

## **The Transformation of the Concept of Socio-economic Rights in India through the Tool of Transformative Constitutionalism: An Analysis through the Landmark Judgments**

*Dr. Sagnika Das*<sup>1</sup>

### **Abstract**

*The very concept of 'Dignity' of a human being which is the fundamental distinguishing factor between humans and animals, is resting in the factor of the availability of resources within a given socio-economic and political framework within a certain geopolitical area. On the basis of the different variety of resources, the notion of the concept of social and economic demands of the people of a particular territory depends and on this very note, the concept of Socio-economic Rights undergoes transformation. This transformation, is a tool, by which a Thesis (the traditional viewpoint) changes into Synthesis (new ideas giving way to the changing dynamics of the society) and giving shape to a new social order, enabling humans to develop a modern cognitive domain of thinking, reasoning and internalizing the changing dimensions of the society. Social change, is a phenomena which is closely associated with the concept of 'Rights' of the people allowed within a given legal framework and the changing equations between these different Rights allow the society to mould itself with the changing geo-politics. In view of the above, the paper focuses on the journey and transformation of the concept of Socio-economic Rights in India since the very inception of the Constitution of India and also intends to look into the major factors that aided the Transformation of the Constitutional Ethos within the country with reference to some of the landmark judgments coming from the Supreme Court of India through jurisprudential insights.*

**Key words:** Transformative Constitutionalism, Socio-economic Rights, Constitution of India, Supreme Court of India, Fundamental Rights, Directive Principles of State Policy and Human Rights.

### **I. Introduction**

The general principle of science is that all the physical things existing around humans are changing continuously. The basic principle of the *Law of Insurance*

---

<sup>1</sup> Independent Researcher, email id: sagnika.mtb10@gmail.com.

is that everything existent is subject of destruction, be it the life of a human, life of an animal, life of a tree or be it any smallest part of the environment, all are subjects of change and decaying. From the process of birth to destruction, all the tangible phenomena existing within the earth are subjected to some chemical as well as physical changes. It is kind of a helical model where the circle of change goes on and on. This is how the *Mother Nature* functions, however, there exist certain fundamental principles onto which the *Principle of Change* do not apply which on the philosophical as well as on jurisprudential language know as *a priori*<sup>2</sup>. There exists certain universal truths which are omnipresent *viz. sun rises on the east, sets on the west; water consists of two molecules of hydrogen and one molecule of oxygen*, these are universal truths and are not subjected to be any changes from time immemorial. Hence, there always lies some exceptional rules against the general popular rules which may always seem to stand against the basic principle of *Change*, however, this popular notion can always be refuted by valid evidences. Similar notion is found in the *Constitutional Legal Framework* as well where the legal principles remain the same as they are known to be the *Basic Structure of the Constitution*, however, within this vast ambit of the *Rule of Basic Structure*, certain Duties and Rights of the State and of the People changes with time along with the changing social dynamics which sets the footing for social change through *Transformative Constitutionalism*.

The term *Transformative Constitutionalism* is a philosophical jurisprudential notion which roots for the idea that the *Constitution* is not a mere set of words stating rules and limitations, rather, it is a living document that has the ability not only to deal with the present scenario but also to mould and change, according to the needs of the future changing dynamics and contingencies. It is the reason because of which *Law* could never be defined exclusively under the purview of *Jurisprudence*. It has always remained as an open ended statements for all the jurists and for all the legal learners, the basic concept of the same is coming from the universal consciousness, irrespective of the name on which it has been called in any language, be it *Volksgeist* or *Grundnorm* or *the Command of the Sovereign* (the command also being transforming from era to era depending upon the

---

<sup>2</sup> Knowledge which are existent within the nature self-evidently. There is no need of proving the same as they come from deduction (general observation to particular conclusion). <https://dictionary.cambridge.org/dictionary/english/a-priori> (last visited Feb 18, 2026).

availability of resources, reigning principles and necessity) or a *Transcendental Metaphysical Abstract*.

This transformation can occur depending on several variables, the most prominent amongst them all can occur at the general functioning of the Sovereign, where the Parliament brings a motion to amend the Constitution or bring new Statute or Ordinance or Rules regarding a specific subject matter or it can be brought by the motion of the people where any individual or a group of citizens exercises the rule of *Locus Standi* a bring an issue before the judiciary where the judges judge the gravity of the motion of the people and orders to bring about the social change ensuring the benefit of the larger population. In order to examine further, a detailed study of the concept of Transformative Constitutionalism and Socio-economic Rights is essential.

## II. Evidences of the Constitution of being a Living Document

The dictionary meaning of the term '*Constitution*' denotes the '*formal or informal system of establishing something*'<sup>3</sup> and under the legal ambit, it denotes the fundamental principles of a particular geo-political territory demarketing the components of the State and their shared roles and responsibilities along with the Rights and Duties of the citizens and a basic outline on the long term goals and aspirations of the country.<sup>4</sup> From this above statements, it becomes clear that most of the *Constitutions* of the world, come into existence at the moment of the inception of the Country.<sup>5</sup> Now, the question arises that, whether these *Constitutions* coming into force in a country is stating or having the ability to be changed or transformed and the answer to such question comes in affirmative way *i.e.* the Constitution of every country has the ability to be altered according to the changing needs and dynamics within a certain geo-political territory. Almost, all the *Constitutions* of the countries of the world have shown such

---

<sup>3</sup> Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/constitution> (last visited Feb 18, 2026).

<sup>4</sup> M. P. JAIN, INDIAN CONSTITUTIONAL LAW 1 (7<sup>th</sup> ed. Reprint 2016).

