

Introduction to Urban Planning
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Lecture - 31
Introduction to Planning Legislation

Welcome to the course introduction to urban planning. In today's session we will start with a new series of discussion on planning legislations. Before, we look deeper into particular legislation in the later sessions. In this session we will try to understand the fundamentals behind it.

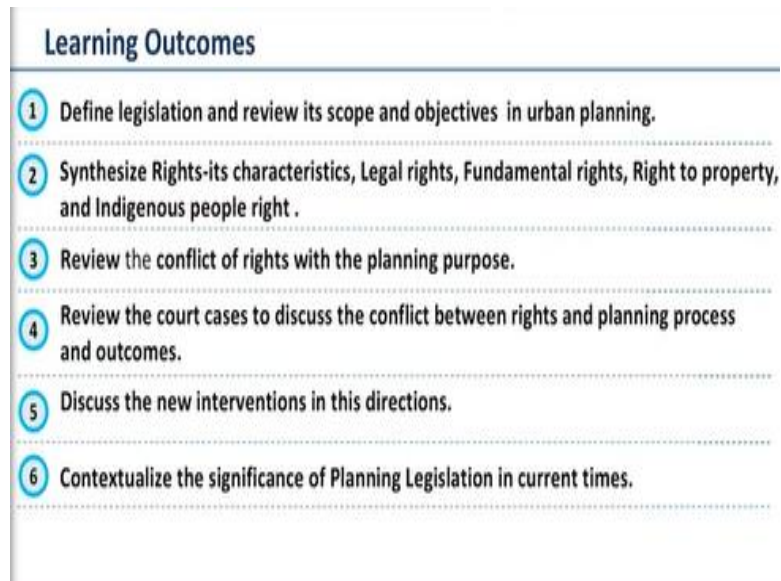
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Coverage	
1	Legislation – Scope and Objectives
2	Rights- characteristics, Legal rights, Fundamental Rights, Right to property, Right of Indigenous People
3	Duties of the Citizens
4	Study of conflicts through court cases
5	Rights-based approach to development in urban planning and attaining SDG
6	Significance of Legislation

So, accordingly our coverage would include we will look into legislation, its scope and objectives. We will try to understand rights, its characteristics, legal rights, fundamental rights. We look into right to property, right of indigenous people. We will further look into the duties of the citizens we will also look at conflicts through the case studies of various court cases. We will look at the new interventions in this direction such as right based planning approach to urban planning and attaining sustainable development goals.

Lastly, we will look at the significance of legislation in the current context. So, accordingly learning outcomes will include that after completion of the session, you should be able to define legislation.

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Learning Outcomes

- 1 Define legislation and review its scope and objectives in urban planning.
- 2 Synthesize Rights-its characteristics, Legal rights, Fundamental rights, Right to property, and Indigenous people right .
- 3 Review the conflict of rights with the planning purpose.
- 4 Review the court cases to discuss the conflict between rights and planning process and outcomes.
- 5 Discuss the new interventions in this directions.
- 6 Contextualize the significance of Planning Legislation in current times.

And review its scope and objectives in the urban planning. You should be able to synthesize rights, its characteristics, legal rights, fundamental rights, rights to property, rights of indigenous people in the current context. You should be able to review the conflict of rights with the planning purpose and process. Further you should be able to review the court cases to discuss the conflict between the rights and the planning process and the outcomes.

You should be able to discuss the new interventions in this direction. You should be able to contextualize the significance of legislation in the current times.

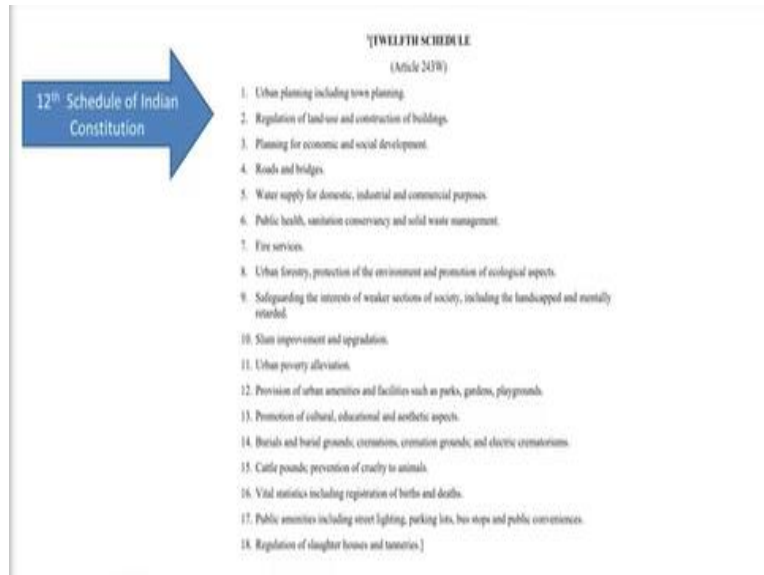
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**Legislation :
Scope and Objective**

Looking at the scope and objectives of legislation, I would like to remind you that we discussed earlier the purpose of planning and looked at 12th schedule that.

