

HUMAN RIGHTS AND THE CONSTITUTION OF INDIA

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INTRODUCTION

- On 10 December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights as under:-
- *“All human beings are born with equal and inalienable rights and fundamental freedoms.”*
“The United Nations is committed to upholding, promoting, and protecting the human rights of every individual. This commitment stems from the United Nations Charter, which reaffirms the faith of the peoples of the world in fundamental human rights and in the dignity and worth of the human person.”

• In Indian Context:-

- The Constitution of India is federal in nature. It is adopted by the India Constituent Assembly on 26th Nov, 1949 and came into effect on 26th Jan, 1950. Its adoption is celebrated as Republic Day in India every year.
- The Constitution of India is the longest written constitution of any sovereign country in the world. It sets out Fundamental Rights, Directive Principles and the Duties of Citizens.
- It declares India to be a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC, assuring its citizens of justice, equality and liberty, and endeavors to promote fraternity among them.

FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES

- These are the 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.
- 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.

FUNDAMENTAL RIGHTS

- The *Fundamental Rights* are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution irrespective of race, place of birth, religion, caste, creed or sex.

Fundamental Rights includes:-

Right to Equality

Right to Freedom

Right against Exploitation

Right to Freedom of Religion

Cultural and Educational Rights

Right to Constitutional Remedies

RIGHT TO EQUALITY

- The Right to Equality is one of the chief guarantees of the Constitution of India. Articles 14–18 of Constitution highlights the right to equality.
- It refers to the equality in the eyes of law irrespective of caste, race, religion, place of birth or sex.

ARTICLE 14

- Article 14 guarantees equality before law as well as equal protection of the law to not only citizen of India but also to all the people within the territory of India. This includes the equal subjection of all persons to the authority of law, as well as equal treatment of persons in similar circumstances.
- The State cannot refuse this right. But no persons or group of persons can demand for any special treatment or any special privilege.

ARTICLE 15

- Article 15 prohibits discrimination on the basis of religion, race, caste, sex, place of birth, or any of them. This right applies only to citizens of India and can be enforced against the State as well as private individuals, regarding free access to places of public entertainment or places of public resort maintained partly or wholly out of State funds.
- The State has the right to make special treatment for women, children and for the development of backward class, scheduled caste or scheduled tribe people.

ARTICLE 16

- Article 16 guarantees equality of opportunity in matters of public employment. It prevents the State from discriminating against anyone in respect of employment on the grounds of religion, race, caste, sex, descent, place of birth or place of residence.
- However, the State may provide special reservation to the people of backward classes, scheduled castes or scheduled tribes for the upliftment of the weaker sections as well as for a person professing that particular religion in case of religious institution.

ARTICLE 17

- Article 17 abolishes the practice of untouchability. It has been declared an offence punishable by law. The Protection of Civil Rights Act, 1955 has been enacted by the Parliament which states punishments for not allowing a person to enter the place of worship and from taking water from a well or tank.

ARTICLE 18

- Article 18 prohibits the State from granting any titles other than military or academic distinctions, and even the citizens of India cannot accept titles from a foreign state. Thus, Indian aristocratic titles and titles of nobility given by the British have been abolished.

RIGHT TO FREEDOM

- The Right to Freedom is covered in Articles 19–22, with the view of guaranteeing individual rights. But some of the rights are subject to security of the State, friendly relation with foreign countries, public order, decency or morality and for which certain restrictions may be imposed by the State on individual liberty under specified condition.

ARTICLE 19

It guarantees the citizens of India the following six fundamental freedoms subject to certain restrictions:-

- Freedom of Speech and Expression
- Freedom of Assembly
- Freedom of form Associations
- Freedom of Movement
- Freedom of Residence and Settlement
- Freedom of Profession, Occupation, Trade and Bussiness

ARTICLE 20

- Article 20 provides protection from conviction for offences in certain respects, including the rights against ex post facto laws, double jeopardy and freedom from self-incrimination.

ARTICLE 21

- Article 21 prevents the encroachment /protection of life or personal liberty by the State.
- No person shall be deprived of his life or personal liberty except according to procedure established by law.