<sup>5</sup> There exists certain exception where a country adopts a Constitution and later changes the same, as had happened in the case of Nepal which has adopted a total number of seven Constitutions since 1948. Similarly, there are some other countries like France, Pakistan, Chile, Venezuela and so on which have been witnessed to have adopted more than one Constitution since its very inception. <https://constitutionnet.org/country/france> (last visited Feb 18, 2026).

dynamic feature and as a result of this it has been stated that *the Constitution is a living document*.

While talking about the Constitution as a living document in the context of India, the words of *Dr. B. R. Ambedkar* remains like a cornerstone as he stated that *the Constitution is not merely a document of words but a vehicle of life which always remains as the spirit of the age*.<sup>6</sup> If liberally interpreted, it indicates that the Constitution of a country should not be construed on the basis of the words as it was perceived at the time of the adoption of the same, rather, it should change with the changing circumstances and values of the society in order to meet the needs and beliefs of the not only the present but also of the forthcoming generations as well. At this point, it is essential to state that, *Constitution and Constitutionalism*, both are distinct concepts and may contradict from each other. For example, under the circumstances of autocracy, *the Constitution* is the command of the Dictator, whereas, *Constitutionalism* is concerned with the checks and balances by which a control is put on the governmental machineries functioning with the ambit of the Constitution. Hence, there are certain prescribed mechanisms by which *Constitutionalism* can be ensured under a given Constitutional framework viz. *a written constitution, fundamental rights, independent judiciary, power of judicial review, doctrine of rule of law, transparency and accountability of the Government officials, separation of powers and flexible amendability* are some of the milestones of *Constitutionalism*<sup>7</sup> with the help of which a written Constitution can remain relevant and existent to bring about social transformation in any given society.

In the Indian context, since the very inception of the *Constitution of India*, *Constitutionalism* has sailed through the high sea of social, economic and political turmoil and stood through with the changing dynamics where the basic concept of the *Rights* of the people of India have been evolved. For a very long time, India strived to understand the basic principles of *Indian Constitutionalism* till the case of *Kesavananda Bharati*<sup>8</sup> and within this timeframe the scenario relating to the *Rights and Duties of the people* have gone through many changes

---

<sup>6</sup> B. R. Ambedkar, *Guiding Light of India's Constitution*, static.pib.gov.in (last visited Feb 18, 2026).

<sup>7</sup> M. P. JAIN, *INDIAN CONSTITUTIONAL LAW 6-7* (7<sup>th</sup> ed. Reprint 2016).

<sup>8</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

both by judicial pronouncements and by amendments, a detailed discussion of which is essential to identify the *transformation of the Constitutionalism in India*.

### **III. Jurisprudential Evolution of the Concept of Socio-economic Rights in India**

Socio-economic Rights or the *Second Generation Human Rights*<sup>9</sup> are those set of attributes which are essential for ensuring *Dignity* of human beings. Under the *Constitution of India*, there are two bouquets of *Rights* as they are enshrined under Part III and Part IV of *the Constitution of India*. The previous consists of *Civil and Political or First Generation of Human Rights* whereas the later embodies *the Socio-Economic and Cultural or Second Generation Human Rights* and it is noteworthy to state that while the first set of Rights are enforceable by the Judiciary, the second set of Rights by virtue of Article 37 of the *Constitution of India* are not and exactly at this point the point of *Transformative Constitutionalism* had been embedded within the constitutional ethos of India as though these Rights were not enforceable at the time of commencement of the *Constitution*, however, it was made fundamental principles behind the governance of the country on the availability of soundness of resources within the country. On this note, certain theories relating to the evolution of the concept of *Rights* as a tool of *Transformative Constitutionalism* are discussed in the following.

The first jurist on this segment would begin with the era of enlightenment when Emmanuel Kant (1724-1804) in his epistemology stated that humans perceive nature through its sense organs and while doing so it is not possible to acquire the actual knowledge of the universe. Humans perceive the nature of universe only by applying their reason to enquire into the relation between the mind and the universe. He stated that the practical reason of man is able to distinguish

---

<sup>9</sup> Under the Human Rights Jurisprudence, presently there are 4 generations of Human Rights. 1. The First Generation or the Civil and political Rights which is related to mainly Right to Life, Liberty, Equality, Justice and Fraternity. 2. The Second Generation of Human Rights or the Social, Economic and Cultural Rights broadly deal with the different variable aspects functioning under the umbrella of Right to Life *viz.* Right to Food, To Work, Equitable Wages, Maternity Relief, Equal Pay for Equal Work, Right to Education, to Live in a healthy Environment so on and so forth. The Third Generation of Human Rights are dealing with the Right to Self-determination, Right to Environment, to Traditional knowledge and finally the Fourth Generation of Human Rights consists of Right to Technological Advancements and Right to Internet.

between good and evil which is the fundamental basis behind the moral law of a society and through this he reaches to the concept of *human dignity* where he holds that each human being deserves a special regard only because of being a human being as by virtue of the nature, each of them are born with unique quality which cannot be exchanged for any worldly value. He distinguishes between the moral and legal motives where the earlier refers to acting from goodwill whereas the legal motive refers to acting from the fear of law. Here the fear refers to the sovereign power of the state which is distinct from any hereditary king or queen but the legal power is derived from the authority of the people who are regarded as the equal citizens in the term of their political rights which he called as Republicanism.<sup>10</sup> This fear at the present legal scenario refers to the accountability of the State in protecting the *Rights* of the people and at the same time the fear exists on the people in order to obey the law and in any of the circumstances this analogy gives space to the concept of *Socio-economic Rights*.

