

# Indian Constitution and Social Transformation

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**Abstract –** *The Constitution of a country is the highest legal-political document for its government. It also embodies the statement of rights of the people as lawfully established. In a general sense it lays down the structure of power and obligations of the rulers towards the ruled. Such obligations imply not only the limit of the governmental power but also the expectation of the people from the government. A significant point about a Constitution is that it is future oriented, rather than past oriented. People who administer their affairs according to traditions and customs do not need a constitution. The memories of their elders are sufficient for them. Historically, whenever a Constitution has been framed, it has followed a revolution. A Constitution has been intended to usher in a new social and political order. In the Eighteenth century, when the first written constitution in the world appeared – in the United States of America – only the bare structure of a federal republican government was laid down in 1789. That was a break with the 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. The assumption was that the people had certain rights, naturally, and the Government could not take them away. Those rights were conceived in terms of the liberal laissez faire doctrine that put premium on the rights to life, liberty and personal property. The Constitution of every nation is the Supreme Law and only this can deliver justice to all with maintaining equality and upholding the rights of Natural Justice.*

**Keywords:** Indian Constitution, Rights of the People, Justice, Equality, Judicial Interpretation, Jurisprudence, Republican Democracy, Preamble, Democratic, Sovereign country, Directive Principles of State Policy, Social Rights, Political Rights, Nature of Rights and Social Transformation etc.

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## INTRODUCTION

In the twentieth century, this view of rights was considerably widened by the welfare, and even socialist approach. New rights were included in the other Constitutions of the world and the scope of old rights were widened by judicial interpretations. Even the form of the statement of the rights was modified. Thus, the Constitution of the now defunct Union of Soviet Socialist Republics incorporates the right to gainful employment as the fundamental right of every citizen. In the USA, affirmative action in favor of the weaker sections of the people was legally Law and Social Transformation in India validated. The Constitution of Ireland incorporated certain directives to the Government on the people's welfare. The proclamation of the Indian Constitution after the transfer of power from Britain heralded a new era too. First and foremost, it established a Republican Democracy in place of the monarchical empire of the British Government. Expectedly, the Indian Constitution inherited the world trend through the experiences of the people during the freedom struggle. The Indian Constitution retained the liberal democratic framework but broadened the scope of governmental intervention with a view to promoting social reform and welfare. There was prohibition on

the state to violate the rights and equality of the citizens – the rights that were essentially of negative character. There was a prohibition on the society to practice untouchability. Permission was granted to the state to take special measures for the improvement of weaker sections of the people. The Constitution also adopted the Irish model of issuing positive directives to the Government for the promotion of welfare measures.

## THE PREAMBLE OF THE INDIAN CONSTITUTION

Every liberal democratic Constitution has a preamble articulating its spirit. The Preamble to the Indian Constitution also has stated the noble aims of the polity. The first point that needs mention is that, according to the Preamble, it is 'We, the people of India' who, in the Constituent Assembly of India, adopted, enacted and gave to ourselves this Constitution. In short, the authority of the Constitution, as the Supreme Law of the land, is derived from the people and not from the grace of any external sovereign. Therefore, India is a Democratic, Sovereign country. India is also a Republic. It does not recognize 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 the state Legislative Assemblies on the basis of adult franchise. Every resident, adult citizen of sound mind, and not legally barred on grounds of crime, corruption or illegal practice, is entitled to be registered as a voter (Article 326 of the Constitution). The Constitution also promises to all its citizens Justice, social, economic and political; Liberty of thought expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual. By an amendment in 1976 the aims of establishing secularism and socialism and promoting the unity and integrity of the nation were proclaimed.

### THE RISE OF THE PEOPLE

The significance of the universal adult franchise can never be overstressed. The British had introduced an elective system of legislature in India. Until the coming into force of the new Constitution, however, only about 15% of the adult Indians Constitution's Orientation and Response to Social Transformation were voters, the voting right being conditioned by property and educational qualifications. By one stroke it was made universal and became a key factor in the making and unmaking of the government. The Constitution not only made the people the ultimate masters of their destiny, but it also made them equal. The traditional Indian social system, fragmented by religious and ethnic differences and stratified by caste, lost its legitimacy. Individual human beings became the fundamental units of polity. All political and economic rights were granted to the individuals. At the same time, some cultural rights were granted to the minority groups.

### RIGHTS OF THE PEOPLE

There are two kinds of rights under the Indian Constitution: some granted to all 'persons' and some to 'citizens' only. The first kind of rights is available to non-citizens too and include equality before the law and equal protection of the law (Article 14), protection against unlawful conviction (Article 20), life and personal liberty (Article 21), protection against unlawful detention (Article 22), right against exploitation in the form of traffic in human beings and forced labor except for public purposes (Article 23), right of children against hazardous employment (Article 24), freedom of religion (Article 25), freedom of religious denominations to manage their religious affairs (Article 26), and freedom from payment of taxes the proceeds of which specifically go to the benefit of any particular religion or religious denomination (Article 27), freedom from enforced religious instruction in schools run by religious denominations (Article 28), protection of minorities (Article 29), right of minorities to establish and administer educational institutions of their choice (Article 30), right to Constitutional Remedies (Articles

32 and 226) and the right not to be deprived of property save by authority of law (Article 300A). All other rights – right against discrimination by the state (Article 15), equality of opportunity in matters of public employment (Article 16), right against practice of untouchability (Article 17), right against creation of state titles other than military or academic (Article 18), right to freedom of speech and expression, to assemble peacefully and without arms, to form associations or unions, to move freely throughout the territory of India and to reside and settle in any part of the territory of India and to practice any profession or carry on any occupation, trade or business (Article 19) are granted to the citizens.

