Chapter 3

Directive Principles

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Fundamental Rights is a charter of rights contained in the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus. Violations of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, color or Gender. They are enforceable by the courts, subject to certain restrictions. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

The six fundamental rights recognised by the constitution are\(^1\)

1. The right to equality
2. The right to freedom
3. The right to freedom from exploitation
4. The right to freedom of religion
5. Cultural and educational rights
6. The right to constitutional remedies

Rights mean those freedoms which are essential for personal good as well as the good of the community. The rights guaranteed under the Constitution of India are fundamental as they have been incorporated into the "fundamental Law of the land" and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment.

Fundamental rights for Indians have also been aimed at overturning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouched ability and hence prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions.

Significance and characteristics

The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The writers of the constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognized and protected by the State. According to them, "democracy" is, in essence, a government by opinion and
therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights.\[6\]

All people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their fundamental rights. It is not necessary that the aggrieved party has to be the one to do so. Poverty stricken people may not have the means to do so and therefore, in the public interest, anyone can commence litigation in the court on their behalf. This is known as "Public interest litigation".\[7\] In some cases, High Court judges have acted on their own on the basis of newspaper reports.

These fundamental rights help not only in protection but also the prevention of gross violations of human rights. They emphasize on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. Some fundamental rights apply for persons of any nationality whereas others are available only to the citizens of India. The right to life and personal liberty is available to all people and so is the right to freedom of religion. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are reserved to citizens alone, including non-resident Indian citizens.\[8\] The right to equality in matters of public employment cannot be conferred to overseas citizens of India.\[9\]

Fundamental rights primarily protect individuals from any arbitrary state actions, but some rights are enforceable against individuals.\[10\] For
instance, the Constitution abolishes untouchability and also prohibits beggar. These provisions act as a check both on state action as well as the action of private individuals. However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed. The Supreme Court has ruled \[11\] that all provisions of the Constitution, including fundamental rights can be amended. However, the Parliament cannot alter the basic structure of the constitution. Features such as secularism and democracy fall under this category. Since the fundamental rights can only be altered by a constitutional amendment, their inclusion is a check not only on the executive branch, but also on the Parliament and state legislatures.\[12\]

A state of national emergency has an adverse effect on these rights. Under such a state, the rights conferred by Article 19 ( freedoms of speech, assembly and movement, etc.) remain suspended. Hence, in such a situation, the legislature may make laws which go against the rights given in Article 19. Also, the President may by order suspend the right to move court for the enforcement of other rights as well.

**Right to equality**

Right to equality is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties, and guarantees the following:

- Equality before law: Article 14 of the constitution guarantees that all citizens shall be equally protected by the laws of the country. It means that the State[3] cannot discriminate against a citizen on the basis of caste, creed, colour, sex, religion or place of birth.\[13\]
- Social equality and equal access to public areas: Article 15 of the constitution states that no person shall be discriminated on the basis of caste, colour, language etc. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. However, the State may make any special provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward class or scheduled castes or scheduled tribes.\[14]\n
- Equality in matters of public employment: Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. The Parliament may enact a law stating that certain jobs can only be filled by applicants who are domiciled in the area. This may be meant for posts that require knowledge of the locality and language of the area. The State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which are not adequately represented in the services under the State to bring up the weaker sections of the society. Also, there a law may be passed which requires that the holder of an office of any religious institution shall also be a person professing that particular religion.\[15] According to the Citizenship (Amendment) Bill, 2003, this right shall not be conferred to overseas citizens of India.\[9]\n
- Abolition of untouchability: Article 17 of the constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law.\[16]\n
The Untouchability Offences Act of 1955 (renamed to Protection
of Civil Rights Act in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.

- Abolition of Titles: Article 18 of the constitution prohibits the State from conferring any titles. Citizens of India cannot accept titles from a foreign State.\[^{[7]}\] The British government had created an aristocratic class known as *Rai Bahadurs* and *Khan Bahadurs* in India — these titles were also abolished. However, Military and academic distinctions can be conferred on the citizens of India. The awards of *Bharat Ratna* and *Padma Vibhushan* cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition”.\[^{[8]}\] The Supreme Court, on 15 December 1995, upheld the validity of such awards.

### Right to freedom

The Constitution of India contains the right to freedom, given in articles 19, 20, 21 and 22, with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The right to freedom in Article 19 guarantees the following six freedoms:\[^{[9]}\]

- Freedom of speech and expression, which enable an individual to participate in public activities. The phrase, "freedom of press" has not been used in Article 19, but freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.
• Freedom to assemble peacefully without arms, on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.

• Freedom to form associations or unions on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.

• Freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics.

• Freedom to reside and settle in any part of the territory of India which is also subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes because certain safeguards as are envisaged here seem to be justified to protect indigenous and tribal peoples from exploitation and coercion. Article 370 restricts citizens from other Indian states and Kashmiri women who marry men from other states from purchasing land or property in Jammu & Kashmir.