ARTICLE 22

- Article 22 provides specific rights to arrested and detained persons, i.e., the rights to be informed of the grounds of arrest, consult a lawyer of one's own choice, be produced before a magistrate within 24 hours of the arrest, and the freedom not to be detained beyond that period without an order of the magistrate.

- Article 22 also provides that when a person is detained under any law of preventive detention, the State can detain such person without trial for only three months, and any detention for a longer period must be authorised by an Advisory Board. The person being detained, has the right to be informed about the grounds of detention, and be permitted to make a representation against it, at the earliest opportunity.

RIGHT AGAINST EXPLOITATION

- The Right against Exploitation, contained in Articles 23–24, lays down certain provisions to prevent exploitation of the weaker sections of the society by individuals or the State.
- Child labour and Begar is prohibited under the Right against Exploitation.

ARTICLE 23

- Article 23 prohibits human trafficking and forced labour or any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it. Any contravention leads to an offence.
- However, it permits the State to impose compulsory service for public purposes, including conscription and community service. The Bonded Labour system (Abolition) Act, 1976, has been enacted by Parliament to give effect to this Article.

ARTICLE 24

- Article 24 prohibits the employment of children below the age of 14 years in factories, mines and other hazardous jobs. Parliament has enacted the Child Labour (Prohibition and Regulation) Act, 1986, providing regulations for the abolition of, and penalties for employing, child labour, as well as provisions for rehabilitation of former child labourers
- The Employment of Children Act, 1938 was the first act to prevent Child Labour.

RIGHT TO FREEDOM OF RELIGION

- The Right to Freedom of Religion, covered in Articles 25–28, provides religious freedom to all citizens and ensures a secular state in India. According to the Constitution, there is no official State religion, and the State is required to treat all religions impartially and neutrally.

ARTICLE 25

- Article 25 guarantees all persons the freedom of conscience and the right to preach, practice and propagate any religion of their choice. This right is, however, subject to public order, morality and health, and the power of the State to take measures for social welfare and reform. The right in this article shall not affect the operation of any existing law or prevent the State from making new law.

ARTICLE 26

- Article 26 guarantees all religious denominations or any sections, subject to public order, morality and health; to manage their own affairs in matters of religion, set up or manage institutions of their own for charitable or religious purposes, and own, acquire and manage property in accordance with law. These provisions do not derogate/deviate from the State's power to acquire property belonging to a religious denomination.

ARTICLE 27

- Article 27 guarantees freedom for payment of taxes.
- No person can be compelled to pay taxes for the promotion or maintenance of any particular religion or religious institution.

ARTICLE 28

- Article 28 prohibits religious instruction in a wholly State-funded educational institution, and educational institutions receiving aid from the State cannot compel any of their members to receive religious instruction or attend religious worship without their consent or their guardian's consent in case of minor.

CULTURAL AND EDUCATIONAL RIGHTS

- The Cultural and Educational rights, given in Articles 29 and 30, are measures to protect the rights of cultural, linguistic and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination.

ARTICLE 29

- Article 29 grants any section of citizens having a distinct language, script culture of its own, the right to conserve and develop the same, and thus safeguards the rights or interest of minorities by preventing the State from imposing any external culture on them. It also prohibits discrimination against any citizen for admission into any educational institutions maintained or aided by the State, on the basis of religion, race, caste, language or any of them. However, this is subject to reservation by the State for socially and educationally backward classes, as well as reservation of up to 50 percent of seats in any educational institution run by a minority community for citizens belonging to that community.

ARTICLE 30

- Article 30 guarantees the right of minorities to set up and administer educational institutions of their choice in order to preserve and develop their own culture, and prohibits the State, while granting aid, from discriminating against any institution on the basis of the fact that it is administered or managed by a religious or cultural minority.

RIGHT TO CONSTITUTIONAL REMEDIES

- The Right to Constitutional Remedies empowers citizens to approach the Supreme Court of India to seek enforcement, or protection against infringement, of their Fundamental Rights.
- It is covered in Article 32.

ARTICLE 32

- Article 32 provides a guaranteed remedy for enforcement of all the other Fundamental Rights, and the Supreme Court is designated as the protector of these rights by the Constitution. The Supreme Court has been empowered to issue writs, namely habeas corpus, mandamus, prohibition, certiorari and quo warranto, for the enforcement of the Fundamental Rights, while the High Courts have been empowered under Article 226 – which is not a Fundamental Right in itself.

