

# Economic and Social Rights under the Indian Constitution

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## The Topic

Covers a broad understanding of the status of socio-economic human rights under the Indian Constitution. The slides are divided into three parts;

**Part I- *Nature & Status under Indian Constitution*** covers the provision for socio-economic rights under the Constitution, directive principles of state policy & relevant provisions, nature of state responsibility, and changing approaches to socio-economic rights.

**Part II- *Constitutional Law & Socio-economic rights*** covers the relationship between fundamental rights and directive principles of state policy, the related approaches/themes, specific socio-economic rights recognised by interpretation under Part III, public interest litigation, and a few pieces of legislation and schemes on the rights.

**Part III - *India and UN Mechanisms*** covers country specific reports submitted by UN Special Rapporteurs for water, sanitation and housing. The reports discuss the status of socio-economic rights, achievements and priority areas including central laws on water, sanitation, and housing.

Note: Also see slides on *Three Generations of Human Rights*, and *Introduction to Economic, Social and Cultural Rights*.

# Points for Discussion

## Part I: Nature & Status under Indian Constitution

1. Background
2. Classification
3. Indian Constitution
4. Indian Constitution & ICESCR: Comparison
5. Status of Directive Principles : Justiciability
6. Directive Principles & Judicial Interpretation: Enforceability
7. Directive Principles: Approaches

## PART II: Constitutional Law & Socio-economic rights

8. Fundamental Rights & Directive Principles: The Dynamics
9. New Frames
10. Socio-economic rights under Part III [livelihood, food, shelter...]
11. Socio economic rights under Part III [[equal pay, employment..]
12. Legislation
13. Schemes & Programmes
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## Part I

# Nature & Status under the Indian Constitution

## 1. Background

### What are Economic and Social Rights

- ❖ 'a range of affirmative obligations of a state to its own people, from the assurance of basic needs, such as food, shelter, and health care, to access to education and decent jobs' [Stark 2009].
- ❖ 'Economic, social and cultural rights are those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.' (OHCHR 2008)

#### Examples:

- ❖ Right to food
- ❖ Right to shelter
- ❖ Worker's rights (such as equal pay for equal work, safe and healthy working conditions, reasonable hours of work, to form and join trade unions, etc.)
- ❖ Right to education
- ❖ Social security

## 2. Classification

- ❖ **CLASSIFICATION** : It must be noted that the International Covenant on Economic, Social and Cultural Rights (ICESCR) does not expressly classify any rights as social or economic or cultural.
- ❖ Initially the classification was **bureaucratic**: rights concerned with **ILO** were seen as 'economic'; those relevant to **FAO, WHO**, etc. seen as 'social', and those pertaining to **UNESCO** seen as 'cultural'.
- ❖ Commentators and scholars also differ in how they classify various rights. According to Donnelly (1986), for example, right to work, rest and leisure are economic rights while right to education is a social right.
- ❖ Realistically, there are overlaps; for example, education can be seen as a right that is social, economic, and cultural, and also can be seen as a civil and political right.

### 3. Indian Constitution

- ❖ Part III of the Constitution (Fundamental Rights) can be seen as dealing with mainly civil and political rights, while Part IV (Directive Principles of State Policy) deal with mainly economic and social rights
- ❖ The categorization of civil & political rights under Part III and socio-economic rights under Part IV is comparable to the ICCPR and ICESCR, respectively.
- ❖ The core rights mentioned in the ICESCR can be found under Part IV of the Indian Constitution. These include provisions pertaining to basic needs, workers rights, and social justice.
- ❖ Part IV also contains other rights that are specific to the Indian context such as on a Uniform Civil Code [Article 44] and organization of village panchayats [Article 46], etc.
- ❖ Part IV is referred to as fundamental in the governance of the State.

## Indian Constitution (cont...)

Directive Principles of State Policy: Mainly, economic and social rights in the Constitution of India are set out in this part. These include:

- ❖ equal right of citizens to an adequate means of **livelihood** [article 39 (a)]
- ❖ **equal pay for equal work** for both men & women [39 (d)]
- ❖ the right to **work, education** and **public assistance** in certain cases including unemployment, old age, sickness, disablement, and other cases of undeserved want [article 41]
- ❖ **just and humane conditions** of work and maternity relief [article 42]
- ❖ living **wage**, etc. for workers [article 43]
- ❖ raising the level of **nutrition** and **standard of living** of the people [article 47]
- ❖ improvement of **public health** [article 47]

Right to **education** (free and compulsory education of all children from the age of six to fourteen), has however been placed in Part III as article 21A vide the Constitution (Eighty-Sixth) Amendment, 2002.