• Freedom to practice any profession or to carry on any occupation, trade or business on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.
The constitution also guarantees the right to life and personal liberty, which in turn cites specific provisions in which these rights are applied and enforced:

- Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty. According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at that time. This legal axiom is based on the principle that no criminal law can be made retrospective, that is, for an act to become an offence, the essential condition is that it should have been an offence legally at the time of committing it. Moreover, no person accused of any offence shall be compelled to be a witness against himself. "Compulsion" in this article refers to what in law is called "Duress" (injury, beating or unlawful imprisonment to make a person do something that he does not want to do). This article is known as a safeguard against self incrimination. The other principle enshrined in this article is known as the principle of double jeopardy, that is, no person can be convicted twice for the same offence, which has been derived from Anglo Saxon law. This principle was first established in the Magna Carta.[23]

- Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law.[23] This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence. (Attempted suicide being interpreted as a crime has seen
many debates. The Supreme Court of India gave a landmark ruling in 1994. The court repealed section 309 of the Indian penal code, under which people attempting suicide could face prosecution and prison terms of up to one year. In 1996 however another Supreme Court ruling nullified the earlier one. "Personal liberty" includes all the freedoms which are not included in Article 19 (that is, the six freedoms). The right to travel abroad is also covered under "personal liberty" in Article 21.

- In 2002, through the 86th Amendment Act, Article 21(A) was incorporated. It made the right to primary education part of the right to freedom, stating that the State would provide free and compulsory education to children from six to fourteen years of age. Six years after an amendment was made in the Indian Constitution, the union cabinet cleared the Right to Education Bill in 2008. It is now soon to be tabled in Parliament for approval before it makes a fundamental right of every child to get free and compulsory education.

- Rights of a person arrested under ordinary circumstances are laid down in the right to life and personal liberty. No one can be arrested without being told the grounds for his arrest. If arrested, the person has the right to defend himself by a lawyer of his choice. Also an arrested citizen has to be brought before the nearest magistrate within 24 hours. The rights of a person arrested under ordinary circumstances are not available to an enemy alien. They are also not available to persons detained under the Preventive Detention Act. Under preventive detention, the government can imprison a person for a maximum of three months. It means that if
The government feels that a person being at liberty can be a threat to the law and order or to the unity and integrity of the nation, it can detain or arrest that person to prevent him from doing this possible harm. After three months such a case is brought before an advisory board for review.\textsuperscript{291}

The constitution also imposes restrictions on these rights. The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. However, the right to life and personal liberty cannot be suspended. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency.

**Right against exploitation**

The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and *Beggar* (forced labor),\textsuperscript{301} and abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. Child labour is considered a gross violation of the spirit and provisions of the constitution.\textsuperscript{311} *Beggar*, practiced in the past by landlords, has been declared a crime and is punishable by law. Trafficking in humans for the purpose of slave trade or prostitution is also prohibited by law. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military conscription is covered by this provision.\textsuperscript{301}
**Right to freedom of religion**

Right to freedom of religion, covered in Articles 25, 26, 27 and 28, provides religious freedom to all citizens of India. The objective of this right is to sustain the principle of secularism in India. According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.

Religious communities can set up charitable institutions of their own. However, activities in such institutions which are not religious are performed according to the laws laid down by the government. Establishing a charitable institution can also be restricted in the interest of public order, morality and health. No person shall be compelled to pay taxes for the promotion of a particular religion. A State run institution cannot impart education that is pro-religion. Also, nothing in this article shall affect the operation of any existing law or prevent the State from making any further law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice, or providing for social welfare and reform.

**Cultural and educational rights**

As India is a country of many languages, religions, and cultures, the Constitution provides special measures, in Articles 29 and 30, to protect the rights of the minorities. Any community which has a language and a script of its own has the right to conserve and develop it. No citizen can
be discriminated against for admission in State or State aided institutions.\footnote{[36]} 

All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution.\footnote{[37]} But the right to administer does not mean that the State can not interfere in case of maladministration. In a precedent-setting judgment in 1980, the Supreme Court held that the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards. It can also issue guidelines for ensuring the security of the services of the teachers or other employees of the institution. In another landmark judgment delivered on 31 October 2002, the Supreme Court ruled that in case of aided minority institutions offering professional courses, admission could only be through a common entrance test conducted by State or a university. Even an unaided minority institution ought not to ignore the merit of the students for admission.

