



Constitution of India: An Instrument of Social Change

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ABSTRACT

The Constitution is a crucial legal-political document for a country's government, establishing the people's rights and outlining the power structure and rulers' obligations towards the ruled. It is future-oriented, aiming to usher in a new social and political order. The first written constitution in the world, the United States of America, was established in 1789, breaking with monarchical colonial links with Britain. Within two years, the Constitution of the United States went through ten amendments, incorporating the rights of the people in the form of limits to governmental power. These rights were conceived in the liberal laissez-faire doctrine, emphasizing the rights to life, liberty, and personal property. The Constitution of every nation is the Supreme Law, delivering justice to all while maintaining equality and upholding the rights of Natural Justice.

KEYWORDS: Indian Constitution, Rights of the People, Justice, Equality, Republican Democracy, Preamble, Democratic, Social Rights, Political Rights, Social Transformation etc.

INTRODUCTION

In the twentieth century, the view of rights expanded significantly due to welfare and socialist approaches. New rights were added to other world constitutions, while old rights were widened by judicial interpretations. The form of the rights statement was modified, such as the Constitution of the Union of Soviet Socialist Republics incorporating the right to gainful employment as a fundamental right. In the USA, affirmative action was legally recognized for weaker sections of the population. In India, Social Transformation was validated, and the Constitution of Ireland included directives for welfare. The Indian Constitution established a Republican Democracy, inherited from the freedom struggle, and broadened the scope of



government intervention for social reform and welfare. It prohibited the state from violating citizens' rights and equality and granted permission for special measures for the improvement of weaker sections. The Constitution also adopted the Irish model of issuing positive directives for welfare measures.

The Indian Constitution: An Overview

The Indian Constitution, a liberal democratic constitution, was adopted by the Constituent Assembly of India, ensuring its authority is derived from the people, not external sovereigns. India is a democratic, sovereign republic, not recognizing any hereditary rule. The democratic character of the state is ensured by the right of the people to elect the first chambers of the Union Parliament and state Legislative Assemblies based on adult franchise. The Constitution promises justice, social, economic, and political rights, liberty of thought expression, equality of status and opportunity, and fraternity. An amendment in 1976 aimed to establish secularism and socialism, promoting unity and integrity of the nation.

THE RISE OF THE PEOPLE

The British introduced an elective system of legislature in India, but only 15% of adult Indians were voters until the new Constitution. This made voting universal and a key factor in government formation. The Constitution made people the ultimate masters of their destiny and equal, transforming the traditional Indian social system fragmented by religious and ethnic differences and stratified by caste. Individual human beings became the fundamental units of polity, with political and economic rights granted to them, while some cultural rights were granted to minority groups.

RIGHTS OF THE PEOPLE

The Indian Constitution grants two types of rights: those granted to all persons and those granted to citizens only. The first type of rights is available to non-citizens, including equality before the law, protection against unlawful conviction, life and personal liberty, protection against unlawful detention, and the right against exploitation. It also protects children from hazardous employment, freedom of religion, and the right to manage religious affairs. It also allows for the payment of taxes that go to the benefit of specific religions or religious denominations. It also protects minorities, allowing them to establish and administer



educational institutions of their choice. Citizens have the right to Constitutional Remedies and not to be deprived of property except by law authority. The second type of rights grants citizens the right against discrimination, equality of opportunity in public employment, untouchability, creation of state titles other than military or academic, freedom of speech and expression, peaceful assembly, association formation, and the right to move freely throughout India.

NATURE OF THE RIGHTS

The Indian Constitution outlines rights that are negative in form, restricting authorities from violating them. Most rights are against the state, but some, like the right against untouchability and the right to protection of minorities, are against society. Some rights are granted to individuals, while others are granted to groups. Most rights are conditional upon public interest, law and order, decency, and welfare of certain weaker sections of the people.

In contrast to traditional liberal democracies like the United States, India's Constitution imposes limits on rights, setting them based on public interest, decency, morality, and the welfare of weaker sections of society. The Constitution also acknowledges groups and individuals, as a result of the country's unhappy communal history. This concern for religious and linguistic minorities and weaker castes is similar to European constitutions set up between World Wars, but implemented with seriousness.

The structure of rights in India envisages an active role of the state in bringing forth social transformation. The Constitution's limitations are set by the Constitution itself, ensuring that the rights of the Scheduled Castes, Scheduled Tribes, and religious and linguistic minorities are protected.

