



Human Rights and the Indian Constitution: An Overview of Fundamental Rights and Directive Principles of State Policy

Dr. Mohd Nazish

Banasthali Vidyapith (University)

ABSTRACT

India, since its ancient civilizations, has been sensitive to the philosophy and values of human rights in various ways, such as in the form of duties, religious sanctions, and traditions and culture. This legacy can be traced to the Indian Constitution and its predecessor national and social movements. The Indian constitution believes in the principles of justice and equality and upholds human rights, particularly "Fundamental Rights" and "Directive Principles of State Policy." The paper analyses the extent of compliance of the Indian Constitution with the major principles of human rights. Besides, the paper also takes up a detailed analysis of India's stand in relation to the application of international laws. The paper argues that there are some rights that are directly mentioned in the Indian Constitution. Besides, some human rights are implicit in nature and recognized by the Indian judiciary. In addition to this, various human rights seek the attention of the Indian Constitution; those need to be incorporated into it.

1. Introduction

The philosophy and values of human rights are rooted in the past of human civilization; however, the particular term "human rights" is new and modern. All human civilizations had a philosophy of human rights in their traditions and cultures. India has been a champion in this field due to its wide wings to accommodate different traditions and cultures. India has also been a land of various social movements, organizations, and social reformers that uphold the philosophy of human rights, such as Raja Ram Mohan Roy, "Ishwar Chandra Vidyasagar," Mahatma Gandhi, etc. The philosophical foundations of human rights may be traced back to these movements, and traditions and cultures. It was the result of the long struggle to uphold the principles of equality, non-discrimination, civil liberties, freedom of speech and expression, and freedom of the press that the Indian Constitution came into existence as a champion of freedom, equality, and justice. The preamble of the Indian Constitution, which shows its philosophy, aims to provide the same condition of living that is supposed by human rights. Following its roots, the Indian Constitution has various provisions for the protection of human rights. The Indian Constitution established the implementation process in Parts III and IV, referred to as "Fundamental Rights" and "Directive Principles of State Policy," respectively, to safeguard the rights of its citizens. While the former offers individuals certain rights, the latter directs the state to grant its citizens additional rights in particular areas. Even if DPSP are not legally enforceable, they shouldn't be seen as less important than fundamental rights. They serve as directives to the Executive and the Legislature. Whoever seizes power will be required to abide by these directives, called DPSP.

The foundation of the commitment to social reform and the conscience of the Constitution are the Fundamental Rights and the DPSP. As a result, they should be harmoniously constituted, and the Court should try its best to address any apparent inconsistencies. In order to achieve a welfare state, the fundamental rights and directive principles work in concert with one another. They are the chariot's two wheels as well as two sides of the same coin. Since they complement one another, rights and principles should be built in a way that makes sense. A key component of the Constitution's fundamental framework is the harmony and balance between the two.

2. What are Human Rights?

Human rights are, to use a widely used term, the fundamental, unalienable rights that every human being has. Human rights are the nondiscriminatory privileges to which every individual is inherently entitled due to their humanity (Hannum, 2016). It means human rights are those rights given to a human just because they/he/she is human. No other consideration is required. Human rights are considered basic rights and conditions and claim that they are necessary for the development of humans. It can be better understood through different definitions of human rights.

D.D. Basu defines "Human Rights as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of human family, irrespective of any other consideration" (Chandra Panigraha Kumuda, 2018).

According to **Scott Davidson**, "The concept of human rights is closely connected with the protection of individuals from the exercise of State, Government or authority in certain area of their lives, it is also directed towards creation of societal condition by the state in which individual are to develop their fullest potential" (Madan Nidhi, 2017).

Harold J Laski says that "rights are those condition of social life without which no man can seek, in general, to be his best" (Cotterrell Roger, 2022).

Ernest Barker defines "rights are the external conditions necessary for the greatest possible development of the capacities of the personality" (Rajput Vidhu, 2023).

