

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## EDITORIALTEAM

### EDITORS

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpna

Assistant professor of Law

*Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **HUMAN RIGHT AND THE INDIAN CONSTITUTION: ROLE OF FUNDAMENTAL RIGHT AND DIRECTIVE PRINCIPLE.**

AUTHORED BY - ANJALI PARESH BHANUSHALI,  
RIDDDHI JAYANTIBHAI BHANUSHALI, SINGH RAGINEE & ANJALI YADAV

## **ABSTRACT.**

THE Indian Constitution embodies a strong commitment to human right by embedding them within the frame work of Fundamental Rights and Directive Principles of State Policy (DPSPs). Fundamental right act as a enforceable guarantees that protect individual liberty equality, and dignity, forming the core of Indian democratic governance. In contrast, Directive Principles serve as a guiding values that direct the State towards stabling social and economic justice, bridging inequalities, and realizing the broader ideals of welfare. Together, these two constitutional pillars create balance between individual freedoms and collective well- being. While Fundamental Rights ensure justiciable protections, the Directive Principles provide moral and political obligations for governance, reinforcing India's pledge to uphold human rights in both theory and practice.

## **KEYWORDS.**

1. HUMAN RIGHTS
2. FUNAMENTAL RIGHTS
3. DIRECTIVE PRINCIPLES OF STATE POLICY
4. INDIAN CONSTITUTION
5. SOCIAL JUSTICE

## **INTRODUCTION**

Human rights symbolize the fundamental dignity and equal value of all individuals, cutting across cultural, social, and political differences. While drafting the Indian Constitution, the framers incorporated these universal ideals by taking inspiration from international human rights movements and the Universal Declaration of Human Rights (1948), thereby embedding them firmly within the constitutional framework. In India, the protection and promotion of human rights find expression primarily through Part III (Fundamental Rights) and Part IV

(Directive Principles of State Policy).

Fundamental Rights guarantee civil and political liberties such as equality before law, freedom of speech, protection of life and personal liberty, and rights against exploitation. They are justiciable in nature, meaning individuals can approach the courts to seek enforcement. On the other hand, Directive Principles focus on social and economic dimensions of human rights by emphasizing equitable distribution of resources, promotion of education, protection of health, and safeguarding the interests of weaker sections. Though non-justiciable, they guide the State in formulating policies to achieve social and economic democracy. The harmonious interaction between Fundamental Rights and Directive Principles illustrates the Constitution's vision of creating a just society where individual freedoms coexist with social welfare. This balance underlines India's human rights framework, ensuring that liberty does not exist in isolation from equality and justice.

## Harmonization of Fundamental Rights and DPSPs

### 1. Introduction

The Indian Constitution contains both Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV). Fundamental Rights (FRs) are enforceable by courts and protect the liberty of individuals. Directive Principles of State Policy (DPSPs) are not enforceable by courts but are essential for achieving social and economic justice. The real challenge is to harmonize FRs and DPSPs, so that individual freedom and social welfare go hand in hand.

### 2. Nature of Conflict

FRs guarantee individual rights like equality, freedom, and protection of life. DPSPs require the State to promote welfare measures like equal distribution of wealth, free education, and protection of environment. In practice, welfare laws enacted under DPSPs sometimes restrict FRs.

**Example:** Land reform laws (to implement Art. 39(b)(c)) restricted the Right to Property (then an FR).

**Example:** Reservations (Art. 46) may seem to conflict with equality under Art. 14 and 16.

### 3. Judicial Approach

#### (a) Supremacy of FRs – Early Phase

**Champakam Dorairajan v. State of Madras (1951):** Court held that FRs prevail over DPSPs

if there is conflict.

(b) Balance and Flexibility

**Golaknath v. State of Punjab** (1967): Parliament cannot amend FRs even for implementing DPSPs.

(c) Doctrine of Basic Structure

**Kesavananda Bharati v. State of Kerala** (1973): Parliament can amend FRs to give effect to DPSPs, but cannot destroy the “basic structure” of the Constitution.

(d) Harmonious Construction

**Minerva Mills v. Union of India** (1980): FRs and DPSPs are complementary, not conflicting. Absolute priority to one over the other would destroy the balance. Both must work in harmony.

#### 4. Constitutional Amendments

**42nd Amendment** (1976): Strengthened DPSPs; added Art. 39-A, 43-A, 48-A; emphasized socialism and welfare.

**44th Amendment** (1978): Shifted Right to Property from Fundamental Right to a constitutional/legal right (Art. 300-A), reducing conflicts.

#### 5. Present Position

Courts interpret FRs in the light of DPSPs.

**Example:** Right to Education (Art. 21-A) evolved from Art. 21 read with DPSPs (Art. 41, 45).

**Example:** Right to Environment under Art. 21 is supported by DPSP Art. 48-A.

Today, the accepted view is that both are integral parts of the Constitution and must be harmonized.

### **Right to Education – From DPSP to Fundamental Right**

#### 1. Background in the Constitution

Directive Principle (Art. 45, 1950 version):

Originally, Article 45 directed the State to provide free and compulsory education for all children up to the age of 14 years within 10 years of the Constitution’s commencement.

But since DPSPs are non-justiciable, this obligation was only moral, not legally enforceable.

Fundamental Right (Art. 21):

Article 21 guarantees the Right to Life and Personal Liberty. Courts began interpreting this provision broadly to include rights necessary for a dignified life.

## 2. Judicial Development

### **Mohini Jain v. State of Karnataka** (1992):

The Supreme Court held that the Right to Education is a fundamental right under Article 21. Charging high capitation fees in educational institutions was declared unconstitutional.

