

**THE EVOLUTION OF JUDICIAL THOUGHT ON RIGHT TO
DEVELOPMENT UNDER ARTICLE 21 OF THE
CONSTITUTION OF INDIA: CHALLENGES AND
OPPORTUNITIES**

**Dissertation submitted to the National University of Advanced Legal
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PREFACE

The concept of development has evolved beyond mere economic growth to encompass a comprehensive understanding of human well-being, dignity, and social justice. The recognition of the *Right to Development* as a fundamental human right marks a significant milestone in international and constitutional law, reflecting a global consensus that development must be inclusive, equitable, and sustainable. This study, titled "*The Evolution of Judicial Thought on Right to Development Under Article 21 of the Constitution of India: Challenges and Opportunities*", is an attempt to explore the normative, institutional, and judicial dimensions of this right. It begins with a general introduction and moves toward a detailed examination of the historical evolution of the Right to Development in international law. It then focuses on India's constitutional framework, governmental initiatives, and the significant role played by the judiciary, especially through Article 21 of the Constitution. A comparative analysis with other jurisdictions such as South Africa, the United States, and the European Union helps to situate India's position in the broader global context. The study concludes by identifying the challenges in realizing the Right to Development and suggests measures to enhance its implementation in India.

This research was motivated by the increasing need to understand development not just as a policy goal but as a right that empowers individuals and communities. I hope this work contributes meaningfully to the academic discourse on human rights and development and inspires further legal and policy reforms in this vital area. I am deeply grateful to my mentors, peers, and all those whose insights and guidance have shaped the direction and depth of this research.

ABBREVIATIONS

ACPHR	African Charter on Human and Peoples' Rights
AIDS	Acquired immune deficiency Syndrome
AIR	All India Reporter
Anr.	Another
AU	African Union
BBBP	Beti Bachao Beti Padhao
CBO	Community Based Organization
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CERD	Convention on Elimination on All Forms of Discrimination
COFEPOSA	Conservation of Foreign Exchange and Prevention of Smuggling Activities Act
COVID 19	Coronavirus Disease 2019
CSR	Corporate Social Responsibility
DPSP	Directive Principles of State Policy
ECHR	European Court of Human Rights
ESIA	Environmental and Social Impact Assessment
EU	European Union
FCI	Food Corporation of India
FIAN	Food First Information and Action Network
FRA	Forest Rights Act
GIB	Great Indian Bustard
HIV	Human Immunodeficiency Virus
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
IMF	International Monetary Fund
INSC	Indian Supreme Court
IRDP	Integrated Rural Development Programme

LIC	Life Insurance Corporation
MDG	Millenium Developmental Goals
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
NALSA	National Legal Services Act
NDP	National Domestic Product
NFSA	National Food Security Act
NHRM	National Rural Health Mission
NIEO	New International Economic Order
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
Ors	Others
OSC	One Stop Centre
PIL	Public Interest Litigation
PM KISAN	Pradhan Mantri Kisan Samman Nidhi
PMAY	Pradhan Mantri Awas Yojana
PM JAY	Pradhan Mantri Jan Arogya Yojana
PM KVV	Pradhan Mantri Kaushal Vikas Yojana
PM MY	Pradhan Mantri Mudra Yojana
POSHAN	Prime Minister's Overarching Scheme for Holistic Nourishment
RBI	Reserve Bank of India
RLEK	Rural Litigation and Entitlement Kendra
RNBC	Residuary Non- Banking Company
RTD	Right to Development
RTI	Right to Information
SCC	Supreme Court Cases
SCW	Supreme Court Weekly
SDG	Sustainable Development Goals
SHG	Self Help Group
SMILE	Support for Marginalized Individuals for Livelihood and Enterprise
SNP	Supplementary Nutritional Programme
ST	Scheduled Tribes
TAC	Technical Advisory Committee

UDHR	Universal Declaration of Human Rights
UN	United Nations
UN CED	United Nations Conference on Environment and Development
UN CHR	United Nations Commission on Human Rights
UN DRIP	United Nations Declaration on Rights of Indigenous People
UNDRTD	United Nations Declaration on Right to Development
UNGA	United Nations General Assembly
US	United States
UT	Union Territory
VDPA	Vienna Declaration and Programme of Action
v.	versus

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5	Chameli Singh v. State of Uttar Pradesh AIR 1996SC 1051
6	C Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoli 1996 AIR 1697
7	Election Commission of India v. St Mary's School & Ors AIR 2008 SC 655
8	Essar Oil v. Halar Utkarsh Smiti 2004(2) SCC 392
9	Francis Coralie Mullin v. The Administrator, Union Territory of Delhi 1981 AIR 746
10	Fuel Retailers Association of South Africa v. Director General Environment Management & Ors (2007) ZACC 13
11	Government of the Republic of South Africa & Others v. Grootboom & Ors 2001(1) SA 46
12	Justice K.S. Puttuswamy v. Union of India (2017) 10 SCC 1
13	Kapila Hingorani v. State of Bihar (2003) 2BLJ 754
14	Karma Dorjee & Ors v. Union of India (2016) 9 SCR 968
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19	M C Mehta v. Kamal Nath 2006(6) SCC 213
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33	People's Union of Civil Liberties v. Union of India 2003 AIR SCW 2353
34	People's Union of Democratic Rights v. Union of India 1982 AIR 1473
35	Raghunath Rao Ganapath Rao v. Union of India (1993) 1 SCR 480
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CHAPTER 1

INTRODUCTION

“The greatness of humanity is not in being human but in being humane”

- Mahatma Gandhi

1.1 General Introduction

The right to development is a fundamental concept in international human rights discourse, recognized as essential for the realization of human dignity, freedom, and social justice. This right encapsulates the notion that all individuals and communities should have the opportunity to participate in and benefit from economic, social, cultural, and political development¹. It embodies the idea that development is not merely an economic concept but a holistic process that encompasses human dignity and equality². “Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.”³

In the Indian context, the right to development has evolved significantly, particularly through the interpretations and rulings of the judiciary, which have played a pivotal role in shaping its understanding and application.⁴ India's judiciary has been instrumental in embedding the right to development within the constitutional framework, interpreting it through various landmark judgments and public interest litigations.⁵ These judicial pronouncements not only highlight the state's obligation to ensure equitable development but also emphasize the necessity of addressing systemic inequalities that hinder marginalized communities from accessing their rights.⁶ The evolution of judicial thought on this issue reflects a broader commitment to human rights and social justice,

¹ Noam Peleg, Developing the Right to Development, 25 INT'L J. CHILD. RTS. 380 (2017).

² Id

³ The Right to Development - Extracts, 31 ENVTL. POL'Y & L. 184 (2001).

⁴ Dharmendra Kumar Singh, Galvanisation of the Right to Development within the Shared Constitutional Space in India, 19 ASIA-PAC. J. on HUM. RTS. & L. 268 (2018).

⁵ Sujit Kumar Biswas, Role of the Judiciary in Bringing out Social Transformation in India after Independence, 11 INDIAN J.L. & JUST. 19 (March 2020).

⁶ Biswas, Supra note 5

aligning with global standards while responding to the unique socio-economic challenges faced in the country.

However, this evolution has not been without its challenges. The interplay between judicial interpretations and the socio-political landscape often complicates the effective realization of the right to development.⁷ Issues such as socio-economic disparities, bureaucratic inertia, and political resistance continue to impede progress. Nevertheless, the judiciary's proactive approach in advocating for this right presents opportunities for enhancing its implementation, particularly through innovative legal interpretations and strengthened public interest litigation.⁸

1.2 Scope of the Study

This dissertation delves into a comprehensive study on the concept of right to development as a basic human right, its evolution and conceptualization in human rights era. This study also provides a brief history on the development of right to development in India and how the Constitution of India inadvertently promotes the concept of development of individuals, so that they can realize their potential leading a holistic growth. This dissertation seeks to explore the evolution of judicial thought on the right to development in India, mapping its historical milestones and contemporary interpretations.

By critically analyzing the challenges and identifying potential opportunities for enhancement, this study aims to contribute to a deeper understanding of the judiciary's role in promoting the right to development, ultimately advocating for a more just and equitable society. The dissertation also studies about the development of right to development in various countries and its impact on recognizing the right as a universal right. It aims to contribute to the academic discourse on human rights and inform policymakers, legal practitioners, and civil society on the critical role of the judiciary in realizing the right to development for all.

⁷ Md. Saif Ali Khan & Sharafat Ali, Transformative Constitutionalism: Contemporary Issues and Challenges in India, 3 INT'L J.L. MGMT. & HUMAN. 1411 (2020).

⁸ Id

1.3Objective of the Study

1. To understand the concept of right to development and its importance as a human right.
2. To study the evolution of right to development in India through different legal frameworks.
3. To assess the role of judiciary in developing and enhancing the right to development as human right available to the citizens of India
4. To understand the challenges associated with the recognition of right to development as a basic human right and propose recommendations to incorporate right to development as a right available to every person for their holistic development.

As a fundamental human right, the right to development expresses the pursuit of inclusive, equitable, and sustainable development that improves the lives of both individuals and communities. This study aims to deepen understanding of the right to development by examining its significance as a human right and tracking its advancement in the Indian context through a variety of legal frameworks, including legislative actions, policy initiatives, and constitutional provisions. The main focus is on how the Indian court, particularly under Article 21 of the Constitution, interprets and expands this right through groundbreaking rulings that balance growth with fundamental rights.

In addition, the study explores the obstacles that stand in the way of the fulfilment and enforcement of the right to development, such as socioeconomic disparity, ignorance, and inadequate institutional capacity. In order to give everyone, the opportunity for a comprehensive and respectable growth, it also seeks to offer specific recommendations for incorporating this right into the primary legal and policy discourse.

1.4 Research Questions

1. How has the Indian judiciary interpreted and evolved the concept of the right to development through its judgments with special reference to Article 21 of the Constitution of India?

2. How does the judiciary navigate and resolve conflicts that arise between the protection of individual rights and the broader goals of collective development?
3. How has other countries recognized right to development as a basic human right and incorporated it in their legal frameworks?
4. What are the key challenges in upholding the right to development in India including the Indian Judiciary?

The study places a strong emphasis on critically examining how India's notion of the right to development has evolved, particularly as a result of judicial activism under Article 21 of the Constitution, which has expanded the definition of the right to life to include fundamental facets of human development such as environment, health, and education. It explores how the Indian court reconciles the often-conflicting demands of collective development goals and individual rights so that progress does not come at the price of human dignity.

A comparative analysis of how other countries have recognized and incorporated the right to development into their legal systems is also included in the research, which projects international perspectives and best practices. It goes on to address the main barriers to successfully implementing this right in India, including ambiguous laws, socioeconomic disparities, administrative difficulties, and organizational constraints and it aims to promote workable solutions for its widespread acceptance and implementation.

1.5 Statement of Problem

The right to development is an integral aspect of human rights discourse, recognized at international levels yet inconsistently applied at national levels. In India, the judiciary has played a pivotal role in interpreting and evolving this right through landmark judgments and public interest litigations. This dissertation aims to critically examine the evolution of judicial thought concerning the right to development in India, identifying key challenges faced by the judiciary and exploring the opportunities for reinforcing this right within the broader framework of the Constitution of India.

1.6 Hypothesis

The study will be conducted on the hypothesis that:

The recognition of right to development as a Fundamental Right in India presents a complex challenge in harmonizing individual and collective rights while simultaneously addressing the nation's developmental priorities.

1.7 Research Methodology

This dissertation will employ a doctrinal research methodology, including:

- **Case Law Studies:** Conducting detailed examinations of landmark cases that have set precedents in judicial thought on the right to development.
- **Literature Review:** Reviewing existing scholarly articles, books, and reports on the right to development and the role of the judiciary.
- **Comparative Analysis:** Drawing comparisons with other jurisdictions to identify best practices that could be adopted in the Indian context.

1.8 Chapterization

1. Introduction

Chapter 1 gives a brief introduction on right to development. The chapter gives the scope of the study, objective of the study, research questions, statement of problem, hypothesis, research methodology, chapterization and literature review.

2. Evolution Of the Right to Development as A Universal Human Right

Chapter 2 describes how the Right to Development (RTD) came to be recognized as a universal human right, with a focus on how it integrates civil, political, economic, social, cultural, and environmental rights. It follows the development of regional and global instruments such as the Vienna Declaration, the 1986 UN Declaration on RTD, and the African Charter, as well as the Universal Declaration of Human Rights. The chapter addresses how international frameworks like the Declaration on the Rights of Indigenous Peoples and the Millennium Development Goals promote the RTD and

emphasizes the significance of self-determination, equitable development, state responsibility, and international cooperation.

3. The Right to Development in India

In Chapter 3, the acknowledgement and application of the Right to Development (RTD) in India are covered, with a focus on the fundamental rights, directive principles of state policy, and judicial interpretations that form the foundation of the Indian Constitution. The chapter focuses on how India's legal and constitutional framework, bolstered by historic court decisions and government initiatives, encourages social justice, inclusive development, and participatory governance to uplift underprivileged groups and guarantee the comprehensive development of all residents.

4. Judicial Thought on Right to Development in India with Special Reference to Article 21

Chapter 4 looks at how Indian courts have been interpreting the Right to Development (RTD) over time, especially in light of Article 21 of the Constitution. The chapter demonstrates how RTD has been acknowledged as a basic, if unquantifiable, right necessary for inclusive, egalitarian, and sustainable development, especially for excluded people, through historic rulings.

5. Comparative Study on The Right to Development as A Human Right In Different Countries

In Chapter 5, the Right to Development (RTD) as a human right in various nations is compared. It looks at the legislative frameworks, political philosophies, and historical experiences of the US, EU, South Africa, and India in relation to RTD.

6. Conclusion

Chapter 6 offers a thorough analysis of the Right to Development (RTD), highlighting how it has evolved into a fundamental idea in international human rights that encompasses equity, participation, and sustainability in addition to economic growth.

1.9 Literature Review

1. Amartya Sen, *Development as Freedom* (Oxford Univ. Press 1999).

Amartya Sen examines the idea of development as more than just economic progress in "Development as Freedom," highlighting the fact that real development entails extending human freedoms and capacities. Sen contends that development should improve people's capacity to live the lives they choose, emphasizing fundamental liberties including social possibilities, economic facilities, political freedom, transparency assurances, and protective security. By emphasizing that poverty is a deprivation of fundamental abilities as well as a lack of income, the book questions conventional economic viewpoints. Sen's writings, which support a people-centered approach to progress, have become seminal in the field of development studies.

2. Philip Alston, *Making Space for New Human Rights: The Case of the Right to Development*, 1 Harv. Hum. Rts. Y.B. 3, 3–4 (1988).

Philip Alston explores the acceptance and creation of new human rights in "Making Space for New Human Rights: The Case of the Right to Development," with a particular emphasis on the right to development. Alston examines the difficulties in establishing development as a human right from a legal, philosophical, and practical standpoint. He talks on the conflict between individual and collective rights, international cooperation, and the intricacies of governmental obligations. The document promotes the right to development as a valid human right that necessitates international cooperation and cogent legal acceptance.

3. Anna-Lena Wolf, *Juridification of the Right to Development in India*, 49 *Verfassung und Recht in Übersee / L. & Pol. Afr., Asia & Latin Am.* 175, 175–92 (2016).

"Juridification of the Right to Development in India," Anna-Lena Wolf investigates how India's legal systems have acknowledged and upheld the right to development. The article looks at how the Indian legal system changed this right from an intangible idea to a tangible legal standard. Wolf examines significant court rulings and legislative documents that have influenced Indian perceptions of the right to development, emphasizing the judiciary's function in interpreting and upholding this right. The study

sheds light on how development, human rights, and the law interact in a complicated sociopolitical setting.

4. K.L. Dalal, Man's Right to Development, 15 India Int'l Ctr. Q. 89, 89–96 (Summer 1988).

In his article "Man's Right to Development," which was published in the summer of 1988 in the India International Centre Quarterly, K.L. Dalal explores the idea that the right to development is a basic human right. The article examines the ethical and intellectual underpinnings of this right, highlighting the need for development to prioritize improving social welfare, equality, and human dignity. Dalal highlights the significance of justice, equity, and sustainability in the development process as he looks at the duties of governments and international organizations in making sure that development serves everyone. The difficulties in identifying and upholding this right in both domestic and international settings are critically examined in the study.

5. Isaac Shai, The Right to Development, Transformative Constitutionalism and Radical Transformation in South Africa: Post-colonial and De-colonial Reflections, 19 Afr. Hum. Rts. L.J. 372 (2019).

In his work "The Right to Development, Transformative Constitutionalism and Radical Transformation in South Africa: Post-colonial and De-colonial Reflections," Isaac Shai examines how radical social change, transformative constitutionalism, and the right to development intersect in South Africa. The 2019 essay, which was published in the African Human Rights Law Journal, critically analyses how South Africa's constitutional framework addresses historical injustices stemming from colonialism and apartheid while embracing the right to growth. Shai evaluates the efficacy of legislative and policy initiatives meant to advance equitable development using post-colonial and decolonial perspectives. The essay emphasizes the necessity of a revolutionary strategy that places a high value on equality, social justice, and human dignity.

6. B. G. Ramcharan, Individual, Collective and Group Rights: History, Theory, Practice and Contemporary Evolution, 1 Int'l J. on Grp. Rts. 27 (1993).

"Individual, Collective and Group Rights: History, Theory, Practice and Contemporary Evolution," written by B.G. Ramcharan, offers a thorough examination of the development and interaction of these rights. The essay, which was published in the International Journal on Group Rights in 1993, examines the theoretical underpinnings of these rights and charts their historical evolution. Ramcharan discusses the implementation of these rights in many social, political, and cultural contexts while analysing how international law has acknowledged and balanced different kinds of rights. In addition to providing insights into the evolving character of human rights law, the article underscores current difficulties in defending collective rights without compromising individual liberties.

7. Russel Lawrence Barsh, The Right to Development as a Human Right: Results of the Global Consultation, 13 Hum. Rts. Q. 322, 322-38 (1991).

The right to development is thoroughly examined as a recognized human right under international law in "The Right to Development as a Human Right: Results of the Global Consultation," written by Russell Lawrence Barsh. The article, which was published in Human Rights Quarterly in 1991, highlights the opinions of nations, international organizations, and civil society while discussing the results of a global consultation on the right to development. Barsh addresses the difficulties in reaching an international agreement on the application of this right while critically evaluating its ethical and legal aspects. In order to guarantee that development benefits everyone, the article emphasizes the necessity of collaborative international efforts.

8. SC Fobosi, The Protection of Human Rights in South Africa: Unpacking the Duty of the State to Realise the Right to Development, Online ISSN 1727-3781.

In his article "The Protection of Human Rights in South Africa: Unpacking the Duty of the State to Realise the Right to Development," SC Fobosi explores the state's responsibility to guarantee that South Africa's right to development is realised. The essay examines the legal and constitutional frameworks that uphold the nation's human rights protections, emphasizing the need for the state to actively advance and preserve every citizen's right to development. In his analysis of the potential and difficulties in

putting this right into practice, Fobosi emphasizes the significance of social fairness, accountability, and sound governance in attaining sustainable development.

9. Dr. Shamba Dev & Kaushiki Mishra, Right to Development as a Fundamental Right – A Conceptual Analysis, 1 Int'l J. Res. & Analytical Revs., Jan.–Mar. 2019.

Dr. Shamba Dev and Kaushiki Mishra's paper, "Right to Development as a Fundamental Right – A Conceptual Analysis," offers a thorough examination of the right to development as a basic human right. The essay, which was published in 2019 in the International Journal of Research and Analytical Reviews, looks at the theoretical underpinnings of the right to development, as well as how it is recognized by international law and used at the national level. The writers examine the connection between human rights and development, stressing that social fairness, equity, and human dignity must be given top priority in development. The paper provides insights into the difficulties and opportunities of achieving this right globally through a thorough analysis of legal doctrines and case studies.

10. United Nations, Realizing the Right to Development (U.N. Publ'ns 2013).

"Realizing the Right to Development," a 2013 United Nations publication, examines the idea that the right to development is a fundamental part of international human rights. The normative basis, historical history, and actual application of the right to development are all thoroughly examined in this paper. It talks about the obligations placed on states, international organizations, and other parties involved in advancing this right. Emphasizing the concepts of equity, sustainability, and participation, the publication also identifies important issues, best practices, and policy suggestions for guaranteeing that development benefits everyone.

CHAPTER 2

THE EVOLUTION OF THE RIGHT TO DEVELOPMENT AS A UNIVERSAL HUMAN RIGHT

2.1 Introduction

All people, regardless of their colour, sex, nationality, ethnicity, language, religion, or any other status, are entitled to certain rights. Human rights encompass a wide range of rights, such as the freedom from slavery and torture, the right to life and liberty, the freedom of expression, the right to employment and education, and many more. Without exception, everyone is entitled to these rights. Human rights are a collection of values pertaining to justice and equality⁹. They acknowledge that we are free to make decisions about our life and to reach our full potential as people. They are about leading a life devoid of discrimination, harassment, or fear¹⁰.

The world witnessed the drastic effects of the two World wars and the effects of these wars in the human society. The Second World War experience led to the UN General Assembly's adoption of the Universal Declaration of Human Rights on December 10, 1948¹¹. Following the conclusion of that war and the establishment of the United Nations, the international community pledged to prevent future atrocities similar to those that occurred during that struggle. In order to ensure the rights of every person worldwide, world leaders agreed to add a roadmap to the UN Charter. At the first General Assembly session in 1946, they discussed the paper that would eventually become the Universal Declaration of Human Rights.¹²

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, is a foundational document that outlines the basic rights and freedoms every person is entitled to, regardless of nationality, ethnicity, or religion¹³. It plays a crucial

⁹ United Nations, Human Rights, <https://www.un.org/en/human-rights>. Last accessed on Nov.15, 2024.

¹⁰ Australian Human Rights Commission, An Introduction to Human Rights, <https://humanrights.gov.au>, last accessed on Nov 15, 2024

¹¹ The Long and Influential Life of the Universal Declaration of Human Rights, The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World, 2016, pp. 29-38

¹² Id

¹³ United Nations, History of the Declaration, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, last accessed on Nov.15, 2024

role in promoting global human dignity and equality. The UDHR has influenced the development of international human rights law and serves as a common standard for all nations to aspire to, helping to guide policies and actions to protect individuals from abuses and discrimination¹⁴. By establishing a universal framework, the UDHR encourages peace, justice, and respect for human rights worldwide.

The Universal Declaration of Human Rights along with the International Convention on Civil and Political Rights, 1976 and International Convention on Economic, Social and Cultural Rights 1976 forms the trilogy of the human rights known as ‘International Bill of Human Rights’¹⁵. These conventions cover human rights relating to civil, political, economic, social and cultural rights. These rights form the first- and second-generation human rights.

The list of human rights recognized by the international community has changed over time. Over the course of the UDHR's more than 75 years of existence, other treaties and papers have clarified and expanded upon some of the fundamental ideas outlined in the original text, even if none of the rights enumerated in it have been seriously questioned¹⁶. These additions have resulted from a variety of circumstances, including the emergence of new risks and opportunities as well as shifting perspectives on human dignity¹⁷. Regarding the particular new class of rights that have been put out as third generation rights, they have resulted from a better comprehension of the various kinds of barriers that may stand in the way of realizing first and second-generation rights. In this context comes various third generation rights or solidarity rights. The rights typically encompassed within third generation rights include the rights to development, peace, a healthy environment, equitable sharing of the common heritage of mankind, communication, and humanitarian assistance¹⁸.

¹⁴Implementation of Human Rights, The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World 81, 81-104 (2016).

¹⁵ Office of the High Commissioner for Human Rights, International Bill of Human Rights, <https://www.ohchr.org/en/core-international-human-rights-instruments>, last accessed on Nov.17, 2024

¹⁶ Council of Europe, The Evolution of Human Rights, <https://www.coe.int/en/web/compass/the-evolution-of-human-rights>, last accessed on Nov.17, 2024

¹⁷ Id

¹⁸ Id

2.2 The African Charter of Human and Peoples' Rights, 1981

The Organization of African Unity (OAU), which is now the African Union (AU), adopted the African Charter on Human and Peoples' Rights (ACHPR), also called the Banjul Charter, on June 27, 1981 in Nairobi, Kenya¹⁹. It became operative on October 21, 1986. While taking into account the distinct historical, cultural, and social settings of the continent, the charter creates a framework for the defence and advancement of human and peoples' rights in Africa. It is a landmark regional human rights instrument that protects both individual and collective (peoples') rights while recognizing economic, social, and cultural development as essential to human dignity²⁰.

One of the most significant features of the Charter is its recognition of the right to development, which is rarely emphasized in other human rights instruments. A written expression on right to development for the first time was seen in the African Charter²¹. It included right to development as a basic human right by giving its citizen the developmental rights as a collective human right or third generation right²².

The right to development is explicitly recognized in Article 22 of the African Charter, which states:

"(1) All peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage mankind.

(2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development."²³

¹⁹African Charter on Human and Peoples' Rights, Wikipedia, The Free Encyclopedia, https://en.wikipedia.org/wiki/African_Charter_on_Human_and_Peoples%27_Rights, last accessed on Nov.17, 2024.

²⁰ A. Bolaji Akinyemi, The African Charter on Human and Peoples' Rights: An Overview, 46 INDIAN J. POL. SCI. 207, 207-38 (1985)

²¹ Organization of African Unity, Banjul Charter on Human and Peoples' Rights, 21 INT'L LEGAL MAT. 58, 58-68 (1982).

²² Id

²³ African Charter on Human and Peoples' Rights art. 22, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

The opening paragraph makes it abundantly evident that the RTD is composed of freedoms (civil and political rights) as well as economic, social, and cultural rights. Actually, this emphasizes the complex nature of the right²⁴.

During a meeting of African Heads of State on the travaux préparatoires of the African Charter on Human and Peoples' Rights (ACHPR), former Senegalese President Léopold Sédar Senghor emphasized the necessity of including the Right to Development (RTD) in the forthcoming African Convention. He argued that this right encompasses economic, social, and cultural rights while also ensuring that civil and political rights are not overlooked²⁵.

This perspective was later reflected in the ACHPR, which acknowledges the inseparability of civil and political rights from economic, social, and cultural rights. The Charter affirms that recognizing and fulfilling economic, social, and cultural rights serves as a foundation for the realization and enjoyment of civil and political rights. Additionally, it underscores the importance of prioritizing the right to development, recognizing its central role in the broader human rights framework²⁶.

2.3 The Declaration on Right to Development, 1986

Compared to anything concrete like a bicycle, a pair of shoes, or your teacher, the abstract concept of development is much harder to understand. If you were to ask five people what they think the term "development" means, you probably would get five wildly disparate responses. However, one thing is certain: the term "development" describes a process of change that takes place throughout time²⁷. Development is the process of moving from a simpler or lower form or stage to one that is more sophisticated, mature, or complex. Another definition of it is the steady progress or development brought about by a sequence of progressive adjustments. Development is not a stage; it is a process. It is a way to accomplish specific objectives²⁸.

²⁴ U. O. Umzurike, The African Charter on Human and Peoples' Rights, 77 AM. J. INT'L L. 902, 902-12 (1983)

²⁵ Rose M. D'Sa, Human and Peoples' Rights: Distinctive Features of the African Charter, 29 J. AFR. L. 72, 72-78 (1985).

²⁶ Id.

²⁷ Maya S., The Concept of Development, IDEKU, <https://www.ideku.net>, last accessed on Nov 18, 2024.

²⁸ Centre for Global Development, What Is Development? <https://www.cgdev.org>, last accessed on Nov 18, 2024

Development is a comprehensive civil, cultural, economic, environmental, political and social process that is aimed at the constant improvement of the well-being of the entire population and of all peoples and individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom²⁹. Development is understood not simply in terms of economic growth, but also as a means of widening people's choices to achieve a more satisfactory intellectual, emotional, moral and spiritual existence rooted in the cultural identity and the cultural diversity of peoples³⁰.

The concept of Right to Development stems from the intellectual discourses of two eminent persons – Keba Mbaye, a Senegalese Judge and Karel Vasak, the originator of the concept of third generation human rights or collective rights³¹. An intellectual connection between human rights and development gave rise to the right to development. Development had been revitalized by the call for a new inter-economic order, which resulted in the famous Declaration and Programme of Action 3 in May 1974³². The human right activists and scholars pointed the state of human rights in developing countries and the need for human rights-based approach on development. This led to the evolution of the concept of developed nations helping the under developed nations financially in their developmental activities. This will indirectly help those nations and its citizens in their overall development and have a holistic improvement in their wellbeing.³³

The Declaration on the Right to Development, adopted by the UN in 1986 with almost unanimous support except for a single dissenting vote from the US, explicitly recognized the right to development as a human right. This came nearly 38 years after the Universal Declaration of Human Rights, which outlined human rights as both civil and political (Articles 1 to 21) and economic, social, and cultural rights (Articles 22 to

²⁹ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986), Art. 1.1.

³⁰ Russel Lawrence Barsh, The Right to Development as a Human Right: Results of the Global Consultation, 13 HUM. RTS. Q. 322 (1991).

³¹ Id

³² Supra note 29.

³³ Olivia Perean, Issues on the Right to Development, RESEARCHGATE, <https://www.researchgate.net/publication/>. Last accessed on Nov.18, 2024

28)³⁴. The right to development is an inalienable human right which recognizes the right of every individual as well as the society³⁵.

The right to development was proclaimed in the Declaration on the Right to Development, adopted in 1986 by the United Nations General Assembly (GA) in its resolution 41/128. This right is also recognized in the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights and re-affirmed in several instruments including the 1992 Rio Declaration on Environment and Development, the 1993 Vienna Declaration and Programme of Action, the Millennium Declaration, the 2002 Monterrey Consensus, the 2005 World Summit Outcome Document and the 2007 Declaration on the Rights of Indigenous Peoples³⁶.

Article 1.1 of the Declaration states that “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”³⁷ The RTD thus recognizes right to development as a right available to every person and in order to fully recognize their overall well-being they have the right to participate, contribute and enjoy all other human rights of social, cultural and political nature. A special aspect of the RTD is that every individual is entitled to benefit arising out such participation or development. It also provides that by recognizing right to development as fully developed human right helps in addressing the lacunas in addressing other human rights and fundamental freedoms³⁸.

Article 1.2 of the Declaration states that “The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the

³⁴ Arjun Sengupta, Right to Development as a Human Right, 36 ECON. & POL. WKLY. 2527 (2001)

³⁵ Id

³⁶ Right to Development, WIKIPEDIA, https://en.wikipedia.org/wiki/Right_to_development. Last accessed on Nov.20, 2024

³⁷ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Art. 1.1 (Dec. 4, 1986).

³⁸ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Art. 2.1 (Dec. 4, 1986).

exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”³⁹

The right of people to choose their own course in life is known as the human right to self-determination⁴⁰. The people can choose their own political position and their own path of economic, cultural, and social development thanks to this right. The Human Rights Committee states that the right to self-determination is particularly significant since it is a prerequisite for the effective protection and upholding of individual human rights as well as for the advancement and reinforcement of those rights.⁴¹ By recognizing right to self-determination as part of right to development, it embodies the rights of all people.

The right to self-determination in the Declaration gives the nations sovereignty over their own natural wealth and resources. By enabling people to actively shape their own economic, social, and political development paths—basically, granting them control over how their resources are used—and guaranteeing that development initiatives are in line with their needs and priorities rather than being imposed from without, the right to self-determination greatly aids in the realization of the right to development⁴².

Communities can prioritize development projects, use their natural resources wisely, and engage in policy-making by exercising self-determination. This results in a more responsive and inclusive development process. Control over natural resources is frequently a part of the right to self-determination, allowing communities to use their resources to further economic development and growth that directly benefits them⁴³. People can hold their leaders accountable and push for policies that meet their development requirements when they have the authority to choose their own political status. Through self-determination, people can pursue progress while preserving and advancing their cultural identity, halting the decline of long-standing customs and values. Instead of adhering to development goals that are imposed externally, a nation

³⁹ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Art. 1.2 (Dec. 4, 1986).

⁴⁰ Natalie Jones, Self-Determination and the Right of Peoples to Participate in International Law-Making, 94 BRIT. Y.B. INT'L L. 1 (2021), <https://doi.org/10.1093/bybil/brab004>.

⁴¹ Human Rights Council, The Right of Peoples to Self-Determination as a Basic Human Right, U.N. Doc. A/HRC/24/35 (July 1, 2013).

⁴² Wouter Vandenhole, The Human Right to Development as a Paradox, 36 VERF. U. R. ÜB. / L. & POL. IN AFR., ASIA & LAT. AM. 377 (2003).