\section*{Right to constitutional remedies}

Right to constitutional remedies empowers the citizens to move a \textit{court} of law in case of any denial of the fundamental rights. For instance, in case of imprisonment, the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that it is not, the person will have to be freed. This procedure of asking the courts to preserve or safeguard the citizens' fundamental rights can be done in various ways. The courts can issue various kinds of \textit{writs}. These writs are
**Critical analysis**

The fundamental rights have been criticised for many reasons. Political groups have demanded that the right to work, the right to economic assistance in case of unemployment, old age, and similar rights be enshrined as constitutional guarantees to address issues of poverty and economic insecurity, though these provisions have been enshrined in the Directive Principles of state policy. The right to freedom and personal liberty has a number of limiting clauses, and thus has been criticized for failing to check the sanctioning of powers often deemed "excessive". There is also the provision of preventive detention and suspension of fundamental rights in times of Emergency. The provisions of acts like the Maintenance of Internal Security Act (MISA) and the National Security Act (NSA) are a means of countering the fundamental rights, because they sanction excessive powers with the aim of fighting internal and cross-border terrorism and political violence, without safeguards for civil rights. The phrases "security of State", "public order" and "morality" are of wide implication. People of alternate sexuality are criminalized in India with prison term up to 10 years. The meaning of phrases like "reasonable restrictions" and "the interest of public order" have not been explicitly stated in the constitution, and this
ambiguity leads to unnecessary litigation.[39] The freedom to assemble peaceably and without arms is exercised, but in some cases, these meetings are broken up by the police through the use of non-fatal methods.[41][42]

"Freedom of press" has not been included in the right to freedom, which is necessary for formulating public opinion and to make freedom of expression more legitimate.[39] Employment of child labour in hazardous job environments has been reduced, but their employment even in non-hazardous jobs, including their prevalent employment as domestic help violates the spirit and ideals of the constitution. More than 16.5 million children are employed and working in India.[43] India was ranked 88 out of 159 in 2005, according to the degree to which corruption is perceived to exist among public officials and politicians worldwide.[44] The right to equality in matters regarding public employment shall not be conferred to overseas citizens of India, according to the Citizenship (Amendment) Bill, 2003.[49]

Amendments

Changes to the fundamental rights require a constitutional amendment which has to be passed by a special majority of both houses of Parliament. This means that an amendment requires the approval of two-thirds of the members present and voting. However, the number of members voting should not be less than the simple majority of the house — whether the Lok Sabha or Rajya Sabha.

The right to education at elementary level has been made one of the fundamental rights under the Eighty-Sixth Amendment of 2002.[27]
The Constitution originally provided for the right to property under Articles 19 and 31. Article 19 guaranteed to all citizens the right to acquire, hold and dispose off property. Article 31 provided that "no person shall be deprived of his property save by authority of law." It also provided that compensation would be paid to a person whose property has been taken for public purposes.

The provisions relating to the right to property were changed a number of times. The Forty-Forth Amendment of 1978 deleted the right to property from the list of fundamental rights. A new provision, Article 300-A, was added to the constitution which provided that "no person shall be deprived of his property save by authority of law". Thus if a legislature makes a law depriving a person of his property, there would be no obligation on the part of the State to pay anything as compensation. The aggrieved person shall have no right to move the court under Article 32. Thus, the right to property is no longer a fundamental right, though it is still a constitutional right. If the government appears to have acted unfairly, the action can be challenged in a court of law by citizens.

The liberalisation of the economy and the government’s initiative to set up special economic zones has led to many protests by farmers and has led to calls for the reinstatement of the fundamental right to private property. The Supreme Court has sent a notice to the government questioning why the right should not be brought back but in 2010 the court rejected the PIL.
As in 2007 the Supreme Court unanimously said that the fundamental rights are a basic structure of the constitution and cannot be removed or diluted.

Right to Education

On 1 April 2010, India joined a group of few countries in the world, with a historic law making education a fundamental right of every child coming into force. Making elementary education an entitlement for children in the 6-14 age group, the Right of Children to Free and Compulsory Education Act, 2009 will directly benefit children who do not go to school at present.

Prime Minister Man Mohan Singh announced the operationalisation of the Act. Children, who had either dropped out of schools or never been to any educational institution, will get elementary education as it will be binding on the part of the local and State governments to ensure that all children in the 6-14 age group get schooling. As per the Act, private educational institutions should reserve 25 per cent seats for children from the weaker sections of society. The Centre and the States have agreed to share the financial burden in the ratio of 55:45, while the Finance Commission has given Rs. 25,000 crore to the States for implementing the Act. The Centre has approved an outlay of Rs. 15,000 crore for 2010-2011.

The school management committee or the local authority will identify the drop-outs or out-of-school children aged above six and admit them in classes appropriate to their age after giving special training.
Fundamental Rights, Directive Principles of State Policy-

The **Fundamental Rights, Directive Principles of State Policy** and **Fundamental Duties** are sections of the **Constitution of India** that prescribe the fundamental obligations of the State to its citizens and the duties of the citizens to the State.\(^{[1]}\) These sections comprise a constitutional **bill of rights** for government policy-making and the behaviour and conduct of citizens. These sections are considered vital elements of the constitution, which was developed between 1947 and 1949 by the **Constituent Assembly of India**.