### **Unnikrishnan v. State of Andhra Pradesh** (1993):

The Court clarified that Children up to the age of 14 years have a fundamental right to free education. Beyond 14 years, the right is subject to the economic capacity of the State. This interpretation directly connected Article 21 with Article 45.

## 3. Constitutional Amendment

To give constitutional backing to these judicial pronouncements and to fulfill the mandate of DPSP, Parliament inserted:

**Article 21-A** (86th Amendment, 2002): “The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.”

Simultaneously, new Article 45 was amended to direct the State to provide early childhood care and education to children below six years.

**Article 51-A** (k) was also inserted, making it a fundamental duty of parents/guardians to provide education to their children aged 6–14 years.

## 4. Practical Implementation

Based on Art. 21-A, the Right of Children to Free and Compulsory Education Act (RTE Act), 2009 was enacted.

### Key provisions of the RTE Act:

Free education in government schools for children aged 6–14.

No child can be denied admission for lack of documents.

Private schools required to reserve 25% seats for weaker sections.

No capitation fee, screening test, or expulsion till completion of elementary education.

## 5. Significance of Harmonization

This is a classic example of harmonization of FRs and DPSPs: What was earlier a mere directive principle (Art. 45) has been transformed into a fundamental right (Art. 21-A) through judicial interpretation and constitutional amendment. It shows how DPSPs, though non-enforceable, act as a guiding force for the legislature and judiciary in realizing socio-economic

rights.

## Judicial Role in Expanding Human Rights through the Constitution

### 1. Introduction

The Indian Constitution guarantees a wide range of Fundamental Rights (Part III) which form the foundation of human rights protection in India. However, the text of the Constitution alone could not cover every aspect of human rights. The judiciary, particularly the Supreme Court, has adopted an activist role by interpreting rights broadly and reading new dimensions into existing provisions, especially Article 14 (Equality), Article 19 (Freedoms), and Article 21 (Right to Life).

### 2. Judicial Techniques

1. Expansive Interpretation – Courts have given wider meaning to words like “life,” “liberty,” and “equality.”
2. Harmonization – Fundamental Rights are interpreted in light of Directive Principles of State Policy (DPSPs) to realize social and economic justice.
3. Judicial Activism & PIL (Public Interest Litigation) – Opened access to justice for disadvantaged groups and expanded human rights protection.

### 3. Key Judicial Contributions

#### (a) Right to Life and Liberty (Art. 21)

**Maneka Gandhi v. Union of India** (1978): “Right to life” means more than mere existence — it includes dignity, fairness, and freedom from arbitrary action.

**Francis Coralie v. Union Territory of Delhi** (1981): Right to life includes the right to live with human dignity, including food, clothing, shelter, and medical care.

#### (b) Right to Education

Mohini Jain (1992) and Unnikrishnan (1993): Declared education a fundamental right under Art. 21. Later constitutionalized as Article 21-A (86th Amendment, 2002).

#### (c) Environmental Rights

**M.C. Mehta v. Union of India** (1986 onwards): Right to a healthy environment, pollution-free water and air is part of Article 21.

#### (d) Prisoner’s Rights & Dignity

**Sunil Batra v. Delhi Administration** (1978): Protection against torture and inhuman treatment.

**Sheela Barse v. State of Maharashtra** (1983): Safeguards for children and women in custody.

(e) Right to Livelihood

**Olga Tellis v. Bombay Municipal Corporation** (1985): Right to livelihood is included in the right to life.

(f) Gender Justice and Equality

**Vishaka v. State of Rajasthan** (1997): Laid down guidelines against sexual harassment at the workplace, treating it as violation of Art. 14, 19, 21.

(g) Access to Justice

Through PILs (*S.P. Gupta v. Union of India*, 1981), the Court expanded human rights by allowing even third parties to seek remedies on behalf of the marginalized.

#### 4. Significance

The judiciary has ensured that human rights are not static but dynamic and evolving. By creatively interpreting constitutional provisions, the Court has transformed Directive Principles into enforceable rights through Article 21. This judicial expansion has made the Indian Constitution a living document that adapts to new social realities.

### Conclusion:

The Indian Constitution is not only a legal framework but also a charter of human rights. By incorporating Fundamental Rights (Part III) and drawing inspiration from international human rights principles, it safeguards liberty, equality, and dignity for every individual. The Directive Principles of State Policy (Part IV) further guide the State towards achieving socio-economic justice, making rights meaningful in practice.

The judiciary has played a transformative role in expanding the scope of human rights, especially through liberal interpretation of Article 21, converting it into a source of diverse rights such as education, livelihood, health, and environment. This has ensured that the Constitution remains a living and dynamic document, responsive to the evolving needs of society.

In essence, the Indian constitutional framework strikes a balance between individual freedom and collective welfare, ensuring that human rights are not merely theoretical ideals but practical guarantees. By protecting rights while also promoting social justice, the Constitution seeks to fulfill its ultimate goal — the establishment of a democratic, just, and welfare-oriented society.

## References

1. The Constitution of India, 1950.
2. Universal Declaration of Human Rights, United Nations, 1948.
3. Maneka Gandhi v. Union of India, AIR 1978 SC 597.
4. Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.
5. Vishaka v. State of Rajasthan, AIR 1997 SC 3011.
6. Basu, D.D., Commentary on the Constitution of India, LexisNexis, 2018.
7. Singh, Mahendra P., V.N. Shukla's Constitution of India, Eastern Book Company, 2021.
8. Austin, Granville, The Indian Constitution: Cornerstone of a Nation, Oxford University Press, 1999.
9. Bhagwati, P.N., "Judicial Activism and Human Rights," Indian Law Institute Journal, Vol. 23, 1981.
10. Jain, M.P., Indian Constitutional Law, LexisNexis, 2019.

