INDIA)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral international treaty that primarily deals with socio-economic and cultural entitlements such as the right to work, adequate wages, health, education, food, housing, and social security. India ratified the ICESCR on 10 April 1979, thereby affirming its commitment to promoting social justice and improving the living conditions of its people. Although the rights under the ICESCR are not directly enforceable in Indian courts, their underlying principles have significantly influenced the constitutional vision of socio-economic welfare.¹⁶

A substantial portion of the rights recognized under the ICESCR find reflection in Part IV of the Constitution of India, which contains the Directive Principles of State Policy (DPSPs). These principles are fundamental in the governance of the country and impose a moral and constitutional obligation upon the State to strive toward securing social and economic justice. While DPSPs are non-justiciable, they serve as guiding ideals for legislative and executive action and have often been relied upon by courts for interpretative support.¹⁷

COMPARATIVE ANALYSIS

A comparative study of the international human rights and the Indian constitutional architecture shows that there is a deliberate attempt to make global human rights standards compatible with the national constitutional thought. The main part of the international human rights law is the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political rights (ICCPR) and the International Covenant on Economic, Social and Cultural rights (ICESCR). These instruments can be seen reflected in the Constitution of India that was written in the aftermath of such developments, but which is adapted to the social, political, and constitutional realities of India.

The ICCPR to Part III of the Constitution of India shares a direct relationship in the field of civil and political rights. Fundamental Rights expressly guarantee rights like equality before the law, the freedom of speech, expression, the protection of their lives and personal liberty, the prevention against arbitrary arrest, and even the right to religion. Although the

¹⁶ The International Covenant on Economic, Social and Cultural Rights

¹⁷ *Ibid.*

ICCPR is an international level instrument and depends mostly on the state compliance and reporting systems, the Indian Constitution offers effective domestic enforcement of the international norms by the judicial redresses under Articles 32 and 226. This enhances constitutional rights in India and makes them more justiciable. Nevertheless, Indian courts have always held that international covenants do not just automatically become binding unless they are reflected in domestic law, and have relied on them as interpretative aids where constitutions are uncertain.

In the case of economic, social, and cultural rights, the ICESCR is nearest to Part IV of the Constitution, which includes the Directive Principles of State Policy. The DPSPs are very much represented by such rights as the right to work, equal pay to equal work, human conditions of labour, children protection, public health and education. The Indian Constitution categorizes these rights as non-justiciable unlike the ICESCR which envisions gradual implementation of these rights at the international level. However, the Indian courts have over time extended the application of DPSPs as a means of broadening the Fundamental Rights particularly the Fundamental Right under Article 21, which in turn indirectly empowers socio-economic rights.

One area where there is a major divergence is the issue of enforceability. International covenants rely on moral obligation to a large extent and on international supervision and periodic reporting as compared to the Indian system of the constitution that gives a judicial means to enforce them. Meanwhile, the Indian judiciary has also employed international human rights standards to enrich constitutional interpretation, especially on dignity, privacy, environment, health and fair procedure. This strategy shows that there is a gradual process of convergence between international standards and constitutional practice.

Generally speaking, the comparative analysis reveals that although the international human rights instruments address the normative background, the Constitution of India transforms most of the above principles into actionable rights and directives. It is not a question of incorporation at all because the context of interaction between international law and constitutional law in India is more to create an adaptation where the values of global human rights find their reflection through the text of the constitution, judicial interpretation, and the socio-economic dictates of the nation.

JUDICIAL DISCOURSE

Indian judiciary has considerably been creative in expanding the scope of constitutional rights by its interpretations. This is most felt in the judicial interpretation of Article 21 that assures life and personal liberty. What started as a somewhat specialized, procedural protection has been developed by the courts into a fruitful pool of substantive rights. The ruling on *Maneka Gandhi v. Union of India*¹⁸ proved to be an eye opener: the Court stated that the right to life encompasses human dignity and all aspects of existence that make life worth living and meaningful.