The **Fundamental Rights** are defined as the basic **human rights** of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, **caste**, creed or gender. They are enforceable by the courts, subject to specific restrictions.

The **Directive Principles of State Policy** are guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution, are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws.

The **Fundamental Duties** are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties, set out in Part IV–A of the Constitution, concern individuals and the nation. Like the Directive Principles, they are not legally enforceable.
The Fundamental Rights and Directive Principles had their origins in the Indian independence movement, which strove to achieve the values of liberty and social welfare as the goals of an independent Indian state. The development of constitutional rights in India was inspired by historical documents such as England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man. The demand for civil liberties formed an important part of the Indian independence movement, with one of the objectives of the Indian National Congress (INC) being to end discrimination between the British rulers and their Indian subjects. This demand was explicitly mentioned in resolutions adopted by the INC between 1917 and 1919. The demands articulated in these resolutions included granting to Indians the rights to equality before law, free speech, trial by juries composed at least half of Indian members, political power, and equal terms for bearing arms as British citizens.

The experiences of the First World War, the unsatisfactory Montague-Chelmsford reforms of 1919, and the rise to prominence of M. K. Gandhi in the Indian independence movement marked a change in the attitude of its leaders towards articulating demands for civil rights. The focus shifted from demanding equality of status between Indians and the British to assuring liberty for all Indians. The Commonwealth of India Bill, drafted by Annie Beasant in 1925, specifically included demands for seven fundamental rights – individual liberty, freedom of conscience, free expression of opinion, freedom of assembly, non-discrimination on the ground of sex, free elementary education and free use of public spaces. In 1927, the INC resolved to set up a committee to draft a "Swaraj Constitution" for India based on a declaration of rights that would provide safeguards against oppression. The 11-member committee, led by Motilal
Nehru, was constituted in 1928. Its report made a number of recommendations, including proposing guaranteed fundamental rights to all Indians. These rights resembled those of the American Constitution and those adopted by post-war European countries, and several of them were adopted from the 1925 Bill. Several of these provisions were later replicated in various parts of the Indian Constitution, including the Fundamental Rights and Directive Principles.¹¹¹

In 1931, the Indian National Congress, at its Karachi session, adopted a resolution committing itself to the defiance of civil rights and economic freedom, with the stated objectives of putting an end to exploitation, providing social security and implementing land reforms. Other new rights proposed by the resolution were the prohibition of State titles, universal adult franchise, abolition of capital punishment and freedom of movement.¹²¹ Drafted by Jawaharlal Nehru, the resolution, which later formed the basis for some of the Directive Principles, placed the primary responsibility of carrying out social reform on the State, and marked the increasing influence of socialism and Gandhian philosophy on the independence movement.¹⁵¹ The final phase of the Independence movement saw a reiteration of the socialist principles of the 1930s, along with an increased focus on minority rights – which had become an issue of major political concern by then – which were published in the Sapru Report in 1945. The report, apart from stressing on protecting the rights of minorities, also sought to prescribe a "standard of conduct for the legislatures, government and the courts".¹⁸¹

During the final stages of the British Raj, the 1946 Cabinet Mission to India proposed a Constituent Assembly to draft a Constitution for India as part of the process of transfer of power.¹¹¹ The Constituent Assembly of
India, composed of indirectly elected representatives from the British provinces and Princely states, commenced its proceedings in December 1946, and completed drafting the Constitution of India by November 1949.\textsuperscript{[12]} According to the Cabinet Mission plan, the Assembly was to have an Advisory Committee to advise it on the nature and extent of fundamental rights, protection of minorities and administration of tribal areas. Accordingly, the Advisory Committee was constituted in January 1947 with 64 members, and from among these a twelve-member sub-committee on Fundamental Rights was appointed under the chairmanship of J.B. Kripalani in February 1947.\textsuperscript{[13]} The sub-committee drafted the Fundamental Rights and submitted its report to the Committee by April 1947, and later that month the Committee placed it before the Assembly, which debated and discussed the rights over the course of the following year, adopting the drafts of most of them by December 1948.\textsuperscript{[14]} The drafting of the Fundamental Rights was influenced by the adoption of the Universal Declaration of Human Rights by the U.N. General Assembly and the activities of the United Nations Human Rights Commission, as well as decisions of the U.S. Supreme Court in interpreting the Bill of Rights in the American Constitution.\textsuperscript{[16]} The Directive Principles, which were also drafted by the sub-committee on Fundamental Rights, expounded the socialist precepts of the Indian independence movement, and were inspired by similar principles contained in the Irish Constitution. The Fundamental Duties were later added to the Constitution by the 42nd Amendment in 1976.\textsuperscript{[40]}

**Directive Principles of State Policy**

The Directive Principles of State Policy, embodied in Part IV of the Constitution, are directions given to the State to guide the establishment
of an economic and social democracy, as proposed by the Preamble. They set forth the humanitarian and socialist instructions that were the aim of social revolution envisaged in India by the Constituent Assembly. The State is expected to keep these principles in mind while framing laws and policies, even though they are non-justifiable in nature. The Directive Principles may be classified under the following categories: ideals that the State ought to strive towards achieving; directions for the exercise of legislative and executive power; and rights of the citizens which the State must aim towards securing.