The development of the concept of *Socio-economic Rights* owes much of its fundamentals to the Analytical School of Jurisprudence. Jeremy Bentham (1748-1832), John Austin (1790-1859), and John Stuart Mill (1806-1873) are the three most important exponents of this school which talks about the theory of *Utilitarianism*. *Bentham* proceeds from the view that humans are governed by *two sovereign masters viz. pleasure and pain*, helping them realise what ought to do and what ought not to. People quantify good and evil according to the amount of pain and pleasure resulting from their actions. This ability of pleasure and pain to increase or diminish the amount of happiness of people has been identified by Bentham as 'utility'. Denying the notion of the *Natural Rights philosophy*, he stated that whether to recognition a certain privilege as Right or not, completely depends upon the will of the Sovereign as it is the sole source of power in a society. The theory of Austin was further supported by *John Austin* who stated that *Law is nothing but the command of the Sovereign i.e.* anything coming from any other source having the force of law is not legal as it lacks legitimacy because of not coming from the command. Contrary to the notion of *absolute power of the command theory* supported by *Bentham* and *Austin*, *Mill* talks about a mechanism to control the tyranny of the social rules and public

---

<sup>10</sup> M.D.A. FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE 132-139 (7<sup>th</sup> edition 2001).

opinion. He desired for a need for protection against the tendency of the society to impose civil penalties onto those who dissent from the public opinion. Mill in his famous work *On Liberty* stated that, the right to liberty of a person ends at the point where it might curb the freedom of another person. He further condemned the tyranny of the majority in a democratic society. Thus he supported both the concepts of *Natural Rights and the power of the Sovereign*, but with a measure of check and balance.<sup>11</sup> Thus this school of thought aided the need of the recognition of the *Socio-economic Rights* gradually, with the passing time, with the constantly changing dynamics of thought, expression and belief.

The contribution of G. W. F. Hegel (1770-1831) in the development of the concept of *Socio-economic Rights* is crucial at this point. While accepting the concept of *Rule of Law*, he to some extent followed the philosophy of *Emmanuel Kant*. Like *Kant*, he stated that reason is the basis of reality which is expressed during the course of history. His theory is popularly known as *Historical Materialism* where he states that the reason of human being passes through the *Thesis, Anti-Thesis and Synthesis*. He stated that everything has antithesis and while the first is positive the later is negative and in the course of time the thesis and antithesis reconcile in the form of synthesis. On the basis of this triad, Hegel has evolved the concept of Right, the concept of morality and the concept of social morality where Right means certain attributes which gives protection of life to everyone whereas everyone comes under the social contract where they promise not to intervene in the Rights of others and finally, the *synthesis* comes as a punitive measure against the violation of Rights *i.e.* if anybody violets the Right of any other individual then that person will be subjected to punishment.<sup>12</sup> This is how the concept of Right has come out according to the theory of Hegel which certainly gives foundation to the concept of *Socio-economic Rights* as well.

The theory of *Karl Marx (1818-1883)* is also essential for understanding the principles behind the *Socio-economic Rights*. He stated that in order to survive in this nature, people need *inter alia* food, clothing, shelter which are essential for survival and in order to get these things, there is a need for material

---

<sup>11</sup> Sagnika Das, Challenges of Implementation of Socio-economic Rights in India: A Study of the Supreme Court Cases (July 24, 2025) (Unpublished S.D. Thesis, University of North Bengal) (on file with the university library system).

<sup>12</sup> DR. O. P. GAUBA, WESTERN POLITICAL THOUGHT 236-246 (1<sup>st</sup> ed. 2011).

production. The production single handedly cannot fully fill the needs of the people as the production has to be distributed accordingly so that it could be consumed by the people. Hence, production, consumption and distribution have an independent distinct relationship with one another and at one point this interrelation enters into a conflict which renders the society unstable.<sup>13</sup> The labours have a distinct role to play in this as this sells their labour power which adds value to the commodities. Their skill demands a valued wage to be paid and according to Marx inequality lies on the time of the payment of such wages by the capitalists. On the basis of this the question relating to fair wage, living wage, decent working environment, rest and leisure and maternity benefit has come into being which are clearly the components of the Socio-economic Rights.

The fundamental jurisprudential values behind the concept of *Socio-economic Rights* can be found in the concept of *Distributive Justice* based on the theories of *John Rawls (1921-2002)*. In his landmark work *A Theory of Justice 1971*, he stated that a just society is characterized by a number of virtues and *Justice* is the first virtues of that society. However, Justice is dependent on several variables viz. *just distribution of the primary goods* which include *Rights and Liberties, Powers and Opportunities*, income, wealth, means of self-respect and so on. While vehemently criticising *Utilitarianism* he stated that the principle of greatest happiness of greatest number ultimately results into injustice by putting certain individuals or groups of people to extreme hardship in life which creates an obstruction to build a just society. Rawls invoked the principle of social contract and stated about a hypothetical original position where they are placed behind the *veil of ignorance* where they are completely unaware of their wants, interests, skills, and abilities as well as fair conditions of living. The only knowledge they have is that of *economics and psychology and a sense of just and unjust* and in such given scenario all these people behind *the veil of ignorance* will choose the least dangerous options by which they will ultimately place themselves in *the least advantages position* by which they will demand *the greatest benefit for the least advantaged*. And through these three basic principles will usher in 1. Principle of equal right 2. Principle of fair equal opportunity and 3. Equal distribution of the primary goods can be justified only when it can be proved that it brings the greatest benefit to the least advantaged.

