

UNIT – IV

Protection of Human Rights at National Level

Indian Constitution • Protection of Human Rights Act, 1993

Human Rights Law and Practice

Unit Overview

This unit focuses on the domestic framework for human rights protection in India. The Constitution of India is the primary source of human rights guarantees through Fundamental Rights and Directive Principles. The Protection of Human Rights Act, 1993 created the institutional architecture – NHRC, SHRCs and Human Rights Courts.

Key areas:

- Human rights in the Indian Constitution (Part III & Part IV)
- Landmark Supreme Court judgments expanding rights
- Structure, powers and functions of NHRC under the 1993 Act
- State Human Rights Commissions and Human Rights Courts
- Interface between constitutional remedies and statutory mechanisms

What You Will Learn

01 Constitutional Base

Map Fundamental Rights and DPSPs to international human rights standards

02 Landmark Cases

Analyse Maneka Gandhi, D.K. Basu, Vishaka and other transformative judgments

03 PHRA 1993

Understand definition, composition and functions of NHRC

04 Powers of NHRC

Inquiry, recommendations, compensation and limitations

05 SHRC & Courts

Role of State Commissions and designated Human Rights Courts

06 Remedies

Art 32 & 226 vs statutory mechanisms under the 1993 Act

Human Rights and the Indian Constitution

The Constitution of India is the primary domestic source of human rights. Fundamental Rights (Part III) are justiciable; Directive Principles (Part IV) are fundamental in governance.

Preamble

Justice (social, economic, political), Liberty, Equality, Fraternity – mirrors UDHR values

Part III

Arts 12–35: Fundamental Rights – enforceable by courts under Arts 32 & 226

Part IV

Arts 36–51: DPSPs – non-justiciable but fundamental to governance (Art 37)

Part IVA

Fundamental Duties (Art 51A) – corresponding obligations of citizens

FUNDAMENTAL RIGHTS

Key Articles Corresponding to Human Rights

Art 14	Equality before law & equal protection	Art 15	Prohibition of discrimination
Art 19	Six freedoms (speech, assembly, etc.)	Art 21	Right to life and personal liberty
Art 21A	Right to education	Art 22	Protection against arrest & detention
Art 23	Prohibition of traffic in human beings & forced labour	Art 24	Prohibition of child labour in hazardous employment
Art 25-28	Freedom of religion	Art 32	Right to constitutional remedies (heart & soul)

Transformative Judgments – Part I

Maneka Gandhi v. Union of India (1978)

Expanded Art 21: procedure must be just, fair and reasonable. Interlinked Arts 14, 19 & 21 (Golden Triangle). Overruled A.K. Gopalan. Introduced due process into Indian constitutional law.

Kesavananda Bharati v. State of Kerala (1973)

Basic Structure Doctrine. Parliament cannot amend the Constitution to destroy its basic features, including fundamental rights and judicial review.

Olga Tellis v. Bombay Municipal Corpn (1985)

Right to livelihood is part of the right to life under Art 21. Pavement dwellers cannot be evicted without alternative shelter.

Transformative Judgments – Part II

D.K. Basu v. State of West Bengal (1997)

Laid down detailed guidelines for arrest and detention to prevent custodial torture and deaths. Failure to follow guidelines amounts to contempt and violation of Art 21.

Vishaka v. State of Rajasthan (1997)

Used international conventions (CEDAW) and UDHR to formulate binding guidelines against sexual harassment at workplace until legislation was enacted (later POSH Act 2013).

Nilabati Behera v. State of Orissa (1993)

Awarded compensation under Art 32 for custodial death. Established that public law remedy of compensation is available for violation of fundamental rights.

Protection of Human Rights Act, 1993

An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

Definition (s.2(d))

Human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

Structure

NHRC (Chapter II), SHRCs (Chapter V), Human Rights Courts (Chapter VI)

Amendment 2019

Expanded composition, allowed Chairperson from High Court Chief Justices, reduced term, etc.

National Human Rights Commission – Composition

Chairperson

A person who has been a Chief Justice of the Supreme Court (or High Court Chief Justice after 2019 amendment)

Members

One who has been or is a Judge of the Supreme Court; one who has been or is Chief Justice of a High Court; three persons having knowledge of or practical experience in human rights (at least one woman)

Ex-officio

Chairpersons of National Commission for Minorities, SC, ST, Women, and Backward Classes

Appointment

By the President on recommendation of a committee comprising PM, Speaker, Home Minister, Leaders of Opposition in both Houses, and Deputy Chairman of Rajya Sabha

Section 12 – Functions of the Commission

- (a) Inquire into complaints of violation or negligence in prevention of human rights (suo motu or on petition)
- (b) Intervene in any proceeding involving allegation of human rights violation pending before a court
- (c) Visit jails and other institutions to study living conditions and make recommendations
- (d) Review constitutional and legal safeguards and recommend measures for effective implementation
- (e) Review factors that inhibit enjoyment of human rights and recommend remedial measures
- (f) Study treaties and international instruments and make recommendations for their effective implementation
- (g) Undertake and promote research in the field of human rights
- (h) Spread human rights literacy and promote awareness

POWERS

Inquiry Powers & Limitations

Civil Court Powers

While inquiring, NHRC has all powers of a civil court under CPC – summoning witnesses, discovery, receiving evidence on affidavit, etc. (s.13)

Recommendations

Can recommend payment of compensation, initiation of proceedings, or any other action. Recommendations are not binding but carry high persuasive value.