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.
- It contains Article 36 to 51.

ARTICLE 36:-

- Definition.—The STATE includes the Government of India; Parliament of India; the Government of each of the States which constitute the Union of India; the Legislature of each of the States which constitute the Union of India; all local authorities within the territory of India; all local authorities under the control of the Government of India; all other authorities within the territory of India; and all other authorities under the control of the Government of India.

ARTICLE 37:-

- Application of the principles contained in this Part.—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

- Article 38:- The State shall strive to secure and protect a social order to promote the welfare of the people in which justice, social, economic and political shall inform all the institutions of the National life.

The State shall also strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas .

• Article 39:-

The State shall, in particular, direct its policy towards securing—

- *that the citizens, men and women equally, have the right to an adequate means of livelihood;*
- *that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;*
- *that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;*
- *that there is equal pay for equal work for both men and women;*
- *that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;*
- *that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*

- Article 39A:- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and also 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 or other disabilities.
- Article 40:- The State shall take steps to organise 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 41**:--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 certain cases like unemployment, old age, sickness and disablement.
- **Article 42**:--The State shall make provision for securing just and humane conditions of work and for maternity relief.
- **Article 43**:-- The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and to promote cottage industries on an individual or co-operative basis in rural areas.

- **Article 43A**:- The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.
- **Article 44**:- The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.
- **Article 45**:- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
- **Article 46**:- The State shall promote the educational and economic interests of the weaker sections of the people, and the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

- **Article 48**:— The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.
- **Article 48A**:— The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.
- **Article 49**:— The State shall protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export.

- Article 50:- The State shall take steps for the separation of the judiciary from the executive in the public services of the State.
- Article 51:- The State shall endeavour to maintain honourable relation with other nations; promote international peace and security; encourage settlement of international disputes by arbitration; respect for international law and treaty obligations in the dealings of organised people with one another.

REMEDY THROUGH WRIT JURISDICTION

- Article 226:- A writ may be issued by a High Court to a person or authority amenable to the Court's jurisdiction either by residence or location within the State, even if the petitioner and other parties are from other States. This power can be exercised, though the person or authority is outside the territories in relation to which the High Court has jurisdiction, provided the cause of action arises, wholly or in part, within such territories. Under Article 226 of the Constitution, the High Court has the power to issue not only writs of certiorari, prohibition and mandamus, but also other writs, directions and orders.

FIVE PRESCRIBED WRITS:-

- A writ of ***Habeas corpus*** requires that a person under arrest should be brought before a judge or court. The underlying principle behind the writ of Habeas Corpus is that a prisoner should be released from unlawful detention.
- The Writ of ***Mandamus*** is another important jurisdictional remedy in which an order is passed on from a superior institution to a supplementary, subordinate court or authority that prohibits the court or government official from performing a certain act under the nature of statutory obligation. This is basically issued in the form of command to either take a particular form of action or refrain from doing it, and is backed with legal rights and reasoning.
- ***Prohibition*** is writ issued by the high court or the Supreme Court to the local courts to prevent them from proceeding with a case which does not fall under its jurisdiction.
- ***Certiorari*** is a writ issued to lower courts, when these courts have gone beyond the scope of their jurisdictions.
- ***Quo Warranto*** writ is issued to a person who has been wrongly appointed in the office of authority. This obligates the accused of presenting whatever evidence he or she has to the court to support the reasons for occupying a particular post.

Article 32:- The Article in the Indian Constitution states that the Supreme Court can accept writs from citizens or organizations if any of the fundamental rights have been denied to them. Along with exercising writs, the Supreme Court can also give other lower courts or even take away the responsibility of jurisdiction for certain cases.

The SC can issue writs under Article 32 against any person/govt in whole territory of India.