⁴³ Supra note 39

exercising self-determination can give priority to development programs that address its unique needs.⁴⁴

The Declaration on Right to Development places the individual or a human person as the centre of every developmental process. Every individual has a duty, both personally and collectively, to contribute to the development of society. This responsibility must be grounded in a deep respect for human rights and fundamental freedoms, recognizing that these are essential to the well-being of all people. In addition to their rights, individuals also have obligations toward their communities. It is only through fulfilling these duties and fostering a sense of collective responsibility that true human potential can be realized⁴⁵.

Furthermore, for development to be meaningful and sustainable, it requires the establishment and maintenance of a political, social, and economic environment that supports progress for everyone. This environment should promote equality, justice, and opportunity, ensuring that every person can fully thrive and achieve their potential in a free and fair society⁴⁶. By actively working to create and protect such an order, individuals and communities help build the foundation for lasting, inclusive development that benefits all.

Under the Declaration, Article 3 provides that “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development”⁴⁷. According to the high-level task force on the implementation of the right to development “the responsibility for the creation of this enabling environment encompasses three main levels:

(a) States acting collectively in global and regional partnerships as given in Preamble of the Declaration and Article 2.

⁴⁴ Supra note 39

⁴⁵ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Art. 2.2 (Dec. 4, 1986).

⁴⁶ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Art. 2.3 (Dec. 4, 1986).

⁴⁷ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Art. 3 (Dec. 4, 1986).

(b) States acting individually as they adopt and implement policies that affect persons not strictly within their jurisdiction as provided in Article 4.

(c) States acting individually as they formulate national development policies and programmes affecting persons within their jurisdiction as in Article 2.

Article 5 of the Declaration states that “ States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid , all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.”⁴⁸ The RTD places the State as the flag bearers of recognizing the basic human rights. It places duty on the State to end all kinds of discrimination based on race, caste or creed and disregards apartheid and colonial attitudes of any nation.⁴⁹

The Declaration on Right to Development is pioneer step towards recognizing the inter relationship between all the basic human rights with development. The Declaration is a non-binding document. The critics on RTD pointed out the fallacies on the declaration including the non-binding nature of the declaration, lack of proper implementation mechanism, vagueness in the responsibilities of State actors in promoting right to development including mutual benefit sharing and responding to other international covenant duties⁵⁰. This created a tension on human right watchers including United Nations, leading long debates and resolutions to articulate a better instrument for creating a universality in the acceptance of right to development as a basic human right. This need for a universal consensus led to the Vienna Declaration and Programme of Action 1993, which declared the right to development as a universal basic human right available to everyone.

⁴⁸ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Art. 5 (Dec. 4, 1986).

⁴⁹ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128, Art. 3.3 (Dec. 4, 1986).

⁵⁰ Right to Development at a Glance, U.N., <https://www.un.org>, last accessed on Nov.20, 2024

2.4 Vienna Declaration and Programme of Action, 1993

The World Conference on Human Rights in Vienna, Austria, on June 25, 1993, unanimously endorsed the Vienna Declaration and Programme of Action (VDPA), a human rights declaration⁵¹. This Declaration suggested the role of the United Nations High Commissioner for Human Rights, which was later established by General Assembly Resolution 48/141. The World Conference on Human Rights reaffirmed the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights. The Conference also places a human person as the centre of every development and human rights⁵².

Even if progress makes it easier to enjoy all human rights, a lack of development cannot be used as an excuse to restrict access to internationally recognized rights. In order to guarantee development and remove barriers to it, states ought to work together⁵³. For the right to development to be realized and development barriers to be removed, the international community should encourage effective international collaboration. Effective national development strategies, fair economic relations, and a favourable international economic climate are all necessary for long-term progress toward the realization of the right to development.⁵⁴

2.5 Rio Declaration on Environment and Development, 1992

The 1992 United Nations Conference on Environment and Development (UNCED), also known colloquially as the Earth Summit, produced the brief declaration known as the Rio Declaration on Environment and Development, or simply Rio Declaration⁵⁵. The 27 guiding principles of the Rio Declaration were designed to help nations pursue sustainable development in the future. It was signed by more than 175 nations. Principle

⁵¹ Vienna Declaration and Programme of Action, WIKIPEDIA, Available at https://en.wikipedia.org/wiki/Vienna_Declaration_and_Programme_of_Action., last accessed on Nov.20, 2024.

⁵² Vienna Declaration on Human Rights, 19 POPUL. & DEV. REV. 877 (1993)

⁵³ Id

⁵⁴ Id

⁵⁵ Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol. I), at 1 (1992).

3 of the Declaration states "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."⁵⁶

The Right to Development and the Rio Declaration complement each other. The Right to Development emphasizes that development must be equitable, inclusive, and supportive of human rights, whereas the Rio Declaration highlights sustainable development with an emphasis on long-term growth and environmental conservation. In order to guarantee that progress results in the general well-being of people without compromising social or environmental systems, both emphasize the significance of international cooperation and responsibility⁵⁷.

2.6 Millenium Development Goals, 2000

Following the United Nations Millennium Summit in 2000, eight international development goals known as the Millennium Development Goals (MDGs) were created with the intention of tackling important global issues such gender equality, poverty, hunger, health, education, and environmental sustainability⁵⁸. With an emphasis on enhancing living conditions and guaranteeing fundamental rights for everyone, especially in developing nations, these objectives were set to be accomplished by 2015. The MDGs provide a framework for global development and collaboration, directing international activity to lessen inequality and promote human well-being worldwide. These goals are in consonance with the Declaration on Right to Development of the UN⁵⁹.

The Declaration on the Right to Development recognizes this right as an essential human entitlement, stating that every individual and all peoples have the right to participate in, contribute to, and benefit from economic, social, cultural, and political development where all human rights and freedoms can be fully realized⁶⁰. Governments that base their development strategies on this right are more likely to succeed in

⁵⁶ Rio Declaration on Environment and Development, Principle 3, U.N. Doc. A/CONF.151/26 (Vol. I), at 1 (1992).

⁵⁷ Deni Greene Consulting Services for the Task Force on Sustainable Development, The Rio Declaration on Environment and Development, Env't Design Guide, No. 8, at 1 (May 2005).

⁵⁸ Information Note on the Right to Development, U.N., <https://www.un.org>, last accessed Nov.22, 2024

⁵⁹ Id

⁶⁰ Id

achieving the Millennium Development Goals (MDGs) and in fulfilling the United Nations Charter's vision for a more just and equitable world.

The eight MDGs—aimed at reducing poverty, hunger, and disease while promoting gender equality, education, environmental sustainability, and global partnerships—are interconnected. Achieving them requires collaboration between developed and developing nations, as emphasized in Goal 8, which calls for collective responsibility in international cooperation and assistance.⁶¹

The right to development strengthens this global partnership, fostering a more favourable environment for developing countries to engage in international economic activities. It calls on the international community to eliminate structural barriers and ensure opportunities for development⁶². The right incorporates key principles such as transparency, equality, participation, accountability, and non-discrimination, which should be adhered to at both national and global levels.⁶³

2.7 Declaration on the Rights of Indigenous Peoples, 2007

The Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the United Nations in 2007, is a non-legally binding resolution that outlines the individual and collective rights of indigenous peoples.⁶⁴ It emphasizes their rights over cultural and ceremonial expression, identity, language, employment, health, education, and more, ensuring their ownership extends to the protection of intellectual and cultural property. UNDRIP highlights the importance of enabling indigenous peoples to preserve and enhance their own institutions, cultures, and traditions while allowing them to pursue development that aligns with their unique needs and aspirations.⁶⁵ The declaration also prohibits discrimination against indigenous peoples, advocating for their full and effective participation in decisions that directly affect them.⁶⁶ It recognizes their right

⁶¹ Information Note on the Right to Development, U.N., <https://www.un.org>, last accessed on Nov.22, 2024

⁶² Supra note 61

⁶³ Supra note 61

⁶⁴ Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007)

⁶⁵ United Nations Permanent Forum on Indigenous Issues, Frequently Asked Questions – Declaration on the Rights of Indigenous Peoples (2012)

⁶⁶ Id

to maintain their distinct identities and cultural practices, including their freedom to define and pursue their own vision of social and economic progress.

One of the primary aims of UNDRIP is to encourage countries to collaborate with indigenous peoples to address broader global challenges. This includes fostering development, promoting multicultural democracies, and decentralizing decision-making processes to ensure indigenous communities are not marginalized.⁶⁷ By establishing these principles, the declaration seeks to create a more inclusive world where indigenous peoples are not only recognized but are empowered to shape their futures in accordance with their values and priorities.⁶⁸ This framework encourages cooperation between governments and indigenous communities to create solutions that respect both cultural diversity and shared global objectives.

Article 23 elaborates "Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions." Thus, effectuating the concept of right to development by the protection of the rights of the indigenous communities especially their right for self-determination.⁶⁹

2.8 Draft International Covenant on Right to Development, 2023

In the recent years, right to development as a human right gained a wide spectrum of debates on various issues related with enforceability of the declaration as well as implementation challenges. In view of these opinions, the United Nations in the aegis of the Human Rights Council in 2023 drafted an international covenant on right to development.⁷⁰ This draft when presented and ratified by the signing states makes the right to development as a binding human right which cannot be violated by any state or non-state parties. At 1998 Movement of Non-aligned Countries summit in Durban, South Africa, led by then-President Nelson Mandela, the concept of a legally binding

⁶⁷ Supra note 56

⁶⁸ Supra note 67

⁶⁹ Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295, Art. 23 (Sept. 13, 2007).

⁷⁰ Human Rights Council, Resolution Adopted on October 12, 2023, U.N. Doc. A/HRC[Resolution Number] (Oct. 12, 2023).

RTD treaty was born. An eventual convention was described as "an important step towards implementing the right to development" in the summit's result document.⁷¹ The draft document when implemented becomes the cornerstone for attaining the balance between developmental rights with human rights or in a better way human rights approach to development.

2.9 Conclusion

The Declaration on Right to Development by United Nations in 1986 is a landmark international document which aims at protecting the developmental needs of each individual and the community with that of the human rights. The Right to Development encompasses a variety of other rights which makes interconnections so that the overall well-being and holistic development of every human person and the communities are balanced. The non-binding nature of the Declaration hinders the application of these rights in the daily interactions, various member states of the Declaration including India had taken it in an active sense. The judicial interpretations of various State laws as well as human right initiatives see the application of this right in its glorious self. The Indian jurisprudence shows the different ways in which right to development was interpreted and applied in the different cases in the Courts. The right to development stands as ever encompassing right connecting all rights together for the realization of the full potential of an individual as well as a community.

⁷¹ Nico Schrijver, A New Convention on the Human Right to Development: Putting the Cart Before the Horse?, 38 NETH. Y.B. INT'L L. 205 (2020)

CHAPTER 3

THE RIGHT TO DEVELOPMENT IN INDIA

3.1 Introduction

Social justice is the availability of equal social opportunities for everyone in the community to develop their personalities, free from prejudice based on race, sex, or caste.⁷² These inequalities should not deprive anyone of the social circumstances that are necessary for social progress. Economic equality and rights are necessary for social equality and social rights, which are linked to the topic of social justice.⁷³ Only in a society where human exploitation by human beings does not exist and where the privileges of the few are not based on the suffering of the many can social justice be achieved.

A nation's constitution outlines the fundamental laws and regulations that must be adhered to inside its borders. It serves as the guide for managing the nation.⁷⁴ Since it lays out the nation's laws, citizens' rights, and responsibilities, it is an essential document. Through a system of checks and balances, it limits the government's power and stops it from acting arbitrarily. In addition to outlining the nation's rules, the constitution also outlines the goals of its people.⁷⁵

The Constitution of India is the supreme law of the land or otherwise the Grund norm.⁷⁶ Adopted with the intention of promoting social reform and nation-building, the Constitution served as a catalyst for India's material and social transformation.⁷⁷ As a result, how it is interpreted should reflect the changing social, political, and economic

⁷² Sougata Talukdar, Constitution and Its Importance to Bring Social Change in India, 11 INDIAN J.L. & JUST. 89 (March 2020).

⁷³ Jean-Philippe Deranty, Post-Operaismo and Working-Class Subjectivity: Notes on the Recent Italian Debates, ResearchGate (Jan. 2016), <https://www.researchgate.net/publication/314581421>.

⁷⁴ Gowher Rizvi, Emergent India: Globalization, Democracy, and Social Justice, 62 INT'L J. 753 (Fall 2007).

⁷⁵ Id.

⁷⁶ Zainab Arif Khan, Application of Grundnorm in India, iPleaders Blog, <https://blog.ipleaders.in/application-of-grundnorm-in-india>, last accessed on Nov.25,2024

⁷⁷ S. Waseem Ahmad & M. Ashraf Ali, Social Justice and Indian Constitution, 67 INDIAN J. POL. SCI. 793 (2006).

requirements of the populace as well as the changing goals of future generations. In *Raghunath Rao Ganpatrao v. Union of India*⁷⁸, the Court held :

“It is difficult to imagine that the framers of the Constitution, who gave up a lot to achieve certain goals, would include clauses that go against those goals. Given their political expertise and experience, they undoubtedly expected that society would endure enormous social, economic, and political shifts over time. Therefore, the Constitution was drafted with the ability to change to meet these changing needs.”

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Every Indian citizen is entitled to a set of fundamental freedoms and rights that are enshrined in the Indian Constitution. These rights are seen as basic since they are thought to be necessary for a person's general development, progress, and well-being.⁸⁰ The Indian Constitution's underlying ideals of justice, liberty, equality, and brotherhood are reflected in the concept of fundamental rights, which is inspired by a number of sources, including the Universal Declaration of Human Rights. These rights are subject to specific restrictions in order to strike a balance between people's individual liberties, the general welfare, and the preservation of public order.⁸¹

3.2 Indian Constitution and Right to Development

“Rights, justice, development and governance form the four sovereign foundations of the constitution of India”. – Dr. B.R Ambedkar

Individual growth in the social, economic, and political domains is essential to Indian constitutional ideals, according to Dr. Ambedkar, who saw the state as its primary tool.⁸² The preamble's ideas of equality, dignity, and equality recognize every citizen's right to thrive and fully develop their individuality in all spheres.

India had ratified the UN Declaration on Human Rights in January 1942 making human rights as the basic principles that guide the country's society.⁸³ The Constitution of India

⁷⁸[1993] 1 S.C.R. 480

⁷⁹ Supra note 78

⁸⁰ Shalini alias Simmy, Importance of Fundamental Rights in Indian Constitution, 5 INT'L J.L. POL'Y & SOC. REV. 104 (2023)

⁸¹ Id.

⁸² Talukdar, supra note 72

⁸³ Dr. Vimal R. Parmar, Comparative Study of Universal Declaration Human Rights and Fundamental Rights of Indian Constitution, 5(4) GLOB. RES. ANALYSIS (APR. 2016).

on its enactment contained the detailed provisions for the protection of human rights of its citizens. Part III of the Constitution contains the Fundamental Rights which are basically the legal protection accorded the universally accepted basic human rights.⁸⁴ Similarly, Part IV of the Constitution contains the Directive Principles of State Policy which acts as a guideline for the State for protection and upliftment of the citizens.

India also ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1979.⁸⁵ Along with all these conventions and other international elements, the Constitution of India acts as the umbrella legislation for the protection of the rights of the individuals. India ratified the United Nation Declaration on Right to Development in 1986 and by Article 1 of the Declaration, the right to development was accepted as a human right.⁸⁶

One of the characteristics of state sovereignty is the ability to enter into international treaties and agreements. India applies the dualist idea to the local application of international law.⁸⁷ In India, international accords are not always incorporated into domestic legislation. Therefore, in order to execute international law in India, the Parliament must create the necessary legislation.⁸⁸

According to Articles 246 and 253 read with Entry 14 of List I of the Seventh Schedule of the Constitution, the union government has the executive authority to sign and carry out foreign treaties.⁸⁹ The Union of India's legislative authority is the source of the union government's executive authority. Regarding international law, the Indian Constitution adheres to the "dualistic" theory.⁹⁰ As a result, national law does not always incorporate international treaties. Where appropriate, they must be included in the legal system through legislation passed by the legislature.⁹¹

⁸⁴ Parmar, Supra note 83.

⁸⁵ Dr. Mohd Nazish, Human Rights and the Indian Constitution: An Overview of Fundamental Rights and Directive Principles of State Policy, 5 *INT'L J. RES. PUB. & REV.* 5199 (2024).

⁸⁶ Piyush Kumar, Right to Development as a Human Right: Position in India, 7 *J. FAC. L. MODY U.* (2015–16).

⁸⁷ Vivek Sehrawat, Implementation of International Law in Indian Legal System, 31 *FLA. J. INT'L L.* 125 (2019).

⁸⁸ *Id.*

⁸⁹ Prabhash Ranjan, The Supreme Court of India and International Law: A Topsy-Turvy Journey from Dualism to Monism, 43 *LIVERPOOL L. REV.* 571 (2022)

⁹⁰ *Id.*

⁹¹ *Id.*

The Union of India had ratified the UN Declaration of Right to Development as well the following re-affirmative Vienna Declaration and Programme of Action as part of the World Conference on Human Rights in 1993.⁹² But the inclusion of right to development in the domestic laws of India still remains in papers. The Government had implemented various aspects of development in the policy frameworks of India. Development is not a single right but include the well-being of the individuals as well as the society in a holistic manner. Amartya Sen in his work ‘Development as Freedom’ describes development as a process of expanding the real freedoms that people enjoy.⁹³

“Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states. Sometimes the lack of substantive freedoms relates directly to economic poverty, which robs people of the freedom to satisfy hunger or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed, or sheltered, or to enjoy clean water or sanitary facilities. In other cases, the unfreedom links closely to the lack of public facilities and social care, such as the absence of epidemiological programs, or of organized arrangements for health care or educational facilities, or of effective institutions for the maintenance of local peace and order. In still other cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.”⁹⁴

Development thus encompasses wide range of rights that helps individuals and society to reach their maximum potential. Giving this concept its own ambit, the Constitution of India even though doesn’t contain an express provision recognizing right to development as a fundamental right, had other provisions that enhances this right.⁹⁵ The Indian judiciary is the final interpreter of the Constitution. The Courts in India had in

⁹² Surya P. Subedi, Declaration on the Right to Development, U.N. Audiovisual Libr. Int’l https://legal.un.org/avl/is/Subedi_RTDR.html, last accessed on Dec.11, 2024.

⁹³ Supra note 89

⁹⁴ Id at 92

⁹⁵ Supra note 89

several cases interpreted the Constitution especially the Fundamental Rights and the Directive Principles of State Policy (DPSP) to give effect international conventions and obligations to the upliftment and overall development of the citizens.⁹⁶

The Constitution of India contain provisions for the protection of human rights in lines with the UDHR, ICCPR, ICESCR and other international conventions. Human rights can be basically classified into three categories i.e. the civil and political rights, economic and social rights and collective rights.⁹⁷ The first category of civil and political rights is comprehensively covered by Part III of the Constitution while economic and social rights are provided as Directive Principles of State Policy as in Part IV of the Constitution.⁹⁸ The concept of collective rights are protected by the Constitution through its fundamental rights and directive principles and these rights are widely interpreted by the judiciary.⁹⁹ The right to development in India is also interpreted by the judiciary in the ambit of these provisions. It is to be comprehended that the interpretation of the Constitution in including the right to development in its human rights jurisprudence in India is basically done by the judiciary through different case laws.¹⁰⁰

3.2.1 Right to Equality and Right to Development

With origins in the liberation movement, the concept of equality is ingrained in Indian culture.¹⁰¹ Articles 14 to 18 of the Indian Constitution, which was drafted by the country's founders after independence, emphasize equality as a fundamental principle.¹⁰² Article 14 encapsulates the twin concept of equality i.e. equal protection of law and equality before law.¹⁰³ The definitive safeguard against any special privileges granted by the state to any individual is equality before the law. Equal

⁹⁶ Subedi, Supra note 93.

⁹⁷ S. K. Kapoor, *International Law & Human Rights* 800 (17th ed. 2009).

⁹⁸ Id

⁹⁹ Satyam Chauhan, *Safeguarding Individual Rights and Collective Rights Under Constitutional Frameworks: A Comparative Study*, WHITE BLACK LEGAL INT'L L.J., ISSN 2581-8503.

¹⁰⁰ S. Radhakrishnan, *Development of Human Rights in an Indian Context*, 36 INT'L J. LEGAL INFO. 282 (2008).

¹⁰¹ Khushnoor Kaur, *Exploring India's Constitutional Right to Equality*, 2 LAWFOYER INT'L J. DOCTRINAL LEGAL RSCH. 134 (2024).

¹⁰² *Constitutional Law of India – Chapter 7: Right to Equality*, Student Manupatra, <https://student.manupatra.com/Academic/Abk/Constitutional-Law-of-India.last> accessed on Dec. 17, 2024

¹⁰³ India Const. art. 14.

protection under the law contrasts with a feudal culture that depended on hierarchy and preferential treatment. The statement "equals should be treated equally" goes one step further. Essentially, it gives the State the ability to distinguish and treat people with different circumstances differently, which serves as the foundation for affirmative action.¹⁰⁴

Article 15 of the Indian Constitution firmly opposes discrimination, a scourge that has shattered societies.¹⁰⁵ This article, which forbids discrimination based on religion, race, caste, sex, or place of birth, is essential to advancing inclusivity and social welfare.¹⁰⁶ Despite their apparent simplicity, these reasons have broad ramifications. It implies that all public spaces, including markets, wells, and educational institutions, must welcome everyone without discrimination.¹⁰⁷

Recognizing the need to uplift those historically disadvantaged, the State can also create particular provisions for women, children, and socially and educationally backward classes. Recognizing the societal inequities, the Constitution allows for positive discrimination to reinforce the rights of women and children, a contentious but essential component that allows the government to provide opportunities for people who have been excluded for millennia, guaranteeing a level playing field.¹⁰⁸

By extending the idea of equality to the workplace, Article 16 guarantees that all citizens have an equal chance to serve their country.¹⁰⁹ This article, which states that no citizen will be denied public employment or subjected to discrimination on the basis listed in Article 15, serves as a safeguard against nepotism and cronyism. It is evidence of the meritocratic culture that the country aspires to maintain. Nonetheless, there are provisions for reservations in appointments for any members of the backward class, a topic that has generated a lot of discussion and debate in Indian culture.¹¹⁰

¹⁰⁴ Hanamant Karanure, Article 14 – Equality Before Law and Equality Protection of the Law, Manupatra Articles, <https://articles.manupatra.com/article-details/Article-14-Equality-Before-Law-and-Equality-protection-of-the-law>. Last accessed on Dec.17, 2024

¹⁰⁵ Parul Sharma, Article 15 of Indian Constitution, 4 INT'L J.L. MGMT. & HUMAN. 2429 (2021).

¹⁰⁶ India Const. art. 15.

¹⁰⁷ Supra note 103

¹⁰⁸ Supra note 103

¹⁰⁹ India Const.art.16

¹¹⁰ Aarushi Gupta, A Critical Analysis of Protective Discrimination under Indian Constitution, 20 SUPREMO AMICUS 1 (2020).

Untouchability, formerly a stain on India's moral fiber, is boldly abolished by Article 17 of the Constitution. In addition to being illegal, untouchability—a practice that condemned some groups to a life of humiliation and persecution—is also penalized by law.¹¹¹ This clause guarantees that the stigma of caste-based discrimination is banished from democratic spaces and highlights the nation's dedication to social justice and human dignity.¹¹²

The right to development gives emphasis to the individual and collective development of the society by respecting the human rights of all. Considering the inclusivity of individuals in the Declaration on Right to Development with human being as the central subject as mentioned in Article 2 of the Declaration, giving equal status and equality in all aspects is a central theme for the concept of right to development.¹¹³ This visualization of equality is enshrined in the Constitution of India from Article 14 to 18.

The United Nations Declaration on the Right to Development's Article 5 highlights governments' obligation to take decisive action to end widespread and egregious human rights abuses, especially those brought on by racism, colonialism, apartheid, foreign dominance, and aggression.¹¹⁴ It affirms the fundamental right of all peoples to self-determination and emphasizes the significance of preserving national sovereignty, unity, and territorial integrity. Articles 14 to 18 of the Indian Constitution, which collectively form the Right to Equality—a pillar of India's democratic framework—strongly align with this worldwide principle.¹¹⁵

In the history of Indian jurisprudence, the Supreme Court and various other High Courts interpreted the equality provisions of the Constitution as a cornerstone for protection of the rights of marginalized sections of the Indian society. Discrimination and atrocities against minorities, women and children in India are a topic of long-standing debate and the need for the protection of their rights remains a strong

¹¹¹ Shivanshika Samaddar, Article 17 and the Expansive Interpretation of "Untouchability", 1 JUS CORPUS L.J. 35 (March 2021).

¹¹² Id

¹¹³ Declaration on the Right to Development art. 2, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

¹¹⁴ Declaration on the Right to Development art. 5, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

¹¹⁵ Tanya Gupta, Balancing the Right to Self-Determination, 4 INT'L J.L. MGMT. & HUMAN. 1641 (2021).

concern.¹¹⁶ The Supreme Court's 2016 ruling in *Karma Dorjee & Ors. v. Union of India*¹¹⁷ marks a turning point in the acknowledgement of discrimination as a breach of human rights, especially with regard to people from India's northeastern states. The case, which sought judicial involvement to remedy the widespread racial prejudice and violence experienced by people from these regions, developed as a Public Interest Litigation under Article 32 of the Constitution. The Court recognized that this kind of discrimination not only goes against Article 15, which forbids discrimination on the basis of race, place of birth, and other factors, but also compromises Article 21's guarantee of the right to live in dignity.

The Court underlined that altering legislation by themselves is insufficient without altering societal attitudes in a forceful assertion of human rights.¹¹⁸ It advocated for inclusive policies, education, and sensitization campaigns to bring about a cultural and institutional change. Crucially, the Court connected India's international commitments—particularly those outlined in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which India has ratified—with its constitutional duties. The Court found that when domestic law is silent or insufficient, international human rights standards must direct the interpretation and application of constitutional rights, drawing on the principles of previous seminal rulings such as *Vishaka v. State of Rajasthan*.¹¹⁹

The Court provided a framework for accountability by emphasizing the need for legislative, administrative, and social reforms and suggesting the establishment of a monitoring committee under the Ministry of Home Affairs.¹²⁰ By stating that the right to equality must be translated into meaningful protection against racial and ethnic bias in all areas of life, this ruling thereby closes the gap between human rights jurisprudence and anti-discrimination principles (Articles 14–18).¹²¹

Development stems from the upliftment of its most marginalized communities in the society. For the upliftment of communities that had faced generational inequalities and

¹¹⁶ Keshav Hari Dixit, Violence against Women & the Factors Leading to Violence against Women in India, 4 INT'L J.L. MGMT. & HUMAN. 1034 (2021).

¹¹⁷ (2016) 9 S.C.R 968

¹¹⁸ Supra note 116

¹¹⁹ 1997 AIR SCW 3043

¹²⁰ Amartish Kaur, Protection of Human Rights in India: A Review, 5 JAMIA L. J. 55 (2017).

¹²¹ Id

discrimination need strong protection of their basic rights and bringing them in fore front.¹²² The over hyped impact of globalization and global market, gender-based violence and other atrocities hamper the developmental aspirations of such communities. In that line of thought to right to development, one crucial component is the equal opportunity principle.¹²³ It goes without saying that everyone and every group inside a country, as well as every country worldwide, should have an equal opportunity to take part in and profit from the process of growth, free from prejudice and obstacles. This is protected in the Constitution of India with the provisions of Article 15 and Article 16.¹²⁴

In the context of safeguarding underprivileged populations and advancing the Right to Equality under Articles 14 to 18 of the Indian Constitution, the Supreme Court's ruling in *Sukanya Shantha v. Union of India*¹²⁵ is a revolutionary expression of constitutional values. Fundamentally, the case contested caste-based discrimination in Indian jails, where it was discovered that caste identities—which have their roots in colonial and hierarchical structures—guided inmate segregation and physical labour assignments.

After carefully examining the ruling, the Court concluded that such actions are a clear violation of Articles 14 (equality before the law), 15 (non-discrimination), 17 (abolition of untouchability), and 21 (right to life with dignity). The Court acknowledged these as indirect and systemic forms of caste discrimination by invalidating clauses in State Prison Manuals that permitted the assignment of menial jobs, like as sweeping or cleaning latrines, to members of Scheduled Castes or denotified tribes. The ruling disregarded caste as a legal classification in the prison system, highlighting the fact that it has no logical connection to justifiable correctional goals and hence does not meet Article 14's reasonable classification test.¹²⁶

The actual development of a society starts from how the women in the society is treated.¹²⁷ This famous saying gains voice in the discussions on equality and right to

¹²² Sonali Sharma, Poverty, Inequality and Marginalised Communities, 15 SUPREMO AMICUS 364 (2020).

¹²³ Ishan Bhardwaj, Gender Equality and Equal Opportunity for Social Economic Developments, 3 INT'L J.L. MGMT. & HUMAN. 1153 (2020)

¹²⁴ Supra note 121

¹²⁵ 2024 INSC 753

¹²⁶ Id.

¹²⁷ Dr. Minara Yeasmin, Dr. B.R. Ambedkar's Vision for Women Empowerment, 6 INT'L J. CREATIVE RES. THOUGHTS (Apr. 2018) (ISSN 2320-2882)

development in India as well as in global scenario. The right to equal participation, free from discrimination and equal sharing of benefits forms part of the UN Declaration on RTD. This is protected in India by statutory as well as constitutional framework.¹²⁸

The Indian Constitution's core values, which protect citizens' rights, are in line with the Equal Remuneration Act of 1976. Numerous articles and directives explicitly outline the rights, emphasizing the value of equality, justice, and refraining from discrimination.

First of all, the Constitution's opening declaration lays the groundwork for justice and equitable treatment for all. While Article 15 forbids discrimination based on gender, Article 14 ensures equal treatment under the law. The significance of resolving gender inequality and advancing gender equality in all spheres is recognized by Article 15(3).¹²⁹

Regardless of gender, Article 16 guarantees that everyone has an equal opportunity to obtain employment in public offices. Ensuring that both men and women have adequate means of subsistence is emphasized in Article 39(a) of the Directive Principles of State Policy.¹³⁰ Article 39(d) promotes justice and non-discrimination by highlighting the significance of guaranteeing equal compensation for equal labour.¹³¹ Furthermore, acknowledging the unique challenges that women face in their professional lives, Article 42 highlights the significance of offering appropriate working conditions and maternity support.¹³² Despite not being formally acknowledged as a fundamental right, the idea of "equal pay for equal work" is often accepted as such because it is consistent with core values.

The Supreme Court of India adopted a fair and balanced stance in the *Randhir Singh v. Union of India*¹³³ case, departing from a strict interpretation of the law to assist workers. The framers' conception of "Socialist" was carefully examined by the court as it examined the Constitution's Preamble. The Constitution's Articles 14 and 16 provide the basis for the equal pay for equal labour principle. It can be used in situations where

¹²⁸ Id.

¹²⁹ India Const.art.15.clause 3.

¹³⁰ India Const.art.39.clause a.

¹³¹ India Const.art.39.clause.d.

¹³² India Const.art.42.

¹³³ 1982 SCR (3) 298

workers who perform the same tasks for the same company receive different compensation depending on their categorization. In accordance with the principles stated in Articles 14 and 16, the court emphasized the significance of guaranteeing equitable remuneration for comparable labour.

The Supreme Court of India's historic ruling in *National Legal Services Authority (NALSA) v. Union of India*¹³⁴ significantly strengthened the equality principle outlined in Articles 14, 15, and 21 of the Constitution. The Court acknowledged the transgender community as the third gender in this case, upholding their rights to equality, dignity, and non-discrimination. The Court ruled that Article 14 includes transgender people within its purview since it ensures that everyone, regardless of gender identity, has equal protection under the law and equality before the law. Additionally, it decided that discrimination on the basis of gender identification violates Article 15, which forbids discrimination based on sex. This implies to the concept of inclusivity in the terms of right to development in the society as well as at individual levels.

Regardless of public health, education, or average income, a society cannot be considered fully developed until all of its members have equal access to opportunities.¹³⁵ A person can succeed in three ways: by their own decision, by their own circumstances, and by governmental policies that create social and economic conditions that allow people to succeed in spite of their circumstances.¹³⁶ Public policies ought to focus on particular groups that may hinder people's ability to succeed in their community by preventing them from obtaining equal social and economic chances. Ethnicity, gender, upbringing in a rural versus urban household, and parental income or educational attainment are four uncontroversial and universal factors that influence an individual's circumstances.¹³⁷ Thus, equality in all aspects plays a crucial role in the developmental rights of the individuals as well as the society.