On the basis of the definitions, it may be stated that human rights are the essential conditions of life without which an individual cannot exist as a human being. It is founded on the principle of nondiscrimination and protects the dignity of the people. Initially, most of the definitions of human rights concerned only public authorities. Consequently, these definitions emphasized the protection of individual rights only from state actors; however, in recent times, it has been recognized that human rights are also available against entities other than state and public authorities, such as private entities and individuals.

As we discussed, human rights are beyond national boundaries, so consequently, human rights laws are international in nature. Most countries are obliged to respect and protect human rights by conventions and international agreements. Here the question arises: how are they being implemented at the national level without violating the sovereignty of any country? To see the status of human rights, it is necessary to understand India's approach towards the application of international laws and international human rights laws.

3. India's Approach towards Application of International Laws

When we see that India is a member of many international human rights conventions, a question arises: how are these conventions being implemented or domesticated in India? Whether international laws are directly enforceable or need specific procedures; whether India follows the Monism Theory or Dualism Theory; How does the Constitution of India talk about the enforcement of these international conventions? It is hard to answer these questions in one line or in a concrete manner. To understand India's approach toward the domestication and implementation of international conventions, one has to understand the provisions enshrined under the Indian Constitution and prevalent practices recognized under various judicial pronouncements. Indeed, Indian Constitution under Article 51 of the DPSP provides for respect of international law; however, being a part of the DPSP, it is not justifiable (Mohapatra Anil Kumar, 2011). In the absence of justifiability, the power relating to international affairs has been vested in the hands of the Parliament under Article 253 of the Constitution (Constitution of India, 1950).

As far as the status of the implementation of international laws under the Indian Constitution is concerned, the principle of dualism is enshrined under Article 253 of the Constitution. It gives the Parliament the authority to legislate corresponding laws that implement international law. Therefore, Indian Constitution does not provide an automatic implementation of international treaties and it requires appropriate domestic legislation to make it effective. Although the Judiciary is considered the custodian of the rights and liberties of people and guardian of the Constitution, there is a vacuum in the Indian Constitution with regard to the relation between international law and courts. This vacuum provides the flexibility to the judiciary to implement international law in a progressive manner depending upon its will (Hegde, 2010).

Following the provisions of Article 253 of the Indian Constitution, the Indian judiciary can be seen to follow a dualist approach. In a case, *Jolly George Verghese v. Bank of Cochin*, 1980, justice Krishna Iyer says that "until the municipal law is changed to accommodate the treaty, what binds the courts is the former, not the latter." In another case, *State of West Bengal v. Kesoram Industries*, 2004, the Apex Court repeated that India is the follower of the "doctrine of dualism" and that "a treaty entered into by India cannot become the law of the land... unless Parliament passes a law as required under Article 253".

Against this dualism approach, the judiciary of India has witnessed diversity in its judgments and decisions and created vagueness in its stand by adopting the doctrine of monism.

In the case of *Jeeja Ghosh v. Union of India* (2016), the Supreme Court referred to international law to underline the rights of persons with disabilities. In recognizing the obligation of India to comply its law of the land with the ratified treaties, the Supreme Court, in its judgment, says that "The Vienna Convention on the Law of Treaties, 1963, requires India's internal legislation to comply with international commitments." In another case, *Vishaka v. State of Rajasthan*, 1997, considered an important judgement related to sexual harassment against women in workplaces; the Supreme Court gave rise to another confusion by applying the condition of consistency and inconsistency between national laws and international laws. It has been considered in the case that "regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law." Furthermore, the Apex Court has acknowledged that international agreements that align with Part III of the Indian Constitution ought to be interpreted "to broaden the meaning and content thereof." In the 2014 case of *National Legal Services Authority v. Union of India*, which recognizes transgender people as a third category of gender, this was reiterated. The court noted: "Indian courts are required to give regard to Indian law, rather than international law, whenever Parliament has passed any legislation that conflicts with international law." Nonetheless, Indian municipal courts would uphold international law's principles absent conflicting legislation. It means it can be considered that international conventions that are consistent with fundamental rights can be used to enhance the scope of Articles 14, 15, 19, and 21. In the WTO Solar Panel lawsuit against the US, India appears to have used a similar tack. India contended that "legislative action to include an international instrument is required only when there is "conflicting" domestic legislation," referring to the case law of its own Supreme Court. It follows that an enabling domestic law is not necessary for international instruments that do not conflict with local laws to be incorporated into national law. It is significant to note that the court has even invoked

international treaties that are compliant with Indian law in instances like *G. Sundarajan v. Union of India*, (2013) and the Transgender case, even though India has not ratified them (Ranjan Prabhaskar et al., 2016).