### NATURE OF THE RIGHTS

The following points need to be noted about the rights:

(1) These rights are negative in form in as much as they restrict the authorities from violating these rights. (2) While most of these rights are against the state, some of them, like the right against untouchability (Article 17) and the right to protection of minorities (Article 29) are against the society. (3) While most of the rights are granted to the individuals, some are granted to groups (Article 27, 29 and 30), (4) Most of the Law and Social Transformation in India rights are conditional upon considerations of public interest, law and order, decency and welfare of certain weaker sections of the people. These points are significant in the understanding of the nature of rights in India. We have said that in the traditional liberal democracies like the United States, the rights are negatively framed so that the state does not take them away. The question of protection of those rights from the assault of other members of the society is tackled by the law and order functions of the state. For instance, race riots in the USA are dealt with exclusively under the criminal law which the State is constitutionally obliged to apply without discrimination. In India, on the other hand, practice of untouchability by members of the upper castes is directly an offence against the Constitution. Similarly, violation of the rights of minorities by members of the majority community is an offence against the Constitution. It is the direct constitutional responsibility of the state to protect the social rights of the dalits (the people of the Scheduled Castes), the adivasis (the people belonging to the Scheduled Tribes) and the religious and linguistic minorities. The other significant difference with the older liberal constitutions is the specification of limits of the rights by the Constitution of India itself. In the United States such limits are set by the courts of law and depend upon the personal views of the judges. Such personal views are not ruled out in India but they are restricted by the Constitution itself. As has been mentioned, these constitutional restrictions spring from the Constitution's concern

for not only law and order but also public interest in general, including decency, morality and welfare of the weaker sections of the society. Finally, constitutional acknowledgement of groups as well as individuals is the result of the rather unhappy communal history of the country. This concern of the Constitution of India with the plight of the religious and linguistic minorities and the weaker castes is reminiscent of certain European constitutions set up between the two World Wars in pursuit of the minority treaties some of the states had to sign before their establishment. Such countries were Poland, Yugoslavia and Czechoslovakia. The difference is that those European states never seriously implemented them. In India they have been implemented with all seriousness. Thus the structure of rights in the Indian Constitution envisaged an active role of the state in bringing forth social transformation.

### **THE DIRECTIVE PRINCIPLES OF STATE POLICY**

A more direct activist role of the State in bringing forth socio-economic transformation was assigned by the Constitution of India through Directive Principles of State Policy. These principles are not directly enforceable by the law courts. But the courts, while interpreting the Constitution, including the Fundamental Rights, are to be guided by them. The Constitution enjoins the state to regard them as fundamental in governance and to apply them when making laws. Constitution's Orientation and Response to Social Transformation Common Good and Life of Dignity The most fundamental directive to the state is to strive to secure a social order in which justice, social, economic and political shall inform all the institutions of their national life. The state shall, in particular, strive to minimize inequalities in income and eliminate inequalities of status, facilities and opportunities not only among the individuals but also among groups of people residing in different areas or engaged in different vocations (Article 38). In particular the state shall direct its policies towards securing adequate means of livelihood for all citizens, men and women equally, distribution of ownership and control to best serve the common good, preventing concentration of wealth and means of production to the common detriment, ensuring equal pay for equal work for both men and women, protection of the health and strength of the workers, men and women, prevention of the abuse of the children, and facilitation of the children to grow in a healthy manner and with freedom and dignity (Article 39). In the Sphere of Law Most other Articles in this part of the Constitution (Part IV) are elaborations of these basic objectives. The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other

disabilities (Article 39A, added in 1977 by the 42nd amendment to the Constitution). The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India (Article 44). The state shall take steps to separate the judiciary from the executive in the public services of the state (Article 50). The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government (Article 40). In the Economic Sphere There is a more guarded promise in the economic sphere. The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want (Article 41). The right to work as such cannot be granted by any liberal democratic state simply because it does not control all the means of production. The system of social insurance is also provided by only developed industrial countries though its operation is unstable. For a developing country like India the promise of universal right to work and/or social insurance is obviously too ambitious. The State shall regard the raising of the level of nutrition and the standard of living of the people and the improvement of public health as among its primary duties and, in particular, endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating and harmful drugs (Article 47).