Despite being non-justifiable, the Directive Principles act as a check on the State; theorized as a yardstick in the hands of the electorate and the opposition to measure the performance of a government at the time of an election. Article 37, while stating that the Directive Principles are not enforceable in any court of law, declares them to be "fundamental to the governance of the country" and imposes an obligation on the State to apply them in matters of legislation. Thus, they serve to emphasis the welfare state model of the Constitution and emphasis the positive duty of the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight income inequality and ensure individual dignity, as mandated by Article 38.

Article 39 lays down certain principles of policy to be followed by the State, including providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, reduction of the concentration of wealth and means of production from the hands of a few, and distribution of community resources to "sub serve the common good". These clauses highlight the Constitutional objectives of building an egalitarian social order and
establishing a welfare state, by bringing about a social revolution assisted by the State, and have been used to support the nationalization of mineral resources as well as public utilities. Further, several legislations pertaining to agrarian reform and land tenure have been enacted by the federal and state governments, in order to ensure equitable distribution of land resources.

Articles 41–43 mandate the State to endeavor to secure to all citizens the right to work, a living wage, social security, maternity relief, and a decent standard of living. These provisions aim at establishing a socialist state as envisaged in the Preamble. Article 43 also places upon the State the responsibility of promoting cottage industries, and the federal government has, in furtherance of this, established several Boards for the promotion of khadi, handlooms etc., in coordination with the state governments. Article 39A requires the State to provide free legal aid to ensure that opportunities for securing justice are available to all citizens irrespective of economic or other disabilities. Article 43A mandates the State to work towards securing the participation of workers in the management of industries. The State, under Article 46, is also mandated to promote the interests of and work for the economic uplift of the scheduled castes and scheduled tribes and protect them from discrimination and exploitation. Several enactments, including two Constitutional amendments, have been passed to give effect to this provision.

Article 44 encourages the State to secure a uniform civil code for all citizens, by eliminating discrepancies between various personal laws currently in force in the country. However, this has remained a "dead letter" despite numerous reminders from the Supreme Court to implement.
the provision. Article 45 originally mandated the State to provide free and compulsory education to children between the ages of six and fourteen years, but after the 86th Amendment in 2002, this has been converted into a Fundamental Right and replaced by an obligation upon the State to secure childhood care to all children below the age of six. Article 47 commits the State to raise the standard of living and improve public health, and prohibit the consumption of intoxicating drinks and drugs injurious to health. As a consequence, partial or total prohibition has been introduced in several states, but financial constraints have prevented its full-fledged application. The State is also mandated by Article 48 to organise agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of cattle. Article 48A mandates the State to protect the environment and safeguard the forests and wildlife of the country, while Article 49 places an obligation upon the State to ensure the preservation of monuments and objects of national importance. Article 50 requires the State to ensure the separation of judiciary from executive in public services, in order to ensure judicial independence, and federal legislation has been enacted to achieve this objective. The State, according to Article 51, must also strive for the promotion of international peace and security, and Parliament has been empowered under Article 253 to make laws giving effect to international treaties.

Human Rights in India

The situation of human rights in India is a complex one, as a result of the country's large size and tremendous diversity, its status as a
developing country and a sovereign, secular, democratic republic, and its history as a former colonial territory. The Constitution of India provides for Fundamental rights, which include freedom of religion. Clauses also provide for Freedom of Speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad.

It is often held, particularly by Indian human rights groups and activists, that members of the Dalit or Untouchable caste have suffered and continue to suffer substantial discrimination. Although human rights problems do exist in India, the country is generally not regarded as a human rights concern, unlike other countries in South Asia[51]. Based on these considerations, the report Freedom in the World 2006 by Freedom House gave India a political rights rating of 2, and a civil liberties rating of 3, earning it the highest possible rating of free.

Chronology of events regarding human rights in India

- 1829 - The practice of sati was formally abolished by Governor General William Bentick after years of campaigning by Hindu reform movements such as the Brahmo Samaj of Ram Mohan Roy against this orthodox Hindu funeral custom of self-immolation of widows after the death of their husbands.
- 1929 - Child Marriage Restraint Act, prohibiting marriage of minors less than 14 years of age is passed.
- 1947 - India achieves political independence from the British Raj.
• 1950 - The Constitution of India establishes a sovereign democratic republic with universal adult franchise. Part 3 of the Constitution contains a Bill of Fundamental Rights enforceable by the Supreme Court and the High Courts. It also provides for reservations for previously disadvantaged sections in education, employment and political representation.

• 1952 - Criminal Tribes Acts repealed by government, former "criminal tribes" categorized as "denotified" and Habitual Offenders Act (1952) enacted.