Based on the above discussion, it can be concluded that India follows the dualist theory in the domestication of international law. Consequently, provisions of international treaties and principles of international law require the adoption of domestic law to be implemented in India. The judgments of the courts suggest that in the light of Article 51, India needs to implement the treaties to which it is a party in good faith; however, the executive cannot be compelled to follow the treaty in the absence of domestic law. On the other hand, it can be considered that the courts can borrow the provisions of international law and treaties if they are not inconsistent with the domestic laws of India. But if they clash with the municipal laws of India, then domestic laws will get priority. As of right now, only treaties that impact citizens' rights or call for the adoption of new legislation or amendments to local ordinances need the approval of the Parliament in India.

"International Covenant on Civil and Political Rights" and "International Covenant on Economic Social and Cultural Rights" were adopted in 1966 and are the major sources and parts of the "International Bill of Human Rights." One can analyze and evaluate any country by comparing the provisions of these conventions and the constitution of the concerned country with respect to individual rights. India ratified the "International Covenant on Civil and Political Rights" and "International Covenant on Economic Social and Cultural Rights" in 1979 (*UN Treaty Body Database*, 1979). India has indicated on a global scale through ratification that it agrees to be bound by both conventions. It is required to grant the people the rights outlined in both documents. The extent to which the rights protected by the covenants align with those outlined in the Constitution is a matter of debate.

4. Covenant on Civil and Political Rights and the Indian Constitution

The constitution provides several rights to individuals in Part III, which have been termed 'fundamental rights' (Rao M.Vasanth & Doradla Manovikas, 2022). The word "fundamental" refers to the fact that these rights are innate in all people and necessary for each person's unique identity and soul to develop. Therefore, these rights are designed to uphold each person's dignity and foster environments that allow each person to fully express their unique self. These fundamental rights are acknowledged as "natural rights" or "human rights" by the Indian Supreme Court (Kaur Amartish, 2017).

These are moral rights that every human being, anywhere at any time, should enjoy just by virtue of his or her morality or reason, which sets him apart from other creatures. The rights that are intrinsic to every person are those that are protected in Part III. It doesn't really matter what name people call them. For convenience's sake, the fundamental rights protected by the Indian constitution can be split into two categories: specified fundamental rights and other fundamental rights (Bhattacharjee Baloy, 2022). Every fundamental right is a human right that upholds and advances people's dignity (Agarwal H O, 2014).

"Fundamental Rights" and "Directive Principles of State Policy" are the major parts of the Indian Constitution that protect and promote human rights. The former mostly includes civil and political rights, and the latter mostly includes socio-economic and cultural rights (Rao M.Vasanth & Doradla Manovikas, 2022).

4.1 Specified Fundamental Rights

The Indian Constitution explicitly recognizes a number of the rights included in the Covenant on Civil and Political Rights as fundamental rights. Because they are specifically named in the Constitution, they may be referred to as "specified" fundamental rights. The several articles of the Covenant and the Constitution that specify the same rights are displayed in the following table (Agarwal H O, 2014).