Article 23: prohibition of forced labour

Cultural and Educational Rights: Part III

- ❖ Right of any section of citizens having a distinct language, script, or culture of its own to conserve the same [article 29 (1)]
- ❖ **Right of minorities** to establish and administer educational institutions [article 30]

## 4. Indian Constitution and ICESCR: A Comparison

Right	Indian Constitution	ICESCR
Right to work	Article 41	Article 6(1)
Just and favourable conditions of work with equal remuneration for work of equal value	Articles 39 (d) and 42	Article 7
Right to an adequate standard of living and the right to be free from hunger	Article 43, 47 (raising level of nutrition)	Article 11
Right to education including free and compulsory primary education	Articles 21A, 41, and 45	Article 13
Health	Article 47 (public health)	Article 12

## 5. Status of Directive Principles

[A right is **justiciable** if it is “capable of being determined by a court of law” and “liable to be brought before a court for trial” (Collins Dictionary)]

- ❖ **ARTICLE 37:** According to Article 37, “The provisions...shall *not be enforceable by any court*, but the principles therein laid down are *nevertheless fundamental in the governance of the country* and it shall be the duty of the state to apply these principles in making laws”.
- ❖ **FRAMING OF CONSTITUTION:** At the framing stage, most members supported the inclusion of these principles and some members (e.g. Sh. B.N. Rau, Sh. K.M. Munshi) wanted them to be made justiciable. However they were made non-enforceable to give the government sufficient latitude, until action was taken towards changes in the economy.
- ❖ According to Dr Ambedkar: “it is the intention of [the Constituent] Assembly that in future, both the legislature and the executive *should not merely pay lip service* to the principles enacted in this part, but that they *should be made the basis of all executive and legislative action* that may be taken hereafter in the matter of the governance of the country”.
- ❖ **NON- JUSTICIABLE:** It can be said that as per article 37, the rights incorporated in the Directive Principles are *not justiciable*. They are not of the *same status* as fundamental rights under Part III which are enforceable in a court of law.

*In a broader context, social welfare rights are included in the text of most national constitutions and their inclusion is not a recent phenomenon...But social welfare rights are infrequently enforced by courts. Indeed, constitutional law scholars have largely contended that social rights are non-justiciable.* [Christiansen 2008].

## 6. Directive Principles & Judicial Interpretation

[Enforceability]

- ❖ **GIVING EFFECT:** In *Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109, it was observed: '[w]hen the ***court is called upon to give effect to the directive principles*** ... the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter [for the] policy making authority. The least that the Court may do is to ***examine whether appropriate consideration[s] are borne in mind and irrelevancies excluded***. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The ***Court may always give necessary directions.***'
- ❖ **CONSTITUTIONAL AMENDMENTS:** 25<sup>th</sup> Constitutional Amendment sought to give primacy to some (articles 39 (b) and (c)) directive principles and 42<sup>nd</sup> Amendment sought to give primacy to all directive principles over the fundamental rights in articles 14 and 19, and exclude the laws made from judicial review.
- ❖ **JUDICIAL REVIEW :** *Keshavananda Bharati v. State of Kerala*, AIR 1973 SC 1461: the validity of Article 31C (25<sup>th</sup> Amendment) was partly upheld but the Court preserved its power of judicial review to decide whether a law made by the legislature had any nexus with the principles recognised in Articles 39 (b) and (c).

## 7. Directive Principles: Approaches

- *Minerva Mills v. Union of India*, AIR 1980 SC 1789: The amended form of Article 31C giving primacy to all directive principles over fundamental rights was held **unconstitutional**.
- **APPROACHES**: The interpretation given by the Indian judiciary to the Directive Principles and their position *vis-à-vis* the Fundamental Rights at various points of time has affected the way in which the applicability of these principles is viewed.
- In the international context, it may be noted, ***the interdependence, interrelationship, and indivisibility of all human rights is often stressed*** (for example, Vienna Declaration and Programme of Action, 1993). The understanding of rights has influenced several constitutional frameworks *vis-à-vis* social and economic rights.