---

<sup>13</sup> EDGAR BODENHEIMER, THE PHILOSOPHY AND METHOD OF LAW 81-83 (6<sup>th</sup> Indian reprint 2009).

Here he brought the analogy of the chain connection and stated that in order to develop a strong chain there is a need to strengthen the weakest link existing therein.<sup>14</sup> With this notion of *least advantageous position*, the weaker sections of the society comes in mind because of whom making availability of resources have been made a fundamental in the governance of the country by *Part IV* of the *Constitution of India*.

Contrary to the view of *John Rawls*, *Robert Nozick* (1938-2002) on his famous work *Anarchy, State and Utopia* has opined that there are three sources of goods which individuals strive to acquire. Number one is the body and brain of a person. A person has the absolute right over his or her body and has the absolute right to get price for any discoveries he or she makes out of the use of that brain. Second is the natural world where the land water minerals are the goods of every human being and every person is entitled to acquire those resources. The third and the final resource is the things which people make by applying the resources of the natural world for example the agricultural and the industrial produces. *Nozick* states that every human being has the entitlement over these things. He further states that if any group of people enters into an uninhabited continent, then he has the legitimate Right over that land a natural resources on *the first come first serve basis*.<sup>15</sup> Though this position of *Nozick* gives way to the *exploitative capitalism* as well as validates the rules established in the colonialism, however, speaks for the advancement of *the social and economic rights* of the people justifying the demand for the right to the natural resources.

With these vast jurisprudential thoughts, it can be stated that the conceptual thought of *Right and Duty* has gone through evolution since the very beginning but the notable thing is that the fundamentals of the jurisprudential thoughts have also gone through changes which aided in the paradigm shifts from one logical era to another and the same shift is also found in the concept of *Socio-economic Rights*. Initially, during the era of Natural Law the whole discussion was concerned with *Liberty, Equality and Fraternity and Social Contract*, during the era of enlightenment the notion of *Sovereign* came into being and with time there also came a question relating to the means by which control can be brought to

---

<sup>14</sup> M.D.A. FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE 485-590 (7<sup>th</sup> edition 2001).

<sup>15</sup> DR. O. P. GAUBA, WESTERN POLITICAL THOUGHT 167-169 (1<sup>st</sup> ed. 2011).

*limit the power of the Sovereign* and with this a sense of transparency and accountability is also attached on the part of the Sovereign which has given enough reason to build the Human Rights centric theory of Socio-economic Rights under most of the prominent constitutional legal framework of the world. With this view, the next segment of the paper shall look into the tool of *Constitutional Amendment* under the *Indian constitutional legal framework* in order to map the changes that it has brought in under this purview.

#### **IV. Constitutional Amendment as a Tool of Transformative Constitutionalism in Shaping the Future of Socio-economic Rights in India**

The amendment to the *Constitution of India* can take place in mainly three ways. One certain provisions which are of less significant can be amended by simple legislative process, second, those provisions which are material and vital can be amended only by following the role of special majority and certain constitutional provisions which are of federal nature, need to be amended by presenting a bill to both the houses of the parliament and by half of the state legislature. In all the three cases, the ascent of the president is a material requirement.<sup>16</sup> Despite having a separate dedicated provision prescribing the procedures for the amendment of the constitution, several decades long debates have been in existence due to the question of amendability of the same. India has witnessed a series of judicial decisions discussing and determining about the power of the parliament to amend the constitution and in order to do so there came certain judicial decisions which completely changed the dynamics of the exercisable *Rights* of the people of India.

The first case in this regard came into being is *Shankari Prasad Singh v. Union of India*<sup>17</sup> where the first amendment to the constitution was challenged on the ground that it curtails right to property and while answering to the question, the apex Court of India through adopting literal interpretation stated that the parliament has the power to amend the constitution without any exception. This meant that the parliament has unlimited power to amend any part of the constitution including the *fundamental rights* as mentioned under Part III of the same. Similarly in *Sajjan Singh v. State of Rajasthan*<sup>18</sup> the Court stated that

---

<sup>16</sup> Art 368, Constitution of India, 1949.

<sup>17</sup> AIR 1951 SC 458.

<sup>18</sup> AIR 1965 SC 845.

*fundamental rights* are not beyond the scope of article 368. However this literal observation of the *supreme court of India* changed in 1967 through the case of I. C. Golaknath v State of Punjab<sup>19</sup> where the court held that the constitutional amendments made under Article 368 is also *Law* as per the subject of Article 13 and while coming to the question of amendment to the fundamental rights, it cannot be taken away, however, it is further to remember that Article 368 is not subjected to be controlled by Article 13 and any amendment made in this regard are completely open to challenge before the Court. Next, the Court by invoking the doctrine of '*prospective overruling*' stated that the it would create hue and cry to give a retroactive effect to this ruling and the judgment should be affected in future situations only.

After the *Golaknath case*, the *Constitution of India* underwent is 24th and 25th amendment in 1971 which respectively amended article 13 (which state it that article 13 is not applicable to any constitutional amendment made under article 368) and inserted article 31C to the constitution. This action by the parliament at one hand was a clear attack on the transcendental feature of the fundamental rights and on the other hand it was self-evident that the parliament was repetitively acting against the rulings made by the apex court which was creating a constant stress between the legislature and the judiciary at one hand and on the other it also showed the efforts from the side of the legislature to give shape to the concept of *Welfare State* by giving importance to the weaker sections of the society and prohibiting the concentration of wealth which is also fundamental for the policy of governance by virtue of Part IV of the constitutional mandate which was evidently rooting for transformation.