### **ROLE OF LAW IN SOCIAL TRANSFORMATION IN INDIA AND RIGHTS OF WORKERS**

The State shall make provision for securing just and humane conditions of work and for maternity relief. The state shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, industrial, agricultural or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavor to promote cottage industries on an individual or cooperative basis in rural areas (Article 43). By the 42nd Amendment to the Constitution, the State was enjoined to take steps, by suitable legislation or any other way, to secure the participation of workers in the management of undertakings, establishments of other organizations engaged in any industry (Article 43A) For Children and the Weaker Sections The state is directed to provide, within a period of ten years (from the proclamation of the Constitution) to all children up to the age of fourteen years (Article 45). The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all

forms of exploitation (Article 46). The Sphere of Agriculture and Environment The state shall endeavor to develop agriculture and industry along modern scientific lines (Article 48). It is the obligation of the state to protect every monument or place or object of historic interest declared by the Parliament to be of national importance from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be (Article 49). Article 48A, incorporated by the 42<sup>nd</sup> amendment in 1977 enjoins the duty to protect and improve the environment and safeguard the forests and wildlife of the country.

## SOCIAL RIGHTS AND THE CONSTITUTION

This chapter begins with a discussion on what could be termed as "social rights", the Indian constitutional structure of the division between fundamental rights and directive principles, and the debates on social rights during the drafting of the Constitution. With this background, some of the most important judgments of the Supreme Court in the last ten years in the field of social rights have been analyzed, looking specifically at the enforcement and justifiability of the right to food, right to education and the right to health. The developments in the last decade are significant as during this time the deleterious effects of globalization and threats of deprivation of basic social rights have been acutely felt and this has been studied. The study of the recent case-law in the nineties on these social rights is of interest because the Supreme Court has demonstrated a judicial willingness and capacity to address aspects of social rights in a way that challenges many preconceived Constitution's Orientation and Response to Social Transformation notions of the judicial role. From the nineties onwards we can see that the Supreme Court has shown a positive and marked tendency to take the principle of the interdependence of human rights seriously and to interpret entrenched constitutional guarantees of the fundamental rights in the light of the directive principles. Moving ahead from the position that social rights and civil and political rights are indivisible and interdependent, through the discussion and analysis of the specific rights to food, health and education, this article argues that social rights can indeed be made enforceable and are amenable to judicial implementation. The recent Indian experience shows that their enforceability still remains the crucial factor and gives ample examples of ways in which innovative remedies have been used to enforce social and economic rights by the judiciary.

### DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS IN THE CONSTITUTION

"Social rights" refer to those rights that protect the basic necessities of life or rights that provide for the foundation of an adequate quality of life. Social rights may also be defined as claims against the State to

have certain basic social and economic needs of life satisfied. These social claims have also been defined by Amartya Sen as basic entitlements. Amartya Sen argues that people are entitled in the prevailing system of institutional rights, to adequate means for survival and entitlements are the totality of things a person can have by virtue of her rights, which in turn depends on the legitimized process of acquiring goods under the relevant system. The basic necessities of life encompass at a minimum, the right to adequate nutrition, shelter, health, education, work and environment. All of these rights provide foundations upon which human development can occur and human freedom can flourish. In addition, such basic social rights should be conceptualized in terms of an entitlement both to be equal as humans and to be equal as members of society.

## SOCIAL RIGHTS IN THE CONSTITUTION

Human rights in the Constitution are divided into two separate parts. Part III of the Constitution houses the "fundamental rights", which in conventional human rights language may be termed as civil and political rights. Part IV of the Constitution contains the directive principles of State policy (DPSPs), which include all the social, economic and cultural rights. Social rights or basic entitlements have been recognized internationally as being as important as other civil and political human rights. As Frank Michelman argues, the fact that social rights make budgetary demands or call for government action and not just forbearance, does not in itself differentiate them radically from the standpoint of justifiability from constitutionally protected rights to equality before the law, right to speech and expression or to so-called negative liberties. At the very minimum social rights can sometimes even be "negatively protected" by Law and Social Transformation in India comfortable forms of judicial intervention, for example when municipal zoning and land use laws, insofar as they constrict local housing, can be open to challenge. While the fundamental rights mentioned in Part III are justiciable under the Constitution, DPSPs are not justiciable rights and their non-compliance cannot be taken as a claim for enforcement against the State, as per the text of the Constitution.

## DRAFTING OF THE CONSTITUTION AND SOCIAL RIGHTS

The Constitution does not merely provide the apparatus for governance, but it is also futuristic in envisioning what social and economic transformation India would undergo. In this sense, the vision of the drafters was very similar to what the new South African Constitution is imagined to be — a transformative constitution. The Constitution aimed at not only achieving political independence from colonial rule but also resolved to establish a new social order based on social,

economic and political justice. Social revolution was put at the top of the national agenda by the Constituent Assembly and DPSPs, it was thought, would make explicit the "socialist" as well as the social revolutionary content of the Constitution. It is very interesting to discover that during the drafting of the Constitution, some of the directive principles of State policy were initially part of the declaration of fundamental rights adopted by the Congress party at Karachi. Among the advocates for DPSPs in the Drafting Committee were Munshi, DrAmbedkar, Prof. K.T. Shah and B.N. Rau. They would have made the directive principles, or an even more rigorous social programme, justiciable. They disliked mere precepts and in the end supported them in the belief that half a loaf was better than none. Munshi had even included in his draft list of rights, the "rights of workers" and "social rights", which included provisions protecting women and children and guaranteeing the right to work, a decent wage, and a decent standard of living. K.T. Shah supported DrAmbedkar in the principle believing that there must be a specified timelimit within which all directive principles would be made justiciable. Ultimately the bifurcation between civil and political rights and social and economic rights was made under the Constitution because the latter, it was felt, could not be made enforceable until appropriate action was taken by the State to bring about changes in the economy. The importance given to Part IV is reflected in the speech of DrAmbedkar when he insisted on the use of the word "strive" in Article 38: "We have used it because it is our intention that even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these directive principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfillment of these directives. ... Otherwise it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go." Such insightful thinking of the framers of the Constitution was futuristic since it falls in line 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) and gives weight to the argument that the enforceability of social rights was never thought of as being dependent only on the availability of resources.