*The approach in favour of enforced constitutional rights is viewed as providing at least four classes of assistance:*

- 1) *remedying glaring rights violations;*
- 2) *influencing government action through the threat of judicial enforcement;*
- 3) *supporting extra-judicial social welfare action; and*
- 4) *reinforcing constitutional values for social transformation.*  
[Christiansen 2008]

## Part II

# Constitutional law & Socio-economic rights

## 8. Fundamental Rights & Directive Principles:

### The Dynamics

- ❖ In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others*, AIR 2006 SC 212, the interpretation of the relationship between the fundamental rights and directive principles was noted to have undergone three stages:
  - ❖ **STAGE ONE:** Initially a strict or literal interpretation of Article 37 (*State of Madras v. Smt. Champakam Dorairajan*, AIR 1951 SC 226 : **DPSP must conform to and run subservient to fundamental rights**)
  - ❖ **STAGE TWO:** Thereafter, the position was that DPSP **must be implemented but not so as to take away or abridge fundamental rights** [e.g. *Mohd. Hanif Quareshi v. State of Bihar*, AIR 1958 SC 731]
  - ❖ **STAGE THREE:** DPSP and fundamental rights are **complementary and supplementary** to each other towards the same goal—social revolution [*C.B. Boarding and Lodging v. State of Mysore*, AIR 1970 SC 2042]; **harmony and balance** between them held to be **part of the basic structure of the constitution** [*Minerva Mills v. Union of India*, AIR 1980 SC 1789]

## 9. New Frames

- ❖ More recently, it has been observed, in interpreting any constitutional provision, the directive principles were to be viewed as the “**book of interpretation**” [Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1]
- ❖ Also, the Court is required to **interpret the fundamental rights** in light of the directive principles [Charu Khurana v. Union of India, (2015) 1 SCC 192]
- ❖ **Key arguments** by courts on the fundamental nature of social & economic rights;
  - socio-economic rights are part of **right to life and dignity**, and
  - socio-economic rights are **constitutional rights**.
  - Socio-economic rights are deeply **interconnected** to fundamental rights under Part III.
  - “Parts III and IV together constitute the **core of the commitment to social revolution** and ... conscience of the constitution.”
  - India is obligated under **international human rights laws** to enforce socio-economic rights.

## 10. Socioeconomic rights under Part III

[Livelihood,  
Education,  
Food,  
Shelter,  
Water]

Under Article 21, the following rights have been included as a facet of the right to life & human dignity.

- ❖ **Livelihood** [*Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; *State of UP v. Charan Singh*, Civil Appeal no 2381 of 2007, Supreme Court of India, decided 26 March 2015]
- ❖ **Education** [*Unnikrishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645; *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858; *Society for Unaided Private Schools of Rajasthan v. Union of India and Others*, Supreme Court of India, decided 12 April 2012]
- ❖ **Food** [*People's Union for Civil Liberties v. Union of India* (CWP 196/2001-several orders); *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746]
- ❖ **Shelter** [*Shanti Star Builders v. Narayan Khimalal Totame*, AIR 1990 SC 630; *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, (1997) 11 SCC 121]
- ❖ **Clean drinking water** [*A.P. Pollution Control Board II v. Prof M.V. Nayudu*, (2001) 2 SCC 62; *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664]

## 11. Socioeconomic rights under Part III

[Equal pay,  
employment,  
Labour]

- ❖ Such wide interpretation has also been given by the court to other fundamental rights to include some economic and social rights, e.g.:
  - ❖ **Equal pay for equal work** [*Grih Kalyan Kendra Workers Union v. Union of India*, AIR 1991 SC 1173 having regard to Article 39 and equality in Articles 14 and 15; *U.P. Land Development Corporation and Another v. Mohd. Khursheed Anwar and Another*, (2010) 7 SCC 739]
  - ❖ **Right to be considered for employment** [*Anuj Garg and Others v. Hotel Association of India and Others*, AIR 2008 SC 663; Articles 14 and 16]
  - ❖ **Livelihood:** [*Senior Divisional Commercial Manager v. SCR Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and Another*, Civil Appeals nos 610–20 of 2016, Supreme Court of India, 29 January 2016; Article 19 (1) (g)]
  - ❖ **Forced labour:** [held to include cases of persons compelled to work for remunerations lower than the statutory minimum wage: *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473; Article 23]
  - ❖ **Free Legal Service:** *Madhav Hoskot v. State of Maharashtra*, 1978