THE DIRECTIVE PRINCIPLES OF STATE POLICY

The Constitution of India assigns a direct activist role to the state in bringing about socio-economic transformation through Directive Principles of State Policy. These principles are not directly enforceable by law courts but are guided by them when interpreting the Constitution. The state is enjoined to regard these principles as fundamental in governance and apply them when making laws. The most fundamental directive is to secure a social order where justice, social, economic, and political inform all institutions of national life. The state



must minimize income inequalities and eliminate inequalities of status, facilities, and opportunities among individuals and groups of people. The state must direct its policies towards securing adequate means of livelihood for all citizens, distribution of ownership and control, preventing the concentration of wealth and means of production, equal pay for equal work, and protection of workers' health and strength. The state must also organize village panchayats and ensure the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement.

THE FUNCTION OF THE LAW IN INDIA'S SOCIAL TRANSFORMATION AND LABOR RIGHTS

The state is responsible for ensuring fair working conditions, maternity relief, and a living wage for all workers, including those in industries. It promotes cottage industries in rural areas and encourages workers to participate in management. The state also provides education and economic opportunities to children up to fourteen years old, particularly to Scheduled Castes and Scheduled Tribes. It also develops agriculture and industry according to modern scientific principles and protects national monuments and objects of historic interest. The state also aims to improve the environment and safeguard the country's forests and wildlife.

SOCIAL RIGHTS AND THE CONSTITUTION

This chapter discusses social rights in India, analyzing the Supreme Court's judgments in the last decade on rights such as food, education, and health. The chapter highlights the impact of globalization and threats to basic social rights. The Supreme Court has shown a willingness to address social rights, challenging traditional notions of the judicial role. The article argues that social rights can be enforceable and judicially implemented, with innovative remedies used to enforce social and economic rights. The article highlights the importance of social rights in the Indian constitutional structure.

DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS IN THE CONSTITUTION

Social rights are fundamental rights that protect the necessities of life and provide for an adequate quality of life. They are claims against the State to satisfy certain social and



economic needs. Amartya Sen defines these rights as basic entitlements, which are the total amount of things a person can have through their rights, which depend on the legitimized process of acquiring goods under the relevant system. These rights provide the foundation for human development and freedom and should be conceptualized as entitlements to be equal as humans and members of society.

SOCIAL RIGHTS IN THE CONSTITUTION

The Indian Constitution divides human rights into two parts: Part III, which includes fundamental rights, such as civil and political rights, and Part IV, which includes directive principles of State policy (DPSPs), including social, economic, and cultural rights. Social rights are recognized as important as other civil and political rights, and they can sometimes be "negatively protected" by judicial intervention, such as challenging municipal zoning and land use laws. While fundamental rights in Part III are justiciable under the Constitution, DPSPs are not justiciable rights and their non-compliance cannot be considered a claim for enforcement against the State.

DRAFTING OF THE CONSTITUTION AND SOCIAL RIGHTS

The Constitution of India is not just a governance apparatus but also a futuristic vision of social and economic transformation. It aims to achieve political independence from colonial rule and establish a new social order based on social, economic, and political justice. The Constituent Assembly prioritized social revolution, and the Drafting Committees (DPSPs) aimed to make the directive principles of State policy justiciable. Advocates like Munshi, Dr Ambedkar, Prof. K.T. Shah, and B.N. Rau supported these principles, including the rights of workers and social rights, which included provisions protecting women and children, the right to work, a decent wage, and a decent standard of living.

The bifurcation between civil and political rights and social and economic rights was made under the Constitution, as the latter could not be made enforceable until appropriate action was taken by the State to bring about changes in the economy. Dr Ambedkar's emphasis on the word "strive" in Article 38 highlights the importance of striving for the fulfilment of directive principles, even in difficult circumstances. This futuristic thinking aligns with the "progressive realization of rights" language of the Constitution's Orientation and Response to



Social Transformation International Covenant for Economic, Social, and Cultural Rights (ICESCR).

SOCIAL RIGHTS JURISPRUDENCE OF THE SUPREME COURT

The Constitution of India has been shaped by the Supreme Court's emphasis on justifiability, with the court reaffirming that both fundamental rights and Directive Principles of State Policy (DPSPs) must be interpreted harmoniously. This approach has laid the foundation for the principle that social rights are complementary, interdependent, and indivisible from civil and political rights.

The Supreme Court expanded Article 21 to include social rights in the late 1970s, making them de facto justiciable and enforceable by courts. This period saw the emergence of social action litigation and a proactive judicial strategy, shifting from a neutralist adversarial role to an inquisitorial, affirmative judicial role. The judicial process changed from an adversarial, bilateral process to a polycentric, conflict-resolving process.