## **SOCIAL RIGHTS JURISPRUDENCE OF THE SUPREME COURT**

As reference to the preamble and Constitutional Assembly Debates would show, it would be invidious and indeed dangerous to give primacy or overriding effect to fundamental rights over the directive principles of State policy. Unfortunately, during the initial period of the working of the Constitution, the trend of judicial pronouncements showed an undue

emphasis on the aspect of justifiability. Since the emergency in the seventies, there has been a perceptible change in the judicial attitude on this question, and the Supreme Court has been reaffirming that both the fundamental rights and DPSPs must be interpreted harmoniously — thus laying the foundations for the principle that social rights are complementary, interdependent and indivisible from civil and political rights. It was held by the Supreme Court that there is no disharmony between the directive principles and the fundamental rights, because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare State, which is envisaged in the preamble. Following this, in Unni Krishnan, the famous right to education judgment, Justice Jeevan Reddy declared: The provisions of Parts III and IV are supplementary and complementary to each other and not exclusionary of each other and that the fundamental rights are but a means to achieve the goal indicated in Part IV. Article 21 and the Supreme Court From the late 1970s starting from Maneka Gandhi case, the Supreme Court started expanding the guarantee of the right to life in Article 21 to include a whole gamut of social rights. This strategy has been widely and continuously used through the years, and through the expansion of Article 21, social rights have thus become de facto justiciable and enforceable by the courts. Since the national emergency the Supreme Court started to emerge, in the words of Prof. UpendraBaxi, as "the last resort of the oppressed and bewildered". In dealing with deprivation of social rights and bringing DPSPs into the fold of the larger and justiciable right to life in Article 21 following the emergency, there was thus a heightened phase of judicial activism. This phase witnessed the emergence of social action litigation and a proactive judicial strategy became the most distinguishing characteristic of judicial activism. There was a subtle shift from a neutralist adversarial judicial role to an inquisitorial, affirmative judicial role and the judicial process changed from an adversarial, bilateral process to a polycentric, conflict-resolving process. In dealing with the huge number of PILs or social action litigation for enforcement of social rights, the Supreme Court also had to evolve new remedies for giving relief. The existing remedies which were intended to deal with private Law and Social Transformation in India rights situations were simply inadequate and new remedies were evolved. These new remedies were unorthodox and unconventional and were intended to initiate affirmative action on the part of the State and its authorities. For example, in Bandhua Mukti Morcha, the Supreme Court made an order giving various directions for identifying, releasing and rehabilitating bonded laborers, ensuring minimumwage payments, observance of labor laws, providing wholesome drinking water and setting up dust-sucking machines in the stone quarries. The Supreme Court also set up a monitoring agency, which would continuously

check the implementation of those directions. Some of these new and creative remedies have been taken forward by the Supreme Court in the nineties to seek enforcement of some of the newer articulated social rights such as the right to food, health and education. Judicial process is generally considered efficient in preventing encroachments on rights or liberties. But can it create new rights and enforce positive action in terms of allocation of resources? By examining some of the most important constitutional social rights cases of the last ten years more closely, and viewing them in terms of the specific right to food, the right to education, and the right to health, we can see that social rights adjudication in India is indeed vibrant and dynamic, and that they have been made enforceable despite their not being included as justiciable fundamental rights in the Constitution.

## THE RIGHT TO FOOD

While the Supreme Court has reiterated in several of its decisions that the right to life guaranteed in Article 21 of the Constitution, in its true meaning includes the basic right to food, clothing and shelter, it is indeed surprising that the justifiability of the specific right to food as an integral right under Article 21 had never been articulated or enforced until 2001! In 2001, there was a massive drought in several States in India especially Orissa, Rajasthan and Madhya Pradesh. Due to this drought, which had been going on for months and the extreme poverty and complete lack of access to foodgrains, people starved in large numbers. While the poor were starving in the drought-hit villages, the Central Government had excess foodgrains in its storehouses, which were not being distributed. The agitation in the country over lack of access to foodgrains in the drought-hit States of Orissa, Rajasthan, Gujarat and others, took rapid momentum after shocking incidents of people in some of the poorest districts of Orissa dying due to starvation. Despite these facts, the Central Government maintained that there were no incidents of starvation deaths. The Right to Food Petition Slowly, the public agitation over lack of access to food became a full-fledged right to food campaign. As part of this campaign, public interest the Supreme action was filed by the People's Union for Civil Liberties (PUCL) in April 2001 in Court for enforcement of the right to food of the thousands of families in the droughtstruck States of Orissa, Rajasthan, Chhattisgarh, Gujarat and Maharashtra. Constitution's Orientation

1. Starvation deaths had become a national phenomenon while there is a surplus stock of foodgrains in government and Response to Social Transformation. The right to food petition raised three major questions: granaries. Does the right to life mean that people who are starving and who are too poor to buy foodgrains should be denied foodgrains free of cost by the State from the

surplus stock of the State particularly when it is lying unused and rotting?