## 12. Legislation

- ❖ The state has enacted various *pieces of legislation* which reflect or give effect to different provisions of the DPSP. [according to article 37, 'it shall be the duty of the state *to apply these principles in making laws*'.]
- ❖ Examples:
  - ❖ **Worker's rights:** e.g. Minimum Wages Act, 1948 (Article 43); Equal Remuneration Act, 1976 (Article 39 (d)); Factories Act, 1948 (Article 42, 43); Mines Act, 1952; Maternity Benefits Act, 1961 (Article 42); [Article 7 of the ICESCR]
  - ❖ **Social Assistance and Insurance:** e.g. Workmen's Compensation Act, 1923, Employees State Insurance Act, 1948 (Article 41) (enacted prior to the Constitution)
  - ❖ **Work:** Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (Article 41) [Article 6, ICESCR]
  - ❖ **Education:** The Right of Children to Free and Compulsory Education Act, 2009 (21-A- fundamental right) [Article 13, ICESCR]
  - ❖ **Basic needs:** e.g. National Food Security Act, 2013 (Article 47); 'access to adequate quantity of quality food at affordable prices'

## 13. Schemes and Programmes

- ❖ Schemes and Programmes have also been formulated by various governments from time to time dealing with various socio-economic rights.
- ❖ Examples:
  - ❖ Five year plans: e.g. Sixth Plan- removal of **poverty** as one of its objectives; Eighth Plan-**employment** generation, universalization of **elementary education**; Twelfth Plan- inclusiveness and **poverty reduction**.
  - ❖ NITI Aayog (which replaced Planning Commission): Three-Year agenda: includes among other development concerns, focus on **education** and skill development, **health**, and inclusivity.
  - ❖ MNREGA for employment; Pradhan Mantri Rozgar Yojna (unemployed educated youth); Public Distribution System (certain quantity of foodgrains at subsidized prices); Mid-day Meal Scheme (one hot cooked meal daily to children attending school); *Pradhan Mantri Gramin Awas Yojna*; *Rashtriya Swasthya Bima Yojana* (health insurance to families living below the poverty line); National Rural Health Mission (inclusive and improved healthcare for those in rural areas).
  - ❖ **Sanitation**: Swachh Bharat Programme

## 14. PIL & Relevant Mechanisms

Several institutional & legal mechanisms have been adopted to give effect to socio-economic rights;

- ❖ **Access:** Mechanism of public interest litigations (to ensure that sections of society unable to approach courts themselves for enforcement of their fundamental rights can access justice.)
- ❖ **Appointment of Commissioners** or experts to ascertain facts [*Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802]
- ❖ **Appointment of Commissioners** to monitor implementation of orders [*PUCL v. Union of India* (CWP 196/2001)]
- ❖ **Continuing Mandamus:** court passes short orders and monitors implementation [*PUCL v. Union of India* (CWP 196/2001); *Swaraj Abhiyan v. Union of India*, Writ Petition (C) 857/2017, 13 May 2016]

*These mechanisms enable the court to not only ensure access to justice and verify facts, but also monitor implementation of orders and progress made towards the enjoyment of rights by people.*

# Part III

## India & UN

### Mechanisms

## 15. UN Special Rapporteur Report [ Safe Drinking Water and Sanitation, India, 2018]

[Country visits made by Special Rapporteurs to study the situation of human rights in India. Two visits were made in relation to right to sanitation, water, & housing].