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Enlist the roles and responsibilities of the urban local bodies in Indian context.

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Need and Requirements for Planning

- **Power**
- **Defined Roles and Responsibilities**
- **PLAN: Tools /Procedure/Methods**
- **Time**
- **Finance**
- **Human Resource**
- **Information**

Further we discussed need of power, defined roles, responsibilities, tools procedure, methods, time, frame. We discussed on the finance, human resource and information to execute the duties.

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Enablers for Planning Objectives

- Law
- Policy
- Program
- Rule (formal or informal)
- Incentive, disincentive
- Order
- Act
- Social norm

Further I would like to add that there are many enablers to attain the objectives such as law, policy, programs, rules formal and informal then we also see incentives, dis incentives like fine and other things penalty then we see order, act, social norms all these create the enabling environment. We have seen programs incentive through different types and levels of plans within the same structure we covered all of them.

In these series we will talk about law and policy. These enablers what we talked about facilitate planning and implementation of projects and programs in a coordinated and integrated manner and provide a platform for a continuous development strategy. These enables ensure consistency of means and purpose, you see that we are working at different levels and we are dealing with different types of plans and then there are different authorities.

So, how do we really have consistency of means and purpose and at the same time promote the achievement of national and local economic developmental goals and objectives. Now we look into advanced question. Now we have seen different kind of plans, types of plans different levels and we have also looked at the urban issues. Now looking at the advanced question once we have made these plans or we are making these plans.

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Q: As a planner or as a citizen how do we really know what is being proposed or being done addresses the public purpose?

Q:What if ULB overstepped their power or gone beyond the roles and responsibilities to execute its duties?

(ALEXANDER 2017)

As a planner or as a citizen how do we really know what is being proposed or being done addresses the public purpose? What if urban local bodies overstep their powers or have gone beyond the roles and responsibilities to execute their duties.

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Tools are Good or Bad ?

- Land use zoning
- Density zoning
- Height zoning
- Building regulation
- Construction or widening of road
- Tax or, urban redevelopment
- Renewal of dilapidated areas
- Land acquisition
- Provision of selected infrastructure
- Procedure
- Method
- Time
- Information

How do we know that our plan or the tools such as the land use zoning, density zoning, height zoning, building regulation, construction or widening of this roads, tax or urban redevelopment or renewable of the dilapidated area, land acquisition, provision of selected infrastructure or procedure of decision making or plan preparation or execution or method or time which we give information which is disclosed is good or bad.

Other questions like whether our plan tools, procedure methods are implementable or not? We all need to understand that all the types of plans we had seen earlier. When it comes to implementation may interfere with the rights of the people, may restrict their powers. For example, as we had seen in case of mobile development plan, we created land use zones and fixed FSI or in the zonal plan for south Delhi we plan for infrastructure development.

Which; means we restrict people from using their property for certain use only within the land use zone. As well as it means that we might be restricting their property rights in terms of how much they can develop their property with the medium of height zoning or the permissible FSI. So, because of this or because of the infrastructure development we might be also taking away the development right or completely the ownership from this which in a way interferes with the right of the landowners to develop his or her property to the fullest.

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So will it constitute duty of the citizen or violation of the rights?

So, will it constitute duty of the citizen or violation of the rights. We also see conversion projects in urban core areas. It may also restrict the building used to the owner during the conservation of the project. In this situation how the urban local bodies or the government entity deliver their roles and responsibilities. From where do they get power or which rules, they follow to execute their purpose?

Likewise in our plan if we plan a road, we might be interfering with the owner's right to even develop his or her property all together. And sometimes may ask the owner to surrender the land for the public purpose project and we may extend a compensation again depriving them to their rights to use their property or own the property. Further the process how you prepare the plan can itself be questioned for its implement ability.

For example, if the consent of the majority of the people affected by the project is not taken the process may be questionable.

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So in many ways by **exerting control over land** as a planner we interfere with the rights of the people.

Or as a **citizen our rights** may be interfered with the development proposal.

So, in many ways by exerting control over land as a planner we interfere with the rights of the people or as a citizen our rights may be interfered with the development proposal. Furthermore, as the citizen we have certain duties for the larger cause and public good. So, amidst all this our rights, the major public purpose, and then our duties. So, how do we really work between this?

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Coverage

Legislation –to exercise power and to execute responsibilities while protecting the rights of the people and also making people contribute towards their duty as a citizen.

So, the planning entities need legislation which means law legislation means law, rule or group of laws to exercise power and to execute responsibilities while protecting the right of the people, while also making people contribute towards their duty as a citizen. So, let us see how planning entities get the power. What is the source of power?