However, both the above mentioned amendments were again challenged under Article 32 by a writ petition filed by Keshavanand Bharati in the State of Kerala<sup>20</sup> where the apex court of India overruled the judgement of Golaknath by stating that there is a clear distinction between the law as mentioned under article 13 and the Constitution as a result of which article 368 confers power to amend the fundamental rights however this power cannot be exercised in such a manner so as to destroy the basic fundamental features of the constitution. An amendment could not offend the basic structure of the constitution and the supremacy of law,

---

<sup>19</sup> AIR 1967 SC 1643.

<sup>20</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

Republican and democratic form of the government, secularism, federal character of the constitution and the doctrine of separation of powers are some of the features which fall under the category of 'the basic structure.' in other words it can be stated that the parliament has the constitutional power to amend the constitution however that Power is not absolute and can be challenged under article 32 if it attempts to destroy the basic fundamental ethos of the constitution. This judgment settled some decades long questions relating to the amendability of the conferred enforceable fundamental rights of the people of India which set a paradigm shift in the Indian constitutional ethos which set foot for the recognition of certain new sets of Rights within the purview of Part III and paved for the conceptual horizontal expansion of Part IV of the *Constitution of India*.

In view of the above, it can be stated that since 1950 to 1973 the constitution of India has gone through multiple amendments and so many more were yet to come in the upcoming years. But the most important thing to notice in this is that since the inception of *the Constitution of India* the society has evolved and along with that the judicial pronouncements have also changed along with the changing social dynamics where the judiciary, executive and the legislature found that giving importance to the Part IV is equally important as it is to protect Part III of the constitution and this has aided towards constitutional transformation which has also held in developing some new dimensions of Rights which will be dealt with in the next segment of the paper.

#### **V. Judicial Decisions as a Tool of Transformative Constitutionalism in Shaping the Functions of Socio-economic Rights in India**

Judges take a quintessential role in upholding the Rights of the people in a democratic republican system of government where the people have been attributed with the power of enforcing their legal rights. Article 32 and 226 of the *Constitution of India* empowers the people as well as the judiciary to enforce and interpret the rights as mentioned under Part III of the constitution and at the same time the High Courts and the Supreme Court have the power to take *suo moto* cognizance of issues on the basis of discretion. The apex court of India has undertaken numerous issues of national importance, the decisions of which have changed the conventional conceptual basis of Rights. Some of these Rights come from literal interpretation, some from liberal, vertical and horizontal interpretation as well. In the following, the most significant judicial decisions are

mentioned which have changed the socio-economic, cultural and legal dynamics of India.

The first case while talking about the implementation of the social economic rights can be found in *Maneka Gandhi v. Union of India*<sup>21</sup> where the passport of the petitioner was impounded by the passport officer in public interest. Maneka Gandhi was directed to surrender her passport within the given stipulated time and while she asked for the reason behind this decision of the passport officer she was stated that in the interest of the general public she will not be served with the copy of the statement of reasons behind making such an order. Hence the petition of filed the rich petition contending that this order violets her fundamental right as mentioned under article 19 (1) (a) and 19 (1) (g). The supreme court of India stated that impounding of passport of any individual is not illegal however while doing so there is need to follow the rule of *audi alteram partem* so that the petitioner would have exercise he is or her right to be heard. It for the stated that the fundamental rights are the modern name of the rides which formerly used to be known as the natural rights and this rights do not stand in isolation the existence of one without the other is not possible. Does impounding of passport without giving reasonable opportunity of being heard is not only the violation of fundamental right to freedom of expression and freedom of practicing any profession but also violets the right to life and personal liberty as has been enshrined under article 21 of the constitution. This landmark judgement of the supreme court of India initiated a paradigm shift within the role of interpretation and right to go to abroad was first time recognised as a fundamental right under the purview of Part III.

*Madhav Hayawadanrao Hoskot v. State of Maharashtra*<sup>22</sup> is another landmark judgment where *the Supreme Court* on appeal faced a case of forgery made by a 30 years old male, belonging to a middle class family who forged a degree obtained from University of Karnataka where he was sentenced to 3 years of imprisonment by the High Court. However even after 4 years of imprisonment he was not released and the reason for the delay was that the high court it not deliver a copy of the ruling to the petitioner. The court held that it is the responsibility of the state to provide free Legal aid to the prisoners if there unable

---

<sup>21</sup> AIR 1978 SC 597.

<sup>22</sup> AIR 1978 SC 1548.

to acquire the same. It is the first time when the right of prisoners to free legal assistance under article 21 was recognised. At this point it is essential to state that in 1976 through the 42nd constitutional amendment act article 39A was incorporated under part 4 of the constitution which mandated to provide equal justice and free Legal aid while full feeling its obligation to secure social and economic justice.

In *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*<sup>23</sup> depicted a pathetic picture of the administration of justice of India in the state of Bihar where persons including women children and other deprived categories of poor section had been locked behind the bars and where seeking for trials. The most concerning issue here was that these under trial prisoners remaining jail for more years than what is prescribed for the committed offences. When a rich petition was filed before the supreme court of India the court held that wrongful confinement of these under trial prisoners is a violation of the fundamental right to life and state has the obligation to provide speedy trial to the accused and also to provide free legal services to those who cannot afford legal advisory by their own.