### From the Report of Special Rapporteur;

1. **STATE OBLIGATIONS:** The human rights to water and sanitation and the *human rights obligations* of the State are recognized in the International Covenant on Economic, Social and Cultural Rights, and several other international human rights treaties.
2. **INTERRELATED RIGHTS:** The human rights to water and sanitation derive from the *right to an adequate standard of living*, protected under article 25 of the UDHR, & article 11 of the ICESCR. Furthermore, the General Assembly and the Human Rights Council have explicitly recognized the rights to water and sanitation as *two distinct but interrelated human rights*.
3. **IMPLEMENTATION & ACCESS:** The analysis of the realization of the *human rights to water and sanitation* in India calls for a highly complex assessment, in the light of ... the large *social, economic, political, demographic, cultural and regional diversities* across the country.
4. **ARTICLE 21 RIGHTS:** While the Constitution does not explicitly mention the human rights to water and sanitation, *its article 21, on the right to life, has been progressively interpreted* by the courts to include the rights to water and sanitation. The *Supreme Court of India* also addressed issues of sanitation within the broad interpretation of the right to life under article 21 of the Constitution

## UN Special Rapporteur Report

[Safe Drinking Water and Sanitation, India, 2018]

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5. **CONCERNS:** There is a need for a *binding legislation or regulation* and legal enforcement mechanisms ... *The lack of harmonized legislation had led to a patchwork of legislation on water and sanitation varying by state, with few states adopting the model bill as law.*

6. **LEGISLATION:** Emphasis placed on the *draft national water framework bill (2016)*, it should recognize the human rights to water and sanitation in line with the authoritative interpretations provided by the Committee on Economic, Social and Cultural Rights, the General Assembly and the Human Rights Council...

7. **LEGAL REMEDIES:** *a national law is key ...to ensure the justiciability of the human rights to water* and sanitation, namely, individuals and groups who *are alleged victims of violations of those rights* would be able to file a complaint before a judicial body, to request legal remedies and to have those remedies enforced.

8. **STATE & LOCAL GOVERNMENTS:** As part of the State, local governments themselves — *both those in the Panchayati Raj system and municipalities* — *are bound by international human rights law.*

9. **TARGETS:** *Availability, Affordability, Accessibility, Quality & Safety, Accessibility, Sustainability*

[See Report for further details]

16.

**UN Special Rapporteur  
[Adequate Housing,  
India Report] 2017**

**From the Report by Special Rapporteur;**

- 1. INTERNATIONAL OBLIGATIONS:** India is party to most core international human rights treaties including the ICESCR, article 11 (1) of which contains provisions on the right to *adequate housing*, article 2 (2) on the right to nondiscrimination... India has *binding international human rights obligations* to ensure the enjoyment of the right to adequate housing without discrimination on any ground.
- 2. ARTICLE 21:** The Constitution of India... although does not explicitly enumerate the right to adequate housing as a justiciable right, several Supreme Court rulings under Article 21 have specifically referred to the right to housing in cases raising right to life issues, explicitly stating that *"the State has the constitutional duty to provide shelter to make the right to life meaningful"*.
- 3. PRIORITIES:** India is at a critical juncture in term of protection of the right to adequate housing...If the critical situation of those who *are landless, homeless, inadequately housed and displaced is to be taken as a serious human rights priority*, there must be a vigorous effort without *delay on the part of all levels of government to* put the right to adequate housing at the centre of the agenda.

**UN Special Rapporteur  
[Adequate Housing, India  
Report] 2017**

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**4. LEGISLATIVE REFORM:** *Short-term schemes* will not be sufficient to address the housing situation of those who are most disenfranchised and discriminated against with respect to housing. As a next step ... India needs an overarching, ***visionary and coherent piece of legislation*** based on human rights.

A national housing law that aims to address growing inequalities and offers a long-term road map is essential.

**5. FORCED EVICTIONS:** Enact ***legislation to guide forced evictions*** that stipulates that forced evictions can only occur in the most exceptional of circumstances, once all other alternatives have been pursued, in strict compliance with international human rights law.

**6. PROTECT, RESPECT, REMEDY:** Private entities should be regulated and measures put in place to ensure that they are ***monitored and held accountable***, including with respect to speculation of land and housing, land grabbing, rentals, forced displacement and forced evictions both in urban and rural areas.

[See Report for all details]

## 17. Points for Consideration

1. The practice of discrimination in the provision of socio-economic rights and benefits.
2. The need for adequate legislation ensuring all facets of basic needs, at the least for the deprived sections of society.
3. The role of state and local governments in implementing laws and policies.
4. Effectiveness of judicial decisions in terms of actual realisation of socio-economic rights for people.
5. Mandatory requirement for *impact assessment* of state & other projects and plans
6. *Coordination & Cooperation* with UN human rights mechanisms and other organizations
7. Emphasis on achieving availability, accessibility, affordability & acceptability of socio-economic rights .

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