• 1955 - Reform of family law concerning Hindus gives more rights to Hindu women.

• 1958 - Armed Forces (Special Powers) Act, 1958.[52]

• 1973 - Supreme Court of India rules in Kesavananda Bharati case that the basic structure of the Constitution (including many fundamental rights) is unalterable by a constitutional amendment.

• 1975-77 - State of Emergency in India - extensive rights violations take place.

• 1978 - SC rules in Menaka Gandhi v. Union of India that the right to life under Article 21 of the Constitution cannot be suspended even in an emergency.


• 1984 - Operation Blue Star and the subsequent 1984 Anti-Sikh riots

• 1985-6 - The Shah Bano case, where the Supreme Court recognised the Muslim woman’s right to maintenance upon divorce, sparks protests from Muslim clergy. To nullify the decision of the Supreme Court, the Rajiv Gandhi government
enacted The Muslim Women (Protection of Rights on Divorce) Act 1986


- 1989–present - Kashmiri insurgency sees ethnic cleansing of Kashmiri Pandits, desecrating Hindu temples, killing of Hindus and Sikhs, and abductions of foreign tourists and government functionaries.

- 1992 - A constitutional amendment establishes Local Self-Government (Panchayati Raj) as a third tier of governance at the village level, with one-third of the seats reserved for women. Reservations were provided for scheduled castes and tribes as well.

- 1992 - Babri Masjid demolished by Hindu mobs, resulting in riots across the country.

- 1993 - National Human Rights Commission is established under the *Protection of Human Rights Act*.

- 2001 - Supreme Court passes extensive orders to implement the right to food.[56]

- 2002 - Violence in Gujarat, chiefly targeting its Muslim minority, claims many lives.

- 2005 - A powerful *Right to Information Act* is passed to give citizen's access to information held by public authorities.[57]


- 2006 - Supreme Court orders police reforms in response to the poor human rights record of Indian police.[58]

- 2009 - Delhi High Court declares that Section 377 of the Indian Penal Code, which outlaws a range of unspecified "unnatural" sex
acts, is unconstitutional when applied to homosexual acts between private consenting individuals, effectively decriminalising homosexual relationships in India. See also: Homosexuality in India

**Custodial deaths**

Despite state prohibitions against torture and custodial misconduct by the police, torture is widespread in police custody, which is a major reason behind deaths in custody. The police often torture innocent people until a 'confession' is obtained to save influential and wealthy offenders. G.P. Joshi, the programme coordinator of the Indian branch of the Commonwealth Human Rights Initiative in New Delhi comments that the main issue at hand concerning police violence is a lack of accountability of the police. About 800 people die after being tortured to death in Indian prisons each year.

In 2006, the Supreme Court of India in a judgment in the *Prakash Singh vs. Union of India* case, ordered central and state governments with seven directives to begin the process of police reform. The main objectives of this set of directives were twofold, providing tenure to and streamlining the appointment/transfer processes of policemen, and increasing the accountability of the police.

**Human Rights for Women in India**

Woman, the very creation of God that makes living beautiful is often at the receiving end of trauma. Not necessarily do criminals live around rural thatched roofs only. They are found in sky rises and posh suites too. In 2009 rape cases have reached 2,497, domestic violence has crossed the
10,000 mark. In short women are still treated as a lesser person. But of course the government is doing all its best to improvise the situation. Around 2.8 million social workers have been employed by the government to reach into villages and homes across the country, to make women aware of their rights.

Much to their surprise women are not even aware that they have any rights in a man’s world. While some are treated as slaves in their adulthood, most don’t even enjoy a childhood. To this purpose the National Commission for Women is set up and located at 4, Deen Dayal, Upadhayaya Marg, New Delhi 110 002, phone: 11 23237166. It is the apex organisation for protecting women. Besides this there are Commissions set up in each state of the country to protect and uplift women.

These organizations implicit that there should be equality of rights for women as given to men. Article 14 of the Constitution in India says that no person will be denied equality before the law. Article 42 states that women should be provided just and human work atmosphere and maternity relief. Sati laws have been abolished, child marriages are legally punishable. The girl now has to be of 18 years when she is married and her consent has to be taken. Using force is punishable. To her relief eve teasing too is considered a crime. It can be reported and offenders will be put behind bars immediately.

http://www.indianchild.com/womens_human_rights_india.htm

Women's Rights Movement in India : There are many committed organizations and non-governmental organisations (Ngos) in India
working for the advancement of women's rights in addition to government appointed agencies. The Indian government has a National Commission for Women, which is dedicated to the welfare of Indian women.

**Human Right Act 1993-**

An Act to provide for the constitution of a National Human Rights Commission. State Human Rights Commission in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto. Be it enacted by the parliament in the forty-fourth year of the Republic of India as follows-

**Chapter I – PRELIMINARY**

1. Short title, extent and commencement

(1) This Act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India. Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.