2. Does not the right to life under Article 21 of the Constitution of India include the right to food?
3. Does not the right to food which has been upheld by the Apex Court imply that the State has a duty to provide food especially in situations of drought to people who are not in a position to purchase food?

As relief measures, the petition demanded among other things, the immediate release of foodstocks for drought relief, provision of work for every able-bodied person and the increase in quota of foodgrains under the Public Distribution Scheme (PDS) for every person. This was the very first time that a distinct right to food was being articulated as encompassed within Article 21 and was sought to be enforced in the Supreme Court. The Supreme Court and Enforcement the Supreme Court expressed serious concern about the increasing number of starvation deaths and food insecurity despite overflowing food in FCI godowns across the country. The Bench comprising Justices Kirpal and K.G. Balakrishnan even broadened the scope of the petition from the initially mentioned six droughtaffected States, to include the entire country. In its several hearings, the Court directed all State Governments to ensure that all public distribution shops are kept open with regular supplies and stated that it is the prime responsibility of the Government to prevent hunger and starvation. On 23-7-2001 recognizing the right to food, the Supreme Court held: "In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to malnourishment, starvation and other related problems." Food Distribution Schemes Made into Entitlements.The Court, in an unprecedented interim order on 28-11-2001, directed all the State Governments and the Union of India to effectively enforce eight different Centrally-sponsored food schemes to the poor. These food security schemes were declared as entitlements (rights) of the poor, and the Court also laid down everyLaw and Social Transformation in India specific time-limits for the implementation of these schemes with the responsibility on the States to submit compliance affidavits to the Court. These include the Antyodaya Anna Yojna, the National Old Age

Pension Scheme, the Integrated Child Development Services (ICDS) Programme, the National Midday Meals Programme (NMMP), the Annapurna Scheme and several employment schemes providing food for work. Of the eight schemes, the most significant is the order directing all State Governments to provide cooked midday meals in all government schools by January 2002. The Supreme Court directed the State Governments to: "Implement the Midday Meal Scheme by providing every child in every government and government-assisted primary schools with a prepared midday meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all government and government-aided primary schools in at least half the districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State." In addition to the above Midday Meal Scheme, the Supreme Court also held that under the Targeted Public Distribution Scheme, the States should commence distribution of 25 kg grain per family per month (as against the earlier limit of 20 kg grain per family per month), latest by 1-1-2002. All State Governments were directed to take their "entire allotment of foodgrains from the Central Government under the various schemes and disburse the same in accordance with the schemes". Further, the Court required that "the Food for Work Programme in the scarcity areas should also be implemented by the various States to the extent possible". It is interesting to note that this time the Supreme Court did not merely direct the States to formulate appropriate schemes for food distribution as had been done earlier by the Court in several cases relating to the right to housing and shelter, but went several steps further in directing strict implementation of already formulated (and modified, where considered necessary) schemes within fixed time-frames, to make them entitlements and to ensure accountability. With a view to ensuring adequate food to the poorest of the poor, the Supreme Court in March 2002 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) ensuring the right to work to adults in rural areas. On 8-5-2002, the Supreme Court agreed on a system of monitoring. The Bench also added that the States are to provide funds utilization certificate before the money is released for use. Enforcement of the Right to Food the orders of the Supreme Court in the right to food petition are already being implemented at the ground level. Since the beginning of the 2002 academic year, primary schools in Rajasthan have been serving midday meals in compliance with Supreme Court orders, and among States that did not already have a Midday Meal Constitution's Orientation and Response to Social Transformation Scheme; Rajasthan was the first to comply. Interestingly, the Midday Meal Scheme is not merely providing

nutrition to the school children. In a survey conducted it has been found that it has resulted in a sharp increase in the enrolment of girls (36%) and a reduction in gender bias in enrolment in schools. A daily attendance of children in the schools has also increased and this was attributed to the midday meals. These orders of the Supreme Court bear great relevance for social rights jurisprudence — it not only shows once again the indivisibility of rights, but also that courts do have the authority to order positive action by the State which has financial/budgetary implications. Pleas on financial constraints did not seem to have affected the Court in making this order for enforcement of the right to food of the thousands of people starving in the drought-struck States and the Court took the opportunity to be truly activists. While the Supreme Court has been guided entirely by national law, it could also have drawn on recent advances made in understanding the right to food at the global level. There is increasing recognition worldwide that food and nutrition is a human right and thus there is a legal obligation to assure that all people are adequately nourished. Ground-level reports and surveys done for the implementation of the Supreme Court orders are indeed encouraging and several State Governments along with the NGOs are actually implementing the several schemes although by no means is the implementation of all the schemes perfect in any way, and there remains a lot of scope for further improvement. The active intervention of the Supreme Court in this petition shows how theoretically and in practice, there is no reason why certain social rights such as the right to food cannot be subject to judicial determination.