¹³⁴ AIR 2014 SC 1863

¹³⁵ Supra note 122

¹³⁶ Supra note 123

¹³⁷ Supra note 123

3.2.2 Right to Development and Fundamental Freedoms

The fundamental meaning of "freedom" is "not to be constrained in any way."¹³⁸ The concept of "freedom" is especially well-liked by western political theorists. Isaiah Berlin, a British philosopher, first proposed the ideas of positive and negative freedom in his book "Two Concepts of Liberty." He defined negative freedom as the ability to behave whichever one pleases, regardless of external constraints.¹³⁹ Conversely, positive freedom means being in charge of one's own life and the choices that are made within it.¹⁴⁰ The distinction between the two is that negative freedom refers to the freedom to do or not do anything, while positive freedom is associated with an idea of oneself that is neither limited nor controlled by others.¹⁴¹ Therefore, the freedom of movement, freedom of speech and expression, freedom of religion, freedom of travel, freedom of employment, freedom of self-identity, freedom of property ownership, etc. are all included in the right to freedom.¹⁴²

The Indian Constitution refers to the essential rights safeguarded by Articles 19 to 22 as the right to freedom. These rights are intended to guarantee that everyone has the right to a life of dignity, to put an end to personal injustices, and to protect the Preamble's ideas of liberty in newly independent India.¹⁴³ Every citizen of India is entitled to the fundamental freedoms outlined in the Constitution, which are necessary for maintaining human dignity, individual liberty, and the smooth operation of a democracy. These liberties include freedom of speech and expression, freedom of assembly, freedom of organization formation, freedom of travel, freedom to live and settle wherever in the nation, freedom to engage in any occupation, trade, or business, freedom of life, and freedom of liberty.¹⁴⁴ These liberties, together with other essential rights like the right to equality, the right to life, and the right to personal liberty, are the

¹³⁸ Titus Monday Utibe, Understanding the Concept of Freedom in Political Theory Discourse, ResearchGate, 2015.

¹³⁹ StudyIQ Education, Fundamental Rights of Indian Constitution (Articles 12–35), <https://www.studyiq.com/articles/fundamental-rights-of-indian-constitution>

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ Supra note 137

foundation of India's democratic system, enabling its people to freely and actively engage in the political, social, and economic life of the country.¹⁴⁵

The fundamental civil rights guaranteed by Article 19 of the Indian Constitution serve as the cornerstone of both individual freedom and political participation, making it a vital component of the nation's democratic structure.¹⁴⁶ All Indian citizens are particularly granted six essential freedoms under this article, which guarantee them freedom of expression, association, and movement within the nation.¹⁴⁷ These include:

- (a) freedom of speech and expression, which permits people to freely express their opinions through writing, speech, art, or the media, subject to reasonable limitations for the purposes of public order, morality, defamation, or national security;
- (b) freedom to assemble peacefully and without weapons, which permits peaceful demonstrations and meetings;
- (c) The freedom to organize associations or unions, which guarantees the ability to create groups, societies, or unions for collective action;
- (d) The freedom to travel freely across India's territory, which guarantees unhindered movement within the nation;
- (e) The freedom to live and settle anywhere in India, which fosters national unity and removes internal barriers;
- (f) The ability to engage in any occupation, trade, or company, as well as to practice any profession, is essential for both personal growth and economic freedom.

Under some circumstances, the State may restrict these liberties in accordance with the Constitution. This can be seen from Article 19(2) to Article 19(6).¹⁴⁸ For example, restrictions on freedom of speech and expression may be necessary to protect India's integrity and sovereignty, public order, cordial relations with other countries, security of the State, decency or morality, contempt of court, defamation, and encouragement to

¹⁴⁵ Supra note 137

¹⁴⁶ Hashneet Kaur & Kritika, Freedom of Speech and Expression: An Overview, 3 INT'L J.L.MGMT. & HUMAN. 1072 (2020).

¹⁴⁷ India Const.art.19

¹⁴⁸ Supra note 144

crime.¹⁴⁹ Similar to this, the freedom to create groups may be limited for grounds of public morality or order, and the right to assemble may be regulated to preserve sovereignty and public order.¹⁵⁰ For reasons pertaining to public health or security, or to safeguard the interests of scheduled tribes, the freedom of movement and residency may be restricted.¹⁵¹ Furthermore, the State may impose restrictions on the freedom to practice any profession in the public interest or through regulations pertaining to professional credentials. These limitations make sure that exercising one's own liberties doesn't violate the rights of others or jeopardize the peace and stability of the country.¹⁵²

Article 2(2) of UN DRTD provides that individually and collectively; all people have a duty to develop while keeping in mind the necessity of complete respect for their human rights and basic liberties as well as their responsibilities to the community, which is the only way to guarantee the free and full realization of the human potential; as a result, they ought to support and defend a suitable political, social, and economic order for growth. The true potential for the development of an individual stem from the basic liberties that they have to exercise. These basic freedoms are protected by the Constitution of India.¹⁵³

By ensuring the freedoms necessary for social and political participation—both of which are critical for empowerment—Article 19 of the Indian Constitution effectively upholds the Right to Development.¹⁵⁴ Development involves more than just increasing financial resources; it also involves giving people the ability to express their opinions, have an impact on choices, and actively engage in forming the institutions and policies that have an impact on their daily lives. Article 19 establishes the framework for this kind of participatory empowerment, particularly articles (a), (b), and (c).

Article 19(1)(a) deals with the freedom of speech and expression.¹⁵⁵ Free speech is the cornerstone of every democratic society on the earth. The core of free speech is the

¹⁴⁹ Supra note 146

¹⁵⁰ Constitutional Law of India – Chapter 8: Right to Freedom, Manupatra, <https://student.manupatra.com/Academic/Abk/Constitutional-Law-of-India/CHAPTER-8.htm>, last accessed on Dec. 17, 2024

¹⁵¹ Id.

¹⁵² Id.

¹⁵³ Declaration on the Right to Development art. 2(2), G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

¹⁵⁴ Supra note 93

¹⁵⁵ India Const.art.19.clause(a)

ability to communicate openly and gather information from others. It is regarded as the main requirement for autonomy.¹⁵⁶ It is recognized as the "mother" of all other liberties and is one of the most important civil liberties that are shielded from government restriction or repression.¹⁵⁷

Article 19 of the Universal Declaration of Human Rights (UDHR) acknowledges freedom of expression as a human right, and the International Covenant on Civil and Political Rights (ICCPR) states that the right to free speech is protected by international human rights law.¹⁵⁸ Since the right to free expression is not unconditional, Article 19(2) places restrictions on it. Freedom of speech and expression refers to the freedom to freely express one's thoughts and opinions through words, literature, publishing, pictures, or any other medium.¹⁵⁹ Therefore, it includes expressing one's thoughts, feelings, opinions, and ideas through any visual presentation or communication medium, including signs, gestures, symbols, and the like.

There are four main unique purposes for freedom of expression: It makes it possible for someone to achieve self-fulfilment; it helps reveal reality and the truthfulness of statements; it improves a person's ability to make decisions; and it helps realize their rights.¹⁶⁰ It facilitates and strengthens a person's capacity for making decisions and provides a means of achieving a meaningful balance between social change and social cohesiveness.¹⁶¹ In the Indian social system, everyone is free to have their own opinions and freely share them with others. People's right to information is the fundamental idea behind the application of the relevant right. Therefore, everyone who believes that public participation in government operations is essential should vigorously support freedom of speech.¹⁶² The Right to Information is recognized as a fundamental right under Article 19(1) of the Indian Constitution. In 1976, the Supreme Court, in the case

¹⁵⁶ Kartik Tripathi, Freedom of Speech and Expression in India: A Critique on Article 19, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

¹⁵⁷ Id.

¹⁵⁸ Tejaswini Kaushal, A Bird's Eye View of the Right to Freedom of Speech and Expression in India, Manupatra (Feb. 16, 2023), <https://articles.manupatra.com/article-details/A-Bird's-Eye-View-of-the-Right-to-Freedom-of-Speech-and-Expression-in-India> .

¹⁵⁹ Id.

¹⁶⁰ Supra note 157

¹⁶¹ Supra note 157

¹⁶² Dr. Ved Pal Singh Deswal, Right to Information as a Fundamental Right in the Era of Civilization: Glimpses from India, INT'L CONF. ON INFO. L. & ETHICS (ICIL), PRETORIA, S. AFR. (FEB. 22–23, 2016)

of *Raj Narain vs State of Uttar Pradesh*¹⁶³, held that the Right to Information would be considered a fundamental right under Article 19.

Because of this freedom, people can voice their desires, ideas, and complaints without worrying about censorship or reprisal. This implies that citizens can openly discuss policy, express disapproval of government actions, push for reforms, and demand responsibility in a developmental framework.¹⁶⁴ For activists, civil society organizations, and marginalized communities—all of whom frequently oppose developmental models that marginalize or take advantage of vulnerable groups—this is crucial.¹⁶⁵

According to court interpretation, the Indian Constitution's Article 19(1)(a) right to free speech and expression now encompasses not just the freedom to voice one's opinions but also the freedom to get and share information, particularly on issues of public interest. Given that the Right to Development places a strong emphasis on everyone's involvement in decisions that impact their economic, social, cultural, and political life, this enlarged scope is vital.¹⁶⁶

The Supreme Court ruled in the seminal case of *State of Uttar Pradesh v. Raj Narain*¹⁶⁷ that the right to know is an essential component of freedom of speech, stating that openness and informed citizens are necessary for a robust democracy. In a similar vein, the Court reiterated in *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*¹⁶⁸ that Article 19(1)(a) guarantees the freedom to receive and disseminate information, acknowledging that meaningful involvement requires two-way contact.

The Indian Supreme Court firmly established that the right to information is an essential part of the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution in the seminal decision of *People's Union for Civil Liberties v. Union of India*.¹⁶⁹ The Court underlined that a functioning democracy is built on an

¹⁶³ 1975 AIR 865

¹⁶⁴ Abdul Jabbar Haque, Right to Information in India: A Critical Appraisal, 5 INDIAN J.L. & JUST. 99 (September 2014).

¹⁶⁵ Id.

¹⁶⁶ Supra note 163

¹⁶⁷ Supra note 161

¹⁶⁸ 1995 AIR 1236

¹⁶⁹ 2003 AIR SCW 2353

informed populace, and that the freedom of speech is meaningless without the ability to obtain pertinent information. The ruling acknowledged that people must be free to seek, receive, and disseminate information, particularly on issues of public concern, in addition to being able to voice their opinions.

In *Maneka Gandhi v. Union of India*¹⁷⁰, Justice Bhagwati emphasized the value of free speech, stating that it is the only "corrective of government action" that takes into account the democratic context and that a democratic society is based on unrestricted discussion, debate, and open dialogue. Given that democracy operates on the principle that "of the people, by the people, and for the people," it is obvious that every citizen has the right to participate in democratic processes and that free and open discussion of public issues is crucial to enabling him to exercise his right to vote responsibly.

It is clear that the most crucial thing is the ability to freely express one's opinions. Allowing and promoting free speech is the cornerstone of democratic governance.¹⁷¹ The successful functioning of the democratic process depends on this liberty. The freedom of expression and the right to free speech are essential components of autonomy. In the hierarchy of liberties, it occupies a significant position, supporting and safeguarding the others. It is accurate to state that it is the origin of every other form of freedom.¹⁷²

Article 19(1)(b) encompasses the right to assemble peacefully.¹⁷³ One of the most important democratic tools for collective expression is the freedom to stage nonviolent protests, marches, and open gatherings. It enables people to come together around shared interests, spread awareness, and have an impact on public opinion and governmental policies.¹⁷⁴ Because it compels institutions to address the needs of those left behind, including slum dwellers, women, Dalits, Adivasis, and informal labourers, this type of public mobilization is essential to development. For example, public gatherings have been used by movements like as the Right to Information (RTI)

¹⁷⁰ 1978 AIR 597

¹⁷¹ Shalini Alias Simmy, Free Speech in Restricted Democracy in India, 7 INT'L J.L. MGMT.& HUMAN. 1844 (2024).

¹⁷² Id.

¹⁷³ India Const.art.19.clause.b

¹⁷⁴ Vrinda Grover, Assessing India's Legal Framework on the Right to Peaceful Assembly, INT'L CTR. FOR NOT-FOR-PROFIT L. 2021, <https://www.icnl.org/resources/research/assessing-indias-legal-framework-on-the-right-to-peaceful-assembly>.

campaign, the Narmada Bachao Andolan, or farmer protests to advocate for development policies that are equitable and inclusive.

Article 19(1) (c) provides for the freedom to form unions and associations.¹⁷⁵ This freedom encourages the formation of organizations that are essential to growth, such as advocacy groups, trade unions, cooperatives, NGOs, student bodies, and civil society groups. These groups are essential for advocating for group interests, engaging in state negotiations, offering services, and raising public knowledge of social and economic rights. Without this flexibility, state or corporate interests would control development from the top down, with little opportunity for grassroots involvement.¹⁷⁶ This right is used by worker unions, farmer cooperatives, and women's self-help groups to influence local government, obtain financing, and advocate for equitable salaries, all of which support bottom-up development.

Economic development is closely related to the freedoms of movement and residence (19(1)(d) and (e)), as well as the freedom to practice any business or profession (19(1)(g)).¹⁷⁷ They enable people to follow their chosen careers, relocate to locations with greater employment prospects, and overcome societal or geographic constraints on their ability to advance.¹⁷⁸ For instance, a person from a rural location may relocate to a city for work or study, pursue a career of their choice, and advance both economically and personally.

Article 21 of the Constitution states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹⁷⁹ The Indian Constitution's Article 21 protects the fundamental right to personal liberty and life protection. It guarantees some protections against the wilful deprivation of life and freedom. According to Article 21, no one may be deprived of their life unless it is done in accordance with the legal process. This implies that each and every person has the right to life and that it can only be taken away in compliance with the established legal

¹⁷⁵ India Const.art.19.clause.c

¹⁷⁶ Menaka Guruswamy, Freedom to Assemble and the Freedom of Association, ResearchGate (2016), <https://www.researchgate.net/publication>

¹⁷⁷ India Const.art.19.clause.d

¹⁷⁸ Article 19 of the Indian Constitution, iPleaders, <https://blog.iplayers.in/article-19-indian-constitution>, last accessed on Dec. 20, 2024

¹⁷⁹ India Const.art.21

processes.¹⁸⁰ The right to a healthy environment, the right to livelihood, and the right to live with dignity are all included in the concept of the right to life.

With numerous separate subsidiary rights emerging, it is one of the most important fundamental rights. It is a developing part of the law, not a dormant one. Only the rights to "life" and "personal liberty," subject to the procedure of law, are mentioned in Article 21.¹⁸¹ But after the emergency, the Supreme Court acknowledged a number of unlisted rights under Article 21, such as livelihood, health, and a pollution-free environment. This is the right which encompasses the whole range of rights which directly aligns with the right to development of an individual as well as the whole society.¹⁸²

Every civilization has acknowledged the value of education as a means of preserving and advancing its culture. To ensure that the information and abilities are smoothly transferred to each generation, it is crucial that the elder generations teach the younger ones. Education gives us must become aware of ourselves, envision our goals, and then take action to achieve them.¹⁸³ Thus, education is a means of empowering citizens through socioeconomic mobility, preparing them for a meaningful existence, reducing social and economic inequality, and ultimately igniting the concepts of growth and progress at the same time. The Constitution of India addresses this by including right to education as a Fundamental Right as part of Article 21 A.¹⁸⁴ The Supreme Court of India Court affirmed the fundamental right to education in two landmark cases, *Mohini Jain v. State of Karnataka*¹⁸⁵ and *Unni Krishnan J.P. v. State of Andhra Pradesh*.¹⁸⁶

The protection of rights pertaining to arrest and detention is the main focus of Article 22 of the Indian Constitution.¹⁸⁷ It offers protections such the right to know why someone was arrested, the ability to speak with a lawyer, and the right to be shielded from long-term preventative custody without advisory board approval. By guaranteeing individual freedom and legal protections, which are essential conditions for people to

¹⁸⁰ Sini Sunny, Concept of 'Life' under Article 21 of the Indian Constitution, 2 INDIAN J.L. & LEGAL RSCH. 1 (August-September 2021).

¹⁸¹ Id

¹⁸² Id

¹⁸³ Mohd Nabeel Hussain, Right to Education and Its Recognition in India, 3 NYAAYSHASTRA L. REV. 1 (2023).

¹⁸⁴ India.Const.art.21A

¹⁸⁵ 1992 SCR (3) 658

¹⁸⁶ 1993 AIR 2178

¹⁸⁷ India.Const.art.22

participate actively in and gain from development processes, Article 22 upholds the Right to Development. Article 22 is vital in maintaining the human dignity necessary to the larger right to development since arbitrary detention or a lack of legal remedy might hinder people's capacity to participate in or access development opportunities.

3.2.3 Right to Development and Right against Exploitation

India is currently the world's largest democracy. There is a tremendous struggle hidden beneath this trail of development and success. Slavery has been a problem in India for millennia. Slavery in India was finally outlawed after several centuries of struggle, culminating in the Indian Penal Code (IPC) of 1860.¹⁸⁸ Such practices were outlawed by the Indian Constitution's architects in Articles 23 and 24. Since every person is guaranteed liberty and dignity under the Indian Constitution, there is no room for exploitation, slavery, or cruel treatment.¹⁸⁹

The Indian Constitution's Article 23 clearly forbids forced labour, human trafficking, and related practices.¹⁹⁰ Additionally, it specifies that any breach of this clause shall be regarded as an offense, and the offending party will face consequences in line with the legislation. It expressly forbids begar, a type of forced labour in which an individual is coerced against their will to work for no remuneration.¹⁹¹ Bonded labour, often known as debt bondage, is another significant type of forced labour that is prohibited under this article. In this type of labour, people are compelled to work under unjust circumstances, frequently for meagre pay, in order to repay debts, a burden that may even be passed down through the generations. Article 23 also addresses human trafficking, which is the purchase and sale of people for unethical reasons, especially women and children. Despite not being specifically specified, slavery is regarded as falling within the category of "traffic in human beings."¹⁹²

The Supreme Court interpreted the scope of Article 23 in the *People's Union for Democratic Rights v. Union of India*¹⁹³ case. The following was held by Bhagwati J:-

¹⁸⁸ Kyntiewlin Pakyntein, An Overview Study on the Right against Exploitation of the Indian Constitution, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

¹⁸⁹ Id.

¹⁹⁰ India Const.art.23

¹⁹¹ Constitutional Law: Right Against Exploitation" by Nalina D. B., published by The Advocates League:

¹⁹² Id.

¹⁹³ 1982 AIR 1473

“The scope of Article 23 is vast and unlimited. It is not merely “beggar” which is prohibited under this Article. This Article strikes at forced labour in whichever form it may exist as it violates human dignity and opposes the basic human values. Hence, every form of forced labour is prohibited by Article 23 without considering whether forced labour is being paid or not. Also, no person shall be forced to provide labour or services against his will even if it is mentioned under a contract of service. The word “force” has a very wide meaning under Article 23. It not only includes physical or legal force but also recognizes economic circumstances which compel a person to work against his will on less than minimum wage. It was directed by the court to Government to take necessary steps punishing the violation of the fundamental rights of the citizens guaranteed under Article 23 by private individuals.”

Children under the age of 14 are not allowed to work in factories, mines, or other dangerous jobs, according to Article 24 of the Indian Constitution. The provision was incorporated into the Constitution to safeguard children's rights and guarantee that they are not exposed to dangerous or exploitative working circumstances. The law stipulates that "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."¹⁹⁴

The provision also gives the government the authority to enact legislation governing children's working circumstances in non-hazardous jobs. The article complies with international agreements and guidelines, including the United Nations Convention on the Rights of the Person. India ratified the Child's Rights Act in 1992.¹⁹⁵ According to the Convention, every child has the right to be shielded from economic exploitation and from labour that could endanger their health or hinder their development on all levels—physical, mental, spiritual, moral, or social—or interfere with their education.¹⁹⁶

Article 24 highlights the value of health and education for children's development and displays India's dedication to their care and protection. It also emphasizes how the government and society as a whole must make sure that youngsters are not exposed to

¹⁹⁴ India.Const.art.24

¹⁹⁵ Nishant Pande, Right against Exploitation under Article 24 of the Indian Constitution, 9 CHRIST U. L.J. 37 (July-December 2020).

¹⁹⁶ Id.

are given the chance to develop and flourish in a secure and supportive setting, free from exploitative or dangerous working conditions.¹⁹⁷

The larger idea of the Right to Development, which prioritizes freedom, human dignity, and the chance to take part in and profit from social and economic advancement, is closely related to Articles 23 and 24 of the Indian Constitution. In order to promote inclusive and sustainable development, these constitutional protections guarantee the freedom, equality, and access to opportunities of vulnerable segments of society and shield them from mistreatment. Articles 23 and 24 provide the groundwork for all citizens to live with dignity and actively engage in the country's development by outlawing exploitative behaviours.¹⁹⁸

The Supreme Court in the case of *M.C Mehta v. State of Tamil Nadu*¹⁹⁹ held that in addition to ruling that minors under the age of 14 are not permitted to work in mines, hazardous industries, or other occupations, the Court has established comprehensive guidelines for state authorities on how to safeguard the economic, social, and humanitarian rights of millions of children who are illegally employed in both the public and private sectors.

3.2.4 Right to Development and Cultural, Religious and Educational Rights

The Declaration on RTD encompasses the idea of social and cultural rights that are considered essential for the overall development of the individuals as well as the society in large.²⁰⁰ The same had been identified as human rights by the UN conventions especially ICCPR and ICESCR.²⁰¹ Cultural rights are those that pertain to art and culture in their broadest meaning. Ensuring that individuals and groups have access to and can engage with the culture of their choice is the aim of these rights.²⁰² Assuring the enjoyment of culture and its elements within the principles of equality, human dignity, and non-discrimination is the goal of cultural rights.

¹⁹⁷ Id.

¹⁹⁸ Harsh Raj, Right against Exploitation: Constitutional Perspective of Article 23 of the Constitution of India, Manupatra, <https://articles.manupatra.com/article-details/Right-against-Exploitation-Constitutional-Perspective-of-Article-23-of-the-Constitution-of-India>, last accessed on Dec. 21, 2024.

¹⁹⁹ 1996 (6) SCC 756

²⁰⁰ Supra note 90

²⁰¹ Supra note 90

²⁰² Cultural Rights, Wikipedia, https://en.wikipedia.org/wiki/Cultural_rights, last accessed on Dec.24, 2024.

Articles 25 to 30 of the Indian Constitution deal with the Fundamental Rights related to Religion and Cultural & Educational Rights, ensuring the protection of religious freedom and the rights of minorities in India. These articles safeguard minorities' rights to preserve their culture, language, and script, as well as their ability to create and run the educational institutions of their choosing. They also provide freedom of conscience, practice, and religious propagation.²⁰³

Subject to public order, morals, and health, Article 25 protects the freedom of conscience as well as the right to openly declare, practice, and spread religion. It guarantees people the freedom to practice any religion they so choose.²⁰⁴ The right to handle religious affairs, including the establishment and upkeep of organizations for philanthropic and religious reasons, is granted to religious denominations by Article 26.²⁰⁵ To maintain the state's secular nature, Article 27 forbids forcing anyone to pay taxes for the upkeep or promotion of any one religion.²⁰⁶ According to Article 28, no school that receives all of its funding from the government may offer religious instruction. Nonetheless, religious instruction is allowed in non-state-funded institutions run by religious organizations.²⁰⁷ Minorities' interests are safeguarded under Article 29, which grants each person the right to preserve their unique language, script, or culture. Additionally, it forbids discrimination in state-run educational institutions.²⁰⁸

Minorities have the freedom to create and run any kind of educational institution they choose, regardless of their language or religion, according to Article 30. Additionally, it shields these institutions from prejudice when they apply for government assistance.²⁰⁹ Collectively, these articles support India's secular and diverse culture, guaranteeing minority rights and religious freedom, both of which are critical to the nation's inclusive and democratic structure.

²⁰³ Anisha Kar, *Secularism and Religious Freedom in India: Navigating Recent Developments*, 7 INT'L J.L. MGMT. & HUMAN. 128 (2024).

²⁰⁴ India.Const.art.25

²⁰⁵ India.Const.art.26

²⁰⁶ India.Const.art.27

²⁰⁷ India.Const.art.28

²⁰⁸ India.Const.art.29

²⁰⁹ India.Const.art.30

3.2.5 Directive Principles of State Policy and Right to Development

A welfare state is a form of governance where the state actively works to safeguard and advance the social and economic well-being of its people.²¹⁰ Equitable wealth distribution and equality of opportunity are the cornerstones of a welfare state. The state is in charge of ensuring the wellbeing of its people under this system. This was accomplished by adding a distinct chapter to the Constitution called the Directive Principles of State Policy, Part IV specifically Articles 36 to 51.

The Indian central and state governments are guided by the Directive Principles of State Policy (DPSP). These values must be upheld by the governments when drafting laws and regulations. These principles' primary goal is to establish the social and economic framework necessary for all citizens to live fulfilling lives.²¹¹ Stated differently, the goal is to bring about social and economic democracy in the nation. The public uses these principles as a standard to assess how well governments are doing at accomplishing their goals. These ideas must serve as the foundation for all executive agencies. When making decisions, even the judiciary must consider them.²¹²

The positive socioeconomic and cultural rights that are intended to be gradually attained and the negatively worded civil and political rights that the people of independent India granted themselves are contained in Part IV of the Indian Constitution.²¹³ The two strands in the development of human rights are broadly represented by the constitution. The conventional separation between civil and political rights, which prevent the State from interfering, and socio-economic rights, which require the State to safeguard against need or want, is reflected in the distinction made there based on justiciability.²¹⁴ “These in turn reflect two distinct views of liberty: liberty as freedom from State interference; and liberty as freedom from want and fear.”²¹⁵

Notably, the Universal Declaration of Human Rights lists two categories of rights: the Economic and Social Rights and the conventional Civil and Political Rights and the

²¹⁰ Devdatta Mukherjee, Judicial Implementation of Directive Principles of State Policy: Critical Perspectives, 1 INDIAN J.L. & PUB. POL'Y 14 (2014-2015)

²¹¹ Supra note 210.

²¹² Supra note 208

²¹³ Lael K. Weis, Constitutional Directive Principles, 37 OXFORD J. LEGAL STUD. 916 (Winter 2017).

²¹⁴ Id

²¹⁵ Id

two sets—the first under the Constitution's Fundamental Rights and the second under the Directive Principle of State Policy—are represented in the Indian Constitution.²¹⁶ The Preamble goal of socioeconomic fairness is being pursued by the inclusion of the Directive Principles. Part IV of the Indian Constitution has indeed been dubbed the socio-economic Magna Carta.²¹⁷

Eight general categories can be used to group the directives: socioeconomic reforms (Article 38, 39(b) and (c); means of livelihood, right to work, and legal welfare (Article 39(a), (d), (e), 41, 42, 43); women and children's welfare and right to education (Article 39(e), (f), 42, 45); raising of Articles 41 and 46 address vulnerable groups in society; Articles 47 and 48A protect the environment and public health; Articles 39A, 44, and 50 address legal and administrative reforms; Article 49 protects national heritage; and Article 51 advances global peace and security. The provisions therein emphasize the constitutional goals of creating a welfare state and an egalitarian social order through a state-assisted social revolution.²¹⁸

The core of the Directives is embodied in Article 38, which requires the State to work toward advancing the welfare of the populace by preserving and defending, to the best of its ability, the social order in which justice—social, economic, and Political: will provide information to all national institutions working to reduce income disparities and try to eradicate status, opportunity, and facility disparities between individuals and groups of people living in various places or pursuing different hobbies.²¹⁹

Promoting human welfare via inclusive, equitable, and sustainable development is the shared goal of the UN Declaration on the Right to Development (1986) and the Directive Principles of State Policy (DPSP) found in the Indian Constitution.²²⁰ The UN Declaration emphasizes peoples' and individuals' rights to take part in, contribute to, and enjoy economic, social, cultural, and political development, while DPSPs are protected in Part IV (Articles 36 to 51) of the Indian Constitution.²²¹

²¹⁶ Kanchan Lavania, Directive Principles of State Policy: Coating of Fundamental Rights and Constructs of Human Rights Jurisprudence, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

²¹⁷ Id.

²¹⁸ India Const. pt. IV.

²¹⁹ Prajakta P. Babar, India's Roadmap: Understanding Directive Principles of State Policy, 5 Int'l J. Res. Pub. & Rev. 4703 (2024)

²²⁰ Id.

²²¹ Id.

Every person and all peoples have the right to actively, freely, and meaningfully participate in development and to profit from it, according to Article 2 of the UN Declaration on the Right to Development.²²² The Directive Principles of State Policy, specifically Articles 40 and 43A of the Indian Constitution, reflect this notion. According to Article 40, the State must take action to set up village panchayats and give them the authority and powers they may need to operate as self-governing bodies.²²³ This clause aims to guarantee that local residents are actively participating in decision-making processes that impact their lives, which is in line with the grassroots democracy idea. The spirit of the right to development is upheld by Article 40, which empowers residents to actively shape their communities and obtain developmental advantages through the decentralization of authority and the promotion of participatory governance.²²⁴

On the other side, by guaranteeing workers' involvement in industry management, Article 43A aims to advance industrial democracy. By acknowledging that workers, who are essential to production, must also have a voice in organizational decisions, this approach promotes inclusive economic development.²²⁵ It supports the notion that development must be people-centered and participatory rather than top-down or exclusive, and it is consistent with the UN Declaration's emphasis on justice and equity in the sharing of developmental gains. In accordance with the UN Declaration's international human rights principles, these articles collectively create a moral and legal basis within India's constitutional framework for encouraging inclusive and participatory development.²²⁶

To guarantee that every person can fully fulfil their right to development, states are urged by Article 3 of the UN Declaration on the Right to Development to remove significant barriers to development, especially poverty, inequality, and a lack of education.²²⁷ This vision is highly compatible with a number of the Indian

²²² Declaration on the Right to Development art. 2, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

²²³ India Const. art. 40.

²²⁴ Gautam Bhatia, Directive Principles of State Policy: Theory and Practice, in *THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION* 471 OXFORD UNIV. PRESS 2015.

²²⁵ India Const. art. 43A.

²²⁶ Srinivas Katkuri, Role of Directive Principles Towards Welfare of the State and Social Development in India, 4 *Int'l J. L.* 56 (2018).

²²⁷ Declaration on the Right to Development art. 3, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

Constitution's Directive Principles of State Policy (DPSPs), which work together to build a society that is more just and equal.

Articles 39(e) and (f) guarantee that workers, children, and young people are not subjected to economic exploitation and that abuse or abandonment does not impede their development.²²⁸ The constitutional commitment to protect disadvantaged groups and make sure they don't fall behind in the process of development is reflected in these clauses. Article 41, which requires the state to provide adequate measures for guaranteeing the right to employment, education, and public assistance in situations of unemployment, old age, illness, or disability, serves as additional support for this.²²⁹ In addition, Article 42 requires the state to provide maternity leave and fair and humane working conditions, fostering a respectable and safe workplace. The systemic obstacles that impede holistic development, such as unemployment, limited educational opportunities, and exploitative working circumstances, are directly addressed in these articles.²³⁰

Finally, Article 46 instructs the state to safeguard Scheduled Castes and Scheduled Tribes against exploitation and social injustice while advancing their economic and educational interests.²³¹ The UN's emphasis on lowering inequality and granting communities equal access to development is in line with this. These clauses work together to provide a constitutional framework that reflects the fundamental ideas outlined in Article 3 of the UN Declaration by removing structural obstacles and promoting equitable growth.²³²

The UN Declaration on the Right to Development's Articles 4 and 6 highlight how important international collaboration is to guaranteeing the development of all nations, especially developing ones.²³³ The Declaration emphasizes that in order to establish an international environment that promotes inclusive and equitable development, consistent worldwide efforts founded on equality and mutual benefit are necessary.

²²⁸ India Const. art. 39(e)–(f).