*C. B. Muthamma v. Union of India*<sup>24</sup> is a landmark decision on upholding the fundamental right to equality when the petitioner, an I. F. S. Officer was illegally and unconstitutionally denied of her promotion just because of her gender and the apex Court held that such act is an instance of hostile discrimination against women on services and the central government was directed to make rules without the stain of gender discrimination so that the appointments and promotions can be made solely on the basis of merit. This case revealed that the hoax relating to gender discrimination is a real thing and even the top most officials are being subjected to discrimination on the basis of their gender which is a direct violation of the constitutional ethos and the recognition of the same waves the way towards recognising the socio economic backwardness of women in the society irrespective of their status.

In *Randhir Singh v. Union of India*<sup>25</sup> the petitioner was a driver constable in the police force of Delhi and he brought the petition before the supreme court of

---

<sup>23</sup> AIR 1979 SC 1369.

<sup>24</sup> AIR 1979 SC 1868.

<sup>25</sup> AIR 1982 SC 879.

India stating that the drivers of different departments of the government get different amount of salaries. There is no parity in the amount of their payment. The supreme court of India here by in walking article 14 other constitution stated that equal pay for equal work is a fundamental right. Though it is not expressly mentioned under the constitution to be a fundamental right but by virtue of article 39 (d) it is a constitutional mandate that both men and women get equal pay for equal work. This judgement is an example of horizontal interpretation of the directive principles of state policy within the ambit of part III of the constitution.

The next case in this regard is *Olga Tellies & Ors. v. Bombay Municipal Corporation*<sup>26</sup> where the Bombay pavement dwellers near the Western express Highway were wrongfully evicted and moved outside the city and contended that this eviction amount the loss of their livelihood which is a fundamental right under article 19 (1) (g) and article 21 of the Constitution of India. The court here observed that right to livelihood is a part of right to life and comes under the purview of article 21 and even if the municipal corporation wanted to relocate them it has to make a proper housing facilities for them and make sure that they do not lose their livelihood. This case is another example of transformative constitutionalism where socio economic right to livelihood had been upheld under the ambit of article 21 of constitution of India.

The next case on the field of Transformative Constitutionalism is *M. C. Mehta v. Union of India*<sup>27</sup> which took a giant leap from the Indian colonial past and paved to set of new rules for the rest of the world. The burning issue in this case was the extent of liability of the hazardous industries in India as the people living in, were witnessing causalities due to the leakage of hazardous substances from these industries in various places of the country. In order to cast exemplary damages on the part of these industries the Court deviated from the age old rule of *Strict Liability*<sup>28</sup> and propounded the principle of *Absolute Liability* which had allowed no exception to the on the proportion of liability irrespective of 'fault'.

*Mohd. Ahmed Khan v. Shah Bano Begum*<sup>29</sup> plays a pioneering role in asserting the *Socio-economic Rights of the Muslim women in India after divorce* through

---

<sup>26</sup> AIR 1986 SC 180.

<sup>27</sup> AIR 1987 SC 1086.

<sup>28</sup> *Rylands v. Fletcher*, (1868) LR 3 HL 330.

<sup>29</sup> AIR 1985 SC 945.

*Transformative Constitutionalism.* In this case, the wife of a *Muslim man* was driven out of her matrimonial home after almost 43 years of their marriage without any socio-economic means. When the woman approached the Court for maintenance under *Section 125 of the Code of Criminal Procedure (now Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023)* she was denied the right after the *Iddat Period* as it has been directed under the Muslim personal Laws. When this matter reached the apex Court, it stated that the constitutional ethos of India does not allow vagrancy of any woman who is unable to maintain herself irrespective of the religion she preaches and if the husband has the liability to pay maintenance to wife, unable to meet the daily needs of a human being, then he is bound by law to pay the same. When the same question again came to the *Supreme Court* in *Danial Latifi & Anr. v. Union of India*,<sup>30</sup> the Court stretched *Right to Maintenance* as *Fundamental Right* and stated that if paying maintenance after *Iddat* period is against the ethos of Islam then whole amount of the maintenance needed for the rest of the life of a divorced wife should be paid within the *Iddat period*. This judgment changed the outlook of the people of India towards the law of maintenance protecting the *Socio-economic Rights of the women of the country* irrespective of any religion, caste, creed and established a strong foundation towards transformation of the social security of the Muslim women in a comprehensive manner.

*Transformative Constitutionalism* worked in another case which changed the dimension of the personal legal framework in India. In *Ms. Jordan Diengdeh v. S. S. Chopra*<sup>31</sup> the petitioner, a *Foreign Service Officer* belonging to *Khasi Tribe of Meghalaya* came to the Court asking for the dissolution of her marriage on the ground of impotency of her husband under the Indian Divorce Act, 1869 but at this point of time *impotency as a ground of nullity* was not recognized and as a result she was granted *Judicial Separation* on the ground of *Cruelty*. However, the petitioner was not satisfied with the decision of the Court as a result the Court expressed its strong desire for the legislative intervention to bring a uniform law for the laws relating to marriage, separation and divorce within the Indian constitutional framework. This judgment highlighted the issue differences

---

<sup>30</sup> AIR 2001 SC 3958.

<sup>31</sup> AIR 1985 SC 935.

existing within the personal legal framework and the Court urged the legislature to bring a socio-economic and legal change.

D. K. Basu, Ashok K. Johri v. State of West Bengal, State of U. P.,<sup>32</sup> is another landmark judgment which set forth a paradigm shift in asserting *the Rights of the people under custody* in India. Reference of the American judgment of *Miranda v. Arizona*<sup>33</sup> is essential as the *Supreme Court of India* pointed out certain guidelines which had to be kept in mind while making an arrest of a person and while keeping his or her under custody. It enumerated several substantive guidelines for the State executives in order to bring about transparency and imposing accountability upon the State. These guidelines paved towards the imposing certain responsibility on the State which is presently a cardinal principle of the system of governance of India.