HUMAN RIGHTS PROTECTION THROUGH PUBLIC INTEREST LITIGATION

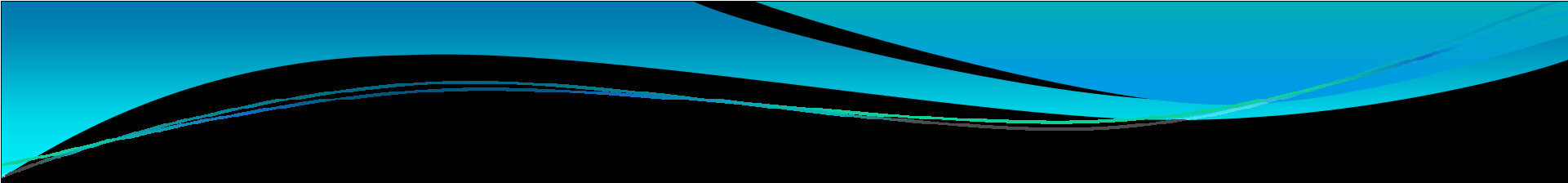
- “ Public Interest Litigation” is not defined under any statute or any act.
- Public Interest Litigation means a litigation which is filed in a court of law for the protection of public interest.
- PIL(Public Interest Litigation) is filed in the court of law by court itself or by the private party; not by the aggrieved party.

A PIL can be filed if the following conditions are fulfilled:-

- There must be a public injury or public wrong caused by the wrongful act or omission of the state or public authority.
- It is for the enforcement of the basic human rights of weaker sections of the community whose fundamental and constitutional rights have been infringed.
- It must not be frivolous litigation by persons having vested interests.

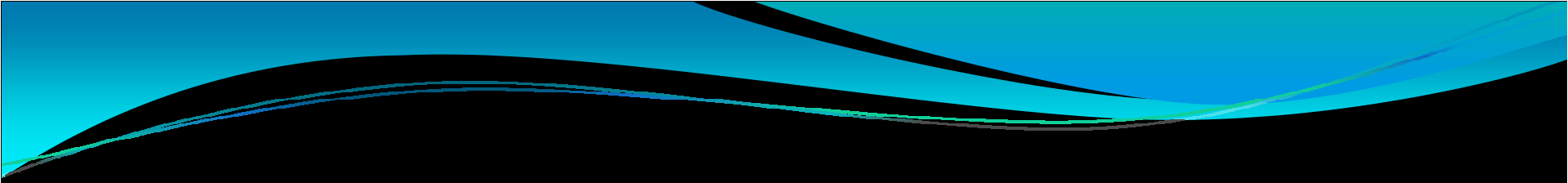
PIL can be filed in the Supreme court or High court in following ways:-

- By sending letter petitions with relevant facts and documents to the Chief Justice of the concerned court.
- By directly filing the PIL in the court through the Free Legal Service Committee of the court.
- By directly filing the case with the help of any PIL lawyer.
- By filing the case through NGOs or PIL firms.

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- The concept of **Public Interest Litigation (PIL)** is in consonance with the principles enshrined in Article 39A of the Constitution of India to protect and deliver prompt social justice with the help of law.
 - Article 32 of the Indian Constitution contains a tool which joins the public with judiciary.
 - The member of the public, who may be a NGO, an institution or an individual, has the right to file suit in PIL by the courts through judicial activism.

OTHER MEASURES FOR PROTECTION OF HUMAN RIGHTS

- Education about Human Rights should become a part of the general public education.
- Technical and financial assistance should be provided to increase knowledge about human rights.
- Police members and security forces have to be trained to ensure the observation of human rights standards for law enforcement.
- Law that makes human rights violations illegal, should be created and existing law should be implemented.

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- Policies and programs should be adopted to ensure people have access to their rights.
 - Proper reservations in politics and public life should be provided by the Government.
 - Government should provide that women have the same rights as men regarding the nationality of their children.
 - Government should work against the trafficking of women and exploitation of prostitution of women.

CONCLUSION

The pursuit of human rights lies at the heart of the mission of the United Nations. a life in freedom, security and prosperity. It underpins the hopes of millions of people for a life in freedom, security and prosperity. The UDHR remains as relevant today as it was on the day it was adopted.

“ In the Universal Declaration of Human Rights, the United Nations has stated in clear and simple terms the rights which belong equally to every person.

These rights belong to you.

They are your rights.

Familiarize yourself with them.

Help to promote and defend them for yourself as well as for your fellow human beings.”



THANK YOU