Rights	ICCPR	Indian Constitution
Forced Labor	Article 8(3)	Article 23
Equality before Law	Article 14(1)	Article 14
Prohibition of discrimination	Article 26	Article 15
Equality of opportunity to public service	Article 25(C)	Article 16(1)
Freedom of speech and expression	Article 19(1) & (2)	Article 19(1) (a)
Right for peaceful assembly	Article 21	Article 19(1) (b)
Right of freedom of association	Article 22 (1)	Article 19 (1) (c)
Right to move freely within the territory of a State	Article 12 (1)	Article 19 (1) (d) & (e)
Protection in respect of conviction for offences	Article 15 (1)	Article 20 (1)
Protection from prosecution and punishment	Article 14 (7)	Article 20 (2)
Not to be compelled to testify against himself	Article 14 (3) (g)	Article 20 (3)
Right to life and liberty	Article 6 (1) & 9 (1)	Article 21
Protection against arrest and detention in certain cases	Article 9 (2) (3) & (4)	Article 22
Freedom of conscience and religion	Article 18(1)	Article 25

Sources: (Agarwal H O, 2014)

The Constitution's numerous guarantees of rights demonstrated that these rights were available to all Indian citizens long before the country adopted the Covenant on Civil and Political Rights. While some of these rights are open to everyone, others are exclusively available to citizens. Both citizens and non-citizens of the nation are included in the term "person."

4.2 Other Fundamental Rights

A number of rights that are included in the Covenant are not outlined in the Constitution's third section. Since the Covenant is an international treaty, states are the parties to it, not private parties. As a result, rights included therein typically only give rise to domestic legal obligations for a state when they are somehow incorporated into the state's internal legislation. However, the Supreme Court has expanded the definition and scope of a number of rights that are not expressly listed as basic rights in Part III of the Constitution but are nonetheless viewed as such by the court (Chandrankanthi L, 2016). Thus, many rights enshrined in the Covenant have been regarded as already covered under some or other specified fundamental rights.

- Right to Privacy
- Right to Travel Abroad
- Right to Speedy Trial
- Right to Provide Legal Assistance
- Right of Prisoners to be Treated with Humanity
- Right of not to be Imprisoned for Inability to Fulfill a Contractual Obligation
- Right to Information

In conclusion, it can be said that because of the Supreme Court's daring interpretation of the rights that are expressly guaranteed by the Constitution, a number of rights that are not expressly mentioned in Part III of the Constitution as "fundamental rights" have been deemed fundamental and made available to individuals (Saikumar Rajgopal, 2019).

In addition to the aforementioned, some rights—such as the presumption of innocence, the right to a fair and public trial by an impartial tribunal, and the right to question witnesses in person—are thought to be essential components of the legal system and were not expressly listed in the Constitution (Agarwal H O, 2014).

There are still some rights, meanwhile, that, despite being acknowledged in the Covenant, are neither recognized by the judiciary as fundamental nor protected as such in Part III of the Constitution. The rights to be free from torture, to be the subject of scientific and medical experimentation, to be married and start a family, to be treated specially as juvenile offenders, to be prohibited from the death penalty for children and pregnant women, and to be free from slavery and servitude are just a few examples. It is preferable for legislation to be passed or modified in order to bring them into compliance with the Covenant's requirements (Agarwal H O, 2014).

4.3 Reservations in the Instrument of Accession

India, while acceding to the ICCPR, made certain reservations by way of 'Declaration'. They specify the conditions of its willingness to become a party to the Covenant (*Depositary*, 2022). The following are the areas and rights against which reservations and declarations are made:

- Right of Self-Determination (Article 1)
- Protection Against Arbitrary Arrest and Detention (Article 9)
- Rights of Aliens (Article 13)
- Right to Freedom (Article 12)

5. Covenant on Economic, Social and Cultural Rights and the Indian Constitution

The "Covenant on Economic, Social, and Cultural Rights" contains the economic, social, and cultural rights of human beings. One major difference between the ICCPR and the Covenant is this (International Covenant on Civil and Political Rights, 1966). The state parties to the ICCPR are required to uphold and respect the rights outlined for each and every person. According to Article 2, Paragraph 1 of the ICESCR, each state party agrees to take action to gradually achieve the full realization of the rights outlined therein, both independently and through international cooperation and assistance, particularly in the areas of economics and technology, to the extent of its resources. It means ICCPR is immediate in nature, and ICESCR is gradual in nature (The International Covenant on Economic, Social and Cultural Rights, 1966).