*Transformative Constitutionalism* once again came into play in another landmark case when the safety of women from sexual harassment at workplace first time came into question in *Vishaka v. State of Rajasthan*<sup>34</sup> where the *Supreme Court of India* held that ensuring security to women at workplace is a part of the mandate as mentioned under Article 14 and 15 of the *Constitution of India*. Apart from this, at that point of time, India did not have any legal framework giving protection to women against sexual harassment at workplace, hence, the judiciary got into the shoes of the legislature and framed a guideline invoking Article 253<sup>35</sup> of the *Constitution* remembering the provisions of the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 1979 as in 1993 the *Government of India* became a State party to this convention which stated that it has an obligation to eliminate all the forms of discrimination against women. This judgment showed how the constitutional ethos of a country can grow in the course of time and changes the socio-legal dynamics of the same. In the aspect of *Gender Justice*, the *Supreme Court of India* has given several other landmark judgments which has certainly changed the gender dynamics within

---

<sup>32</sup> AIR 1997 SC 610.

<sup>33</sup> 384 U.S. 436 (1966) available at: <https://supreme.justia.com/cases/federal/us/384/436/> (last visited on Feb 21, 2026).

<sup>34</sup> AIR 1997 SC 3011.

<sup>35</sup> Parliament has the power to make any law for implementing any international treaty, agreement or convention with any country or countries or international associations.

the country and transformed the jurisprudence relating to the *Socio-economic Rights* in India.<sup>36</sup>

In *John Vallamattom and another v. Union of India*<sup>37</sup> is another case where the Supreme Court by invoking Article 44 stated that personal laws of the country should be in consonance with Part III of the Constitution of India. It started with a civil writ petition by a Roman Catholic Priest who contended that section 118<sup>38</sup> of the Indian Succession Act, 1925 is arbitrary as it prohibits all the Christians of the country from bequeathing their property for charitable purposes.

In *Lily Thomas v. Union of India & Ors*<sup>39</sup> where the Supreme Court held that *Right to freedom of conscience* as enshrined under Article 25 of the *Constitution of India* comes with a positive intent. A Muslim man who has converted into the religion only to solemnize a second marriage is not the true essence of '*Islam*', rather, it is to incur peace and submit within oneself and such a dubious malafide act does not represent the actual submission within the principles of a religion. With this judgment the Court was set to turn out the validity of all those second marriages which were made by any men on the pretext of religious conversion to *Islam* which paved a stronger path for the *gender equality* under the Indian constitutionalism.

*State of Gujarat v. Mirzapur Moti Qureshi Kasab jamaat & others*<sup>40</sup> is a landmark judgement where the issue revolves around the *Fundamental Rights*,

---

<sup>36</sup> *Indian Young Lawyers Association v. the State of Kerala* AIR 2018 SC 243 exclusion of women within the menstruation cycle from entering into sabrimala temple is against the ethos of equality and liberty. *National Legal Service Authority v. Union of India & Ors.* Writ Petition (Civil) No. 400 of 2012 where the apex court held that the transgender people have the right to be treated equally within the country with all the Rights available in Part III of the *Constitution*. *Navtej Singh Johar & Ors. v. Union of India* W.P. (CrI.) No. 76 of 2016 the Supreme Court of India upholding the *Socio-economic Rights of the LGBTQ+ people* stated that they nobody in this country should be subjected to discrimination on the basis of their gender orientation; *Jeeja Ghosh & Anr. v. Union of India & Ors.* AIR 2016 SC 2393 the Court held that discrimination against disabled people is against the constitutional ethos of India.

<sup>37</sup> Writ Petition (Civil) 242 of 1997.

<sup>38</sup> It prohibits all the men having nephew or niece or any nearer relatives from disposing their immovable property for religious or charitable purposes provided that he has a testimony executed 12 months before the date of his death.

<sup>39</sup> AIR 2000 CRILJ 2433.

<sup>40</sup> Civil Appeal No. 4937-4940 of 1998.

*Fundamental Duties and Direct Principles of State Policies.* Controversy arose in the *State of Gujarat* when section 4 of the *Bombay animal preservation (Gujarat extension and amendment) Act 1961* banned the cow slaughter in the State. The petitioner contended that this total Ban of could offend the religious sentiment of the Muslims as the sacrifice of a cow is a mandate approved by the Islamic principles. Along with this, the butchers of the State stated that this Act violets their right to practice any profession as has been proclaimed under article 19 (1) (g) of *the Constitution of India*. In response to this contention the State counter argued that this enactment has come into existence to give shape to the constitutional obligation as has been mentioned under article 48 of *part IV of the constitution*. The object of the Act was to protect, reserve and improve the life stocks as the cows, bulls, bullock and carves of the cows are the most important cattle for agricultural economy of the country and female buffaloes yield a large quantity of milk, hence, they need to be protected. In view of the above the court held that the ban as has been mentioned under this act is only on a particular class of cattle and this ban is not on the total activity of the butchers. They are free to slaughter cattle other than those specific cattle in the Act and as the contention has come that the skin and other allied things of the animal slaughter are related to the profession of the butchers, but they can collect it from the bodies of those animals dying due to natural death. This is a case where the protection of the animal becomes of cardinal importance above the fundamental right to profession and freedom of religious practices as the protection of these classified animals are also associated with the Right to Life as Life on earth cannot survive in isolation and recognition of the same was essential for giving way to the third *generation of human rights or community rights*.