To address the growing number of PILs or social action litigation for enforcement of social rights, the Supreme Court evolved new remedies for relief. These remedies were unconventional and intended to initiate affirmative action on the part of the State and its authorities. For example, in *Bandhua Mukti Morcha*, the Supreme Court issued directions for identifying, releasing, and rehabilitating bonded labourers, ensuring minimum wage payments, observance of labour laws, providing wholesome drinking water, and setting up dust-sucking machines in stone quarries.

The judicial process is generally considered efficient in preventing encroachments on rights or liberties, but it can also create new rights and enforce positive action in terms of resource allocation. By examining important constitutional social rights cases of the last ten years, it is evident that social rights adjudication in India is vibrant and dynamic, making them enforceable despite not being included as justiciable fundamental rights in the Constitution.

THE RIGHT TO FOOD

The Supreme Court has repeatedly stated that Article 21 of the Constitution includes the basic right to life, including food, clothing, and shelter. However, the specific right to food as an integral right under Article 21 was not articulated or enforced until 2001 during a massive



drought in India. The agitation over the lack of access to food gained momentum after incidents of people dying due to starvation. The People's Union for Civil Liberties filed a Supreme action in April 2001 for the enforcement of the right to food.

1. Starvation deaths have increased due to surplus food grains in the government. The right-to-food petition raises questions about denying free food grains to starving, poor, and unused individuals from the state's surplus stock.

2. Does not the right to life under Article 21 of the Constitution of India include the right to food?

3. The Supreme Court of India has upheld the right to food, stating that the state must provide food, especially during drought, to those who cannot afford it. The petition demanded immediate release of food stocks, work for all able-bodied individuals, and an increase in foodgrain quotas under the Public Distribution Scheme. The court expressed concern about rising starvation deaths and food insecurity, directing all state governments to maintain regular supplies and prevent hunger and starvation. The court emphasized the importance of providing food to the elderly, infirm, disabled, and destitute, especially in cases where they lack sufficient funds.

The Indian Supreme Court issued an unprecedented interim order on 28-11-2001, directing State Governments and the Union of India to enforce eight Centrally-sponsored food schemes for the poor. These schemes were declared as entitlements (rights) of the poor, and specific time limits were laid down for their implementation. The most significant order was the order directing all State Governments to provide cooked midday meals in all government schools by January 2002. The Court also directed the States to commence the distribution of 25 kg of grain per family per month under the Targeted Public Distribution Scheme. The Court also required the implementation of the Food for Work Programme in scarcity areas.

The Supreme Court went further by directing strict implementation of already formulated schemes within fixed time-frames, making them entitlements and ensuring accountability. The court also asked all States and Union Territories to respond to an application seeking the framing of wage employment schemes, such as the Sampoorna Gramin Rozgar Yojna (SGRY). The Supreme Court's orders bear great relevance for social rights jurisprudence, as



they show the indivisibility of rights and the authority of courts to order positive action by the State with financial/budgetary implications. Ground-level reports and surveys for the implementation of the Supreme Court orders are encouraging, and there is still much room for further improvement.

RIGHT TO EDUCATION

India has 331 million children aged 0-14, with 179 million aged 6-14. 90 million of these children are not attending school, with many being child workers or street children. The State has failed to provide free and compulsory education for fifty years. The Supreme Court has recently declared the right to education for up to fourteen years a fundamental right. This journey has been a struggle and triumph for activists, child rights advocates, educationists, and NGOs working on education. Article 45 of the directive principles imposed a ten-year time limit for implementing the right to free and compulsory primary education. The right to education has been referred to in Articles 41 and 46 of the directive principles. The theory of the complementary nature of rights in Part III and Part IV has been the foundation for the realization of primary education as a fundamental right in India.

The 1992 Supreme Court judgment in *Mohini Jain v. State of Karnataka* highlighted the importance of education as a means to achieve socio-political justice. The court declared that the charging of capitation fees was illegal and that the right to education flows directly from the right to life. The fundamental rights guaranteed under Part III of the Constitution of India, including freedom of speech and expression, cannot be appreciated, and fully enjoyed without citizens being educated and conscious of their individualistic dignity.

The court referred to the UDHR principles and Article 41 of the Constitution, which recognize an individual's right to education. The court held that without making the "right to education" under Article 41 of the Constitution a reality, the fundamental rights under Chapter III would remain beyond the reach of the large majority, which is illiterate.