(3) It shall be deemed to have come into force on the 28th day of September, 1993.

2. Definitions

(1) In this Act, unless the context otherwise requires-
(a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;
(b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;
(c) "Commission" means the National Human Rights Commission under section 3;
(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.
(e) "Human Rights Court" means the Human Rights Court specified under section 30;
(f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966;
(g) "Member" means a Member of the Commission or of the State Commission, as the case may be, and includes the Chairperson;
(h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992;
(i) "National Commission for the Scheduled Castes and Scheduled Tribes" means the National Commission for the Scheduled Castes and Scheduled Tribes referred to in article 338 of the Constitution;
(j) "National Commission for Women" means the National Commission
for Women constituted under section 3 of the National Commission for Women Act, 1990;

(k) "Notification" means a notification published in the official Gazette;
(l) "Prescribed" means prescribed by rules made under this Act;
(m) "Public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code;
(n) "State Commission" means a State Human Rights Commission constituted under section 21.

(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

Chapter II - THE NATIONAL HUMAN RIGHTS COMMISSION

3. Constitution of a National Human Rights Commission

(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of:

(a) a Chairperson who has been a Chief Justice of the Supreme Court;
(b) one Member who is or has been, a Judge of the Supreme Court;
(c) one Member who is, or has been, the Chief Justice of a High Court;
(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
(3) The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

4. Appointment of Chairperson and other Members

(1) The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal.

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of

(a) The Prime Minister — Chairperson
(b) Speaker of the House of the People — Member
(c) Minister in-charge of the Ministry of Home Affairs in the Government of India — Member
(d) Leader of the Opposition in the House of the People — Member
(e) Leader of the Opposition in the Council of States — Member
(f) Deputy Chairman of the Council of States — Member
Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

5. Removal of a Member of the Commission

(1) Subject to the provisions of sub-section (2), the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved miss behaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be

(a) is adjudged an insolvent; or
(b) engages during his term of office in any paid employment outside the duties of his office: or
(c) is unfit to continue in office by reason of infirmity of mind or body; or
(d) is of unsound mind and stands so declared by a competent court; or
(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

6. Term of office of Members
(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years. Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.

7. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Members
The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed. Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

9. Vacancies, etc., not to invalidate the proceedings of the Commission.

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission

(1) The Commission shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be audited by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

11. Officers and other staff of the Commission

(1) The Central Government shall make available to the Commission:

(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and

(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may
be necessary for the efficient performance of the functions of the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

Chapter III - FUNCTIONS AND POWERS OF THE COMMISSION

12. Functions of the Commission

The Commission shall perform all or any of the following functions, namely:

(a) inquire, some matter on a petition presented to it by a victim or any person on his behalf, into complaint of

(i) Violation of human rights or abetment there for

(ii) negligence in the prevention of such violation, by a public servant;

(b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) Visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to
study the living conditions of the inmates and make recommendations thereon;

(d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) Undertake and promote research in the field of human rights;

(h) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

(j) Such other functions as it may consider necessary for the protection of human rights.

13. Powers relating to inquiries

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of
Civil Procedure, 1908, and in particular in respect of the following matters, namely:

(a) summoning and enforcing the attendance of witnesses and examine them on oath;
(b) discovery and production of any document;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copy thereof from any court or office;
(e) issuing commissions for the examination of witnesses or documents;
(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section
180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

14. Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission.

(a) Summon and enforce the attendance of any person and examine him;
(b) require the discovery and production of any document; and
(c) requisition any public record or copy thereof from any office.
(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report subbed to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

15. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement: Provided that the statement —

(a) is made in reply to the question which he is required by the Commission to answer; or

(b) is relevant to the subject matter of the inquiry.

16. Persons likely to be prejudicially affected to be heard
If, at any stage of the inquiry, the Commission-
(a) considers it necessary to inquire into the conduct of any person; or
(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;
it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defense:
Provided that nothing in this section shall apply where the credit of a witness is being impeached.

**Chapter IV - PROCEDURE**

17. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may-
(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it;

Provided that-
(a) if the information or report is not received within the time stipulated by the commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complaint accordingly
(ii) Without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

18. Steps after inquiry

The Commission may take any of the following steps upon the completion of an inquiry held under this Act namely:

(1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

(2) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(3) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(4) Subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;

(5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
(6) The Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

19. Procedure with respect to armed forces

(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:

(a) It may, either on its own motion or on receipt of a petition, seek a report from the Central Government;

(b) After the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section to the petitioner or his representative.

20 Annual and special reports of the Commission
(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

Chapter V - STATE HUMAN RIGHTS COMMISSIONS

21. Constitution of State Human Rights Commissions

(1) A State Government may constitute a body to be known as the....................... (Name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2) The State Commission shall consist of

(a) a Chairperson who has been a Chief Justice of a High Court;
(b) one Member who is, or has been, a Judge of a High Court;
(c) one Member who is, or has been, a district judge in that State;
(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List 2 and List 3 in the Seventh Schedule to the Constitution", the words and figures "List 3 in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been substituted.