## **RIGHT TO EDUCATION**

As of 1991 there were 331 million children in India between the ages of 0-14. Of these 179 million were between the ages of 6-14 and 90 million of these children do not go to school. A large number of them are child workers, street children or child laborers. Obviously the State has failed in its "duty" to provide free and compulsory education even in fifty years. The activist phase of the Supreme Court during recent years included the declaration of the right to education up to fourteen years a fundamental right. The journey of the right to education — from being initially enumerated in the directive principles to being declared a fundamental right — has been a huge struggle and a triumph, for activists, child rights advocates, educationists and NGOs working on education all over the country. This journey however has been quite different from that of the other constitutional social rights, the main reason being that Article 45 of the directive principles gave a very different promise than the other provisions within the Constitution as it imposed a time-limit of ten years to implement the right to free and compulsory primary education and Social Transformation in India Article 45 is the only article among all the articles in Part

IV of the Constitution, which speaks of a time-limit within which this right should be made justiciable. Therefore, it was clear that when the Constitution of India was adopted in 1950, the framers of the Constitution were aware that for the realization of a person's capabilities and for full protection of her rights, education was an important tool. Thus, in addition to Article 45, the right to education has been referred in Articles 41 and 46 of the directive principles as well. The theory of the complementary nature of rights declared in Part III and Part IV, and the harmonious interpretation of these rights has been the foundation for the realization of primary education being declared a fundamental right today in India. The two crucial judgments of the Supreme Court which paved the way for the declaration of the right to education as a fundamental right, give full realization to the interdependence argument of social and civil/political rights, as discussed below. Education as a necessary means of achieving socio-political justice was largely ignored until the 1992 Supreme Court judgment in *Mohini Jain v. State of Karnataka*. In this case, the two-Judge Bench of the Supreme Court, while declaring that the charging of capitation fees as illegal, categorically held that "the right to education flows directly from the right to life" as "the right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education", and "the fundamental rights guaranteed under Part III of the Constitution of India, including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity". In looking at the interdependence of the rights guaranteed in Part III and Part IV, the Court held: "The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. ... Without making 'right to education' under Article 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate." The Supreme Court, in *Mohini Jain*, referred to the UDHR principles and to Article 41 of the Constitution, which recognises an individual's right to education. Borrowing the words of Dr. Ambedkar, the Court held that "although a citizen cannot enforce the directive principles contained in Chapter IV of the Constitution but these were not intended to be mere a pious declarations ... [and] the directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III". These principles have to be read into the fundamental rights. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III, could be enjoyed by all. The Court held that without making the "right to education" under Article 41 of the Constitution a reality, the fundamental rights under Chapter III

remain beyond the reach of the Constitution's Orientation and Response to Social Transformation large majority which is illiterate. The Court also relied upon Article 21 elaborations and expansion laid down in earlier judgments to uphold the right to education. The zeal demonstrated in *Mohini Jain* continued in the later Constitution Bench decision in *Unni Krishnan v. State of A.P.* where the Constitution Bench articulated that the fundamental right to education flows from Article 21. While declaring the right to education to be a fundamental right, it was held not to be an absolute right, and its content was defined by the parameters of Articles 45 and 41. In other words, every child/citizen has a right to free education up to the age of fourteen years and thereafter the right would be subject to the limits of the economic capacity of the State. This was in the nature of waking up the State from hibernation so that it may be fully alive to its obligations under the directives than an expansion of "life" or "liberty" in Article 21. In *Unni Krishnan* the Court took support from UDHR and Article 13 of ICESCR and for the first time articulated education as a "social" right. By holding the right to free primary education up to the age of 14 years, the Court was thus reminding the State of the endeavor it had to take under Article 45 within a prescribed time-limit, which had expired long ago. This has been one of the first judgments where the courts have employed ICESCR language for progressive realization of the right to higher education while declaring the fundamental right to free primary education. Relying very heavily on *Kesavananda Bharati*, J. *Jeevan Reddy*, J. uses the earlier approach for enforcement of directive principles in *Unni Krishnan* and the debate moves from justifiability of rights to enforcement of rights. This issue — enforcement of social rights, rather than justifiability was elaborated upon even as recently in 2001 in the *Grootbroom* judgment on housing rights by *Zak Yacoob*, J. where the South African Constitutional Court held that the issue should not be one of justifiability but to what extent these rights can be enforced. We can see this concept emerging in 1973 in the Supreme Court in *Kesavananda Bharati* and being relied upon in *Unni Krishnan*. *Mathew*, J. had held: (SCC p. 876, Para 1700). "Many of the articles, whether in Part III or Part IV, represent moral rights which they have recognized as inherent in every human being in this country. The task of protecting and realizing these rights is imposed upon all the organs of the State, namely, legislative, executive and judicial. What then is the importance to be attached to the fact that the provisions of Part III are enforceable in a court and the provisions in Part IV are not? Is it that the rights reflected in the provisions of Part III are somehow superior to the moral claims and aspirations reflected in the provisions of Part IV? I think not. Free and compulsory education under Article 45 is certainly as important as freedom of religion under Article 25. Freedom from starvation is as important as right to life. Nor are the provisions in Part III