*M. K. Ranjitsinh v. Union of India*<sup>41</sup>, is another environment related judgement which changed the dynamics related to environmental jurisprudence in India. The issue of the case rises in the *State of Rajasthan* where *social and cultural value of the Godawan culture* is dependent on the availability of the birds known as *the Great Indian Bustards (GIB)* and because of the fragile grassland ecosystem the number of the presence of these birds' species has declined. *Pollution and climate change* is the main reason behind this rapid decline of the numbers of the GIBs in this area and the court directed that long term research should be taken on the predatory effects of climate change in the Indian environment. The court

---

<sup>41</sup> Civil Appeal No. 3570 of 2022.

further stated that the corporate social responsibility should be extended to environmental responsibility as well by virtue of article 51A (g) as it is the constitutional obligation of the people and the legal persons to protect the environment. Through this judgement the court acknowledged the ill impact of climate change into the Indian environmental ecosystem.

*T. N. Godaverman Thirumulpad v. Union of India*<sup>42</sup> is another instance where the petitioner brought forth the issue of deforestation by the illegal timber operations via saw mills and plywood mills in the Nilgiri region. The Court while examining the provisions of *the Forest Conservation Act, 1980* stated that the meaning of the term forest has to be taken through the dictionary meaning and the nature of ownership of the land should not be counted on the question of deforestation. Along with this, the Court directed the States that if they want to cut down trees they need to take prior permission of the *Government of India*. Here, the Court took a step forward for the protection of the *Socio-economic Rights* of the people of India who care about the forest and also for those whose life and livelihoods are also dependent on the forest.

In relation to this case, in 2025 the *Supreme Court of India* under the operation of its original jurisdiction in *In Re: Issue Relating to Definition of Aravalli Hills and Ranges*<sup>43</sup> was concerned with the demarcation of *Aravalli Hill Range*<sup>44</sup> in order to address the issue of ongoing illegal mining and the court appointed a *committee framed by the Ministry of Environment, Forest and Climate Change (MOEF&CC)* which stated that it is only the State of Rajasthan had an official demarcation about the span of the hills which was made on the basis of *landform classification made by Richard Murphy* and it prohibited mining in all land forms rising 100 metres above and the Court stated that in this fragile area only sustainable mining will be allowed. Thus the judgment paved towards the ecological protection along with the protection of the livelihoods of the people engaged therein. However, it has also to be mentioned that lands below the 100 metres is not open to mining. If that part falls under the protected area of 500 metres between two protected hills then mining cannot be allowed within that part. This decision of the apex court set a new example regarding its stand on the

---

<sup>42</sup> AIR 2005 SC 4256.

<sup>43</sup> 2025 INSC 1338.

<sup>44</sup> Fragmented in the States of Gujrat, Rajasthan, Haryana and Delhi,

question of the protection of socio economic right of the people on India through transformative constitutionalism.

## VI. Conclusion

At last, it can be stated that, Indian civilization is one of the most ancient civilizations of the world and it has a vast pool of history and with the changing historical dynamics, the fundamental ethos of the land also changed. After the *Islamic* takeover of the land followed by the advent of the British, Portuguese and French people in India, the thousands years old civilization was hit by the western legal manoeuvres which shook the very fundamentals of the land through addition and elimination. Certain predatory rules, like the practice of Sati in Bengal was abolished by the *Bengal Sati Regulation, 1829*; the complete ban on the women education of India was uplifted through the opening of certain number of schools and colleges through various British educational policies; establishment of the Indian railways took place with the knowledge of the west at one hand and on the other another set of predatory laws like *Criminal Tribes Act, 1871* came into being which changed the mind-set of the dominant hegemony in India against *Transgender people* and it is still struggling to remove the taboo against the same. Their several rules relating to land revenues, indigo and cotton trade, 'white man's burden' have created a permanent sense of trauma within the very fundamental ethos of the land that it is still struggling with the concept of *White supremacy and Black servitude*, as a result, the people of India are still struggling to get out of its intriguing colonial past and the last stroke of the hammer came up with the severance of the country into 3 parts by which it acquired its independence.

With the Independence and enforcement of the *Constitution of India*, the very Preamble to the same once again set the fundamental ethos of the land and since then with certain combination and alterations that same values have been existent as the fundamental principles of the country which through precedents now is known as the *Basic Structure of the Constitution*. This transformation of India is based on the basic principles of *Equality, Liberty, Fraternity and Justice* and in order to stick with them with the changing society certain changing needs and necessity for the people have to be recognized by either the judiciary or the legislature. At this point, the concept of *Socio-economic Rights* and its absorption within the ambit of *Legal Rights* is essential presently humans are not only dependent on *survival* on the basis of food, clothing and shelter. In order to access

these basic things of survival, there is need of *Education, Technology, Skill, Knowledge, Social Security, Reservation for the Weaker Section, Humane Working Conditions, and Measures of Relief from Sexual Harassment* is essential and these things should come within the ambit of enforceability for the people. The very ethos of the *Socio-economic Rights* creates a pathway for this transformative constitutionalism. At this point, the jurisprudential theory of the famous *Australian jurist John Mitchell Finnis (1940)* becomes relevant as he stated that in order to ensure freedom of the people there is need of ensuring seven basic goods viz. *life, knowledge, friendship and sociability, play, aesthetic experience, practical reasonableness (ability to reason and to take informed choices), religion (ability to connect to the spiritual world and connect to the universal conscience)* and these goods clearly indicate towards the objective of the *Socio-economic Rights* and as these *Rights* change its dynamics, it brings about transformation within the *Constitution*.