²²⁹ India Const.art.41

²³⁰ India Const.art.42

²³¹ India Const.art.46

²³² Declaration on the Right to Development art. 3, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

²³³ Declaration on the Right to Development art. 4-5, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

Article 51 of the Indian Constitution's Directive Principles of State Policy strongly echoes this global perspective. The Indian State is directed under Article 51 to uphold fair and respectable international relations, encourage adherence to treaty obligations, and advance global peace and security.²³⁴ This article reaffirms India's commitment to a development paradigm that transcends national boundaries and is a part of a larger, shared responsibility by promoting peaceful cohabitation and cooperative interaction with the international community.²³⁵

India recognizes under Article 51 the interconnectedness of global development and the fact that fostering positive and cooperative foreign ties is frequently necessary to accomplish domestic development objectives.²³⁶ It supports the UN Declaration's call for a concerted international effort to eliminate development barriers that disproportionately harm developing countries, such as unfair trade practices, foreign dominance, and debt loads. Therefore, in accordance with international human rights norms, Article 51 of India's constitution demonstrates a strong commitment to international solidarity and cooperative development.²³⁷

3.3 Participatory Governance and Role in Development

The promotion of "sustainability" for growth has drawn more attention in recent decades. The growing global drive to reexamine governmental and non-state actors' ability to promote "development outcomes" with individuals regardless of caste, creed, race, religion, gender, disability, and income levels is at the heart of this issue.²³⁸ In the context of emerging nations, there has been a significant change in the extent to which people can participate through responsible and transparent governing frameworks. In particular, these adjustments were meant to hasten modifications to the basic composition and operation of the State from a system that is "closed," "centralized," "rigid," and "static" to one that is "open," "decentralized," "flexible," and "dynamic."²³⁹

²³⁴ India Const.art.51

²³⁵ Mrunal Buva, A Critical Analysis of the Role of the Judiciary in Interpreting the Directive Principles of State Policy with Respect to Fundamental Rights, 3 GNLU L. REV. 53 (October 2010).

²³⁶ Id

²³⁷ Supra note 233

²³⁸ Vaishali Khaira & Saumya Chauhan, The Role of Good Governance in India, 3 INT'L J.L. MGMT. & HUMAN. 1015 (2020).

²³⁹ Id.

India has repeatedly implemented measures to guarantee citizen engagement in government, including Public Interest Litigation (PIL), the Citizen's Charter, the Right to Information (RTI), social audit mechanisms, etc., in accordance with the Constitution's pledge to offer equality and equity to everyone.²⁴⁰ Involving citizens in public affairs, policymaking, and decision-making is known as participatory governance. It places a strong emphasis on cooperation, diversity, and the active participation of people and communities in directing and influencing governmental actions.²⁴¹

Inclusion and participation are seen as crucial human rights principles. It suggests that everyone has the right to actively, freely, and meaningfully contribute to, enjoy, and be a part of civil, economic, social, cultural, and political growth that allows for the realization of fundamental freedoms and human rights.²⁴² The advancement of all human rights, including democratic governance, the rule of law, social inclusion, and economic development, depends heavily on the rights to political and public involvement. One of the fundamental components of development aimed at eradicating marginalization and prejudice is the right to directly and indirectly engage in political and public life, which is crucial for empowering both individuals and groups.²⁴³

Development as a universal human right is firmly established by the Declaration on the Right to Development, especially Articles 1.1, 2., and 8.2. Every human being and every people have the unalienable right to take part in, contribute to, and enjoy economic, social, cultural, and political growth, according to Article 1.1.²⁴⁴ This is further supported by Article 2, which states that nations have the primary duty to establish conditions that promote equitable development and that people are the main subjects of development and should actively participate in and benefit from the process. In order to provide equitable access to the advantages of development.²⁴⁵ Article 8.2 further highlights the necessity for development policy to pay particular attention to the

²⁴⁰Judit Ricz, "The Changing Role of the State in Development in Emerging Economies: The Developmental State Perspective," in *Seeking the Best Master: State Ownership in the Varieties of Capitalism* (2019), pp. 237–274.

²⁴¹ Supra note 240

²⁴² Supra note 240

²⁴³ Supra note 233

²⁴⁴ Declaration on the Right to Development art. 1(1), G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

²⁴⁵ Declaration on the Right to Development art. 2, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

requirements of emerging nations, particularly the least developed ones.²⁴⁶ Collectively, these articles demonstrate that development is a human-centered, inclusive, and participatory process that is based on justice, equality, and international cooperation rather than merely being an economic objective.

Article 40 of the Constitution, which enshrines one of the Directive Principles of State Policy, lays down that 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.²⁴⁷ The Seventy Third Constitutional Amendment²⁴⁸ and the Seventy Fourth Constitutional Amendment 1992²⁴⁹ provided for the establishment of three tier Panchayati raj system and municipalities and urban local bodies for local governance. It added new parts to the Constitution of India – Part IX and Part IX-A.

Women in India have historically faced major obstacles to political involvement and have frequently been left out of government systems' decision-making processes.²⁵⁰ The historic 73rd and 74th amendments to the Constitution, which followed years of debate over women's reservation, therefore required all state governments to set aside one-third of seats for women in local rural bodies and one-third of the chairperson positions at all levels of the newly established Panchayati Raj institutions, as well as in urban local bodies.²⁵¹ Furthermore, women who identify as members of the historically underrepresented Scheduled Caste/Scheduled Tribe community would be granted a third of these seats. The goal of the gender mandate was to expand the distribution of decision-making authority and boost women's representation at the grassroots level in politics.²⁵²

In accordance with the Right to Development, local government entities in India, such as Gram Sabhas and Panchayati Raj Institutions, are essential to achieving the goals of inclusive development, equitable benefit-sharing, and participatory governance. Gram

²⁴⁶ Declaration on the Right to Development art. 8(2), G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (Dec. 4, 1986).

²⁴⁷ India Const.art.40

²⁴⁸ The Constitution (Seventy-Third Amendment) Act, No. 20 of 1992, § 2, India Code (1992).

²⁴⁹ The Constitution (Seventy-Fourth Amendment) Act, No. 21 of 1992, § 2, India Code (1992).

²⁵⁰ Raheena P. A. & Sara Neena T. T., Participation of Women for the Development of Civil Society: A Study among Women Representatives in Local Governance, 16 Artha J. Soc. Sci. 23 (2017).

²⁵¹ Id

²⁵² Id

Sabhas, as required by the 73rd Constitutional Amendment Act, are the cornerstone of grassroots democracy, enabling people to actively engage in local decision-making, resource distribution, and development planning, particularly in rural areas.²⁵³

These organizations support bottom-up governance by making sure that development projects represent the actual needs and priorities of the community. Additionally, by reserving seats and representation, local self-governments make it easier for underrepresented groups—like women, Scheduled Castes, and Scheduled Tribes—to be included and have more equitable access to the advantages of development.²⁵⁴ These institutions improve accountability, transparency, and responsiveness by decentralizing authority and resources, guaranteeing that the results of development are not just equitably distributed but also influenced by the people. By doing this, local governance systems exemplify the concept of the Right to Development, which holds that individuals should actively shape their social, political, and economic surroundings rather than being passive beneficiaries.²⁵⁵

A significant milestone was reached in the 2013 case of *Orissa Mining Corporation v. Ministry of Environment & Forest*²⁵⁶ which upheld the Gram Sabha's position as a pillar of participatory governance and the right to development, particularly for Scheduled Tribes and Traditional Forest Dwellers. In this instance, the Indian Supreme Court maintained the Gram Sabha's jurisdiction to determine whether Vedanta's planned bauxite mining project in the Niyamgiri Hills will infringe upon the customary, religious, and cultural rights of the nearby tribal people. The Court stressed that the Gram Sabha, not outside entities, must have the last word in decisions that impact indigenous peoples' lives and means of subsistence because it acknowledges that development cannot come at the expense of uprooting them or demolishing their holy grounds.

The Forest Rights Act of 2006's constitutional and statutory rights were upheld by this ruling, which also strengthened the Gram Sabha's standing as an authentic democratic

²⁵³ Shivani Yadav, Women Empowerment and Representation in Local Governance, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

²⁵⁴ Shubhangi Sharma & Shashank Nahar, 73rd and 74th - The Tale of Amendments, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

²⁵⁵ Supra note 252

²⁵⁶ (2008) 2 SCC 222

body that guarantees inclusive, bottom-up decision-making. Echoing the fundamental tenets of the UN Declaration on the Right to Development, the ruling upheld that genuine development must be sustainable, participatory, and respectful of local identities by giving the local people the authority to consent.

3.4 Governmental Schemes and Policies

The right to development is a holistic human right that prioritizes not just economic expansion but also people's meaningful, active, and free involvement in the process of development as well as the equitable sharing of its advantages.²⁵⁷ This right, which was established in the United Nations Declaration on the Right to Development in 1986, acknowledges that development is a multifaceted process that aims to advance social justice, guarantee equality, and improve people's quality of life.²⁵⁸ A functioning government is essential to achieve this right in a populous and diverse nation like India by fostering an environment that is conducive through laws, regulations, welfare programs, and institutions that encourage participation.²⁵⁹

The framework for inclusive development is laid by the Indian Constitution's Fundamental Rights and Directive Principles of State Policy, while the government carries out a number of focused programs to combat social exclusion, poverty, inequality, illiteracy, and bad health.²⁶⁰ Economic and social fairness, environmental sustainability, participatory governance, and the empowerment of marginalized groups are the goals of these initiatives. Therefore, in accordance with both national constitutional ideals and international human rights norms, the government serves as the primary designer of a development paradigm that is people-centric, rights-based, and sustainable.²⁶¹

Even though specific provisions giving effect to right to development as a basic right for every citizen, the Government of India had implemented various policies and schemes that acts as a stepping stone in bringing a holistic development in all spheres of the life of its citizens. The Government through its representation in United Nations

²⁵⁷ Anubhuti Goel, Right to Development and the Constitution, 1 INDIQUE L.J. (1) (2019).

²⁵⁸ Id

²⁵⁹ Id

²⁶⁰ Supra note 255

²⁶¹ Supra note 255

on 23rd Session of the Working Group on Right to Development in 2022 made it clear about the vision of the Government in implementing right to development as a basic human right. In the session, the new draft for legally binding right to development was discussed.²⁶² Recognizing the Right to Development (RTD) as a unique, universal, inalienable, and fundamental human right that applies to all people worldwide, India reaffirms its steadfast commitment to its full and effective implementation. This right is essential to accomplishing sustainable development's overarching goal.²⁶³

In order to promote fair and sustainable development, it is imperative that the Right to Development be operationalized from principle to practice. In this context, India emphasizes how all human rights—civil, political, economic, social, and cultural—are interconnected and inseparable. India also emphasizes how international cooperation is essential to achieving RTD in its entirety.²⁶⁴ To ensure that development genuinely serves the interests of the people, nations must implement policies effectively, guided by the principles of democracy, accountability, transparency, equity, non-discrimination, and participatory governance.²⁶⁵ Various schemes and policies implemented by the Government for the wholesome development and valuing the basic human rights for different sections of the society in India include:

3.4.1 Poverty Alleviation Programmes

The World Bank defines poverty as a significant impairment of well-being that has multiple facets. It involves having poor wages and not being able to afford the essential products and services needed to live a dignified life.²⁶⁶ Low levels of education and health, poor access to sanitary facilities and clean water, a lack of physical security, a lack of voice, and a lack of ability and chance to improve one's life are all considered forms of poverty.²⁶⁷ By giving households and families below the poverty line threshold

²⁶² Statement by the Permanent Mission of India to the United Nations, Item 3: General Debate, 7th Sess., Expert Mechanism on the Right to Development, U.N. Gen. Assembly, New York 2022.

²⁶³ Id

²⁶⁴ Id

²⁶⁵ Supra note 260

²⁶⁶ World Bank, Poverty Measurement, <https://www.worldbank.org/en/topic/poverty/brief/how-we-measure-poverty>, last accessed on Dec. 25, 2024.

²⁶⁷ ISPP, Public Policy for Poverty Reduction and Growth (June 11, 2024).

appropriate access to food, financial assistance, and basic necessities, poverty alleviation programs seek to lower the nation's poverty rate.²⁶⁸

There are basically two components to the method for reducing poverty. First, an attempt is being made to increase the opportunities for the impoverished to take part in the process of growth by concentrating on particular industries that present these kinds of chances.²⁶⁹ Second, social sector and poverty reduction initiatives have been reinforced and reorganized with targeted programs for the most vulnerable segments of the population.²⁷⁰ The Indian government started a number of programs to end poverty, give impoverished households access to necessities, encourage the decrease of inequality, and identify strategies for reducing poverty.

The Integrated Rural Development Programme (IRDP) aims to create productive jobs throughout different planning periods by helping the impoverished in rural areas by offering bank credit and subsidies.²⁷¹ Food for Work Program emphasis in providing wage-based work, this program aims to improve food security. Food grains are provided to states free of charge under this program, albeit distribution from Food Corporation of India (FCI) warehouses has been sluggish.²⁷² The National Rural Employment Guarantee Act of 2005, also known as the Mahatma Gandhi Act, every rural household is guaranteed up to 100 days of paid work each year under this regulation, with women holding one-third of the positions.²⁷³ Employment Guarantee Funds established by the federal and state governments are used to carry out the program. An unemployment allowance is given if no work is found within 15 days of the application.

Aajeevika, National Rural Livelihood Mission supports occupations that provide steady monthly incomes and fostering the establishment of Self-Help Groups (SHGs) at the village level, this mission aims to increase the possibilities for rural poor people to make a living.²⁷⁴ NULM, or the National Urban Livelihood Mission, which focuses on the

²⁶⁸ Id

²⁶⁹ Supra note 267

²⁷⁰ Supra note 267

²⁷¹ Ministry of Finance, Government of India, Union Budget 2025-26, available at <https://www.indiabudget.gov.in>

²⁷² Dr. K. Srinivas, Poverty Alleviation Programmes in India: A Critical Analysis, IJMSRR, E-ISSN 2349-6746.

²⁷³ Id

²⁷⁴ Supra note 269

urban poor, intends to establish Self-Help Groups (SHGs), train people for jobs that are relevant to the market, and encourage self-employment by making financing easily accessible.²⁷⁵ Providing skill development and training, the Pradhan Mantri Kaushal Vikas Yojana (PMKVY) program targets recent school dropouts, particularly those who entered the workforce after class X or XII. Pradhan Mantri Jan Dhan Yojana program facilitates direct transfers of insurance, pensions, and subsidies in an effort to provide financial services to the impoverished who do not have access to banks. It opened 1.5 crore bank accounts, which was its goal.²⁷⁶

Wage employment and self-employment options have been made available by programs like MGNREGA and IRDP, raising income levels and lowering reliance on unorganized or exploitative labour.²⁷⁷ By providing direct access to social security and government benefits, programs such as the Pradhan Mantri Jan Dhan Yojana have promoted financial inclusion and decreased corruption and leakage. All things considered, by encouraging respectable livelihoods, fair access to resources, and social justice—especially for the impoverished in rural and urban areas—these initiatives have contributed to the preservation of the right to development.²⁷⁸

3.4.2 Upliftment Programmes for Women and Children

Women's and children's empowerment is important for India's future and challenges. Equal possibilities for growth and development are made possible by empowerment, which results in strong countries and thriving communities.²⁷⁹ Three factors can contribute to women's empowerment: financial freedom, work, and education. In order to teach women about their rights, boost their self-esteem, and enable them to acquire information and skills, education is essential. Financial independence and access to work opportunities are essential components of women's empowerment. Women who are financially independent are able to escape poverty and become less reliant on traditional gender norms, allowing them to live on their own terms.²⁸⁰

²⁷⁵ Supra note 269

²⁷⁶ Supra note 269

²⁷⁷ Supra note 269

²⁷⁸ Supra note 269

²⁷⁹ Press Information Bureau, Government of India, Schemes for the Development of Women and Children, available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1781686>, last accessed on Dec.28, 2024.

²⁸⁰ Id

The government operates the following programs to support women's empowerment and the development of children nationwide, including in rural areas: Pregnant women, nursing mothers, and children under six years old are eligible for a package of six services under the Anganwadi Services program.²⁸¹ These services include: (i) Supplementary Nutrition (SNP); (ii) Preschool Non-formal Education; (iii) Nutrition & Health Education; (iv) Immunization; (v) Health Check-up; and (vi) Referral Services. NRHM & Public Health Infrastructure provides three of the six services, which are related to health and include immunization, health checkups, and referral services.

The One Stop Center and the Universalization of Women Helplines are two programs run by the Women Welfare Division from the Nirbhaya Fund.²⁸² The One Stop Centers (OSCs), also called Sakhi Centers, are designed to provide women who have experienced violence, including domestic abuse, with a variety of integrated services under one roof. These services include police assistance, medical assistance, legal aid and counselling, psycho-social counselling, temporary housing, and more.²⁸³ By connecting them with the proper authorities, including as the police, One Stop Center, hospital, legal services, etc., the Women Helpline (WHL) Scheme offers women who have experienced violence a 24-hour emergency and non-emergency response in both public and private settings.

The Swadhar Greh Scheme is a centrally sponsored program for women who have experienced adversity and require institutional support for rehabilitation in order to live honourable lives.²⁸⁴ A centrally sponsored program, the Ujjawala Scheme aims to prevent human trafficking and rescue, rehabilitate, reintegrate, and repatriate victims of human trafficking for commercial sexual exploitation.²⁸⁵

Launched on March 8, 2018, POSHAN Abhiyaan uses ICT application, convergence, community mobilization, behavioural change and Jan Andolan, capacity building, incentives and awards, and innovations to address the country's nutritional problems.²⁸⁶

²⁸¹ Supra note 279

²⁸² Ministry of Women and Child Development, Government of India, One Stop Centre Scheme, available at <https://wcd.nic.in/schemes/one-stop-centre-scheme>, last accessed on Dec.28, 2024

²⁸³ Id.

²⁸⁴ Ministry of Women and Child Development, Government of India, Swadhar Greh, available at <https://wcd.nic.in/schemes/one-stop-centre-scheme>, last accessed on Dec. 28, 2024.

²⁸⁵ BYJU'S, Women Empowerment Schemes in India, available at <https://byjus.com/free-ias-prep/women-empowerment>, last accessed on Dec.28, 2024.

²⁸⁶ Supra note 285

The Beti Bachao Beti Padhao (BBBP) scheme was introduced on January 22, 2015, with the goal of addressing the falling Child Sex Ratio (CSR) and associated concerns of women's and girls' empowerment across the life cycle continuum. Preventing gender-biased sex-selective elimination, ensuring the survival and protection of girls, and ensuring their education and participation are the goals of the program. Multi-sectoral engagement in specific districts and a nationwide media and lobbying campaign are the scheme's main components.²⁸⁷

Given their critical role in the growth of the country, the Indian government has implemented a number of programs and policies aimed at uplifting women and children. These programs aim to reduce inequality and promote a more inclusive society by tackling important issues like economic empowerment, safety, nutrition, education, and health.²⁸⁸ By providing targeted assistance, they enable women and children to realize their greatest potential and make a substantial contribution to the country's progress toward equitable and sustainable development.

3.4.3 Programmes For the Upliftment of Minorities

With programs like Pradhan Mantri Jan Arogya Yojana (PMJAY), Pradhan Mantri Mudra Yojana (PMMY), Pradhan Mantri Kisan Samman Nidhi (PM KISAN), Pradhan Mantri Ujjwala Yojana (PMUY), Pradhan Mantri Awas Yojana (PMAY), Beti Bachao Beti Padhao Yojana, and others, the government has put in place a number of programs aimed at the welfare and advancement of all segments of society, including minorities.²⁸⁹ Programs and projects for the socioeconomic and educational development of the six centrally designated minority communities—Christians, Sikhs, Buddhists, Muslims, Parsis, and Jains—are also carried out by the Ministry of Minority Affairs.

Two sub schemes are part of the "SMILE - Support for Marginalized Individuals for Livelihood and Enterprise" umbrella program developed by the Ministry of Social Justice and Empowerment. "Central Sector Program for Thorough Rehabilitation for

²⁸⁷ Supra note 285

²⁸⁸ Alka Maurya, Women Empowerment in India: A Critical Study along with Scheme of Government, 5 INT'L J.L. MGMT. & HUMAN. 1119 (2022).

²⁸⁹ Press Information Bureau, Government of India, Schemes for the Upliftment of Minorities, available at <https://pib.gov.in/PressReleasePage.aspx>. Last accessed on Dec. 28, 2024.

Transgender Persons' Welfare" and "Central Sector Program for Thorough Rehabilitation of Individuals Involved in the Act of Beginning."²⁹⁰ With the assistance of state governments, UTs, local urban bodies, voluntary organizations, community-based organizations (CBOs), institutions, and others, this umbrella program would encompass a number of comprehensive measures, such as welfare programs for transgender individuals and those who engage in begging, with a particular emphasis on rehabilitation, the provision of medical facilities, counselling, education, skill development, and economic links.²⁹¹

India's dedication to achieving the Right to Development as a fundamental human right is demonstrated by the execution of numerous government programs and policies meant to improve society.²⁹² These programs, which cover everything from social justice and healthcare to education and poverty reduction, are crucial for promoting inclusive growth and lowering socioeconomic gaps. Even while issues like implementation gaps and unequal access still exist, these initiatives can be strengthened by maintaining a focus on accountability, openness, and community involvement.²⁹³ The spirit of the Indian Constitution and international human rights norms are ultimately upheld when development strategies are in line with the values of justice, sustainability, and human dignity. This guarantees that progress actually reaches the last mile.

3.5 Conclusion

In conclusion, the ideals embodied in the Indian Constitution—particularly the concepts of justice, equality, and human dignity—are closely related to the country's right to development. Although the Right to Development is not specifically mentioned in the Constitution, it is implied in the Fundamental Rights and Directive Principles of State Policy (particularly Articles 38, 39, 41, and 46), which instruct the government to strive for the welfare and well-being of its people by guaranteeing access to fundamental human rights like livelihood, health care, and education. These provisions emphasize

²⁹⁰ Press Information Bureau, Government of India, SMILE Scheme – Support for Marginalized Individuals for Livelihood and Enterprise, available at <https://pib.gov.in/PressReleasePage.aspx>. Last accessed on Dec. 29, 2024.

²⁹¹ Id.

²⁹² Indian School of Public Policy, The Role of Governments in Promoting Human Development, ISPP (Oct. 22, 2024), available at <https://www.ispp.org.in/the-role-of-governments-in-promoting-human-development>, last accessed on Dec. 29, 2024.

²⁹³ Supra note 290

the duty of the state to establish circumstances that support the holistic development of all societal segments.

It is vital to remember that the Indian court has been instrumental in extending and strengthening the reach of the Right to Development as we continue to look at the function of judicial interpretation. Courts have determined that development is a necessary component of a decent existence through advancing interpretations of fundamental rights, including the Right to existence under Article 21. This prepares the ground for examining the seminal case laws and court rulings that have influenced how the Right to Development is understood and applied in India.

CHAPTER 4

JUDICIAL THOUGHT ON RIGHT TO DEVELOPMENT IN INDIA WITH SPECIAL REFERENCE TO ARTICLE 21

4.1 Introduction

In order to ensure that the Constitution remains true to its fundamental principles while adjusting to the changing social, political, and legal environments, the judiciary is vital for its interpretation.²⁹⁴ An essential institution in India, the judiciary has the power to interpret and defend the Constitution as well as assess the constitutionality, application, and interpretation of legislation.²⁹⁵ The goal of the legal system is to uphold individual rights while guaranteeing justice that is equitable and fair.

The necessity to preserve the balance of power between the legislature, executive branch, and judiciary, defend fundamental rights, and uphold and interpret the Constitution led to the creation of constitutional courts in India.²⁹⁶ As the ultimate constitutional interpreter and highest court, the Supreme Court of India was founded in accordance with Article 124 of the Constitution.²⁹⁷ At the state level, it is complemented by the High Courts, which were created under Article 214 and serve as constitutional courts.²⁹⁸ By virtue of Articles 32 and 226 these courts have the authority to consider writ petitions, perform judicial review, and make sure that executive actions and laws are in accordance with constitutional principles.²⁹⁹

One of the most important responsibilities of the court in any democracy is to interpret the constitution. The judiciary in India is essential to maintaining the Constitution's core ideas while ensuring that it is still applicable to contemporary situations.³⁰⁰ The Constitution is a dynamic instrument that embodies the nation's beliefs, values, and aspirations. The judiciary is tasked with interpreting the Constitution's provisions and

²⁹⁴ Ratnesh Kumar Pandey & Preeti Dubey, *The Role of the Supreme Court in Protecting and Interpreting the Constitution of India*, 6 INT'L J.L. MGMT. & HUMAN. 685 (2023)

²⁹⁵ *Id.*

²⁹⁶ Maureen Callahan VanderMay, *The Role of the Judiciary in India's Constitutional Democracy*, 20 HASTINGS INT'L & COMP. L. REV. 103 (Fall 1996).

²⁹⁷ India Const. art. 124

²⁹⁸ India Const. art. 214

²⁹⁹ *Id.* 3.

³⁰⁰ Rahul Shamota, *Judicial Review in India and Constitution*, 5 INT'L J.L. MGMT. & HUMAN. 1082 (2022).

resolving disputes that arise from the administration of its mandates in its capacity as its guardian.³⁰¹ This procedure not only makes the meaning of the Constitution clearer, but it also influences how Indian constitutional law develops.

The Indian Constitution frequently allows for many interpretations due to its extensive and broad framework. The judiciary's approach to interpretation is crucial in this respect. When interpreting the Constitution, courts can use a variety of approaches, and the approach they take can have a significant impact on the results of their decisions.³⁰² The expansion of fundamental rights, preserving the balance of power among the departments of government, and making sure that the Constitution changes in tandem with societal shifts are all areas in which judicial interpretation has been essential to the evolution of Indian constitutional law.³⁰³

It is traditional to expressly incorporate certain fundamental rights in written constitutions in order to protect citizens' fundamental human rights. However, enumerating every potential right in the Constitution's wording is nearly impossible.³⁰⁴ As a result, some rights—known as unenumerated rights—exist that are acknowledged as being crucial for safeguarding fundamental human interests even though they are not explicitly mentioned.³⁰⁵

These rights are intimately related to the constitutionally guaranteed fundamental and non-fundamental rights. The preservation of people's humanity, freedom, and dignity in a civilized and democratic society depends heavily on unnumbered rights.³⁰⁶ Due to their lack of express mention, these rights must be recognized, interpreted, and safeguarded by an independent judiciary using its constitutional interpretation authority.³⁰⁷ By doing this, even in places where the text is silent, the judiciary makes sure that the spirit of the Constitution—especially its dedication to justice, liberty, and equality—is upheld.

³⁰¹Shamota, *Supra* note 7

³⁰²Munira Bharmal, *Judicial Interpretation: An Analysis in Context of Part III & IV of the Constitution*, 3 INDIAN J.L. & LEGAL RSCH. 1 (October-November 2021).

³⁰³ *Id.*

³⁰⁴ Omkar Upadhyay, *Enumerating the Unenumerated: Recognising the 'Right to Be Forgotten' in Indian Jurisprudence*, 9 NLIU L. REV. 468 (July 2020).

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

4.2 Article 21 and Right to Development Through Judicial Interpretations

The primary goal and tenet of human existence is to live and let live. Everybody has rights to certain liberties that cannot be compromised at any cost, whether in the public or private domains.³⁰⁸ Similar to a shield listed in the Indian Constitution, Article 21 protection against discrimination in human life, and any infringement of this is punishable by law. Article 21 of the Indian Constitution states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”³⁰⁹

According to Article 21, no one may be deprived of their life unless it is done in accordance with the legal process. This implies that each and every person has the right to life and that it can only be taken away in compliance with the established legal processes.³¹⁰ The right to a healthy environment, the right to livelihood, and the right to live with dignity are all included in the concept of the right to life. Individual liberty is likewise protected under Article 21.³¹¹ It declares that no one's personal freedom can be taken away from them until the legal process is followed.³¹² The right to life has been seen as "the most important right" since everyone else's rights are meant to make life and the environment better. However, life itself must exist for this to occur. For this reason, the right to life is seen as the foundation of essential rights.³¹³

Without a summary of the traditional approach, it is difficult to completely understand the scope of the right to life's growth. According to the conventional reading of Article 21 of the Constitution in *A. K. Gopalan v. State of Madras*³¹⁴, a person's right to life may be taken away by a legally mandated process. As a result, the original interpretation of this clause was limited and methodical. The state had to show that interfering with a person's right to life was permitted under the process established by a statute that was duly passed.³¹⁵ Whether the legislation was fair and just was irrelevant. The Court's

³⁰⁸ Piyasha Das, Critical Analysis on Interpretation of Article 21 of the Indian Constitution, 3 INT'L J.L. MGMT. & HUMAN. 424 (2020).

³⁰⁹ India. Const.Art.21

³¹⁰ Pragya Kumar, Interpretation of Indian Constitution Article 21 with Special Reference to the Right to Human Dignity: An Analysis, 2 INDIAN J.L. & LEGAL RSCH. 1(August-September 2021).

³¹¹ Id.

³¹² Id.

³¹³ Id.

³¹⁴ AIR 1950 SC 27

³¹⁵ Yepuri Sai Chaitanya, Article 21: The Ever-Evolving Article of the Indian Constitution, 3 INT'L J.L. MGMT. & HUMAN. 2143 (2020).

understanding amounted to little more than the freedom from unjust bodily confinement, false imprisonment, and arrest and detention. Consequently, "personal liberty" said to indicate solely freedom with regard to one's own person or body, and in this way, it was the opposite of compulsion or physical restraint.³¹⁶ Over time, the Supreme Court's conventional and restrictive interpretation of Article 21 has evolved.

The Constitutional Bench of Seven justices' finding in *Maneka Gandhi v. Union of India*³¹⁷ case, which overturned Gopalan's case, served as the foundation and launchpad for an incredible development of the legislation pertaining to the involvement of judges in (individual) human rights matters. Therefore, the Supreme Court recognized in this decision that the legal process for denying someone their right to life must be just, fair, reasonable, and right. A new era of expanding the scope of the right to life and personal liberty has been brought about by the revised interpretation of Article 21 in the Maneka Gandhi case. The broad dimensions assigned to this covers a number of topics that the Constitution's founding fathers may or may not have envisioned.³¹⁸

The Indian legal system has interpreted, applied, and recognized the right to development. There are three ways that the right to development is juridified in India, according to legal scholars:

- (1) Indian judges are depending more on the Declaration on the Right to Development
- (2) The Court has recognized the right to development as a human right in a number of rulings and
- (3) The Right to Development is interpreted as an essential component of the Indian Constitution.³¹⁹

The Constitutional courts in India interpreted right to development as a Fundamental Right as part of Article 21 of the Indian Constitution.³²⁰ The Courts identified right to development not a single right but encompasses various aspects that attribute to the

³¹⁶ Chaithanya, Supra note 22

³¹⁷ 1978 AIR 597

³¹⁸ Eshita Baghel, Case Study of Maneka Gandhi v. Union of India, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

³¹⁹ Anna-Lena Wolf, Juridification of the Right to Development in India, 49 *Verfassung u. Recht i. Übersee* 175 (2016).

³²⁰ Shampa, Supra note 93

holistic development of the individuals as well as the society. The inclusion of right to development into the unenumerated Fundamental Rights list mostly connects it with Article 21 of the Constitution.³²¹

The first case in which the Supreme Court interpreted right to development in the Indian jurisprudence is *Peerless General Finance and Investment Company Ltd v. Reserve Bank of India*³²², the company appeals of the 1987 directives from the Reserve Bank of India (RBI) given in accordance with Sections 45J and 45K of the RBI Act, 1934. By requiring collected deposits to be invested in safe ways, such as approved securities or public sector bank deposits, these directives compelled residuary non-banking firms (RNBCs) to protect depositor interests. Among others, Peerless challenged these directives, claiming that they went beyond the RBI's authority, imposed unjustifiable limitations in violation of Article 19(1)(g) of the Constitution, and would cause them financial instability. Citing worries over a proliferation of financial firms enticing in susceptible investors, the RBI defended its directives on the grounds of public interest, financial discipline, and depositor protection.

The RBI's directives were upheld by the Supreme Court, which emphasized that the financial regulations were designed to preserve economic stability and safeguard public savings. The Court acknowledged that one aspect of advancing the right to development under Article 21 is protecting the financial stability of depositors, especially those from marginalized groups. Despite not being stated directly, the right to development was seen to be a component of the right to life and dignity, guaranteeing that economic activity is regulated in a way that promotes sustainable growth and safeguards disadvantaged populations.

Human progress depends on equal economic participation, which is indirectly promoted by legal frameworks protecting investors' interests, the Court noted. It confirmed that reasonable limitations put in place to stop financial exploitation are both constitutionally permissible and serve the greater good of society. As a result, it was believed that regulating the public's financial interests was crucial to enabling people

³²¹ Id.

³²² 1987 AIR 1023

to exercise their fundamental right to economic stability and meaningful growth under Article 21.