That wider perspective led to the acknowledgment of numerous rights that were not named in the Constitution. In *Olga Tellis v. Bombay Municipal Corporation*¹⁹ the Court concluded that livelihood is a right of life and that people would not survive without means of living. In *Chameli Singh v. State of U.P.*,²⁰ the right to shelter was recognized and the right to health was constitutionalized in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*.²¹ Quality of life also included environmental protection as a part of it. *MC Mehta v. The Union of India*²² that identified a clean environment as a basic one.

Most recently the nine judge bench in *Justice K.S. Puttaswamy v. Union of India*²³ Privacy was unanimously proclaimed by union of India to be an extension of life and personal liberty. That historic decision redid right the previous, more limited approaches to privacy and paved the way to address the contemporary issues such as data protection, surveillance and personal autonomy. In all of this, the Court has shown a dynamic approach to interpretation - an approach that goes beyond the literality to find the more troubling constitutional values and the international human-rights undertakings of India.

The Supreme Court has not merely broadened the rights, but has created new means of procedure to enforce the rights. The most interesting innovation is the Public Interest Litigation (PIL): starting with such cases like the conditions of the prison and the rapid trial in the case *Hussainara Khatoon v. State of Bihar*,²⁴ and transferring to forced and bonded labour in

¹⁸ AIR 1978 SC 597.

¹⁹ AIR 1986 SC 180.

²⁰ AIR 1996 SC 1051.

²¹ AIR 1996 SC 2426.

²² AIR 1987 SC 1086.

²³ (2017) 10 SCC 1.

²⁴ AIR 1979 SC 1360.

Bandhua Mukti Morcha v. Union of India,²⁵ PILs have provided the opportunity to the courts to tackle the systemic injustices implying vulnerable groups. The courts have considerably enhanced access to the courts and brought constitutional safeguards on disadvantaged groups into reality by opening the judicial doors to litigation that is publicly spirited.

CONCLUSION

The Indian constitutional structure is an indication of a deliberate and moderated effort to incorporate the international human rights ideologies into the domestic legal framework. The impact of the international tools like the UDHR, ICCPR and ICESCR can be observed in the pattern of the Fundamental Rights and Directive Principles of State Policy. Part III guarantees enforceable civil and political rights whereas Part IV expresses the socio-economic ambitions of a welfare state. They all show that the Constitution is not an ordinary legal document but a living charter that is geared towards achieving dignity, equality and justice to everyone.

The judiciary over the years has come out to fill the gap between international human rights logistics and constitutional guarantees. The Supreme Court has broadened the definition of life and liberty through purposive and progressive interpretation and in particular the interpretation of Article 21 to allow a number of unenumerated rights to exist, which are fundamental to a dignified living. This has been enhanced by judges innovations like Public Interest Litigation which have made access to justice by the marginalized and vulnerable groups in the society to be strengthened. Yet, amid these changes, there still exists issues of how to convert constitutional vows and international undertakings into positive social performance.

SUGGESTIONS

First, there is an urgent need to be more legislative in ensuring that major Directive Principles are translated into statutory rights which can be implemented especially in matters related to health and housing, employment and social security. This would provide better adherence to the obligations of India to international covenants such as the ICESCR.

Second, the policy-making process needs to be brought closer towards the constitutional values and international human rights commitments. Gaps and better delivery

²⁵ AIR 1984 SC 802.

mechanisms, particularly by disadvantaged groups can be after a periodical review of the prevalent laws and welfare schemes.

Third, although the judicial interpretation has played a crucial role in the expansion of human rights, there must be a balanced approach in ensuring that there would be harmony between the legislature and executive and judiciary. The constitutional values should still be maintained by the courts, whereas long-term socio-economic reforms should be mainly pushed by the democratic process and the legislative one.

Therefore, greater sensitization and learning about human rights, on institutional and grassroot level, is necessary. A knowledgeable citizenry, which is aided by listening institutions, is vital in making sure that constitutional and international human rights norms go beyond being paper guaranteed and are actually working within the life frameworks.