absolute in the sense that the rights represented by them can always be given full implementation...." The argument that the right to life in Article 21 is merely negative in character was rejected by the Court. The question of insufficient resources was also very important. Law and Social Transformation in India ingeniously dealt with by Jeevan Reddy, J. He states quite naturally that it is only Article 41 which speaks of economic capacity of the State, whereas Article 45 does not speak of the limits of its economic capacity as does Article 41 and therefore this hurdle does not stand as an obstacle in carving out a fundamental right to primary education from Article 21! Knowing that this would have grave budgetary implications, he goes on to hold that: "[W]e is not seeking to lay down the priorities for the Government — we are only emphasizing the constitutional policy as disclosed by Articles 45, 46 and 41. Surely the wisdom of these constitutional provisions is beyond question." The declarations of the right to education as a fundamental right, has been further upheld and recently confirmed by the eleven-Judge Constitutional Bench of the Supreme Court in T.M.A. Pai Foundation v. State of Karnataka. As UpendraBaxi states, this self-effacing timorous or normalizing form of activist discourse occurs when Justices maintain that they are doing nothing outside their province, or doing nothing new, when everyone knows the situation to be quite frankly otherwise. This form of articulation is pragmatic as it avoids the ethical burden of justification for judicial activism and paves the way for routine legitimization of judicial innovation. Thus, constructing a fundamental right to education from a long-ignored directive principle as presented in Unni Krishnan as merely an example of the old idea that the directive principles furnish the technology of construction of Part III and now as a swayambhu (self-manifesting) aspect of new judicial power. In 1997 the then Government (United Front) had proposed the Eightythird Amendment to the Constitution which sought to introduce a change to Article 21 of the Constitution to make the right to primary education for children up to the age of 14 a fundamental right. This sparked off a nationwide campaign spearheaded by NGOs working with various aspects of children's rights to pressurize the Government into passing the Amendment Act. The Amendment was finally passed in 2002 and inserted in the Constitution as Article 21A. In addition to the declaration and amendment declaring the right to education as a fundamental right, several States in India have passed legislation making primary education compulsory. These Acts, however, remain unenforced due to various socio-economic and cultural factors as well as administrative and financial constraints. There is no Central legislation making elementary education compulsory. The Central Government, which has placed responsibility of education on the State rather than on parents, has, therefore, been advocating community involvement, decentralization of planning and management of school education to Panchayat raj institutions and other efforts for encouraging primary education. With the Supreme Court declarations, it is to be seen

whether the State machinery is put into work to enforce the right, and also to implement the State-level legislations, which seek to provide free and compulsory primary education. In this case, therefore, the issue would be of enforceability and not one of justifiability, Constitution's Orientation and Response to Social Transformation.

## **THE RIGHT TO HEALTH**

With the recognition that both the preamble of the Constitution and the fundamental right to life in Article 21 emphasize the value of human dignity, the Supreme Court began to address the importance of health as a fundamental right. In the directive principles in Part IV of the Constitution, Article 47 declares that the "State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties". In addition to Article 47, the right to health also has its reference in Articles 38 (social order to promote the welfare of the people), 39(e) (health of workers, men, women and children must be protected against abuse), 41 (right to public assistance in certain cases, including sickness and disability) and 48A (the State's duty to protect the environment) of the directive principles. In a series of cases dealing with the substantive content of the right to life the Court has found that the right to live with human dignity includes the right to good health. Moving towards a Recognition of the Right to Health Compared to some of the other social rights, the right to health has been articulated and recognized as an integral part of the right to life, only from the mid-nineties by the Indian Supreme Court. It was in 1995 in Consumer Education and Research Centre v. Union of India, that the Supreme Court for the first time explicitly held (at SCC p. 70, Para 24) that "[t]he right to health ... is an integral facet of [a] meaningful right to life". This case was concerning the occupational health hazards faced by workers in the asbestos industry. Reading Article 21 with the relevant directive principles guaranteed in Articles 39(e), 41 and 43, the Supreme Court held that the right to health and medical care is a fundamental right and it makes the life of the workman meaningful and purposeful with the dignity of person. This recognition established a framework for addressing health concerns within the rubric of public interest litigation and in a series of subsequent cases, the Court held that it is the obligation of the State not only to provide emergency medical services but also to 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. Very significantly, while adjudicating on the social right to health, the Supreme Court has specifically considered the issue of availability of resources, and has rejected the argument that social rights are non-enforceable due to shortage of resources. This