The case of *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr.*³²³ involved agricultural land that the State Government had given to a tribal person. With the Collector's approval, the appellant, Murlidhar Dayandeo Kesekar, had made a deal with the tribal allottee to buy the land. However, in order to safeguard the tribal's rights, the authorities denied permission for the sale, which prompted the appellant to contest the decision. The main questions were whether the appellant's rights were harmed by the denial of permission for alienation and whether the State was able to stop the transfer in accordance with the law and the constitution.

In this decision, the Supreme Court made a clear connection between Article 21's Right to Development and the defence of tribal land rights. The Court underlined that achieving the right to a dignified existence requires the economic empowerment of marginalized groups, including as Dalits and Tribals. It maintained that inclusive growth is necessary to guarantee that opportunities and resources are distributed fairly, particularly to the weakest segments of society. The Court clarified that the constitutional framework requires the State to advance social, economic, and political justice, especially for marginalized groups, citing the Preamble, Fundamental Rights, and Directive Principles.

The Court noted that the constitutional objectives of economic democracy and empowerment would be undermined by the unfettered alienation of designated lands. It emphasized that the Constitution's definition of development must include the protection of the poor, opportunity for economic growth, and protection from exploitation. It was believed that blocking the sale was a justifiable and essential move in defending the tribal community's right to development, which includes access to resources, land, and means of subsistence that are essential for leading a respectable life. Thus, the ruling reaffirmed that the Right to Development is a basic extension of the Right to Life under Article 21 and that the State must take proactive steps to protect equality, human dignity, and economic security for all citizens, including the underprivileged.

³²³ 1995 SCC, SUPL. (2) 549 JT 1995 (3) 563

In the case of *LIC of India v. Consumer Education & Research Center*³²⁴, the Supreme Court considered whether the Life Insurance Corporation (LIC)'s Table 58 term insurance policy's rigorous qualifying requirements were constitutional. Only salaried workers in government, semi-government, or reputable private companies were granted access to the policy due to the challenged clause. The question posed to the Court was whether such exclusionary conditions aligned with the fundamental rights protected by the Constitution, specifically the right to equality under Article 14, the right to life under Article 21, and the Directive Principles of State Policy's more comprehensive vision of socioeconomic justice.

In a comprehensive and far-reaching ruling, the Court determined that insurance programs such as Table 58 are vital parts of social security that directly affect the right to life and livelihood, rather than being merely economic instruments. According to earlier seminal decisions, the right to life under Article 21 encompasses not only the right to physical existence but also the right to security, dignity, and access to basic services like social protection and health care. Term insurance contributes to social and economic development by offering economically disadvantaged groups vital financial security, especially because of its inexpensive premiums.

The Court underlined that, particularly when considered in light of the Preamble, Fundamental Rights, and Directive Principles, development is a fundamental right rather than an abstract objective. Together, these constitutional clauses mandate that the State and its agencies, especially public sector organizations like LIC, design their policies to advance social justice, equity, and inclusivity. LIC effectively excluded vast percentages of self-employed and unorganized workers—many of whom are in severe need of such protection—by restricting access to social welfare policies like Table 58 to a limited class of paid individuals.

The Court made it clear that LIC must adhere to public law principles even if it is a commercial organization and a public authority. Fairness, rationality, and non-discrimination must be reflected in any contractual policies it offers, particularly where those rules have important ramifications for the public interest. Therefore, the idea of public accountability also applies to how LIC designs and administers its insurance

³²⁴ 1995 AIR 1811

programs. The Court emphasized that in order for such programs to have a public component, they must be available to and advantageous to all societal sectors, not simply a wealthy select few.

The Court upheld that fair access to social programs like life insurance is part of the right to development and ruled that the restricted clause was unconstitutional. The ruling further stated that although LIC has the right to create and modify policies using actuarial and financial principles, those designs cannot be capricious, unfair, or oppressive. The exclusion based only on employment classification was declared to be discriminatory and a violation of constitutional principles, although the remaining requirements under Table 58, such as age restrictions and medical exams, were maintained as legitimate.

The Court reaffirmed that meaningful access to socioeconomic security is a necessary component of the right to growth as guaranteed by the Constitution. The goal of insurance policies, particularly those aimed at affordability and protection, should be to lessen systemic inequality rather than to perpetuate it. LIC, and by extension all public authorities, are constitutionally bound to ensure that its policies and activities fit with the objectives of justice, equality, and inclusive development.

In the case of *C Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoli* ³²⁵, the Supreme Court considered whether Sellathachi, a Hindu widow who had received property as maintenance under her husband's will, became the sole owner under Section 14(1) of the Hindu Succession Act, 1956, or whether Section 14(2) still restricted her rights. She was permitted to enjoy the property while she was alive because the will acknowledged her right to upkeep. The main point of contention was whether the will only established a new, limited right or if this possession was in recognition of an existing right, which would activate Section 14(1) and turn it into absolute ownership.

According to the Court, Sellathachi's right to maintenance was derived from the pre-existing Sastric law rather than being formed by the will. As a result, her limited stake became absolute ownership under Section 14(1) of the Hindu Succession Act of 1956. Therefore, the will's restrictive provisions could not limit her rights. The ruling stressed

³²⁵ 1996 AIR 1697

that laws that acknowledge women's pre-existing rights, including the right to maintenance, shouldn't be read too narrowly to restrict their wealth.

From the standpoint of the right to development, this decision is very important, particularly for the rights of women and their socioeconomic empowerment. The Court emphasized that the "Trinity" of the Preamble, Fundamental Rights (especially Articles 14, 15, and 21), and Directive Principles of State Policy work together to eradicate discrimination, including poverty based on gender. The Court recognized the right to development as a human right and brought Indian law into compliance with the UN Declaration on the Right to Development and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The Court emphasized that the right to life and development is inextricably linked to economic and property rights. It is against both international human rights commitments and constitutional ideals to deny women complete property ownership based just on their marital status or gender. The Court gave weight to the notion that women's development is fundamentally dependent on their ability to acquire resources and become economically independent by ruling that Section 14(1) supersedes restrictive covenants included in documents such as wills.

The ruling also underlined how laws must alter to address historical injustices and reflect societal shifts. The Court emphasized that Directive Principles are not just ideals but rather constitute the constitutional conscience that must direct legislative and judicial activity, citing Dr. B.R. Ambedkar and constitutional ideals. In addition to being a legal right, women's economic empowerment through complete property ownership is a requirement for fair development.

A major endorsement of women's right to growth is provided by the Court's interpretation of Section 14(1). By integrating international human rights principles into domestic jurisprudence, it transcends technical legalities to support substantive equality and social justice. The case emphasizes the judiciary's responsibility to make sure that personal laws change to promote inclusive and participatory development rather than sustaining prejudice.

The Supreme Court of India in the case of *Mrs Valsamma Paul v. Cochin University*³²⁶, examined the intricate relationship between social mobility, personal law, and the affirmative action constitutional framework in this historic ruling. The main question in the case was whether a lady from a forward caste may marry into a backward class and so be eligible for quota benefits. The Court ruled that an individual is not entitled to reservation advantages intended for historically underprivileged communities as a result of such a change through marriage. The ruling made it abundantly evident that the goal of reservations under Articles 15(4) and 16(4) of the Constitution is to address long-standing social and educational backwardness, not to provide advantages to people who may be socially integrated through personal connections but have not experienced historical disadvantage or systemic exclusion.

The Court underlined that the goal of the right to development, as a human right and a constitutional value, is to improve the lives of those groups who have been excluded from social, economic, and political opportunities because of systemic marginalization and discrimination based on caste. In this perspective, "development" refers to both individual and social advancement brought about by structural reform, rather than just economic or personal gain. Reservation rules are intended to give historically marginalized groups—such as Scheduled Tribes, Scheduled Castes, and recognized Other Backward Classes—access to opportunities and resources that they have long been denied. The purpose of these laws would be distorted, and their legitimacy would be called into question, if people from wealthy backgrounds were permitted to obtain these privileges through marriage or adoption.

The Court affirmed that the right to development includes equality, dignity, and participation in the nation's socioeconomic and political life by drawing on both Indian constitutional mandates and international human rights principles, such as those stated in the UN Declaration on the Right to Development and the CEDAW Convention. Nonetheless, a framework of justice must serve as the foundation for the implementation of this right. It cannot be asserted without having experienced the same institutionalized discrimination or social impediments that the Constitution aims to rectify. Getting into a backward class by personal choices like marriage or adoption

³²⁶ 1996(1) CTC 301

does not automatically mean that you share in the past and present disadvantages that people in that class have faced.

Crucially, the Court acknowledged the benefits of intercaste unions in fostering social unity and dismantling caste boundaries. It did, however, draw a clear distinction: although these marriages support secularism and national cohesion, they cannot be used as justification for asserting constitutional rights meant for those from lower socioeconomic backgrounds. Therefore, in order to achieve substantive equality, the right to development is a protective right linked to actual experiences of exclusion rather than a transferable privilege.

The Supreme Court maintained affirmative action's legitimacy as a tool for fostering inclusive growth. The ruling reaffirmed the need to protect social and economic fairness, which are essential components of the right to growth, for those who are truly in need. By guaranteeing that state-sponsored development projects stay concentrated on addressing systemic injustices rather than being weakened by opportunistic or circumstantial arguments, this thoughtful decision upheld the spirit of the Constitution. Therefore, rather than being a result of social association or marital choice, the ruling is a substantial endorsement of growth as a constitutional right for the historically excluded.

In the case of *Madhu Kishwar v. State of Bihar*³²⁷, the Supreme Court was asked to rule on whether the Chota Nagpur Tenancy Act, 1908's exclusion of women from succession rights was discriminatory and unconstitutional, especially when considering the rights to equality, livelihood, and, more generally, development. Limiting property succession to male descendants, according to the petitioners, was against Articles 14, 15, and 21 of the Constitution. By including an intervening right of livelihood for female dependents of male tenants into the statute, the Court preserved their access to land as a means of subsistence without completely invalidating the provisions.

The ruling links the right to development, as interpreted in terms of both human dignity and economic survival, with the right to livelihood, which is a recognized aspect of Article 21 (Right to Life). The Court recognized that women are essential to farming and land maintenance in tribal agricultural households. In addition to upsetting their

³²⁷ 1996 SCC (5) 125

means of subsistence, excluding them from the succession of property, particularly after the male head passes away, also erodes their economic and social independence, so driving them into poverty. In particular, when it goes against constitutional principles intended to promote inclusive and equitable development, the Court reasoned that such exclusion cannot be justified solely on the basis of customary tribal laws.

The Court also cited Articles 39(a) and 41 of the Directive Principles of State Policy, which require the State to provide sufficient means of subsistence and protection in the event of necessity. Despite not being enforceable, these were seen as crucial to comprehending the true meaning of the right to life and growth. The ruling made it quite evident that it was against both constitutional safeguards and more general human rights duties to deny women the ability to stay on and continue to cultivate property they had worked on together, based alone on gender and custom. The Court successfully safeguarded women's developmental rights by halting the application of male-exclusive succession under Sections 7 and 8 of the Act in cases involving dependent female heirs. Tribal traditions are respected by this judicial innovation, which also makes sure that they change to reflect gender justice and developmental fairness.

More broadly, the ruling positions the right to development as a link between traditional values and the moral principles of the constitution. It serves as a reminder that progress is more than just economic expansion; it also involves guaranteeing underprivileged groups like indigenous women access to resources, security, and opportunities. The Court did this by echoing international agreements that India is a party to, including the UN Declaration on the Right to Development and CEDAW. The Court maintained the State's obligation to promote equitable development within the parameters of social justice and human dignity by calling for legislative reform and ordering the State to reevaluate the legislation.

The Indian Supreme Court has continuously broadened the definition of Article 21 of the Constitution, interpreting the right to life as encompassing the right to live with dignity, which includes equality, social security, access to a means of subsistence, and involvement in the process of development, rather than just the right to physical existence. In particular, for underprivileged groups like women, backward classes, and tribal tribes, the Court has reaffirmed that the right to development is a derivative of Article 21 and is closely related to economic fairness and human dignity. The Court in

the later phases of its interpretation of Article 21 included other unenumerated rights like right to health, environment, climate change, livelihood, education and linked these basic rights as part of right to development.

4.2.1 Right to Life and Dignity

A turning point in Indian constitutional jurisprudence, specifically in the development of the right to life and personal liberty under Article 21 of the Constitution, was reached in the 1978 case of *Maneka Gandhi v. Union of India*.³²⁸ The issue started when the government confiscated Maneka Gandhi's passport without giving her a chance to be heard. This ruling greatly broadened the definition of the right to life, defining it to include not only physical existence but also a life marked by freedom, autonomy, and human dignity. The decision made it clear that the right to life is fundamentally based on human dignity and that procedural protections must be strong enough to stop misuse by the state. Article 21 became the cornerstone of rights-based constitutional interpretation in India after Maneka Gandhi's case essentially turned it into a potent instrument for defending individual liberties and promoting social and economic fairness.

The Supreme Court of India rendered a historic ruling in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*³²⁹, which greatly expanded the application of Article 21 of the Constitution, which protects the right to life and individual freedom. The petitioner was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) in this case, and she was severely restricted in her ability to see her lawyer and family. The detention restrictions imposed under clause 3(b)(i) and (ii) of the restrictions of Detention order were closely addressed by the Court in a judgment written by Justice P.N. Bhagwati. These provisions limited family visits to once a month and mandated that discussions with attorneys may only take place with prior approval from the District Magistrate and in the presence of a customs officer. As a violation of her fundamental rights under Articles 14, 21, and 22, the petitioner contested these conditions.

³²⁸ Supra note 317

³²⁹ 1981 AIR 746

The Supreme Court decided in the petitioner's favour, concluding that these limitations violated the constitutional protections because they were capricious and unreasonable. The ruling highlighted the difference between punitive and preventative detention, emphasizing that the former is intended to stop future harm rather than to punish. The rejection of rights that are essential to human dignity cannot, however, come from it. That "a detenu does not shed his constitutional rights at the prison gate" and that detention does not entail the loss of personal liberty or dignity beyond what is absolutely necessary were also reiterated by the Court. In earlier cases, such as *Maneka Gandhi v. Union of India*³³⁰, it was decided that Article 21 required "fair, just, and reasonable" procedures. The Court reaffirmed that the right to life encompasses not only the right to survive but also the right to live with human dignity, which includes basic necessities like food and shelter as well as the capacity to sustain interpersonal connections and legal representation.

The right to development can be significantly associated with the ruling in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*³³¹, since it upholds the idea that genuine development is inclusive, rights-based, and people-centered. Expanding the scope of Article 21 of the Constitution—interpreting the right to life as the right to live with human dignity, which is a fundamental tenet of the right to development—is the case's deeper jurisprudential contribution, even though it generally addressed the conditions of preventive detention.

4.2.2 Right to Livelihood

The landmark ruling in *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors*³³², establishes a close connection between the right to livelihood and the more general, constitutionally protected right to life under Article 21 of the Indian Constitution. The Supreme Court ruled in this case that it was a breach of pavement dwellers' and slum dwellers' right to livelihood and, by extension, their right to life, to evict them without providing alternative plans for their relocation. This interpretation demonstrates a progressive view of constitutional rights, acknowledging that life is more than just

³³⁰ Supra note 317

³³¹ Supra note 329

³³² 1986 AIR 180

breathing; it also includes the capacity to live with dignity, which inevitably entails having access to a means of subsistence.

The right to development, which is acknowledged in both domestic policy frameworks and international human rights discourse, can be closely linked to this ruling. Every human being and every people have the right to take part in, contribute to, and enjoy economic, social, cultural, and political growth, according to the right to development. This viewpoint is supported by the *Olga Tellis* ruling, which upholds that socioeconomic rights like housing and work are essentials that allow people to participate actively in society and growth rather than being extravagances. By denying pavement dwellers their homes without following the proper procedures, their fundamental human rights would be violated and they would be excluded from social and economic advancement.

The court's interpretation emphasizes the State's obligation in a welfare society to provide development-friendly conditions, including housing, job opportunities, and inclusive urban planning. It acknowledges that rural suffering and structural poverty are the main causes of urban migration; as a result, development needs to be inclusive and egalitarian, encompassing even the most marginalized. The normative foundation for incorporating the right to development into constitutional practice is thus strengthened by this interpretation, which advances a just society in which the rights to development, livelihood, and life are viewed as interconnected and mutually supporting.

Since it offers the social and economic framework for people to construct safe, respectable, and satisfying lives, the right to livelihood is essential to advancing the right to development. People can make a living, support their families, and take an active role in the economy when they have a livelihood. The right to development, which emphasizes that people must be both the actors and the beneficiaries of growth, is based on this participation. In practice, the right to development is meaningless since people cannot contribute to or profit from development if they do not have access to a means of subsistence.

Additionally, the right to livelihood fosters equity and inclusion, two things that are critical to meaningful growth. Ensuring the right to livelihood for marginalized groups,

including slum dwellers, rural migrants, and informal labourers, helps close the gap between the rich and the disadvantaged in societies characterized by glaring inequities.³³³ Livelihood rights make guarantee that growth does not become the sole purview of the wealthy or urban elite but rather touches all facets of society by allowing these people to find work or participate in income-generating activities.³³⁴

By facilitating access to necessities like food, shelter, healthcare, and education, livelihood also advances human growth. These are necessary not only for existence but also for people to reach their full potential and live honourable lives. In this approach, livelihood is essential to the wider implementation of the right to development since it serves as a doorway to other rights and capacities.³³⁵ People are better equipped to make decisions, make plans for the future, and engage in public and political life when they have a steady source of income. This allows them to reach their full potential as human beings.

Finally, the right to livelihood guarantees inclusive and ecologically conscious economic growth in the framework of sustainable development.³³⁶ Opportunities for livelihood that are linked to regional resources, customs, and sustainable practices provide a type of development that is both long-lasting and equitable. Therefore, the right to livelihood is a human right that fortifies society and makes the objective of development concrete, inclusive, and sustainable for everyone. It is not merely an economic right.

4.2.3 Right to Food and Shelter

By stating that the right to life encompasses more than just animal existence, Justice Bhagwati in the case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*³³⁷ broadened the definition of Article 21 of the Constitution to include the right to live with human dignity. He underlined that this dignity includes the right to social connection, emotional health, and legal representation in addition to the

³³³ Kamala Sankaran, The Human Right to Livelihood: Recognizing the Right to Be Human, 34 COMP. LAB. L. & POL'Y J. 81 (Fall 2012).

³³⁴ Id

³³⁵ Supra note 332

³³⁶ Supra note 332

³³⁷ Supra note 329

necessities of life, such as food and shelter. His remarks were groundbreaking in acknowledging the complexity of life and freedom.

The holistic perspective of human development promoted by theorists such as Amartya Sen is reflected in Justice Bhagwati's reasoning, which holds that the right to life encompasses food, housing, expression, social contact, and legal representation. According to this viewpoint, the growth of human potential and liberties must be used to gauge development rather than merely GDP or infrastructure.³³⁸ This decision reaffirms that the preservation of fundamental human dignity and the right to development are inextricably linked. Economic progress is only one aspect of development; another is establishing conditions that allow everyone, including the most vulnerable, such as detainees, to live in dignity, obtain justice, and actively engage in society.³³⁹ Francis Coralie Mullin is therefore a potent assertion of the inseparability of development and human rights.

The Supreme Court's examination of the government's inability to successfully carry out the Integrated Child Development Services (ICDS) program, specifically the hold-up in operationalizing Anganwadi Centers (AWCs), is at the heart of the case *People's Union of Civil Liberties v. Union of India*³⁴⁰. The petitioner drew attention to a notable discrepancy between the number of AWCs that are authorized and those that are operational. Only 7.81 lakh of the 10.53 lakh authorized centers were operating as of March 2007, falling well short of the 14 lakh centers that were expected to be online by December 2008. The Court was concerned that many State Governments had not done enough to operationalize the centers in spite of previous decisions. Particularly cited for subpar performance were states like Uttar Pradesh, Jharkhand, and Bihar. The Court underlined that the goals of the ICDS program were undermined since the inability to activate these centers had a direct impact on providing nutritional support to children, teenage girls, and expectant or nursing mothers.

The Court viewed AWCs as part of the fundamental right to life under Article 21 because it recognized the vital role they play in guaranteeing early childhood

³³⁸ Shubhangi Chhaya, Right to Housing and Shelter in India, 4 INT'L J.L. MGMT. & HUMAN. 183 (2021).

³³⁹ Supra note 338

³⁴⁰ 2003 AIR SCW 2353

development, nutrition, and health care. It reaffirmed that citizens should have the right to request the construction of an AWC within three months in communities with at least 40 children under the age of six. In addition, the Court threatened penalties for non-compliance and gave States tight timelines to operationalize sanctioned centres.

The idea of the right to development, which entails providing all citizens with fair access to opportunities, resources, and services, is further advanced by the ruling. Functional Anganwadi Centers are more than just places to get services; they are a doorway to community well-being, women's empowerment, and early childhood development. Development must be inclusive, rights-based, and accessible to the most disadvantaged, the Court emphasized by demanding their prompt and widespread implementation. The Supreme Court made the ICDS a legally binding entitlement rather than a discretionary program. It reaffirmed that the State has a constitutional duty to guarantee the efficient and equitable provision of essential services including health, nutrition, and education, and that development is a fundamental right rather than a privilege.

An important turning point in Indian constitutional jurisprudence was reached in the *Kapila Hingorani v. State of Bihar*³⁴¹ case, in which the Supreme Court addressed a serious human rights issue concerning the mass suicides and starving deaths of workers at state-owned companies in Bihar. The state and its public sector projects' long-term nonpayment of salaries was the direct cause of these deaths. The Court ruled that the State could not deny responsibility in these situations because, according to Article 12 of the Constitution, these organizations are an essential part of the State and are therefore subject to the same duties to protect basic rights.

The idea that life is more than just animal existence—it includes the right to live with dignity, which includes access to food and basic means of survival—was reinforced when the Court explicitly connected the denial of salaries and the ensuing starvation to the violation of the right to life under Article 21. In order to bring domestic constitutional interpretation into compliance with international human rights standards, the Court acknowledged the right to food as a fundamental human right, citing Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR),

³⁴¹ (2003) 2 BLJ 754

1966. It also cited the "12 Misconceptions About the Right to Food" (FIAN), which reject the notion that hunger is due to mere scarcity, emphasizing instead that systemic neglect and denial of access constitute a human rights violation.

The Court confirmed that the State of Bihar cannot abandon its fundamental responsibility to defend the rights of its citizens when it enters the realm of commerce, business, or industry by holding the State constitutionally accountable. Articles 14, 19, 21, and 300-A were highlighted in the ruling, highlighting the collective constitutional framework that the State must operate within to guarantee equality, the protection of life and liberty, the right to livelihood, and property rights. Additionally, it cited the Directive Principles of State Policy and Fundamental Duties, which it said serve as the moral and constitutional compass that directs a welfare state's operations. These clauses require the State to act affirmatively to protect human dignity in addition to abstaining from damage.

The case demonstrates the judiciary's developing role in upholding socioeconomic rights in India, especially when the State's inaction causes widespread suffering among people. It restates those socioeconomic rights, such as the right to food, are justiciable under Article 21. This ruling upholds the idea that a welfare state must operate with empathy, responsibility, and a dedication to social justice in addition to expanding the understanding of fundamental rights. By doing thus, the Court emphasized that growth is meaningless if it does not protect the dignity and fundamental necessities of its most vulnerable residents.

The acquisition of private land for the construction of homes for Scheduled Castes (Dalits) under the Land Acquisition Act, 1894, is at the centre of the case of *Chameli Singh v. State of Uttar Pradesh*³⁴², which arose from a land acquisition dispute in Uttar Pradesh. The appellants, original landowners, argued that the government had violated Article 21 of the Constitution by denying them their land and, consequently, their right to livelihood by using the urgency clause under Section 17(4) to avoid the investigation required by Section 5-A.

However, in accordance with the State's Directive Principles of State Policy (Articles 38, 39, and 46), the court maintained the purchase, highlighting the fact that housing

³⁴² AIR 1996 SC 1051

Dalits and other marginalized groups is a public objective of great constitutional significance.

According to Article 21, the Supreme Court reaffirmed that the right to shelter is a component of the right to life. The Court underlined that shelter includes access to essential amenities like light, clean surroundings, dignity, and sanitary facilities in addition to a roof over one's head. It confirmed that development initiatives that elevate Dalits and Tribes, especially in housing, are constitutionally justified, even if they include the forcible purchase of land. The necessity of housing the impoverished was seen as a fundamental human right, grounded in international agreements like the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights, as well as a national economic and social goal.

The conflict between individual rights and group development objectives was also covered in the ruling. It concluded that although landowners may lose their means of subsistence as a result of acquisition, this deprivation is not unconstitutional as long as compensation is given and the process is just and lawful. It made clear that the State's obligation to uphold social justice and the general welfare may take precedence over the right to livelihood guaranteed by Article 21.

The decision firmly establishes the idea that the State has a constitutional duty to provide economic and social fairness, especially for historically underprivileged groups. By connecting livelihood, shelter, and dignity as essential components of a meaningful existence under Article 21, it underlines that development measures, like as housing for Dalits, are essential to the attainment of the right to development. The Court acknowledged the value of procedural justice while striking a balance with the pressing need to uphold fundamental human rights and national development objectives.

A historic confirmation of the right to shelter as a fundamental component of the right to life under Article 21 of the Constitution was provided by the Supreme Court's ruling in the case of *State of Karnataka & Ors v. Narasimhamoorthy & Ors*³⁴³ sustaining the land acquisition under the Karnataka Acquisition of Land for Grant of House Sites Act, 1972. The Court acknowledged that housing is a fundamental need that allows people

³⁴³ 1995 SCC (5) 524

to live with dignity and is not just a physical structure. The right to life is rendered meaningless in the absence of suitable shelter, particularly for the less fortunate segments of society. This reading is in line with the Court's previous rulings, in which it broadened the definition of Article 21 to encompass the rights required to have a fulfilling life.

The ruling balances the public interest with individual liberties. Although due process and the right to property are recognized, they are balanced against the pressing necessity to house the landless. According to the Court's logic, even in cases where there are minor procedural errors, an acquisition must be upheld if it actually serves a constitutionally protected purpose, such providing housing for the poor. This signifies a change from a strictly legalistic understanding of property rights to one that is more focused on justice and people.

The ruling reaffirms the right to shelter as a fundamental right associated with human dignity, strengthening its legal basis in India. It also supports the notion that the State's function as a welfare agent entails actively pursuing the socioeconomic rights of the impoverished through measures like land acquisition. As a result, the case sets a noteworthy precedent for the development of rights-based jurisprudence in India, especially with regard to housing and urban development.

A life of dignity and well-being depends on having access to food and shelter, which are basic elements of the larger right to development. Both national and international human rights frameworks acknowledge that development is more than just economic expansion; it also involves giving people the means to acquire essentials, develop their potential, and lead fulfilling lives.³⁴⁴ Individuals cannot exist without enough food, and they are denied social inclusion, security, and health without shelter. The right to development, therefore, inevitably includes the guarantee of access to food and shelter, as they enable people to fully participate in society and benefit from progress.³⁴⁵ When the State upholds these rights, it not only satisfies its constitutional obligations but also

³⁴⁴ Preetam Bharti & Vineet Kumar, Property and Right to Housing and Shelter, 5 INT'L J.L. MGMT. & HUMAN. 1381 (2022).

³⁴⁵ Id.

promotes inclusive and sustainable development. These rights are essential for guaranteeing social justice and equality, particularly for marginalized communities.³⁴⁶

4.2.4 Right to Health

An important turning point in the development of socioeconomic rights in India was marked by the *Bandhua Mukti Morcha v. Union of India*³⁴⁷ case, especially with regard to the Right to Health and the more general Right to Development. By ruling that the right to life includes the right to live with dignity, which inevitably includes the right to health, safe working conditions, and a humane livelihood, the Supreme Court not only addressed the predicament of bonded labourers but also established a progressive interpretation of Article 21.

The NGO Bandhua Mukti Morcha filed a public interest lawsuit in this case to draw attention to the cruel and exploitative working conditions of Haryana stone quarry workers. It was discovered that the workers were living in filthy conditions with no access to safe drinking water, healthcare, or suitable housing. Other statutory safeguards, like minimum pay, were also denied to them. After reviewing the evidence, the Supreme Court ruled that the conditions clearly violated the fundamental rights protected by Articles 21, 23, and 24 of the Constitution, which forbid child labour, forced labour, and child labour, respectively.

Importantly, the ruling acknowledged that the realization of the right to live with human dignity is contingent upon the maintenance of basic living conditions, such as environmental safety, hygienic surroundings, and health. This essentially broadened the scope of Article 21 to guarantee the favorable circumstances required for a human life that are worthy of dignity, in addition to the absence of physical restriction. Future rulings and regulations pertaining to public health, occupational safety, and workers' rights were made possible by the acknowledgment that the right to health is an essential component of the right to life.

The Right to Development, which is acknowledged in international human rights debate and indicated in the Indian constitutional framework, is also closely related to this issue. The Court's emphasis on the State's obligation to ensure bare minimum standards of

³⁴⁶ Id.

³⁴⁷ AIR 1984 SC 802

livelihood and health is consistent with the notion that development must be people-centered and improve everyone's quality of life, including the underprivileged. The Court heavily relied on the Directive Principles of State Policy, including Articles 39(e), 41, and 47, which address public assistance, guaranteeing humane working conditions, and improving public health and nutrition, in order to hold the State responsible.

The ruling in *Parmanand Katara v. Union of India* ³⁴⁸ not only reinforced the constitutional interpretation of Article 21's Right to Life, but it also establishes a vital connection to the more general notion of the Right to Development. Development is defined in the context of modern human rights discourse as the expansion of human potential and the capacity of individuals to live lives of dignity, security, and well-being rather than just economic growth or infrastructure. The Supreme Court's recognition of the Right to Emergency Medical Care as an unassailable component of the Right to Life in this instance reflects this more comprehensive view of development.

The Court underlined that healthcare is a basic right of every person, regardless of socioeconomic background, and that no one should be denied medical assistance in an emergency because of formalities or bureaucratic procedures. This is entirely consistent with the tenets of the Right to Development, which stipulates that every person and community must gain from advancements and have equal access to resources for survival and well-being, including housing, healthcare, education, and sanitary facilities. The ruling basically maintains that meaningful progress is dependent on having access to healthcare that can save lives, which is a prerequisite for the fulfilment of other rights.

The Court acknowledged that without the guarantee of health and life, people are effectively excluded from the process of development, making equality and justice unattainable. In addition, the decision reinforces the State's positive obligations—a fundamental component of the Right to Development—by directing the government and medical institutions to create systems where immediate medical treatment is available and accessible. This requires the State to act not as a passive regulator but as

³⁴⁸ AIR 1989 SC 2039

an active provider and protector of essential services that enable individuals to live fully and participate in social and economic life.

The Parmanand Katara case is a legal confirmation that development needs to be inclusive, rights-based, and people-centered. The ruling clarifies that maintaining health, particularly during emergencies, is not only a moral and legal obligation but also a developmental requirement. The Court emphasized that the Right to Development must ensure that everyone, especially the weak and excluded, has timely and adequate access to healthcare by tying the Right to Health and the Right to Life together and presenting both as necessary for survival and dignity.

4.2.5 Right to Healthy Environment and Sustainable Development

The lawsuit in *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*³⁴⁹, which was resolved in the middle of the 1980s, was among the first environmental degradation-related public interest litigation (PIL) cases in India. A non-governmental organization called the Rural Litigation and Entitlement Kendra (RLEK) submitted the case, drawing attention to the detrimental effects of limestone quarrying in the Himalayan region of Mussoorie-Dehradun. The quarries threatened the local biodiversity and public health in addition to causing extensive deforestation, landslides, and pollution of the air and water.

In an effort to protect the environment, the Supreme Court ordered the closure of multiple limestone quarries that were located in environmentally delicate locations. The Court clearly prioritized environmental protection over uncontrolled expansion, even though it recognized the economic significance of the quarrying industry and the livelihoods it supported. Recognizing that ecological preservation is a crucial aspect of human development, the Court ruled that "a balance must be struck between development and conservation". It underlined that everyone, especially those who reside in ecologically fragile places, has a fundamental right to environmental preservation and that it is not a luxury for the wealthy.

The concept of "right to development" was established by the Court's reasoning, even though the term was not used specifically in the ruling. It demonstrated that public

³⁴⁹ 1985 AIR 652

health, intergenerational justice, and environmental sustainability are essential components of real growth. This ruling served as an early expression of the concept of sustainable development, which combines the rights to environmental protection and development.