22. Appointment of Chairperson and other Members of State Commission

(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of
(a) the Chief Minister — Chairperson
(b) Speaker of the Legislative Assembly — Member
(c) Minister in-charge of the Department of Home, in that State — Member

(d) Leader of the Opposition in the Legislative Assembly — Member

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.

Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee.

23. Removal of a Member of the State Commission

(1) Subject to the provisions of sub-section (2), the Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved miss behaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.
(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be –

(a) is adjudged an insolvent;  OR
(b) engages during his term of office in any paid employment outside the duties of his office;  OR
(c) is unfit to continue in office by reason of infirmity of mind or body; OR
(d) is of unsound mind and stands so declared by a competent court; OR
(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

24. Term of office of Members of the State Commission

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier;

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years;

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.
25. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

26. Terms and conditions of service of Members of the State Commission

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed by the State Government.

Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

27. Officers and other staff of the State Commission

(1) The State Government shall make available to the Commission

(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and
(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

28. Annual and special reports of State Commission

(1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the reactions, if any.

29. Application of certain provisions relating to National Human Rights Commission to State Commissions
The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:
(a) references to "Commission" shall be construed as references to "State Commission";
(b) in section 10, in sub-section (3), for the word "Secretary General", the word "Secretary" shall be substituted;
(c) in section 12, clause (f) shall be omitted;
(d) in section 17, in clause (i), the words "Central Government or any" shall be omitted;

Chapter VI - HUMAN RIGHTS COURTS

30. For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.

Provided that nothing in this section shall apply if
(a) a Court of Session is already specified as a special court; or
(b) a special court is already constituted, for such offences under any other law for the time being in force.

31. Special Public Prosecutor

For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.
Chapter VII - FINANCE, ACCOUNTS AND AUDIT

32. Grants by the Central Government

(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

33. Grants by the State Government

(1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

34. Accounts and Audit

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
(2) The Accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded only to the Central Government by the Commission and the Central Government shall cause the audit report to be laid as soon as may be after it is received before each House of Parliament.

35. Accounts and Audit of State Commission

(1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by
him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

Chapter VIII - MISCELLANEOUS

36. Matters not subject to jurisdiction of the Commission

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.
37. Constitution of special investigation teams

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

38. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made there under or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report paper or proceedings.

39. Members and officers to be public servants

Every Member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

40. Power of Central Government to make rules

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.
(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:

(a) the salaries and allowances and other terms and conditions of service of the Members under section 8;
(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11;
(c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of section 13;
(d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and
(e) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

41. Power of State Government to make rules

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.
(2) In particular and without prejudice to the generality of the foreign power, such rules may provide for all or any of the following matters, namely:

(a) the salaries and allowances and other terms and conditions of service of the members under section 26;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 27;

(c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

42. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty. Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each house of Parliament.

43. Repeal and Savings
(1) The Protection of Human Rights Ordinance, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.*66

**Human rights movements in India**

"This study is an attempt to trace the various phases of the human rights movement (HRM) and the assumptions underlying each of them in terms of the inter-relationships between the state, civil society and democracy. The 1970s witnessed the first phase of the HRM— the ‘civil liberties phase’—working within the framework of state-civil society complementarily. HRM along with emphasizing the autonomy of institutions also struggled to recover a ‘rights based civil society’, where all citizens could have access to fundamental rights. The 1980s were marked by a shift to the second phase—the ‘democratic rights phase’—with a new state versus civil society framework. During this phase, the HRM made efforts to construct civil society as a pure ‘realm of freedom’ that stood squarely outside the state and consisted of various militant and radical social movements. Towards the end of the 1990s, the third phase—the ‘human rights phase’—reconstituted itself on a new civil society versus political society framework. The new political society stressed the importance of locating and condemning human rights violations at the civil societal level, including those committed by radical social movements. Finally, the contemporary moment is ironically striving to move beyond the political by basing itself on an abstract moral dimension’’*67
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☐ A b Tayal, B.B. & Jacob, A. (2005), Indian History, World Developments and Civics, pg. A-23


☐ A b The term "State" includes all authorities within the territory of India. It includes the Government of India, the Parliament of India, the Government and legislature of the states of India. It also includes all local or other authorities such as Municipal Corporations, Municipal Boards, District Boards, Panchayats etc. To avoid confusion with the term states and territories of India, State (encompassing all the authorities in India) has been capitalized and the term state (referring to the state governments) is in lowercase.


*Kesavananda Bharati vs. The State of Kerala*: AIR 1973 S.C. 1461, (1973) 4 SCC 225 — In what became famously known as the "Fundamental Rights case", the Supreme Court decided that the basic structure of the *Constitution of India* was unamendable.


*Constitution of India*-Part III Article 14 Fundamental Rights.

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A right to education bill.


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