The Court also relied on Article 21 elaborations and expansion laid down in earlier judgments to uphold the right to education. In *Unni Krishnan v. State of A.P.*, the fundamental right to education flows from Article 21, with every child/citizen having a right to free education up



to the age of 14 years. The Court took support from UDHR and Article 13 of ICESCR and for the first time articulated education as a "social" right.

The debate moves from justifiability of rights to enforcement of rights, with the concept emerging in 1973 in Kesavananda Bharati and being relied upon in Unni Krishnan. The importance of ensuring that the provisions of Part III are enforceable in a court and not in Part IV is crucial for the realization of the fundamental right to free primary education. In 1997, the United Front proposed the Eighty-third Amendment to the Constitution, making the right to primary education for children up to 14 a fundamental right. This led to a nationwide campaign by NGOs to press for the amendment, which was passed in 2002. Several Indian states have passed legislation making primary education compulsory, but these remain unenforced due to socio-economic, cultural, administrative, and financial constraints. There is no Central legislation making elementary education compulsory, and the Central Government advocates community involvement and decentralization of school planning to Panchayat raj institutions. The Supreme Court's declarations will determine whether state machinery is put into action to enforce the right and implement state-level legislation for free and compulsory primary education.

THE RIGHT TO HEALTH

The Indian Supreme Court has recognized the importance of health as a fundamental right since the mid-nineties. Article 47 of the Constitution states that the State shall regard raising nutrition and improving public health as among its primary duties. The right to health is also referenced in Articles 38, 39(e), 41, and 48A of the directive principles. In a series of cases dealing with the substantive content of the right to life, the Court found that the right to live with human dignity includes the right to good health.

In 1995, the Supreme Court explicitly held that the right to health is an integral facet of a meaningful right to life, particularly concerning occupational health hazards faced by workers in the asbestos industry. The Court held that the State should provide emergency medical services and ensure the creation of conditions necessary for good health, including provisions for basic curative and preventive health services and the assurance of healthy living and working conditions.



The Supreme Court has specifically considered the issue of the availability of resources while adjudicating the social right to health. In the Paschim Banga Khet Mazdoor Samity case, the Court addressed the issue of adequacy and availability of emergency medical treatment. The Court found that Article 21 of the Constitution casts an obligation on the State to take every measure to preserve life. The Court found that it is the primary duty of a welfare State to ensure that medical facilities are adequate and available to provide treatment, and for the violation of the right to life, compensation was awarded to the petitioner.

The courts have not only looked at the issue of emergency medical treatment as part of the right to health but have also addressed the importance of providing preventive health services to the Indian population. Measures should be taken to ensure that health is preserved, as seen in *Murli S. Deora v. Union of India*, which prohibited smoking in public places and directed all private non-commercial vehicles to conform to Euro II norms within a specified period.

HIV AND THE RIGHT TO HEALTH

The social right to health is crucial for individuals with HIV/AIDS, as they face significant discrimination and denial of services. A recent Full Bench decision by the Andhra Pradesh High Court views AIDS as a public health issue that needs to be addressed through the constitutional guarantee of the right to life. Employers and health providers must be held accountable for any negligence, omission, or failure to conform to procedure. In *M. Vijaya v. Chairman, Singareni Collieries*, the court awarded compensation as a public law remedy, directing Singareni Collieries to pay ` one lakh towards medical costs.

A constitutional right to health requires the government's responsibility to include relief for the poor facing health challenges and rational planning, which relies on accurate and regular information gathering and timely statistics on health needs. This may lead to the claim that the right to health is merely rhetorical. However, jurisprudence reveals that courts and lawyers can work with and pronounce the social right to health. The right to health and access to medical treatment has become part of Article 21, and judges now impose a positive obligation on the state to ensure individuals enjoy a better life and dignity.



CONCLUSION

Social transformation is a continuous process that changes the dimensions of society, influenced by various factors. The legal system, organized in courts, tribunals, forums, administrative agencies, legislature, executive, law enforcement agencies, prosecuting agencies, judges and juries, lawyers, the legal profession, and legal education, interacts with and influences the life of society as a whole and as a unit. Indian society has undergone a transition from a society governed by smriti, sruti, dharma, and other customary laws to Western conceptions of law and authority during the colonial period. The rights-based Indian Constitution and progressive law-making, including codification of religious laws and affirmative action during the post-colonial period, have contributed to this transition.

However, no yardstick exists to determine the factors contributing to the balancing of all types of transformations, including social transformation. The human being is the subject of law, and the response of human behaviour in a society to the law can be understood. The interplay of law and society contributes to the development of each other for social transformation. Research on concepts like law, legal system, social justice, morality, and development is essential for understanding the role of law in bringing about social change.

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