Limitation (s.36)

Cannot inquire into any matter after expiry of one year from the date on which the act constituting violation is alleged to have been committed.

Armed Forces

Special procedure for complaints against armed forces – report to Central Government which must inform the Commission of action taken.

Paramjit Kaur (1999)

Supreme Court clarified that the one-year limitation under s.36 does not bind the Court when exercising jurisdiction under Art 32.

Cases Interpreting the 1993 Act

Paramjit Kaur v. State of Punjab (1999)

Supreme Court held that the limitation of one year under s.36 of the Act does not apply to the Court's power under Art 32. NHRC can be asked to investigate even older matters when directed by the Court.

People's Union for Civil Liberties v. Union of India

On appointment process and independence of NHRC members. Emphasised the need for transparency and adherence to the statutory composition.

D.K. Basu (later orders)

Supreme Court continued to monitor implementation of arrest guidelines and directed NHRC involvement in custodial death inquiries.

State Commissions & Human Rights Courts

SHRC (Chapter V)

Every State may constitute a State Human Rights Commission. Composition similar to NHRC but scaled to State. Functions largely parallel to NHRC within the State.

Human Rights Courts (s.30)

State Government may, with concurrence of the Chief Justice of the High Court, specify for each district a Court of Session as a Human Rights Court for speedy trial of offences arising out of human rights violations.

Special Public Prosecutor

For every Human Rights Court, the State Government shall specify a Public Prosecutor or appoint an advocate as Special Public Prosecutor.

Limitation

Many States have not fully operationalised SHRCs or designated Human Rights Courts effectively.

Key Features of the National Framework

01

Constitutional Primacy

Fundamental Rights remain the strongest protection; statutory bodies supplement them

02

Broad Definition

s.2(d) includes rights under Constitution and International Covenants enforceable in India

03

Suo Motu Power

NHRC can take up matters on its own motion – proactive role

04

Recommendatory Nature

Recommendations not binding, yet high compliance due to moral and political pressure

05

Judicial Backing

Supreme Court has repeatedly strengthened NHRC through directions

06

One-Year Bar

s.36 limitation is a practical constraint often criticised

Core Principles

Art 21 Expansion

Life includes dignity, livelihood, health, education, environment, privacy, etc.

Public Law Compensation

Available under Arts 32/226 for violation of fundamental rights (Nilabati Behera)

International Law Use

Courts freely use UDHR, Covenants and other instruments as interpretive aids (Vishaka)

NHRC Independence

Composition and appointment process designed to ensure independence from executive

Complementarity

Constitutional remedies and NHRC/SHRC mechanisms operate side by side

Limitation Awareness

One-year bar under s.36 is a practical constraint; Court can overcome it under Art 32

Article 21 – The Expanding Universe of Rights

After Maneka Gandhi, Art 21 has been interpreted to include:

- Right to livelihood (Olga Tellis)
- Right to health and medical care
- Right to education (later made explicit by Art 21A)
- Right to clean environment
- Right to privacy (Puttaswamy, 2017)
- Right against solitary confinement and bar fetters
- Right to speedy trial
- Right to legal aid
- Right to dignity and against sexual harassment

This expansive reading has made Art 21 the most powerful vehicle for human rights protection in India.

KEY HIGHLIGHTS

Sections & Main Points

Art 21	Just, fair, reasonable procedure; expanded to include dignity, livelihood, privacy
Maneka Gandhi	Golden Triangle – Arts 14, 19, 21 interlinked
D.K. Basu	Arrest guidelines; custodial torture prevention
Vishaka	International conventions used to fill legislative vacuum
s.2(d) PHRA	Definition includes Constitution + International Covenants
s.12	Wide functions including suo motu inquiry and research
s.36	One-year limitation – not binding on Supreme Court under Art 32
Paramjit Kaur	Clarified NHRC powers and Court's residual jurisdiction

ADDITIONAL CASES

Further Important Judgments

Francis Coralie Mullin (1981)

Right to live with human dignity includes bare necessities of life

Bandhua Mukti Morcha (1984)

Public interest litigation for bonded labour; expanded locus standi

M.C. Mehta series

Environmental rights as part of Art 21; absolute liability principle

Puttaswamy (2017)

Right to privacy as a fundamental right under Art 21

Navtej Singh Johar (2018)

Decriminalisation of consensual same-sex relations; dignity and equality

Joseph Shine (2018)

Decriminalisation of adultery; equality and dignity of women

Must-Remember Points

- The Constitution (especially Art 21) is the primary and strongest source of human rights protection in India.
- Landmark judgments have dramatically expanded the content of fundamental rights.
- The 1993 Act created NHRC as a specialised, recommendatory body with wide functions.
- Recommendations of NHRC are not binding but carry significant weight.
- One-year limitation under s.36 is a constraint, but the Supreme Court can direct investigation beyond it.
- Constitutional remedies (Arts 32 & 226) remain available alongside statutory mechanisms.
- International human rights instruments are regularly used by Indian courts as interpretive tools.

Key Takeaways

1. Indian Constitution provides robust justiciable human rights through Part III.
2. Judicial interpretation (Maneka Gandhi onwards) has made Art 21 a repository of many rights.
3. PHRA 1993 institutionalised human rights protection through NHRC/SHRCs.
4. Landmark cases have clarified powers, limitations and the relationship between Court and Commission.
5. The dual system (constitutional + statutory) offers multiple avenues for redress.

Next Unit: Human Rights and Vulnerable Groups – Women, Children, Disabled, Tribals, Aged & Minorities.