The *Vellore Citizens' Welfare Forum v. Union of India*³⁵⁰ case started because of the serious environmental damage that Tamil Nadu's tanneries, especially those in the Vellore district, were causing. The petitioners claimed that these tanneries' untreated effluents were contaminating river systems, agricultural land, and groundwater, endangering public health and infringing on the right to a safe and clean environment. The Supreme Court utilized this occasion to establish the groundwork for contemporary environmental jurisprudence in India by treating the petition as a public interest litigation (PIL) in accordance with Article 32.

The Court publicly acknowledged sustainable development as a crucial element of Indian constitutional law in a historic ruling. According to this definition, sustainable development is development that satisfies current needs without endangering the capacity of future generations to satisfy their own, thereby balancing the demands of environmental preservation and economic growth. "The traditional concept that development and ecology are opposed to each other is no longer acceptable," the Court said, in a significant statement.³⁵¹ Instead, the sustainable development principle calls for a balance that protects natural integrity while fostering social and economic progress. This demonstrated that environmental preservation is a prerequisite for significant and long-lasting advancement rather than a hindrance to it.

Under Article 21, the Court established and affirmed important elements of international environmental law and proclaimed them to be part of national law. According to the precautionary principle, it is the developer's or industrialist's responsibility to demonstrate that their operations are environmentally benign. Owing to the Polluter Pays Principle, the polluter bears the financial responsibility for avoiding or repairing environmental harm. Intergenerational equity makes ensuring that the

³⁵⁰ 1996 INSC 952

³⁵¹ Supra note 350

rights of future generations are shielded from the damage that current acts are causing to the environment.

The Court established the foundation for a constitutionally based theory of sustainable development by incorporating these ideas into Indian constitutional law, expanding the reach of Article 21, and redefining the parameters of the right to life to encompass the right to a healthy environment. The ruling in *Vellore Citizens* radically reinterpreted the right to development rather than only upholding environmental regulations. Before this instance, development was frequently seen in a limited sense and associated with industrial expansion or GDP growth. The Court did clarify, though, that real development needs to be economically fair, socially-inclusive and ecologically sound.

Through this conceptualization, development was elevated from a solely economic goal to a human rights-based process in which planning for development takes into account each person's dignity, health, and environmental well-being. The Court tacitly acknowledged that any development that infringes fundamental rights and compromises human dignity is one that pollutes, displaces, or damages the environment. The Court improved the qualitative aspect of the right to development by requiring that economic activity conform to human rights and environmental standards. It evolved from a right to unchecked industrialization to a right to significant advancement that upholds social justice and ecological limits.

The Sardar Sarovar Dam on the Narmada River, a huge multifunctional river valley project meant to supply irrigation, drinking water, and hydroelectric power to multiple Indian states, was at the centre of the *Narmada Bachao Andolan v. Union of India*³⁵². Citing extensive indigenous people displacement, forest area loss, and inadequate rehabilitation, the petitioners led by the Narmada Bachao Andolan contested the project's environmental clearance. A fundamental point was raised by the case: may major infrastructure development be permitted if it has substantial negative social and environmental effects.

The Supreme Court vehemently upheld the significance of development as a constitutional and national imperative in its majority ruling. It acknowledged that the Sardar Sarovar Project was essential to the economic development of millions of

³⁵²AIR 2000 SUPREME COURT 3751

people, particularly in areas of Gujarat, Madhya Pradesh, and Maharashtra that were prone to drought and water scarcity. According to the Court, depriving individuals in poor areas access to water, food security, and electricity due to general environmental objections may be equivalent to denying them their right to development.

By arguing that the right to a living, housing, and basic utilities are essential elements of human dignity, the Court linked development to the right to life under Article 21 of the Constitution. It emphasized the need for inclusive and fair development, and initiatives like Sardar Sarovar were created to close regional gaps. As a result, the Court gave the right to development constitutional legitimacy in cases involving public infrastructure and state-led welfare programs by elevating it as an extension of fundamental rights.

The Court affirmed that development must be sustainable even as it upheld the proposal. The Court highlighted the concept of sustainable development, which aims to strike a balance between ecological integrity and developmental objectives, drawing on prior environmental law such as *Vellore Citizens Welfare Forum v. Union of India*.³⁵³ Notwithstanding the importance of the environment, the Court pointed out that no development can take place in a zero-impact situation and that appropriate mitigation, such as environmental protections and restoration, must be deemed legal. Importantly, the Court highlighted that rehabilitation of displaced persons is not merely a policy matter but a constitutional duty emanating from Article 21. According to the ruling, displacement brought on by development is acceptable as long as it is followed by equitable, efficient, and just relocation.

In Indian environmental and developmental jurisprudence, the NBA ruling became a seminal case. It made clear that the right to development is a goal that is guaranteed by the constitution, particularly when it comes to enhancing the lives of underprivileged groups. But it also established a standard for considering development as a controlled process rather than an unbridled imperative. The Court sent a message that development projects must be carried out properly and under constant supervision by mandating gradual environmental compliance and restoration.

³⁵³ Supra note 350

A significant ruling in both constitutional and environmental law, the Supreme Court's ruling in the Tehri Dam case i.e. *N D Jayal v. Union of India*³⁵⁴ assesses the relationship between the rights to development and the environment, both of which are based on Article 21 of the Indian Constitution. The petition contested the Tehri Dam's ongoing development on the basis of inadequate rehabilitation for displaced residents, safety issues, and environmental degradation. The petitioners sought that the project be stopped, claiming that the 1990 conditional environmental clearance was not sufficiently complied with. They also claimed that the dam did not adhere to sustainable development standards and questioned its safety in a seismically vulnerable area.

The Court emphasized that both the right to development and the right to the environment are fundamental, seeing them as essential elements of Article 21. It supported the idea of sustainable development as a way to strike a balance between the need for development and environmental preservation. The Court reaffirmed that growth must be inclusive and sustainable rather than come at the expense of environmental degradation, citing previous decisions such as the Vellore Citizens Welfare Forum and Narmada Bachao Andolan.

“The right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic wellbeing, and includes within its definition the guarantee of fundamental human rights. The 'development' is not related only to the growth of GNP. In the classic work - 'Development As Freedom' the Nobel prize winner Amartya Sen pointed out that 'the issue of development cannot be separated from the conceptual framework of human right'. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human right. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development. Therefore, the adherence of sustainable development principle is a sine qua non

³⁵⁴ 2004 (9) SCC 362

for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand right to development is also one. Here the right to 'sustainable development' cannot be singled out. Therefore, the concept of 'sustainable development' is to be treated an integral part of 'life' under Article 21. ”³⁵⁵

The Supreme Court reiterated that sustainable development is necessary to combine the rights to development and the environment, which are both basic rights under Article 21. Since it enhances human dignity and well-being, its effects on life quality must be taken into account while evaluating it. The Court decided that development projects like Tehri, which seek to supply large areas with irrigation, energy, and water security, are within the bounds of development that is permitted by the constitution. Such initiatives must, however, follow the sustainable development principle, and the state has an obligation to apply environmental criteria in a sincere manner.

The Supreme Court acknowledged in this decision that the right to development, like the right to life guaranteed by Article 21 of the Constitution, extends beyond economic expansion and material advancement. Rather, it covers a more comprehensive understanding of environmental well-being, social justice, and human dignity. The petition brought attention to Mumbai's worsening environmental problems as a result of poorly managed urban expansion, particularly with relation to the conversion of mill lands for private and commercial usage. The petitioners contended that such unrestrained development infringed upon citizens' rights to liveable city infrastructure and a healthy environment, two essential elements of the right to development.

Development cannot take place in a vacuum, as the Supreme Court's deliberations pointed out. The Court reaffirmed that growth must be sustainable, guaranteeing a balance between current demands and the rights of future generations, citing past rulings like *Virendra Gaur v. State of Haryana*³⁵⁶ and *M.C. Mehta v. Union of India*³⁵⁷. In this way, the right to development is a composite human right, combining aspects of the civic, political, economic, and environmental spheres. According to the Court, development that degrades the environment or excludes essential services like public

³⁵⁵ Supra note 354

³⁵⁶ (1995) 2 SCC 577

³⁵⁷ 1987 AIR 1086

housing, open spaces, or clean air is incompatible with constitutional principles. Public health, equitable urban planning, and environmental sustainability must inform development policies, the Supreme Court affirmed, specifically referring to the concept of sustainable development as the link between the right to development and the right to the environment.

The Supreme Court's stance in this case provides a human-centered and progressive interpretation of the right to development. It demands a development paradigm that is inclusive, participative, and environmentally sustainable, going beyond conventional economic measurements. A developing judicial philosophy, according to which development must be equitable, planned, and accountable to future generations, is reflected in the ruling. It further clarifies that, based on the idea of sustainable development, the right to development cannot supersede the right to a safe, healthy, and clean environment; rather, it must coexist with it.

The Great Indian Bustard (GIB) and the Lesser Florican are critically endangered, and their numbers have drastically decreased as a result of habitat destruction and infrastructure development, particularly from overhead power transmission lines in Gujarat and Rajasthan. In *M.K. Ranjith Singh v. Union of India*³⁵⁸, a writ petition was filed under Article 32 of the Constitution, requesting immediate judicial intervention to protect these species. The petition called for extensive conservation measures, the undergrounding of current electricity lines, and a moratorium on new construction. Thus, the case brought to light the conflict between India's objectives for the development of renewable energy and biodiversity conservation, posing more general ecological and constitutional issues.

The Supreme Court reiterated that, in accordance with Article 21, the right to a healthy environment is a necessary component of the right to life. The Court emphasized that environmental deterioration, whether brought on by industrial pollution or biodiversity loss, directly affects human well-being and breaches constitutional rights, citing earlier judgments such as *M.C. Mehta v. Kamal Nath*³⁵⁹ and *Virender Gaur v. State of*

³⁵⁸ 2024 SCC Online SC 570

³⁵⁹ 2000 (6) SCC 213

*Haryana*³⁶⁰. The Court underlined that maintaining biodiversity, ecological balance, and clean air are all essential components of a decent existence.

“Without a clean environment which is stable and unimpacted by the vagaries of climate change, the right to life is not fully realised. The right to health (which is a part of the right to life under Article 21 is impacted due to factors such as air pollution, shifts in vector-borne diseases, rising temperatures, droughts, shortages in food supplies due to crop failure, storms, and flooding. The inability of underserved communities to adapt to climate change or cope with its effects violates the right to life as well as the right to equality. This is better understood with the help of an example. If climate change and environmental degradation lead to acute food and water shortages in a particular area, poorer communities will suffer more than richer ones. The right to equality would undoubtedly be impacted in each of these instances.”³⁶¹

A significant change in the Indian judiciary's interpretation of the right to development may be seen in the ruling in *M.K. Ranjith Singh* case. The Court reinterpreted development via a rights-based lens, stressing that real development must be inclusive, sustainable, and ecologically balanced. Development has historically been linked to infrastructure, GDP growth, and industrial advancement. The Court acknowledged that development cannot be undertaken at the expense of biodiversity, cultural legacy, or the welfare of future generations, nor can it be done in a vacuum. According to this understanding, the right to development is synonymous with improvements in life, health, and dignity rather than just growth.

The Court gave the right to development a more comprehensive and enforceable dimension by connecting it to Articles 21 and 14 of the Constitution. According to the ruling, the right to development is a composite human right that includes equality, health, clean energy access, environmental preservation, and the capacity to live in dignity rather than a single, economic right. According to this perspective, the right to development is protected by fundamental rights and is therefore justiciable and

³⁶⁰ Supra note 356

³⁶¹ Supra note 358

susceptible to judicial review, particularly in cases when state acts disproportionately impact ecologically significant or vulnerable communities.

The judgment's articulation of the right to development in conjunction with the sustainable development principle is one of its main contributions. The Court emphasized that development is fundamentally wrong and unconstitutional if it worsens climate change or causes the extinction of species like the Great Indian Bustard. It also disapproved of strict environmentalism that impedes the advancement of clean energy. The idea that environmental integrity is a prerequisite for development rather than a hindrance is reinforced by this contradiction. Therefore, having access to sustainable, renewable infrastructure without compromising environmental boundaries is part of the right to development.

The right to development gained a climate justice component when the Court acknowledged the right to be free from the negative impacts of climate change.³⁶² It recognized that social and economic disparities already in place are exacerbated by climate vulnerability, particularly for the impoverished, islanders, and indigenous people. Therefore, development must encompass not only resource access but also equitable burden-sharing, adaptation assistance, and protection from climate-related suffering. By doing this, the Court linked distributive justice—which makes sure that the advantages and costs of growth are not shared unfairly—with development.

By approving India's renewable energy initiative, the Court significantly improved the right to development. The Court subtly acknowledged that access to clean, dependable, and reasonably priced energy is now a part of development rights by approving the nation's attempts to increase solar and wind power as part of its international obligations under the Paris Agreement. The ruling also noted that localized solar power boosts local economies, enhances livelihoods, and lowers energy poverty, all of which contribute to grassroots development. This interpretation gives the State the authority to carry out its responsibilities under the right to development by implementing energy transitions that are climate resilient.

The Court maintained that evidence-based planning, stakeholder consultation, and scientific knowledge must all be considered when making choices about development.

³⁶² Supra note 358

By allowing an expert committee to make technical choices (such as whether underground cables are feasible), it made clear that any development that is deemed legitimate must have a democratic and scientific foundation. This strengthens the core idea of the right to development, which is that it encompasses inclusive, transparent, and participatory procedures in addition to results.

In the end, *M.K. Ranjith Singh v. Union of India*³⁶³ contributed to the harmonization of three interconnected rights: The right to the environment, the right development, and the right to climate resiliency. The Court's approach acknowledges that both rights are mutually reinforcing rather than giving one precedence over the other. Just as the right to a clean environment must promote fairness, renewable energy, and human growth, the right to development today encompasses the right to an ecologically safe.

Within the planned township of Auroville, a distinctive multinational society established on the vision of "The Mother" (Mirra Alfassa) and Sri Aurobindo, a disagreement over the construction of roads—more especially, the "Crown Road"—led to the Auroville lawsuit. In accordance with the Auroville Foundation Act of 1988, the Government of India certified the project's Master Plan, which was subsequently notified by the Ministry of Urban Development in 2010. A group of locals petitioned the National Green Tribunal (NGT) to block the construction of a road through Darkali, a forested area, on the grounds that it was a "deemed forest" and needed prior environmental approval. Using the cautious principle, the NGT partially agreed with this reasoning and ordered the Auroville Foundation to stop construction and update its plans. In addition, it authorized limited road construction under monitoring and mandated the establishment of a Joint Committee to investigate the environmental effects

By acknowledging that the Auroville Master Plan, which had been authorized by appropriate statutory bodies as early as 2001, had legal effect, the Supreme Court in the case of the *Auroville Foundation v. Navroz Kersasp Mody*³⁶⁴ made it plain that planned development was given priority. The Court affirmed the importance of environmental and precautionary principles, but warned that they shouldn't be used to stop authorized development projects unless there are clear and present legislative violations. Thus, the

³⁶³ Supra note 358

³⁶⁴ [2025] 3 S.C.R. 525

decision reaffirms that speculative or overblown environmental concerns cannot stop lawful development.

The right to development is a basic right, and growth through planned infrastructure, including as roads, housing, and public services, cannot be halted forever, the Court affirmed, strongly citing Article 21 as well as Articles 14 and 19 of the Constitution. The Court reiterated that sustainable development must balance ecological protection and economic progress, but shouldn't lead to a developmental standstill, citing seminal judgments like *N.D. Jayal v. Union of India*³⁶⁵ and *Essar Oil v. Halar Utkarsh Samiti*.³⁶⁶

The Supreme Court's ruling underlined that ecological issues must guide, not supersede, development that is based on law, planning, and vision. It made it plain that unless there is a blatant and established breach of environmental legislation, courts and tribunals must refrain from interfering with statutory development plans. Development as a constitutional and public interest necessity is reaffirmed by the ruling, particularly when it is carried out with environmental and procedural safeguards in place. The case demonstrates a rights-based, well-balanced strategy that emphasizes the necessity of ecological stewardship while clearly prioritizing legal, innovative development.

The Supreme Court has repeatedly upheld that the right to development is a component of Article 21, acknowledging that a dignified existence is centered on having access to necessities including housing, electricity, water, and education. The Court has argued, therefore, that environmental obligations cannot be disregarded in the exercise of this right. The guiding premise is the theory of sustainable development, which emphasizes that progress must satisfy current needs without sacrificing the capacity of future generations to satisfy their own.

The judiciary has regarded development and the environment as interrelated constitutional commitments rather than as conflicting forces. The judiciary's view essentially represents a rights-based, balanced approach in which progress is not halted under the pretence of environmentalism, nor is environmental protection compromised for development. Rather, the idea that genuine development is inclusive,

³⁶⁵ Supra note 354

³⁶⁶ 2004 (2) SCC 392

environmentally conscious, and constitutionally consistent has been reaffirmed by the courts.

4.2.6 Right to Education

In a landmark ruling of *Mohini Jain v. State of Karnataka*³⁶⁷, the Supreme Court ruled that, in accordance with Article 21 (the right to life and personal liberty), the right to education is a basic right. The Court held that denying someone access to education, particularly because of financial constraints, is against their right to equality and life, and that education is necessary for the whole development of a person's personality. According to the Court, charging excessive tuition essentially denies impoverished students their fundamental rights, rendering the right to an education a pipe dream for a significant portion of the population.

A dignified life is impossible without education, the Court underlined, and the right to life encompasses the right to live with dignity. According to the ruling, the State cannot avoid its constitutional duty to educate its people by establishing a costly privatized system. The groundwork for subsequent rulings and legislative changes was laid by this case, which was the first court to recognize the right to education as being enshrined in Article 21. As professional education in India became more commercialized, the case of *Unni Krishnan J.P. v. State of Andhra Pradesh*³⁶⁸ came up. There were worries that only the wealthy would be able to afford higher education because a number of private educational institutions, including as medical and engineering schools, were imposing capitation fees. The petitioners contested this practice, posing significant queries regarding the extent of the Constitution's Article 21 right to education and the government's responsibility to guarantee equal access to education.

In a five-judge Constitution Bench decision, the Supreme Court ruled that Article 21 of the Constitution's guarantee of life and personal liberty implicitly includes the right to education. The Court did, however, clarify the extent of this power by declaring that: in accordance with Article 45 of the Directive Principles of State Policy, the State is required to offer free and compulsory education to children up to the age of 14. After

³⁶⁷ 1992 AIR 1858

³⁶⁸(1993) 1 SCC 645

that age, the duty becomes progressive, and the state's economic capabilities and development boundaries apply to the right to higher education.

The Unni Krishnan ruling had a significant impact. It emphasized the interconnectedness of fundamental rights and directive principles and established the nature and boundaries of the State's duty to provide education. More significantly, it had a direct impact on the 86th Constitutional Amendment Act (2002), which added Article 21A to the Constitution, guaranteeing children aged 6 to 14 free and compulsory education as a basic right. Additionally, the amendment included Article 51A(k) and changed Article 45, making it a basic responsibility of parents to educate their children.

The case of *Election Commission of India v. St Mary's School & Ors*³⁶⁹ started when schools objected to the frequent use of their teaching personnel for administrative and electoral tasks like polio drives, censuses, and voter list updates. This practice negatively impacted pupils' right to an education and interfered with classroom hours. The petitioners argued that the ongoing expulsion of instructors from classes for public service purposes that do not include instruction violated the children's right to holistic development and the fundamental right to education guaranteed by Article 21A. Therefore, the issue directly contrasted two constitutional values: the sovereign function of holding free and fair elections and the right to education.

The Supreme Court affirmed in its decision that, as previously stated in *Mohini Jain v. State of Karnataka*³⁷⁰ and *Unni Krishnan v. State of Andhra Pradesh*³⁷¹, the right to education is both a stand-alone fundamental right under Article 21A and an essential part of the right to life under Article 21. The Court emphasized that education is the cornerstone of human dignity and that the right to life encompasses all rights necessary for living with that dignity. The Preamble's greater goals of justice, liberty, equality, and fraternity cannot be achieved without access to high-quality education. One of the main pillars of human progress is education, which allows people to reach their full potential, access economic opportunities, and engage meaningfully in democracy.

By relating education to the right to development, the Court significantly broadened the normative scope of education and interpreted it as a human right, of which access to

³⁶⁹ AIR 2008 SUPREME COURT 655

³⁷⁰ Supra note 367

³⁷¹ Supra note 368

education is a fundamental component. The ruling underlined that social advancement through the provision of free and equal education is a necessary component of development in a democratic society, which cannot be solely judged in economic terms. The Court affirmed that education is crucial for individual development, cultural awareness, and democratic participation—the cornerstones of inclusive development—by citing international jurisprudence and human rights conventions, particularly the European Court of Human Rights' *Leyla Sahin v. Turkey*³⁷² ruling.

Since education gives people the information, abilities, and awareness needed to actively engage in social, political, and economic life, it is a fundamental component of the right to development. People cannot claim their rights, take advantage of opportunities, or advance society without education. Education is essential for inclusive and holistic development because it empowers people, lowers inequality, fosters innovation, and fortifies democratic governance.³⁷³ Additionally, it makes it possible for underprivileged groups to actively engage in the process of nation-building and end the cycle of poverty. Consequently, guaranteeing access to high-quality education is not only a basic right but also a prerequisite for the complete fulfilment of the right to development.

4.2.7 Right to Privacy

In a contemporary constitutional democracy, the rights to privacy and development are not only interdependent but also basic rights in and of themselves. The right to privacy is a fundamental component of Article 21 of the Constitution, which protects the right to life and personal liberty, as acknowledged in *Justice K.S. Puttaswamy v. Union of India*³⁷⁴. This historic ruling made privacy a natural and unalienable right, extending to freedom of thought, bodily integrity, information privacy, and decision-making autonomy.

On the other hand, the judiciary has understood the right to development—which includes access to technology, a clean environment, housing, livelihood, health care, and education—as a crucial component of a dignified existence, even though it is not

³⁷² App No 44774/98, ECHR 2005.

³⁷³ Supraja N. Subramanian, An Analysis of the Right to Education and Human Development -The Indian Scenario, 4 INT'L J.L. MGMT. & HUMAN. 1946 (2021).

³⁷⁴ (2017) 10 SCC 1

expressed expressly. The Supreme Court has recognized that development is the increase of human capabilities and freedom rather than just economic growth in instances such as *Narmada Bachao Andolan*, *Unni Krishnan*, and *Mohini Jain*.

Furthermore, privacy itself has a developmental purpose. It guarantees the right to free speech, especially for vulnerable and excluded groups. It enables people to make independent choices about their lifestyle, gender identity, health, reproduction, religion, and other areas of their lives—all of which are directly related to developmental outcomes like social justice and human well-being.³⁷⁵ Lack of privacy can lead to surveillance-based repression, discrimination in employment and education, and exclusion from state welfare programs, all of which impede inclusive and participatory growth.³⁷⁶

The relationship between privacy and development is even more important in an economy that is digitizing quickly.³⁷⁷ Large volumes of personal data are needed for biometric identity systems, smart cities, artificial intelligence, and data-driven governance.³⁷⁸ To ensure ethical and rights-based development as well as privacy protection, the use of this data must be guided by the principles of data reduction, purpose limitation, informed consent, and openness. Without these tenets, development runs the risk of turning into forceful, exploitative, and exclusive.³⁷⁹

Therefore, the normative framework for humane and sustainable growth is strengthened by the judiciary's acknowledgment of privacy as a basic right.³⁸⁰ These rights are complimentary rather than antagonistic; privacy makes it possible for rights-based, empowering, and participatory development. In order to prevent progress from coming at the expense of equality, dignity, and personal liberty, constitutional governance must work to guarantee that infrastructure and technical advancements are consistent with individual liberties.³⁸¹

³⁷⁵ Ojaswi Gupta, *Right to Privacy*, 4 INT'L J.L. MGMT. & HUMAN. 1086 (2021).

³⁷⁶ *Id.*

³⁷⁷ Swarnim Ghatani, *Right to Information and Good Governance: A Technical Dimension*, 11 INDIAN J.L. & JUST. 130 (March 2020).

³⁷⁸ *Id.* 372.

³⁷⁹ *Id.* 372.

³⁸⁰ *Supra* note 82

³⁸¹ *Supra* note 82

4.2.8 Women's Right and Rights of Marginalized Communities

The rights of marginalized populations are inextricably tied to the right to development since it includes equity, justice, participation, and the advancement of human capacities in addition to economic growth and infrastructure advancement.³⁸² Historical injustice, systemic exclusion, and structural inequality often keep marginalized communities—such as Scheduled Castes, Scheduled Tribes, religious minorities, women, people with disabilities, LGBTQ+ people, and economically disadvantaged sections—at the margins of mainstream development.³⁸³ According to Indian courts' interpretations of the right to development and international frameworks such as the United Nations Declaration on the Right to Development (1986), no group should be left behind and the advantages of growth must be distributed fairly.³⁸⁴

The right to development and women's rights are strongly related. International human rights frameworks such as the UN Declaration on the Right to Development, 1986 and Indian constitutional law both acknowledge that development is about more than just economic progress; it's also about improving human capabilities and freedoms. By defining development as the fulfillment of all fundamental rights, especially for historically oppressed groups like women, the judiciary has recognized this connection. Gender justice is essential to inclusive development, and the courts have confirmed this by increasing access to education, livelihood, reproductive health, and safety.³⁸⁵

The Supreme Court of India issued a historic ruling in *Vishaka v. State of Rajasthan*³⁸⁶, establishing the first all-encompassing framework to handle workplace sexual harassment of women. After Bhanwari Devi, a social worker in Rajasthan, was brutally gang-raped while carrying out her duties to stop child marriage, the story was brought to light. There was no explicit law in India at the time that addressed or penalized sexual harassment in work situations, especially in informal sectors where women were more susceptible, so the occurrence revealed a clear legal gap.

³⁸² Amber Tanweer, LGBT Rights in India, 2 INT'L J.L. MGMT. & HUMAN. 414 (February-March 2019).

³⁸³ Tanweer, Supra note 380

³⁸⁴ Tanweer, Supra note 380

³⁸⁵ Ann Stewart, Debating Gender Justice in India, 4 SOC. & LEGAL STUD. 253 (1995).

³⁸⁶ 1997 AIR SCW 3043

In light of this legislative gap, the Supreme Court interpreted Articles 14, 15, and 21 and used its constitutional authority under Article 32 to declare that sexual harassment is a violation of women's fundamental rights, particularly their rights to equality, non-discrimination, personal liberty, and dignity. The Court emphasized that women's freedom to work depends on a safe and respectable workplace, and that without it, half of the population will not experience real economic and social advancement. Women's capacity to engage in and make contributions to the development of their country is seriously hampered in the absence of safety and respect in professional settings.

In order to address this, the Court released what became known as the Vishaka Guidelines, which required preventive and redressal measures at all workplaces and, for the first time, defined sexual harassment in the Indian context. Among these were the establishment of complaint committees, the need for institutional accountability, and awareness-raising and sensitization initiatives. The Court clarified that until formal legislation was passed by Parliament, these instructions would be regarded as binding law under Article 141 of the Constitution.³⁸⁷

In addition to being a groundbreaking example of judicial activism, the Vishaka ruling was a significant step in advancing gender justice and women's rights to development. The Court established the foundation for an inclusive development model in which gender equality is not optional but rather constitutional by acknowledging that economic empowerment cannot be divorced from individual safety and dignity.³⁸⁸

The dispute in the case of *Samatha v. State of Andhra Pradesh*³⁸⁹ started when a social action group called Samatha contested the sale of tribal land to private mining firms in Andhra Pradesh's Scheduled Areas. The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, which forbade the transfer of tribal land to non-tribals in order to prevent alienation and exploitation, preserved these lands, which were occupied by Scheduled Tribes (STs). The government of Andhra Pradesh had given mining leases to private, non-tribal organizations in violation of these legislative safeguards. According to the petitioner, this went against the protections provided for the tribal community by the Fifth Schedule of the Constitution and other regulations.

³⁸⁷ Supra note 386

³⁸⁸ Supra note 386

³⁸⁹ 1997 (8) SCC 191

The Supreme Court was asked to rule on two main issues: whether private mining leases on tribal territory in Scheduled Areas were lawful and whether, even with government sanction, tribal land may be transferred to non-tribal corporations. The case raised questions about whether mining-related economic growth may supersede constitutional protections for underprivileged areas and raised issues of development vs native rights.

A three-judge Supreme Court panel, presided over by Justice K. Ramaswamy, ruled in a landmark decision that it was unlawful to issue mining licenses to private businesses in Scheduled Areas. According to the Court's interpretation of the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), the Andhra Pradesh Land Transfer Regulation, and the Fifth Schedule of the Constitution, tribal lands cannot be given to private parties, not even by the State. The decision covered all of India's Fifth Schedule regions, not just Andhra Pradesh. In India, *Samatha v. State of Andhra Pradesh*³⁹⁰ established a precedent for sustainable development, environmental justice, and indigenous rights. It reaffirmed the notion that the community owns the natural resources in Scheduled Areas and that private or state-led economic growth must respect ecological balance, tribal rights, and cultural integrity.

The Supreme Court of India issued a historic decision in the Vedanta judgment in *Orissa Mining Corporation v. Ministry of Environment and Forests*,³⁹¹ regarding Vedanta Resources' and the Orissa Mining Corporation's (OMC) proposed bauxite mining in the Niyamgiri Hills of Odisha. The mining project was marketed as a development project with the goal of providing raw materials for an aluminium refinery. The Dongria Kondh, a native tribal group in the Niyamgiri area, fiercely opposed it since they revered the hills and relied on them for their livelihood and sense of cultural identity.

Whether development projects could move forward on Scheduled Tribes' lands without their free, prior, and informed consent was the main constitutional question, especially since those lands are protected by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). The Supreme Court

³⁹⁰ Supra note 389

³⁹¹ (2013) 6 SCC 476)

confirmed that tribal groups had both constitutional and legal rights over their forest areas and places of worship, upholding their rights under the FRA.

Most significantly, the Court acknowledged the notion of participatory government by giving the Gram Sabhas (village assemblies) of the impacted communities the authority to determine whether or not to approve the mining project. It maintained that indigenous populations' voices, cultures, and ecological expertise must be respected before development is pushed from the top down. The Court underlined that genuine development must respect the rights of marginalized groups, including Scheduled Tribes, and be democratic, inclusive, and environmentally sustainable.

This ruling reaffirmed that the right to development encompasses the right to refuse harmful development, marking a turning point for environmental justice and tribal empowerment in India. It established a standard for requiring the full participation and informed consent of those most impacted when making decisions about development, particularly when it comes to traditional lands and cultural survival.

4.3 INDIVIDUAL RIGHTS VERSUS COLLECTIVE RIGHTS

Within the framework of human rights and constitutional law, there are two separate types of rights: individual rights and collective rights.³⁹² The rights and safeguards granted to individuals, as well as to groups, communities, and societies at large, are covered by these rights. Although they have different goals and ramifications, they are both crucial elements of a society that is just and equal.³⁹³

Each person's inherent freedoms and rights as a human being are referred to as individual rights.³⁹⁴ These rights are frequently based on the ideas of individual liberty, dignity, and self-determination. People are shielded by their individual rights against excessive intervention or violations by the government, other people, or organizations. For their acknowledgment and protection, they are frequently enshrined in constitutions or other legal documents.³⁹⁵

³⁹² Lesley A. Jacobs, Bridging the Gap between Individual and Collective Rights with the Idea of Integrity, 4 CAN. J. L. & JURISPRUDENCE 375 (July 1991)

³⁹³ Id

³⁹⁴ B.G. Ramcharan, Individual, Collective and Group Rights: History, Theory, Practice and Contemporary Evolution, 1 Int'l J. on Group Rts. 27 (1993).

³⁹⁵ Id

Conversely, collective rights refer to the rights of communities, groups, and entire societies. These rights acknowledge the importance of a group of people's shared identities, traditions, and historical experiences.³⁹⁶ The goal of collective rights is to safeguard the welfare and interests of underprivileged populations, indigenous peoples, and other organizations that might be subject to historical injustices or systematic disadvantages.³⁹⁷

The 1986 United Nations Declaration on the Right to Development acknowledged the right to development as a comprehensive human right that recognizes everyone's and everyone's right to take part in, contribute to, and enjoy economic, social, cultural, and political growth.³⁹⁸ It seeks to advance an inclusive, equitable, participative, people-centered, and sustainable development paradigm. Both individual and collective aspects of this right must be upheld and balanced in order to guarantee equity and justice in the results of growth.³⁹⁹

The judiciary is essential to striking a balance between the rights of individuals, the rights of the group, and the interests of development. Judicial decisions have clearly evolved over time, particularly in nations like India.⁴⁰⁰ More recently, they have embraced developmental rights (economic growth, infrastructure development, etc.), moving away from prioritizing individual rights (like property and personal liberty) and toward acknowledging collective rights (like environment and public health).⁴⁰¹ The Indian judiciary had interpreted the rights associated with Part III of the Constitution in a three-phase manner. In first phase, there was a restrictive interpretation of the rights by giving priority for individual rights while the second phase gave importance to collective rights which later changed into giving more importance to broader developmental rights.