This indicates that individual rights are not obligated to be granted by the state parties to the Covenant at the moment of ratification. They will, nevertheless, take the necessary actions to ensure that they will eventually be granted these rights. Part III of the Constitution does not contain any mention of the rights outlined in the ICESCR. Part IV of the Constitution, which establishes the Directive Principles of State Policy, protects certain rights (Constitution of India, 1950). This section includes a set of directives and instructions that the nation's governments, both current and future, should adhere to, regardless of their political affiliation.

The government must accomplish the goals and objectives of the DPSP in order to uphold social, political, and economic justice. "Fundamental rights" and "directive principles" differ significantly in that the former can be enforced in court, while the latter cannot be challenged in court (Markandan, 2017).

Human rights include the "directive principles," which include social and economic rights in their entirety. The Directive Principles of State Policy incorporate many of the rights contained in the ICESCR. These are as follows:

Rights	ICESCR	DPSP
Equal Pay for Equal Work	Article 7(a)(i)	Article 39(d)
Safe and Humane Condition of Work	Article 7(b)	Article 42
Maternity Relief	Article 10(2)	Article 42
Right to Work	Article 6(1)	Article 41
Opportunities to Children	Article 10(3)	Article 39(f)
Compulsory Education to Children	Article 13(2)(a)	Article 45
Living Wages	Article 7(a)(i)	Article 43
Conditions of Work	Article 7(d)	Article 42
Adequate Standard of Living	Article 11	Article 47

Sources: (Agarwal H O, 2014)

The rights outlined in Part IV of the Constitution are unenforceable before the courts. However, the Supreme Court has expanded the list of recognized fundamental rights in recent times, making some of these rights considered essential. This has been accomplished, in particular, by extending the definition of the phrase "right to life," which is recognized as the "heart" of fundamental rights (Kaushik N, 2018). These rights include the following: "the right to food, shelter, health care, and equal pay for equal work; the right to a livelihood; and the right to medical benefits". In India, civil and political rights are accorded greater weight than economic and social rights; this could be because the former are not upholdable in court" (Agarwal H O, 2014) . These rights are extremely important because of their connections to civil and political rights. It is impossible to divide or keep these two human rights apart from one another. It is difficult to fully realize civil and political rights without also enjoying economic, social, and cultural rights (Eide, 2001). The Supreme Court's Justice P. N. Bhagwati made the excellent observation that civil and political rights cannot truly become a reality for the whole populace of a nation until social and economic rights are realized. If not, civic and political rights would continue to be just empty promises and playful illusions.

6. Conclusion

The philosophy and values of human rights are rooted in the past of human civilization; however, the particular term "human rights" is new and modern. India has been a champion in this field due to its wide wings to accommodate different traditions and cultures. It was the result of the long struggle, due to which the Indian Constitution came into existence as a champion of freedom, equality, and justice. The preamble of the Indian Constitution, which shows its philosophy, aims to provide the same condition of living that is supposed by human rights. Following its roots, the Indian Constitution has various provisions for the protection of human rights. In order to protect the rights of its people, the Constitution of India laid down the implementation procedure in Parts III and IV, which are known as "Fundamental Rights" and "Directive Principles of State Policy," respectively. The Indian Constitution, under its articles, requires respect for international law and follows the theory of dualism. However, there are instances where the Indian judiciary has adopted the monism theory. As of right now, only treaties that impact citizens' rights or call for the adoption of new legislation or amendments to local ordinances need the approval of the Parliament in India. India is a party to both of the major human rights conventions. It domesticates principles of human rights enshrined in both the Covenant through fundamental rights and the DPSP. The Indian Constitution upholds various human rights directly, and some human rights are being covered in the interpretation of existing rights. The Indian judiciary has played crucial role in domesticating human rights in India. But still there are various rights that have not been explicitly covered in the Indian constitution. There is a need to broaden the scope and also include the remaining rights in the constitution.

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