was discussed in Paschim Banga Khet Mazdoor Samity case, where the Court addressed the issue of adequacy and availability of emergency medical treatment. In this case, Hakim Sheikh, a member of the Paschim Banga Khet Mazdoor Samity, fell off a train and suffered serious head injuries. He was brought to a number of State hospitals, including both primary health centers and specialist clinics, for treatment of his injuries. Seven State hospitals were unable to provide emergency treatment for his injuries because of lack of bed space and trauma and Law and Social Transformation in India neurological services. He was finally taken to a private hospital where he received his treatment. Feeling aggrieved by the callous and insensitive attitude of the government hospitals in Calcutta in providing emergency treatment the petitioner filed a petition in the Supreme Court and sought compensation. The issue presented to the Court was whether the lack of adequate medical facilities for emergency treatment constituted a denial of the fundamental right to life under Article 21. It was held 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 of the petitioner, compensation was awarded to him. In this case, the Supreme Court recognized that financial resources are needed for providing these facilities, but Justice S.C. Agrawal held: But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. The Court recognized that substantial expenditure was needed to ensure that medical facilities were adequate. However, it held that a State could not avoid this constitutional obligation on account of financial constraints. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. So, therefore, not only did Agrawal, J. reiterate that the State has to strive towards enforcement and guaranteeing of social rights irrespective of financial constraints, but also that the need for resources arises also in the matter of enforcement of civil/political rights. The Court in Paschim Banga<sup>18</sup> also required the State to ensure that primary health centers are equipped to provide immediate stabilizing treatment for serious injuries and emergencies. 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. In addition the courts have observed that a healthy body is the very foundation for all human activities and

measures should be taken to ensure that health is preserved. For example in *Murli S. Deora v. Union of India* which was a public interest litigation, the Supreme Court prohibited smoking in public places in the entire country on the grounds that smoking is injurious to the health of passive smokers and issued directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in all public places. In another interesting PIL, the Supreme Court, taking into consideration the increasing pollution levels in New Delhi due to diesel emissions, and that such exposure to toxic air would violate the right to life and health of the citizens, directed all private non-commercial vehicles to conform to Euro II norms within a specified time period.

## HIV AND THE RIGHT TO HEALTH

The social right to health has been very well articulated in relation to persons suffering with HIV/AIDS, due to the large levels of discrimination faced by them. The denial of services vis-à-vis care and support represents one of the most immediate and pressing concerns of people living with HIV/AIDS. A recent Full Bench decision of the Andhra Pradesh High Court views AIDS as a public health issue and one that needs to be articulated in terms of the constitutional guarantee to the right to life, making employers and health providers accountable for any negligence, omission or failure to conform to procedure. In *M. Vijaya v. Chairman, Singareni Collieries, Hyderabad Vijaya*, whose husband was an employee of the company for the past 17 years, underwent a hysterectomy at the Company's hospital in January 1998, for which her brother donated blood. Fifteen days later, she fell sick and was advised further tests, which revealed that she was HIV positive. Her husband tested negative, while her brother tested positive. In its counter-affidavit, the hospital not only disclosed facts about the widespread prevalence of HIV/AIDS in the collieries but also admitted that it had not tested the blood of the donor before accepting it. This, the Court said, was negligence on the part of doctors and could not be condoned. The Court awarded compensation as a public law remedy in addition to and apart from the private law remedy for tortious damages. The Court directed Singareni Collieries to pay one lakh towards medical costs, in addition to the special or general claims for damages that the petitioner might make. Some Thoughts on the Right to Health Adjudication In trying to unpack a constitutional right to health, what would the core elements be? At a minimum would be the Government's responsibility to include relief for the poor confronting health challenges and without the resources to overcome them. In addition a constitutionally recognized right to health can only be fulfilled through rational planning, which in turn is dependent on accurate and regular informationgathering and timely statistics on health needs from the Government, which are often

unavailable. This may lead to the charges that the right to health is no more than a rhetorical one. However, jurisprudence reveals that courts and lawyers are not completely incapable of working with and pronouncing on the social right to health. The movement of judicial view from the early discussions on health to the late nineties clearly shows that the right to health and access to medical treatment has become part of Article 21. A corollary of this development is that while so long the negative language of Article 21 was supposed to impose upon the State only the negative duty not to interfere with the life or liberty of an individual without the sanction of law, judges have now imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity.

## **CONCLUSION**

Social transformation is the continuous process of changing the dimensions of the society. The different factors affects the society and legal system is organized in courts, tribunals, forums, administrative agencies, legislature, Executive, law enforcement agencies, prosecuting agencies, Judges and juries, lawyers, legal profession and legal education. All these act and interact with and in the society and influence the life of the society as a whole and as a unit. Indian society has transformed over the period of time from a society governed by smriti, sruti, dharma and other customary law, to western conceptions of law and authority during the colonial period. Further with the rights based Indian Constitution and progressive law making which includes the codification of religious laws and affirmative action during the post-colonial period, the Indian society has undergone transition. Yet, till date no yardstick is there to decide the factors contributing more or less to the balancing of all types of transformations including social transformation. As the human being is the subject of law who prevails in the society due to its basic nature of being social animal or gregarious animal in the view of Aristotle so the response of human behavior in a society to law and how law has crafted and moulded itself to suit the way of the society responds to it could be understand. There also could be instances we could observe, by which we could see even the society at times demands for laws. So the interplay of law and society contributes and leads to development of each other for social transformation. The subject of research includes concept like law, legal system, social justice, morality and development. Law has always been looked at as one of the important instruments that could bring about social change and the reformation solely through law is one of the most effective and safest methods to achieve the uniformity among several diversities like, social culture, economic and political. Social change is not a social transformation as to establish social change these would be ideally a change in the established social norms, social rules and patterns of social

relations. Whereas, massive, structural or far-reaching social change would be termed as a social transformation.

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23. Article 15(4), Constitution of India reads as: 15. (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of Citizens, the Scheduled Castes and the Scheduled Tribes.
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