³⁹⁶ Ramcharan, Supra note 394

³⁹⁷ Ramcharan, Supra note 394

³⁹⁸ Roland Y. Rich, *The Right to Development as an Emerging Human Right*, 23 VA. J. INT'L L. 287 (Winter 1983).

³⁹⁹ Id

⁴⁰⁰ Satyam Chauhan, *Safeguarding Individual Rights and Collective Rights Under Constitutional Frameworks: A Comparative Study*, White Black Legal L.J., ISSN: 2581-8503

⁴⁰¹ Id

- Phase I- Restrictive Approach to Development

The Indian judiciary's primary focus in the immediate post-independence period was upholding the civil and political rights of individuals as guaranteed by Part III of the Constitution.⁴⁰² But at this stage, the concept of the right to development—which includes collective, cultural, social, and economic rights meant to enhance the standard of living—was mainly missing from judicial discourse.⁴⁰³ This was caused in part by the judiciary's strict and segregated interpretation of fundamental rights and in part by the belief that the legislative and executive branches should have more authority than the courts to oversee the state's development.

During this stage, the courts took a limited and formalistic stance toward rights like the right to property (Article 19(1)(f) and 31) and the right to life (Article 21). Rather than substantive justice, these rights were interpreted solely in terms of procedural legality. The Supreme Court, for instance, ruled in *A.K. Gopalan v. State of Madras*⁴⁰⁴ that "procedure established by law" under Article 21 did not need that the law be reasonable or fair. This limited the judiciary's ability to advance social and developmental justice since the Court declined to consider whether laws were reasonable, even when they significantly restricted human liberty.

The courts in Phase I did not consider such broad interpretations, even in cases when socio-economic rights would have been indirectly safeguarded, such as through the right to health, livelihood, or housing (all of which were eventually acknowledged as components of Article 21). Since they were deemed non-justiciable, the Directive Principles of State Policy (Part IV), which outline objectives that are closely related to the right to development, such as ensuring a just economic order, enhancing public health, and offering education, were not included in the scope of enforceable rights. This served to further solidify the judiciary's hesitancy to become involved in issues pertaining to economic justice or the general welfare.

Furthermore, property rights were fiercely protected as essential rights throughout this time. The Supreme Court underlined in instances such as *Bela Banerjee v. State of West*

⁴⁰² Nikhil Pratap, *Conflicting Fundamental Rights Under the Indian Constitution: Analyzing the Supreme Court's Doctrinal Gap* (2022) (LL.M. thesis, Columbia L. Sch.).

⁴⁰³ *Supra* note 399

⁴⁰⁴ *Supra* note 314

*Bengal*⁴⁰⁵ and *State of West Bengal v. Subodh Gopal Bose*⁴⁰⁶ that the state must offer sufficient compensation for any land acquisition. Individuals' economic interests were safeguarded, while land reforms and other developmental projects—especially those that sought to redistribute resources in order to attain social equity—were impeded. In the end, this conflict resulted in numerous constitutional modifications, which ultimately led to the right to property being struck from the list of fundamental rights in 1978.

In a nutshell the Indian judiciary's attitude throughout Phase I was defined by a strict individualism, giving civil freedoms precedence over socioeconomic change. The idea of the right to development, which suggests striking a balance between personal privileges and group progress, had not yet been incorporated into constitutional interpretation. To broaden judicial thought and incorporate development-oriented rights—like livelihood, health, environment, and education—within the framework of Article 21 and beyond, it would take the social justice movements of the 1970s and the emergence of public interest litigation in the 1980s.

- Phase II- Socio-Economic Perspective of Development

A major turning point in India's constitutional history occurred in the 1970s, especially in the way the judiciary started to interpret and uphold rights that were consistent with the more general notion that development is a human right. Although the "right to development" was not initially recognized by the Constitution as a separate and enforceable right, the Supreme Court adopted a broad and purposeful interpretation of Article 21 (Right to Life and Personal Liberty) during this time, turning it into the basis for a broad range of socioeconomic rights. These included entitlements to livelihood, health, housing, education, legal assistance, and dignity—all of which are now central to the internationally acknowledged right to development.

In 1978, *Maneka Gandhi v. Union of India*⁴⁰⁷ marked a turning point. By redefining Article 21 to state that no one may be deprived of their life or liberty unless a fair, reasonable, and just procedure is followed, the Court famously introduced aspects of

⁴⁰⁵ 1954 AIR 170

⁴⁰⁶ 1954 AIR 92

⁴⁰⁷ Supra note 317

substantive due process. By overturning the previous A.K. Gopalan ruling's limited and formalistic perspective, this ruling allowed the judiciary to start incorporating developmental considerations into the notion of liberty and dignity. According to the ruling, life under Article 21 is not just an animal existence but rather a life with dignity, which inevitably implies having access to socioeconomic essentials.

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*⁴⁰⁸, the Court further developed this development-friendly jurisprudence by holding that the right to life encompasses the right to live with human dignity, which includes having access to sufficient clothing, food, and shelter as well as the freedom to move around and interact with others. This established a solid judicial basis for acknowledging developmental entitlements as enforceable rights under the Constitution and expanded the definition of liberty to encompass material conditions of life. It represented a change in the court's focus from defending the rights of the wealthy to ensuring the underprivileged have access to fundamental dignity.

Similar to this, although a little later, Phase II ideology served as the foundation for the argument in *Mohini Jain v. State of Karnataka*⁴⁰⁹. The Court decided that under Article 21, the right to life and dignity includes the right to education. The Court affirmed that progressive objectives like education and empowerment could no longer be non-justiciable aspirations by making education judicially enforceable, even if it was then a Directive Principle. The 86th Amendment's subsequent constitutional acknowledgment of education as a basic right was facilitated by this judicial action.

During this stage, the Supreme Court started using Directive Principles of State Policy (Part IV), especially those that advance social welfare and economic justice, as a framework for interpreting and extending Fundamental Rights. As a result, the line separating socioeconomic rights from civil-political rights gradually became less distinct, opening the door for the recognition of a composite right to growth, even if it isn't called that. The judiciary demonstrated that development was a constitutional requirement rather than just a matter of policy by enshrining these communal socioeconomic rights under the more expansive purview of Article 21.

⁴⁰⁸ Supra note 329

⁴⁰⁹ Supra note 367

The expansion of individual socioeconomic rights under Article 21 was the main focus of Phase II of Indian constitutional law, but it also signalled the beginning of the movement toward the recognition of collective rights, setting the stage for a more community-oriented understanding of development. The courts started to confront systemic and structural problems impacting entire communities, particularly the disenfranchised, going beyond the boundaries of individual liberty.

Thus, the Supreme Court of India embraced its role as an advocate for inclusive development during Phase II of the country's judicial evolution. In addition to adding socioeconomic rights to the definition of life and liberty, the judiciary reinforced the connection between development and dignity. Under the Constitution, the rights to legal assistance, housing, livelihood, health care, and education all became legally enforceable claims. The jurisprudence established the foundation for comprehending development as a rights-based and people-centric process, solidly anchored within the Indian constitutional framework, even if the phrase "right to development" was not used officially during this time.

- Phase III- Balancing Collective and Developmental Rights

Beginning in the 1980s, Phase III of Indian judicial evolution represented a dramatic change as the court started to address the challenges of striking a balance between collective rights and development, particularly in relation to environmental preservation, displacement, tribal rights, and sustainable growth. The courts continued to acknowledge socio-economic rights as part of Article 21 while building on the groundwork established in Phase II. However, they also became more concerned with making sure that progress did not come at the expense of ecosystems, communities, or future generations. The concept of the right to development had expanded to encompass equity, sustainability, and participatory justice in addition to access to livelihood, health care, and education.

The Supreme Court ruled in *Olga Tellis v. Bombay Municipal Corporation*⁴¹⁰, a landmark decision in this phase, that the right to livelihood is an essential component of the right to life under Article 21. In this case, pavement dwellers were facing eviction due to urban development. The Court affirmed the necessity of regulation but stressed

⁴¹⁰ Supra note 332

that development programs must be considerate of the rights of the weak, essentially stating that economic expansion cannot be achieved at the price of widespread deprivation and displacement. Recognizing the connection between collective rights and developmental programs was made possible in large part by this verdict.

The iconic case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*⁴¹¹ also showed the Court's changing perspective on collective and developmental rights. In India, this was the first significant environmental lawsuit pertaining to limestone quarrying in the hills of Mussoorie. As part of Article 21, the Court highlighted the right to live in a healthy environment and mandated the closure of quarries that endanger public health and the environment. This case established the notion that growth must be ecologically sustainable and that communities' collective right to a safe and clean environment must be upheld, even if it means limiting some forms of economic activity. It demonstrated the Court's growing readiness to strike a balance between economic and industrial objectives and environmental justice.

In *Narmada Bachao Andolan v. Union of India*⁴¹², a case concerning the thousands of people who were displaced as a result of the Sardar Sarovar Dam's construction, the topic of balancing persisted. Citing the dam's developmental benefits—such as irrigation, power generation, and drinking water supply—the Court supported the government's authority to move forward with the project. But it also acknowledged the necessity of restoring displaced populations, requiring adequate and humane relocation. The court's attempt to resolve the conflict between macroeconomic planning and micro-level human costs was reflected in the ruling, which supported the idea that development must be equitable, inclusive, and participatory even while it tended to support state-led development.

Likewise, in the 1996 case of *Vellore Citizens' Welfare Forum v. Union of India*⁴¹³, the Supreme Court established the precautionary principle and the polluter-pays principle as components of Indian environmental law, specifically mentioning the idea of sustainable development. The social, intergenerational nature of the right to development was reinforced by these rulings, which demonstrated a growing judicial

⁴¹¹ Supra note 349

⁴¹² Supra note 352

⁴¹³ Supra note 350

consensus that development must protect future generations' rights in addition to benefiting present ones.

The judiciary also started to articulate the notion that development must be participatory throughout this time, which is significant. Court rulings that promoted openness, public consultation, and impacted communities' involvement in development planning made this clear. The development of the right to information and the Court's defence of democratic participation in cases such as *Union of India v. Association for Democratic Reforms*⁴¹⁴ demonstrate the judiciary's dedication to making sure that people are active participants in the process of development rather than merely passive recipients.

Thus, the current phase shows a mature and integrated judicial vision, where rights are considered as instruments to guarantee that the advantages of development reach all societal segments and development is seen as a means of achieving justice. In order to ensure that growth is inclusive, future-focused, and grounded in rights, the Indian judiciary now aims to synthesize rights and development rather than merely balance them.

4.4 CONCLUSION

The cornerstone of what is now known as the right to development was shaped by the significant changes in the Indian judiciary's interpretation of Article 21. The courts gradually broadened the definition of life and liberty to include socioeconomic rights necessary for human dignity, such as livelihood, health, housing, and education, after initially emphasizing the protection of individual liberties from state intrusion. This change was a clear step toward acknowledging that development is not only a policy objective but also a fundamental constitutional right, especially starting in the 1970s.

Later decades saw a further expansion of the judiciary's purview to include issues of shared concern, such as resource equity, displacement, and environmental preservation. By adopting a balancing strategy, the courts started to protect the rights of impacted communities and defend developmental policies, highlighting the need for inclusive, participatory, and sustainable progress. This development demonstrates the court's explicit intention to incorporate developmental justice within the framework of

⁴¹⁴ (2002) 5 SCC 294

fundamental rights, guaranteeing that advancement upholds both the public interest and individual dignity.

Gaining an understanding of this evolution is essential to understanding how India's constitutional system balances rights-based governance with growth. The next chapter provides a comparative analysis of other nations' approaches to the right to development in order to enhance this understanding. This analysis offers larger insights into international trends and alternative judicial models.

CHAPTER 5

COMPARATIVE STUDY ON THE RIGHT TO DEVELOPMENT AS A HUMAN RIGHT IN DIFFERENT COUNTRIES

5.1 Introduction

The Declaration on the Right to Development, which was adopted by the UN General Assembly (GA) on December 4, 1986, explicitly endorsed the right to development as "an intrinsic human right by virtue of which every human individual and all". People have the right to take part in, contribute to, and enjoy political, social, cultural, and economic growth where all fundamental freedoms and human rights can be completely fulfilled.⁴¹⁵ The International Bill of Human Rights (which includes the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols) and the UN Charter serve as the fundamental foundation for the Right to Development.⁴¹⁶

In order to "address barriers to the enjoyment of economic and social rights in developing countries," the UN Commission on Human Rights (UNCHR) examined the relationship between development and human rights in the middle of the 1960s.⁴¹⁷ In 1970, the Commission Manouchehr Ganji, an Iranian diplomat, was named Special Rapporteur to draft a thorough report on the fulfilment of all economic, social, and cultural rights outlined in the UDHR and ICESCR, with a focus on the Commission's role in this regard.⁴¹⁸

The African Charter on Human and Peoples' Rights, sometimes known as the "Banjul Charter" was the first document to formally recognize the right to development.⁴¹⁹

⁴¹⁵ Russel Lawrence Barsh, *The Right to Development as a Human Right: Results of the Global Consultation*, 13 HUM. RTS. Q. 322 (1991).

⁴¹⁶ Id

⁴¹⁷ Rebecca Browning, *The Right to Development in Africa: An Emerging Jurisprudence? Examining the Endorois Recommendation by the African Commission for Human and Peoples' Rights*, 11 AFR. HUM. RTS. L.J. 546 (2011).

⁴¹⁸ Id

⁴¹⁹ *The Right to Development in the African Human Rights System* University of Pretoria at Univ. of Pretoria Repository.

According to Article 22, "Everyone shall have the right to their economic, social, and cultural development with adequate consideration for their autonomy, individuality, and equitable enjoyment of humanity's shared inheritance."⁴²⁰ As a result, a significant majority of states voted in favour of the historic 1986 Declaration on the Right to Development. Only the United States voted against the 1986 United Nations Declaration on the Right to Development. The United States opposed the proclamation, even though it was approved by a sizable majority (146 votes).⁴²¹

The issue with the Declaration of Right to Development lies in its implementation as well as the acceptance by the global power centres especially United States, United Kingdom etc.⁴²² This divide in the acceptance of the right can be interpreted on various levels from the difference in interpretation of the concept of development to the policies of the concerned national governments.⁴²³ This divide in the acceptance is also different in different countries which has to be studied independently. This also helps in understanding the stand of India and how that can be modified with the global perspective if needed.

5.2 Right to Development In South Africa

The concept of Right to Development was first mentioned in the African Charter of Human and Peoples Rights in 1981.⁴²⁴ All peoples have the right to pursue and enjoy economic, social, and cultural development while maintaining their freedom and identity and having equal access to humanity's common heritage, according to Article 22 of the African Charter on Human and Peoples' Rights (ACHPR).⁴²⁵ It goes on to say that states, whether working alone or in concert, have an unmistakable obligation to guarantee the full realization of this right to growth.⁴²⁶ This clause highlights development's inclusive and participatory character in addition to establishing it as a collective right. The acceptance of the UN Declaration on Right to Development gave

⁴²⁰ African Charter on Human and Peoples' Rights art. 22, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

⁴²¹ Global Policy Watch, Future of Global Governance: Perspectives from Global South (Sept. 16, 2024), <https://www.globalpolicywatch.org> last accessed Feb.24, 2025.

⁴²² Id

⁴²³ Id

⁴²⁴ Browning, Supra note 417

⁴²⁵ Browning, Supra note 417

⁴²⁶ Browning, Supra note 417

an additional momentum to the implementation of Right to development as a human right in South Africa.⁴²⁷

Many people consider the 1996 South African Constitution to be among the most progressive in the world. It was created after apartheid ended and is the highest legislation of the land, establishing the groundwork for a free, democratic, and inclusive society founded on equality, freedom, and human dignity.⁴²⁸ The Bill of Rights, which is located in Chapter Two and provides a broad variety of civil, political, and socioeconomic rights, is one of its most significant components. These include the rights to social security, education, housing, health care, equality, human dignity, freedom of expression, and access to food, water, and other necessities. The Constitution permits people to contest rights abuses in court and imposes a legal obligation on the state to uphold, defend, advance, and carry out these rights.⁴²⁹

Despite without specifically mentioning the "right to development" (RTD) as a separate human right, the 1996 South African Constitution successfully includes many of its essential elements through Chapter Two's Bill of Rights.⁴³⁰ The RTD is regarded as a comprehensive right that incorporates political, social, cultural, and economic aspects. Indirect but significant protection for the right to development is provided by the socioeconomic rights guaranteed by the Constitution, which reflect these dimensions.⁴³¹

The concept of the right to development given in Article 1 of the 1986 United Nations Declaration on the Right to Development closely resembles these rights, which are mostly included in the Bill of Rights.⁴³² According to that article, the right is an inalienable human right that gives every individual and every people the ability to take part in, contribute to, and enjoy all economic, social, cultural, and political processes that are meant to continuously improve well-being and allow for the full realization of fundamental freedoms and human rights.⁴³³

⁴²⁷ Browning, *Supra* note 417

⁴²⁸ Isaac Shai, *The Right to Development, Transformative Constitutionalism and Radical Transformation in South Africa: Post-Colonial And De-Colonial Reflections*, 19 AFR.HUM. RTS. L.J. 494 (2019).

⁴²⁹ *Id.*

⁴³⁰ Yuefen Li, Daniel Uribe & Danish, *The International Discourse on the Right to Development and the Need to Reinvigorate Its Implementation*, S. CENTRE RES. PAPER NO. 149 (Mar. 8, 2022)

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ Li, *Supra* note 430

A legal framework that promotes inclusive growth is established by the rights protected by the Constitution, including the rights to equality, healthcare, education, housing, freedom of expression, and political participation.⁴³⁴ These clauses guarantee that every person and community have access to the resources and chances required for long-term development and reaching their greatest potential. By encouraging a rights-based approach to administration and nation-building, where both individual and communal well-being are primary goals, the Constitution, in this way, represents the essence of the right to development.⁴³⁵

5.2.1 Transformative Constitutionalism and Right to Development

Although not specifically stated in the South African Constitution, the ideas of transformative constitutionalism and the right to development (RTD) are fundamental to the goals and essence of the post-apartheid legal system.⁴³⁶ The tragic history of colonialism and apartheid in South Africa, which solidified structural injustice, inequality, and exclusion, provides the finest framework for understanding their relevance.⁴³⁷ Many people consider the 1996 Constitution to be a fundamental departure from this history and a mark of a new, democratic era. In order to achieve the deeper objectives of justice and equality outlined in the Constitution, both transformative constitutionalism and the RTD have become increasingly important as interpretive instruments.⁴³⁸

According to Karl Klare's seminal work, transformative constitutionalism is the belief that constitutional law should be employed as a long-term tool to radically alter a society's institutions, structures, and power relations in a way that is democratic, egalitarian, and participatory.⁴³⁹ It sees the law as a tool for deep-seated, nonviolent social change rather than just legal reform. This entails eradicating the structural injustices of apartheid and advancing social justice, human dignity, and inclusive growth in the South African setting. Despite not employing the phrase "transformative

⁴³⁴ Li, Supra note 430

⁴³⁵ Li, Supra note 430

⁴³⁶ Shai, Supra note 427

⁴³⁷ Shai, Supra note 427

⁴³⁸ Shai, Supra note 475

⁴³⁹ Eric C. Christiansen, Transformative Constitutionalism in South Africa: Creative Uses of Constitutional Court Authority to Advance Substantive Justice, 13 J. GENDER RACE & JUST. 575 (Spring 2010).

constitutionalism," the Constitution's dedication to equality, human rights, and socioeconomic advancement makes this wide-ranging change its explicit goal.⁴⁴⁰

However, the right to development gained international recognition in the latter half of the 20th century, thanks in large part to the work of African academics and diplomats. Development was defined as a human right by Doudou Thiam in a 1967 diplomatic speech in Algiers, and this concept was expanded upon by Kéba M'baye in his 1972 scholarly study.⁴⁴¹ M'baye believed that human well-being encompassed material, moral, and spiritual aspects in addition to economic progress. Development, in his view, is an inalienable human right that all people have the right to enjoy and that nations and the international community are legally obligated to uphold.⁴⁴²

The RTD's core principle aligns with the transformative objectives of the South African Constitution, despite the fact that it is still disputed internationally, frequently dividing the Global North and South on issues of responsibility, aid, and sovereignty. Both ideas are dedicated to inclusive growth, human dignity, and systemic transformation. They emphasize the notion that governance and the law should be used as instruments to right historical wrongs and establish circumstances that allow everyone to prosper materially, ethically, and spiritually. Thus, transformative constitutionalism and the RTD are effective lenses through which the South African legal system can be viewed and used, even if they are not explicitly stated in the text.

The South African Constitution is fundamentally transformational, according to Karl Klare. According to him, the Constitution's wording and structure demonstrate a conscious commitment to significant reforms in political, social, and economic institutions in order to reverse the inequities of apartheid and establish a more democratic and egalitarian society.⁴⁴³ According to Klare, transformative constitutionalism is a feature of the Constitution itself—it is *a priori* transformational—rather than just an interpretive decision. This implies that its very existence and content

⁴⁴⁰ Supra note 439

⁴⁴¹ I Shai, Supra note 427

⁴⁴² I Shai, Supra note 427

⁴⁴³ I Shai, Supra note 427

require that society be continuously transformed through participatory and democratic legal and political procedures.⁴⁴⁴

In contrast, Shadrack Gutto contends that although the right to development is not specifically mentioned in the Constitution, it is impliedly included through a number of clauses and guiding ideas.⁴⁴⁵ Gutto cites characteristics such as the acknowledgment of self-determination, references to sustainable development, and public involvement in governance as proof that the RTD is ingrained in the constitutional structure. These components are part of a larger, inclusive, people-centered, and rights-based vision of development.

According to Gutto, the RTD "suffuses the entirety of the Constitution" rather than being limited to a single clause or article, indicating that the Constitution functions as a developmental text in its entirety. Its objectives, which include promoting equality, social justice, human dignity, and quality of life, are consistent with the core objectives of the RTD.⁴⁴⁶ Additionally, Gutto highlights that this argument is strengthened by South Africa's acceptance of numerous regional and international human rights instruments that specifically acknowledge the RTD. The African Charter on Human and Peoples' Rights and other UN documents are among them; if adopted, they have an impact on domestic legal responsibilities and interpretation.⁴⁴⁷

Additionally, Gutto notes that the idea that the RTD is already a part of the nation's legal and policy framework is supported by South Africa's national development initiatives, such as the National Development Plan (NDP), and its emphasis on creating a developmental state.⁴⁴⁸ According to this developmental model, the state actively participates in guiding economic growth, lowering poverty, and guaranteeing fair access to resources—objectives central to the RTD.⁴⁴⁹ While Gutto believes that the right to development is implicitly included into the principles, clauses, and larger obligations of the Constitution, Klare believes that the Constitution is fundamentally transformational by design. Both viewpoints emphasize that in order to achieve justice,

⁴⁴⁴ I Shai, *supra* note 427

⁴⁴⁵ I Shai, *Supra* note 427

⁴⁴⁶ I Shai, *supra* note 427

⁴⁴⁷ I Shai, *supra* note 427

⁴⁴⁸ I Shai, *Supra* note 427

⁴⁴⁹ I Shai, *Supra* note 427

equality, and human flourishing, South Africa's constitutional project aims to achieve profound structural transformation in addition to legislative reform.⁴⁵⁰

5.2.2 Judicial Interpretation of Right to Development

By actively interpreting and upholding the Constitution to advance social justice, equality, and human dignity, the South African courts have been instrumental in developing transformational constitutionalism. The judiciary has embraced a more expansive, developmental approach that aims to address past injustices and systemic disparities through progressive jurisprudence, moving beyond a limited, formal understanding of rights.

The seminal ruling in *Government of the Republic of South Africa and Others v. Grootboom and Others*⁴⁵¹ emphasizes the importance of socioeconomic rights within the South African constitutional framework and its vital role in achieving the RTD. In this instance, a disenfranchised population that had been residing in temporary housing was forced off private property after failing to obtain government-provided affordable housing. Section 26 of the Constitution, which protects the right to appropriate housing, prompted the Constitutional Court to evaluate the state's obligation.

The Court decided that socioeconomic rights are enforceable entitlements rather than theoretical concepts that serve as the cornerstone of equality, freedom, and dignity—the fundamental principles of South Africa's constitutional democracy. Denying someone their fundamental needs—such as food, clothing, and shelter—directly impairs their capacity to exercise other rights and engage fully in society, the Court said forcefully. Therefore, social justice and human development—two essential elements of the RTD—depend on the implementation of socioeconomic rights.

The Court explicitly stated in its ruling that the state has a positive duty to take action. Within the limits of its resources, it mandated that the government create and carry out a thorough, well-coordinated, and affordable housing program with the goal of gradually achieving the right to housing, especially for those who are in dire need. This demonstrates a development-oriented reading of the Constitution, in which the

⁴⁵⁰ I Shai, *supra* note 427

⁴⁵¹ 2001 (1) SA 46

government actively combats inequality and poverty to allow people to live honourably and realize their full potential.

Therefore, the Grootboom case serves as an example of how socio-economic rights serve as the actual means by which South Africa's larger Right to Development is achieved. The court confirmed that development is not a privilege but rather a constitutional need based on fairness, inclusiveness, and human rights by requiring the state to act and meet the fundamental needs of its most vulnerable inhabitants.

The South African Constitutional Court's dedication to transformative constitutionalism and the achievement of socio-economic rights is exemplified by the Treatment Action Campaign (TAC) case—*Minister of Health and Others v. Treatment Action Campaign and Others*⁴⁵². In one instance, the Treatment Action Campaign contested a government regulation that limited access to specific research locations for the antiviral medication Nevirapine, which is used to stop HIV/AIDS from being passed from mother to child. According to the Constitutional Court, this policy violated Sections 27(1) and (2) of the Constitution, which require the state to take reasonable steps to ensure the progressive realization of the right to access health care services, including reproductive health care.

The Court underlined that the state must behave fairly and sensibly, particularly when interacting with vulnerable populations like expectant mothers and infants. It mandated that the government immediately remove policy restrictions that restricted the distribution of Nevirapine in public hospitals and increase access to the medication. The decision confirmed that human dignity and development are legal rights that call for proactive state action rather than being merely idealistic objectives. By doing thus, the Court demonstrated how legal actions can directly enhance lives and advance social justice in a constitutional democracy, protecting not only the right to health but also the more general right to development.

The South African Constitutional Court's landmark ruling in the Fuel Retailers Association case i.e. *Fuel Retailers Association of South Africa v. Director-General Environmental Management and Others*,⁴⁵³ emphasizes the connection between environmental preservation and the Right to Development (RTD). Although the case

⁴⁵²2002 (5) SA 721 (CC)

⁴⁵³ [2007] ZACC 13

did not specifically address the RTD, it made a substantial contribution to its interpretation by showing how environmental factors are crucial to advancing sustainable development and human well-being, two of the RTD's main goals.

In the case, it was contested whether environmental authorities had sufficiently evaluated the planned new filling station's social, economic, and environmental effects, particularly in light of the stations' existing status and the wider environmental ramifications. The Court's ruling emphasizes the necessity of sustainable, well-rounded decision-making by requiring environmental impact assessments to take into account the cumulative effects on social and economic growth.

In his opinion for the Court, Justice Ngcobo emphasized the close connection between economic policies and environmental deterioration by drawing on the conclusions of the World Commission on Environment and Development (Brundtland Report). He underlined that economics and environment cannot be seen as distinct fields when making decisions that impact development. To guarantee growth that is equitable, sustainable, and advantageous to everyone, the two must instead be combined in legislation and policy.

This ruling supports the notion that the RTD encompasses environmental rights as well as socioeconomic and civil-political rights, all of which are essential to the enjoyment of human dignity, life, and well-being.⁴⁵⁴ The Court upheld the need that real development be ecologically sustainable by acknowledging that environmental deterioration might directly jeopardize both development and quality of life. As a result, this case contributes significantly to South African law on the RTD, bolstering the idea that, in order to preserve constitutional principles and enhance the lives of all, a comprehensive approach to development—including environmental protection—is required.⁴⁵⁵

Through its jurisprudence, the African Court on Human and Peoples' Rights has played an important and developing role in advancing and fulfilling the Right to Development (RTD).⁴⁵⁶ The Court has confirmed that the RTD is a right that can be challenged and enforced throughout the continent by interpreting Article 22 of the African Charter on

⁴⁵⁴ Repository, Supra note 5

⁴⁵⁵ Repository, Supra note 5

⁴⁵⁶ Repository Supra note 5

Human and Peoples' Rights. The Court has underlined in its rulings that the RTD is multifaceted, involving political, social, cultural, and economic elements, and that it must be interpreted in light of participatory governance and the general welfare of society.⁴⁵⁷

The premise that the RTD is a legally obligatory obligation on nations, connected to the more general objectives of justice, equality, and dignity, has been reaffirmed by the African Court through its interpretations.⁴⁵⁸ By ensuring that development policies and practices respect human rights and promote sustainable growth for all African peoples, the Court makes a significant contribution to the continental mission of transformative justice.

5.2.3 Challenges in the Realization of Right to Development in South African Perspective

Even though South Africa has a progressive Constitution that protects important socio-economic rights, the country nevertheless faces many difficult obstacles in achieving the Right to Development (RTD). The lasting effects of apartheid, which left behind ingrained structural inequality, are among the biggest challenges.⁴⁵⁹ A foundation of poverty and marginalization has been established by the Black majority's historical exclusion from land ownership, good education, work opportunities, and economic engagement. This exclusion now impedes inclusive development.⁴⁶⁰

Socioeconomic inequality is a significant persistent problem. With wealth concentrated in the hands of a small minority and the majority facing unemployment, poverty, and restricted access to basic services, South Africa continues to rank among the most unequal nations in the world.⁴⁶¹ This issue is made worse by high rates of youth unemployment, which deprive a sizable portion of the populace of the chance to support and profit from national progress. This is against the fundamental tenet of the RTD, which is to advance everyone's well-being in a fair and inclusive way.⁴⁶² The poor

⁴⁵⁷Repository, Supra note 5

⁴⁵⁸ Repository, Supra note 5

⁴⁵⁹H.E. Mr. Ali Bahreini, *The Right to Development: Principles, Realization and Challenges*, S. CENTRE, S. VIEWS NO. 252 (Sept. 21, 2023), <https://www.southcentre.int.last> accessed on Feb 27, 2025.

⁴⁶⁰ Supra note 459

⁴⁶¹ Supra note 459

⁴⁶² Supra note 459

provision of public services, including housing, healthcare, education, clean water, and sanitation, is another issue. Despite being legally protected rights, administrative inefficiencies, inadequate planning, and even corruption have made it difficult to realize these rights. Without access to adequate infrastructure, a large number of South Africans still reside in informal settlements, severely limiting their quality of life and potential for personal growth.⁴⁶³

The World Bank and IMF's Structural Adjustment Programs required austerity measures, such as: Spending reductions in the public sector, Market deregulation and public service privatization. The RTD's requirement for human-centered development was undermined by these policies, which frequently resulted in higher unemployment, worsened healthcare and education systems, and greater poverty.⁴⁶⁴

Development is also seriously hampered by corruption and poor governance. Public trust and the state's capacity to carry out its constitutional duties have been weakened by the widespread corruption in public institutions, which has taken funds away from developmental initiatives.⁴⁶⁵ This hinders the advancement of developmental justice and undermines the efficacy of transformative constitutionalism. Another outstanding problem that has an impact on the RTD's fulfilment is land reform.⁴⁶⁶ Many communities are now landless and economically disadvantaged as a result of the poor pace of land redistribution and the lack of support for rural development. Large segments of the populace continue to be shut out of development prospects and economic empowerment in the absence of significant land reform.⁴⁶⁷

The sustainability of development is further threatened by environmental issues like pollution, water scarcity, and climate change.⁴⁶⁸ Environmental degradation mostly affects vulnerable people, especially those in rural and informal settings, where it can endanger their access to vital resources, livelihoods, and health.⁴⁶⁹ Climate resilience

⁴⁶³ Supra note 459

⁴⁶⁴ Shyami Fernando Puvimanasinhe, *Towards a Jurisprudence of Sustainable Development in South Africa: Litigation in the Public Interest*, 10 SUSTAINABLE DEV. L. & POL'y 41 (Fall 2009).

⁴⁶⁵ Id.

⁴⁶⁶ Ruth Kruger, *The Silent Right: Environmental Rights in the Constitutional Court of South Africa*, 9 CONST. CT. REV. 473 (2019).

⁴⁶⁷ Bahreni, Supra note 459

⁴⁶⁸ Bahreni, Supra note 459

⁴⁶⁹ Kruger, Supra note 466

and environmental preservation are essential for sustainable development, which is a key element of the RTD.⁴⁷⁰

Last but not least, outside economic forces such as shifting investment flows, growing debt, and international trade imbalances limit South Africa's progress.⁴⁷¹ These elements may restrict the nation's capacity to finance and carry out development initiatives, which would make it more difficult to meaningfully fulfill the RTD.⁴⁷² Both internal issues, such governance and policy implementation, and external ones, like debt and international economic policies, impede Africa's ability to realize its right to development. Africa and the international community must move toward a people-centered, justice-driven, rights-based strategy that puts the welfare of every person first if development as a right is to be genuinely realized.⁴⁷³

5.3 Realization of Right to Development in United States

In the past, the United States has maintained a nuanced and frequently circumspect position on the Right to Development (RTD), particularly as it has been expressed in global fora like the United Nations.⁴⁷⁴ As initially stated in the United Nations Declaration on the Right to Development in 1986, the concept of the Right to Development highlights that everyone has the right to take part in, contribute to, and benefit from development, which is a comprehensive economic, social, cultural, and political process.⁴⁷⁵ Together with other civil, political, economic, social, and cultural rights, the declaration also establishes development as a human right in and of itself. The United States in the resolution to adopt right to development as a human right in 1986 had voted against the UN Declaration. The global power still retains the stand in its acceptance to the relevance of right to development as a human right available to all.⁴⁷⁶

The United States' emphasis on civil and political rights over economic and collective rights has largely determined its stance on the right to development. The United States

⁴⁷⁰ Kruger, *Supra* note 466

⁴⁷¹ Mesenbet Assefa Tadege, *Reflections on the Right to Development: Challenges and Prospects*, 10 *Afr. Hum. Rts. L.J.* 325 (2010).

⁴⁷² *Id.*

⁴⁷³ Tadege, *Supra* note 57

⁴⁷⁴ E. S. Nwauche & J. C. Nwobike, *Implementing the Right to Development*, 2 *SUR - INT'L J. On HUM RTS.* 93 (June 2004).

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

has historically voiced concerns about recognizing development as a justiciable, enforceable human right, despite acknowledging the significance of development and supporting a number of international development initiatives through agencies like USAID and its contributions to international organizations like the World Bank.⁴⁷⁷ This hesitancy is a result of worries about how the right should be defined and applied, specifically with regard to the duties and responsibilities of states—donor countries in particular—in ensuring that other nations can exercise this right.⁴⁷⁸

The possibility that some developing nations will use the Right to Development as a political tool to call for more financial aid or to attack global economic systems without making equivalent pledges to democratic values, human rights, or good governance has been one of the main worries for the United States.⁴⁷⁹ By directing the emphasis toward state-driven collective development goals, the broad definition of RTD raises concerns in the United States that it may compromise individual rights and accountability.⁴⁸⁰ In global discussions, the United States has frequently urged for a more practical and balanced approach that places a higher priority on the rule of law, economic freedom, transparency, and private sector involvement as crucial pillars of sustainable development.⁴⁸¹

“The United States strongly supports global efforts to promote development and reduce poverty. It actively collaborates with developing countries, international donors, non-governmental organizations, and the private sector to advance progress in areas such as health, education, and economic opportunity. However, despite its commitment to development, the U.S. maintains a critical stance on the concept of a “right to development” as it is currently framed in international discussions. While it supports the idea of helping nations grow and thrive, it does not accept this concept as a legal human right under international law.”⁴⁸²

⁴⁷⁷ Mordica Simpson, Explanation of Vote on a Resolution on the Right to Development (U.S. Mission to the U.N., Oct. 30, 2020), <https://usun.usmission.gov/explanation-of-vote-on-a-resolution-on-the-right-to-development>, last accessed on Mar. 12, 2025

⁴⁷⁸ Id.

⁴⁷⁹ Id.

⁴⁸⁰ Id.

⁴⁸¹ Simpson, Supra note 477

⁴⁸² Simpson, Supra note 477

The fact that none of the fundamental UN human rights treaties acknowledge the "right to development" is one of the primary issues facing the US.⁴⁸³ This so-called right lacks a precise, widely recognized meaning, in contrast to civil and political rights like the right to free speech or the right to a fair trial⁴⁸⁴. More significantly, people cannot demand it from their governments or claim it as a personal right because it is not acknowledged as such. The U.S. is particularly troubled by the fact that the current formulation of this right appears to emphasize state power rather than individual freedoms, which contradicts the foundational principles of human rights.⁴⁸⁵

The United States also highlights that all countries, regardless of their degree of development, have a duty to protect human rights.⁴⁸⁶ To put it another way, a nation cannot violate fundamental human rights by citing poverty or a lack of resources. States are supposed to uphold fundamental rights at all times, and difficulties in developing a country do not excuse repression of liberties or disregard for international commitments. Regardless of their economic standing, the United States urges all countries to honour their human rights obligations.⁴⁸⁷

For instance, the United States was among the few nations to vote against the adoption of the 1986 UN Declaration on the Right to Development, citing concerns about ambiguities in the text and implications for international legal commitments.⁴⁸⁸ The United States has also opposed efforts to elevate the RTD to the status of a binding international legal obligation, and it continues to participate in global development efforts and strongly supports the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs), but it does so from the perspective of voluntary cooperation rather than enforceable rights-based obligations.⁴⁸⁹

The United States has maintained its support for programs that seek to lower poverty, advance education, enhance health outcomes, and encourage inclusive economic

⁴⁸³ Dylan Lang, Explanation of Vote on a Third Committee Resolution on the Right to Development (U.S. Mission to the U.N., Nov. 3, 2022), <https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-the-right-to-development>. Last accessed on Mar.15, 2025

⁴⁸⁴ Id

⁴⁸⁵ Id

⁴⁸⁶ Lang, Supra note 483.

⁴⁸⁷ Lang, Supra note 483.

⁴⁸⁸ U.S. Dep't of State, Explanation of the U.S. Vote on UNGA Resolution 172, "The Right to Development" (Oct. 30, 2003), <https://2009-2017.state.gov/s/l/2003/44384.htm> last accessed on Mar.17, 2025

⁴⁸⁹ Id

growth in recent years. It is certain, therefore, that progress ought to be sought in a manner that upholds rather than diminishes personal liberties and human rights.⁴⁹⁰ All things considered, even while the United States is dedicated to international development initiatives, it continues to firmly oppose the Right to Development as a legally recognized human right that is enforceable under international law in favour of a development paradigm based on liberal democratic principles.⁴⁹¹

5.4 Right to Development in European Union

The European Union (EU) underlines its strong commitment to social justice, human rights, sustainable development, and the eradication of poverty. The EU emphasizes the close relationship between human rights and development. In order to achieve equitable and sustainable development, it highlights the significance of democratic governance, gender equality, and accountability as essential components.⁴⁹² The EU also emphasizes its increased financial commitment to the most vulnerable developing nations and mentions its substantial contribution to global aid, which accounts for 56% of all development assistance globally.⁴⁹³

The idea of the Right to Development is recognized by the EU as being based on the interconnectedness and indivisibility of all human rights. It highlights that people should be the primary agents and beneficiaries of development, and that it should be inclusive.⁴⁹⁴ The EU argues that the implementation of civil, political, economic, social, and cultural rights is part of the right to development and that a wide range of actors at all levels must work together to create an environment that supports development.⁴⁹⁵

Although international collaboration is necessary to support these efforts, the EU maintains that national governments bear the primary responsibility for achieving the

⁴⁹⁰ Supra note 483

⁴⁹¹ Supra note 483

⁴⁹² European Union, Submission in Follow-Up to HRC Resolution 19/34 “The Right to Development” (U.N. Office of the High Comm’r for Hum. Rts., 2012) <https://www.ohchr.org>, last accessed on Mar. 17, 2025.

⁴⁹³ Id

⁴⁹⁴ Id

⁴⁹⁵ Id

right to development.⁴⁹⁶ The EU supports UN resolutions that highlight states' individual and collective responsibilities to create development-friendly national and international environments. It also emphasizes the need for development to be inclusive of all people and free from discrimination.

Although the EU agrees with the fundamentals of the Right to Development, it is against the establishment of a new, legally enforceable international standard for its application. It contends that because the right is composite and consists of many intricate, multifaceted elements, such a binding instrument is not the best course of action.⁴⁹⁷ Rather, the EU supports voluntary methods and useful instruments that may be used to operationalize and evaluate development success.

5.5 Comparison with the Indian Perspective

There has been a great deal of discussion on the Right to Development (RTD) in the context of international human rights discourse, with different nations taking different stances and interpretations of its acceptance and application. The RTD is typically viewed with caution or suspicion by affluent countries, while developing nations typically support it as a mechanism to alleviate global disparities. Particularly when compared to the stances of South Africa, the US, and the EU, India's stance on the Right to Development (RTD) brings a significant viewpoint to the global discussion. India's approach is influenced by its domestic legal and judicial tradition, which has gradually extended socio-economic rights through constitutional interpretation, as well as its foreign policy position in international fora.

In international fora, especially at the United Nations, India has always advocated for the right to development. India sees development as a basic human right, rooted in its own history of colonial exploitation, poverty, and the need for equitable growth. It views the RTD as a communal and individual right that requires an environment that supports people in reaching their greatest potential by giving them access to work, healthcare, education, and a fair portion of the rewards of growth.

⁴⁹⁶ European Commission, European Development Policy, <https://international-partnerships.ec.europa.eu>, last accessed on Mar.21, 2025.

⁴⁹⁷ Supra note 495

In a unique move, India has likewise used judicial interpretation of its Constitution to include the core of the RTD. The Supreme Court of India has construed Article 21— While a "right to development" is not specifically mentioned in the Indian Constitution, the Supreme Court of India has construed Article 21—the right to life and personal liberty—to encompass a variety of developmental rights. The right to livelihood, housing, health care, and education are all part of the right to life, as established by landmark decisions like *Olga Tellis v. Bombay Municipal Corporation*⁴⁹⁸ and *Chameli Singh v. State of U.P.*⁴⁹⁹ Even in the absence of official international legal codification, the RTD is successfully internalized as a fundamental right under Indian law by this broad judicial approach.

Similar to South Africa, India embraces the RTD as a valid human right, acknowledging the significance of global economic fairness and the responsibility of the international community in promoting progress. Both nations have advocated for debt relief, more equitable trade policies, and technological access for developing countries at the UN using their platforms. India, on the other hand, favours non-coercive international collaboration over legal enforcement and prioritizes state sovereignty and national implementation, whilst South Africa supports a legally binding international tool to operationalize the RTD.

Socioeconomic rights are firmly rooted in the constitutions of both nations. But India's judiciary has been more active in turning developmental goals into legally binding rights, and judicial activism is a defining feature of its strategy. Socioeconomic rights are specifically listed in South Africa's Constitution, although India has attained comparable results through progressive interpretation as opposed to clear constitutional requirements. The RTD is also widely supported in South Africa, where socioeconomic rights like housing, health care, education, and social security are specifically mentioned in the post-apartheid Constitution.

In order to grant the RTD enforceable standing under international law, South Africa is in favour of the creation of a legally binding international instrument. The RTD, on the other hand, is not recognized as a legal human right in the United States since it is unclear and unenforceable. It was the sole nation to vote against the United Nations

⁴⁹⁸ Supra note 332

⁴⁹⁹ Supra note 342

Declaration of 1986. The U.S. strategy places a strong emphasis on individual civil and political rights and is against the international extension of human rights to encompass socioeconomic rights. The European Union takes a moderate stance. Although it rejects its codification as a legally binding right, it acknowledges RTD as a legitimate notion. To operationalize the RTD principles, the EU instead favours international collaboration, rights-based policy frameworks, and voluntary methods.

Both the individual and collective aspects of the RTD are accepted in South Africa and India. Development is both an individual right and a shared national goal in India. Indian courts have repeatedly held that the complete realization of human dignity depends on development-related necessities including food, housing, and education. The dual nature of the RTD is also supported in South Africa, which frames it within a people-centered development model and frequently connects it to the more general objectives of social justice and economic empowerment for historically underprivileged communities.

In contrast, the United States insists on an individualistic interpretation of rights, viewing the collective or state-centered formulation of RTD as problematic. It argues that such a framework risk empowering authoritarian governments under the guise of development and detracts from individual freedoms. The European Union acknowledges individuals as the primary agents and beneficiaries of development. It avoids explicit references to collective state rights, preferring to focus on inclusive, participatory, and accountable development policies that enhance individual well-being. It steers clear of overt allusions to collective state rights in favour of development.

The unique feature of India's model is its judicial activism. The Supreme Court's broad interpretation of constitutional rights has turned development objectives into legally binding rights, including the right to food, the right to a clean environment, and the right to education. This strategy has made it possible for RTD to be implemented practically within a national legal framework. RTD is implemented in South Africa through the socioeconomic rights guaranteed by the Constitution, and courts often evaluate how well the government provides basic services like housing and healthcare. The Grootboom and Treatment Action Campaign lawsuits serve as illustrations of how development rights are enforced by the courts.

Although the United States does not view development as a legal need, it does rely on volunteer aid and development assistance initiatives elsewhere. Since courts do not recognize positive rights and socioeconomic rights are not guaranteed by the constitution, the RTD is essentially meaningless in U.S. legal philosophy. While incorporating the RTD into its development cooperation plans, the EU places a strong emphasis on voluntary guidelines, templates, and indicators that are not legally enforceable. By guaranteeing that development initiatives integrate human rights standards like equality, participation, and accountability, it promotes a rights-based approach to development.

India is in favour of a collaborative global framework in which wealthy nations take on the burden of resolving systemic and historical injustices through technology transfers, debt reduction, and fair trade. But it also opposes any top-down imposition of development models and supports national autonomy. Demanding redistributive justice through legally enforceable international agreements, South Africa is more outspoken than other countries. It makes the case that national development initiatives must be matched by international commitments and that the global system has to be reorganized to guarantee justice and equitable.

Any interpretation of RTD that places legal responsibilities on donor nations is opposed by the US. It advocates for development assistance as an instrument for foreign policy rather than a claim that recipient countries can make. Particularly through multilateral organizations like the UN and OECD, the EU promotes international collaboration. However, it opposes the portrayal of extraterritorial obligations as legal duties, favouring aid effectiveness and policy coherence over legally obligatory methods.

India often advocates for equity in global governance while advancing inclusive national development using RTD as a framework. Through its judiciary, it used RTD in a more legalistic and less blatantly political manner. RTD language has also been used by South Africa to divert attention away from international examination of human rights issues. For example, in conversations about Zimbabwe, the country has prioritized development over civil rights. The United States is still dubious about RTD's application in multilateral diplomacy and regularly claims that authoritarian governments use it to excuse their subpar human rights records.

This comparative study demonstrates the significant variations in conceptions and approaches to the Right to Development across geopolitical boundaries. Both South Africa and India endorse the RTD as an essential instrument for attaining social justice and equity, with India leading the way in its advancement through judicial innovation. While the European Union takes a moderate ground, embracing the concepts of RTD without endorsing its legal enforceability, the United States views RTD as philosophically faulty and politically hazardous. In the global human rights discourse, these divergent positions highlight the conflicts between legal, moral, and political interpretations of development as well as the larger North-South divide.

5.6 Conclusion

Different nations have different interpretations and applications of the right to development, which reflect their distinct political, legal, economic, and historical backgrounds. Both South Africa and India support the RTD as a revolutionary instrument for attaining socioeconomic justice; South Africa has enshrined its tenets directly in its Constitution, while India has incorporated them through judicial interpretation. Both place a strong emphasis on a group and people-centered approach, connecting RTD to more general objectives of inclusion, equity, and structural change.

The United States, on the other hand, adopts a minimalist stance, dismissing RTD as a human right and considering development solely as a chosen policy goal driven by political interests rather than legal requirements. It prefers voluntary standards and indicators to official legal recognition. The European Union advocates a policy-based, non-binding approach, prioritizing useful instruments like indicators and voluntary guidance over official legal recognition, even while it acknowledges the significance of progress in the discourse around human rights.

These opposing viewpoints highlight the stark discrepancy between the RTD's actual use and normative goals. The Global North frequently opposes such responsibilities, citing worries about sovereignty, the enforceability of the law, and politicization, while the Global South calls for increased international solidarity and legal commitment. This persistent gap emphasizes how urgently a more inclusive and cogent international framework that respects state sovereignty, defends individual liberties, and encourages accountability among nations is needed. By providing adaptable yet morally sound

mechanisms—such as voluntary pledges, nationally enforceable rights, and enhanced international collaboration—such a framework ought to heal the ideological divide and guarantee that development turns into a genuinely universal right that is appreciated by everybody.

CHAPTER 6

CONCLUSION

6.1 Introduction

Rooted in the understanding that every human being and all peoples have the right to participate in, contribute to, and enjoy economic, social, cultural, and political development, the right to development has evolved as a leading concept in international human rights discourse, reflecting the growing recognition that development is not just about economic growth but also about improving the well-being and freedoms of individuals and communities. The evolution of the right to development is closely linked to global efforts to address poverty, inequality, and systemic injustice, particularly in the post-colonial and post-World War II era.

In the context of the New International Economic Order (NIEO), which aimed to address historical disparities between rich and poor countries, the idea first explicitly surfaced in the 1970s. Developing nations started to stress the importance of fair trade, equitable economic connections, and resource access as necessary elements of development. The United Nations General Assembly adopted the Declaration on the Right to Development in 1986 as a result of these efforts. By putting people at the heart of development and highlighting values like equality, participation, non-discrimination, and self-determination, the Declaration recognized the right to development as an inalienable human right.

Since then, international forums and legal frameworks have expanded on the concept of the right to development. It has impacted discussions about climate justice, sustainable development, and the 2030 Agenda for Sustainable Development, which emphasizes the importance of "leave no one behind." The application of this right is still controversial, nevertheless, mainly because governments have different ideas about their roles and the importance of international collaboration. Some affluent nations have voiced reservations about enforceable responsibilities, while developing nations support more robust global commitments and structural reforms.

The right to development, which acts as a link between development strategies and human rights, is still evolving in spite of these obstacles. It highlights the importance of inclusive, people-centered, and environmentally sustainable development. The right to development provides a framework for advancing justice, equity, and dignity on a national and global scale in a society that is becoming more interconnected by the day.

6.2 Challenges in Realizing Right to Development as Inalienable Human Right in Global Scenario

There are many intricate and interconnected obstacles in the way of the universal achievement of the right to development as a fundamental, unalienable human right. Although this right was technically acknowledged by the UN Declaration on the Right to Development in 1986, its actual application has been inconsistent and contentious. Deep global disparities and competing national interests are reflected in the political, economic, legal, and institutional factors that underlie the difficulties.

The lack of a legally binding international instrument that codifies and upholds the right to development is one of the main obstacles. The right to development is still mostly a declarative and aspirational right, in contrast to civil and political rights, which are protected by legally binding agreements such as the International Covenant on Civil and Political Rights (ICCPR). Developed nations in particular have opposed efforts to draft a legally binding agreement out of concern that it would impose new duties or weaken current norms.

Regarding the extent and application of the right to development, there is a notable ideological and political gap between the Global North and Global South. Developing nations contend that development is a shared responsibility and place a strong emphasis on equity, international collaboration, and resource transfers. Many wealthy countries, on the other hand, prioritize individual human freedoms, market reforms, and governance; they frequently view the right to development with suspicion or as a means of shifting accountability onto donor governments. Consensus on implementation techniques is hampered by this divide.

Many developing nations are unable to pursue development in a sustainable and independent way due to structural injustices in the global economic order, such as unfair trade practices, debt loads, restricted access to technology, and multinational

corporations' dominance of international markets. The fundamental tenets of the right to development—equality, sovereignty, and non-discrimination—are violated by these structural obstacles. Economic, social, and collective rights, such as the right to development, have frequently been neglected in favour of civil and political rights within the global human rights framework. Particularly in international human rights forums and legal systems, this mismatch has led to a lack of resources and attention for rights associated to development.

Global crises including food shortages, armed wars, pandemics like COVID-19, and climate change have made it more difficult to realize the right to development. These crises highlight the weaknesses of international collaboration and disproportionately impact developing nations. For example, climate injustice has sparked questions about how development rights may be fulfilled in a world where environmental costs are not fairly distributed and international support systems are still insufficient.

In international decision-making forums, many developing states and marginalized groups—such as small island nations, indigenous peoples, and populations impacted by conflicts—do not have enough representation. Because of this exclusion, development strategies frequently overlook local circumstances, needs, and goals, which runs counter to the right to development's emphasis on equity, self-determination, and participation.

6.3 Challenges in Realizing Right to Development in India

Since gaining its independence, India, one of the most populous and diversified democracies in the world, has advanced significantly. Nonetheless, the complete implementation of the right to development continues to be a difficult task with many facets. Although the nation has made strides in areas like economic expansion, technical development, and poverty alleviation, many barriers stand in the way of all its residents' full realization of this right.

Significant measures and policy changes have been made by the Indian government in an effort to fulfil the right to development. However, the full implementation of this right has been hampered by a number of failures to create a cohesive and efficient legal framework. These disparities, which show a lack of a comprehensive vision and dedication to incorporating the right to development as a basic component of India's

legal and governance framework, persist in both legislative action and institutional implementation. The challenges in the full realization of right to development in India include:

1. Absence of a specific legal Recognition of Right to Development

The absence of clear legal recognition of the right to development in Indian law is among the most basic flaws. Several socioeconomic rights, including the rights to livelihood, health care, and education, are guaranteed by the Indian Constitution under the Directive Principles of State Policy (DPSPs), however they cannot be challenged in court. The right to development is not expressly enshrined as an enforceable right in any independent law or constitutional amendment. In addition to weakening individuals' ability to assert development as a right rather than as a welfare measure or policy objective, this lack restricts the state's legal accountability. Even the Judiciary when upheld right to development as a Fundamental Right under Article 21 of the Constitution, it is shadowed by the concepts of sustainability, empowerment of marginalized and the need for substantive social justice.

2. Fragmented Policy Framework

The dispersed character of development strategies and initiatives, which are dispersed among numerous ministries and departments without an integrated legal framework, represents another significant flaw. Although sectoral legislation and programs exist to address concerns such as housing, work, health, and education, they frequently lack coordination and synergy. This leads to coverage gaps, inefficiencies, and overlaps, particularly for vulnerable and marginalized groups. There is a lack of a cohesive legal framework that views development as a multifaceted right.

3. Weak Enforcement Mechanisms

There are insufficient enforcement and accountability systems in place even in cases when pertinent laws are in place, such as the National Food Security Act (NFSA), the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), and the Right to Education Act (RTE). Underfunding, bureaucratic hold-ups, a dearth of grievance redressal mechanisms, and inadequate oversight are common problems with this legislation. The transformative potential of these legislative tools in achieving the

right to development is diminished when the government fails to guarantee their effective implementation.

4. Inadequate Inclusion of Marginalized Groups

The legal and policy frameworks have also come under fire for failing to effectively take into account the needs and voices of groups that are marginalized, such as women, people with disabilities, religious minorities, Scheduled Castes, and Scheduled Tribes. Tribal and rural inhabitants are frequently displaced and evicted as a result of development projects and urban growth initiatives without sufficient consultation, compensation, or rehabilitation. Contrary to the ideas of inclusive development and participatory government, this illustrates a gap in the legal safeguards provided to these communities during the development process.

5. Limited Integration of Environmental Sustainability

A key element of the right to development is environmental sustainability, which the government has also failed to properly balance with development. Economic development projects frequently clash with environmental restrictions like the Forest Rights Act or the Environmental Protection Act. In reality, environmental clearances are usually accelerated at the expense of community and ecological rights, exposing a legal disparity between sustainable development and economic growth.

The Indian judiciary, especially the Supreme Court's judicial activism, has been instrumental in broadening the understanding of fundamental rights. Given that the right to development is not expressly acknowledged in the Constitution, the Supreme Court through its various judgments realized right to development as part of Article 21. But still there are a number of obstacles in the way of its full implementation as a fundamental right. The absence of clear constitutional recognition of the right for development is one of the main obstacles. Although the judiciary has construed Article 21 (Right to Life) to encompass rights like livelihood, health, education, and housing, these interpretations are still judicial creations rather than legally recognized rights. As a comprehensive and legally enforceable fundamental right, this breeds uncertainty and restricts its enforceability.

When it comes to collective and developmental rights (like infrastructure projects, industrialization, and economic reforms) and individual rights (like property, livelihood, and consent), the judiciary frequently finds it difficult to strike a compromise. The rights of displaced people or indigenous communities must be weighed against the alleged collective good of national development in land acquisition or environmental lawsuits, for instance. A ruling that inadvertently prioritizes the interests of the state over those of marginalized people may result from this delicate balancing effort.

Judges may not have the technical or policy knowledge required to evaluate intricate development projects or socioeconomic trade-offs, and courts are not authorities that make policy. Their capacity to create comprehensive, long-term guidelines for carrying out development in a rights-based way is thus constrained. Furthermore, there may be delays or lax enforcement because the judiciary frequently relies on executive agencies for implementation. The overwhelming backlog of cases in India's judiciary hinders its ability to provide consistent attention to matters pertaining to development. Delays in cases requiring environmental clearances, land acquisition, or the rights of vulnerable people compromise prompt justice and the fulfilment of development rights.

Judicial reasoning and decisions in instances pertaining to development are sometimes inconsistent. Large-scale projects have occasionally been supported by courts under the pretext of "public interest," while in other instances, they have been put on hold because they violated rights. This discrepancy illustrates how challenging it is to create a solid, rights-aware body of development law.

6.4 Suggestions for The Full Realization and Implementation of Right to Development with Special Reference to Indian Scenario

The realization and implementation of the Right to Development (RTD) as a fully acknowledged and enforced right in India necessitates a comprehensive, multifaceted strategy that incorporates institutional, socioeconomic, legal, and participatory reforms. Despite improvements in a number of development metrics, the advantages have not been shared fairly in India. In order to close this gap and implement the RTD in both spirit and practice, a number of intricate and related procedures are required.

1. Recognizing Right to development as full and separate Fundamental Right

First and foremost, the Indian Constitution urgently needs to acknowledge RTD as a separate and distinct fundamental right. Socioeconomic rights have been judicially added to Article 21, but legal clarity and justiciability would be ensured by a clear and explicit constitutional amendment. Furthermore, by making some Directive Principles of State Policy legally enforceable, the State would be guaranteed its constitutional duty to promote inclusive and equitable growth.

2. Enactment of a Central Legislation in relation to Right to Development

At the national level, legislation specifically addressing the right to development should be passed. The scope of the RTD, the responsibilities of the State and private actors, and the procedures for execution and redress should all be outlined in such a legislation. Instead, than focusing only on economic expansion, it must present development as a people-centered, sustainable, and participative process that aspires to improve human good. The legislation should incorporate clauses that safeguard communities from displacement brought on by development and guarantee their free, prior, and informed consent for all significant projects.

3. Establishment of a Regulatory Body for implementation and addressing concerns

India has to set up a National Right to Development Commission in order to carry out RTD successfully. This organization ought to be in charge of keeping an eye on development initiatives, carrying out human rights-based impact analyses, and looking into concerns about inequality and exclusion. To enable decentralized planning and execution of development projects that represent local needs, local governance organizations like as Panchayats and Urban Local Bodies must also be empowered through the devolution of finances and powers.

4. Inclusion of Marginalized Communities in Development

It is crucial to guarantee inclusion in development policies. The targeted support of marginalized communities, including Scheduled Tribes, Scheduled Castes, minorities, women, people with disabilities, and LGBTQ+ people, must be provided through inclusive budgeting and affirmative action. Prioritizing undeveloped states and

underdeveloped districts through targeted programs and investments in rural infrastructure, healthcare, and education would also help to address regional inequities.

5. Participatory and Transparent Governance

Effective RTD implementation is based on open governance and community involvement. Institutionalizing processes like community-based monitoring, public hearings, and social audits is necessary to increase development's responsiveness and accountability. Transparency and public scrutiny can be improved by fortifying the Right to Information (RTI) Act and establishing open-access data portals.

6. Balancing Development with sustainability in environmental matters

Additionally, the RTD ought to be based on ecologically friendly methods. Future generations' rights and environmental deterioration shouldn't be sacrificed for development. ESIA's (environmental and social impact assessments) need to be thorough, inclusive, and compliant with human rights standards. Since tribal and forest-dwelling populations are frequently disproportionately impacted by unsustainable projects, special attention should be paid to defending their environmental rights.

7. Strengthening socio-economic infrastructure

All people must have access to high-quality public services like housing, healthcare, education, nutrition, and sanitation for development rights to be relevant. Rights-based programs such as MGNREGA, the National Food Security Act (NFSA), and the Right to Education (RTE) must be strengthened. Reducing vulnerability and advancing economic dignity can be achieved at the same time by providing decent employment possibilities and guaranteeing livelihood stability through social protection.

8. Capacity Building and awareness

Awareness and capacity building are also essential. Both civil service training and school curricula need to include human rights education. To assist the underprivileged and disenfranchised in claiming their rights to development, legal aid programs had to be reinforced. To maintain judicial consistency in instances pertaining to development, the court needs to be made more aware of the importance of adopting a rights-based approach to development.

9. Judicial reforms

For India's entitlement to Development (RTD) to become a fully enforceable entitlement, judicial reforms are necessary. In the context of fundamental rights, the judiciary must expressly acknowledge RTD, especially by interpreting Article 21 of the Constitution more broadly. Access to justice can be improved by creating specialized development rights benches or tribunals and strengthening the Public Interest Litigation (PIL) process to encompass development-related complaints. Regular training and education on RTD, international human rights standards, and the balancing of individual, collective, and developmental rights are necessary for judicial officers.

10. A legally binding treaty

The growing international understanding that development is not just an economic objective but a fundamental human right that must be fairly available to all people and nations has led to the necessity for a legally binding treaty on the Right to Development (RTD). Although the UN Declaration on the Right to Development from 1986 established a solid moral and political framework, its enforceability and accountability are restricted due to its non-binding character. States and international organizations would be required by a legally binding agreement to implement inclusive, participatory, and sustainable development policies, address global inequality, and guarantee that human rights be given precedence above financial gain in development cooperation. In the end, it would guarantee that development becomes a shared and enforceable global obligation by changing the conversation about global development from charity and aid to justice and rights.

6.5 General Conclusion

India's judicial perspective on the Right to Development (RTD) has developed throughout time, reflecting a progressive extension of constitutional interpretation, particularly in relation to Article 21, which protects the Right to Life. The Supreme Court of India and other Indian courts have long acknowledged that access to basic requirements like health care, education, livelihood, housing, and a clean environment is essential to achieving true dignity and liberty. The judiciary, which frequently uses the Directive Principles of State Policy to direct the State's duties, has subtly weaved developmental rights into the fabric of fundamental rights through seminal rulings.

Notwithstanding these judicial developments, the RTD has not yet been expressly acknowledged by Indian law as a separate, justiciable right, which restricts its uniformity and enforceability.

The complete implementation of RTD through legal channels is hampered by a number of issues. Courts frequently have to strike a difficult balance between the public interest, community development goals, and individual rights. For example, conflicts between the rights of displaced people and the larger story of economic expansion are common in cases involving land acquisition or infrastructural projects. Furthermore, institutional barriers including delays, a lack of enforcement tools, or a lack of coordination amongst policies might occasionally hinder judicial activism in development-related cases. Courts must mostly rely on case-by-case interpretations due to the lack of a defined legal framework for RTD, which can result in inconsistent and insufficient protections for vulnerable populations.

Better, rights-based development strategies with a foundation in justice, equity, and sustainability are desperately needed in light of these issues. In addition to ensuring that development processes are inclusive, accountable, and participatory, a strong legal and policy framework that expressly acknowledges the Right to Development will strengthen the basis for judicial enforcement. Institutional reforms such as specialized tribunals, enhanced legal aid, and judicial training on rights related to development should be implemented in conjunction with such a framework. Development in India will ultimately be a guaranteed and enforceable right for everyone if national policies are in line with international human rights standards and the constitutional goal of social justice.

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