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Constitutional of a Country
(73-74 Constitutional Amendment act)
State following Constitution creates
legislation/Programs to implement these
structures in the state
For the state the constitution provides
Directive Principles

First source of power is the constitution of the country for which we have already seen 73rd and 74th constitutional amendment act in our initial lectures. The state following this constitutional amendment act creates legislation to implement these structures in the state. For the state the constitution provides directive principles. So, looking at what are directive principles.

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Directive Principles of State Policy

- The **Directive Principles of State Policy of India** are the guidelines or principles given to the institutes governing the State of India.
 - These are provided in Part IV (Article 36-51) of the Constitution of India, and **are not enforceable by any court,**
 - Considered '**Fundamental**' in the **governance of the country,** making it the duty of the State to apply these principles in making laws to establish a just society in the country.
-

Directive principles of a state policy of India are the guidelines or the principles given to the institution governing the state of India. These are provided in part four of the constitution of the country and are not enforceable by any court. However, the principles laid down are considered fundamental in the governance of the country making it the duty of the state to apply these principles in making laws to establish a just society in the country.

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Directive Principles of State Policy

- Directive Principles are classified under the various categories such as :
 - economic and socialistic,
 - political and administrative,
 - justice and legal,
 - environmental,
 - protection of monuments,
 - peace and security.

Looking at the directive principles they are classified under the various categories such as economic and socialist, political and administrative, justice and legal, environmental, protection of monuments peace and security. Unlike the fundamental rights the scope of these directives are limitless.

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Directive Principles of State Policy

- Unlike the Fundamental Rights (FRs), the **scope of DPSP is limitless** and it protects the rights of a citizen and work at a **macro level**.
- DPSP consists of all the ideals which the State should follow and keep in mind while formulating policies and enacting laws for the country.

And it protects the right of a citizen and work at a macro level. These directives consist of all the ideals which state should follow and keep in mind while formulating policies and enacting laws for the country. We further see directive principles are affirmative in directions so, they are positive.

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Directive Principles of State Policy Vs Fundamental Rights

DPSP

- **Affirmative directions**
- The DPSP is **not enforceable by law**; it is non-justiciable which means **not capable of being decided by legal principles or by a court of justice**

Fundamental Rights

- Fundamental Rights are **negative or prohibitive** in nature because they put limitations on the State.
- The Fundamental Rights are **enforceable by law**

DPSP IS NOT SUBORDINATE TO FRs
DPSP and **FRs** go hand in hand

On the other hand, fundamental rights are said to be negative or prohibitive in nature because they put limitation on the state. So, the directives is not enforceable by law, it is not justiciable which means it is not capable of being decided by the legal principles or by a court of justice. It

is important to note that the directives and the fundamental rights go hand in hand, directives is not subordinate to the fundamental rights. But they are seen simultaneously.

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Directive Principles of State Policy

- Aim to create social and economic conditions under which the citizens can lead a good life.
- Aim to establish social and economic democracy through a welfare state.

Check on the government
 (theorized as a yardstick in the hands of the people to measure the performance of the government and vote it out of power if it does not fulfill the promises made during the elections).

Directives aim to create social and economic condition under which the citizen can lead a good life. They also aim to establish social and economic democracy through a welfare state. They act as a check on the government theorized as a yardstick in hands of people to measure the performance of the government and vote it out. If the government is not performing it can vote the government out as for the 74th constitutional amendment act.

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Table 1.1: Directive Principles of State Policy (DPSP) as contained in Part IV of the Constitution, 1950

Sl. No.	Name of DPSP	Enforceability of DPSP	Applicable to State	Classification of DPSP		
				W.F.	S.F.	W.F. & S.F.
1	Article 14	✓	✓	✓	✓	✓
2	Article 15	✓	✓	✓	✓	✓
3	Article 16	✓	✓	✓	✓	✓
4	Article 17	✓	✓	✓	✓	✓
5	Article 18	✓	✓	✓	✓	✓
6	Article 19	✓	✓	✓	✓	✓
7	Article 20	✓	✓	✓	✓	✓
8	Article 21	✓	✓	✓	✓	✓
9	Article 22	✓	✓	✓	✓	✓
10	Article 23	✓	✓	✓	✓	✓
11	Article 24	✓	✓	✓	✓	✓
12	Article 25	✓	✓	✓	✓	✓
13	Article 26	✓	✓	✓	✓	✓
14	Article 27	✓	✓	✓	✓	✓
15	Article 28	✓	✓	✓	✓	✓
16	Article 29	✓	✓	✓	✓	✓
17	Article 30	✓	✓	✓	✓	✓
18	Article 31	✓	✓	✓	✓	✓
19	Article 32	✓	✓	✓	✓	✓
20	Article 33	✓	✓	✓	✓	✓
21	Article 34	✓	✓	✓	✓	✓
22	Article 35	✓	✓	✓	✓	✓
23	Article 36	✓	✓	✓	✓	✓
24	Article 37	✓	✓	✓	✓	✓
25	Article 38	✓	✓	✓	✓	✓
26	Article 39	✓	✓	✓	✓	✓
27	Article 40	✓	✓	✓	✓	✓
28	Article 41	✓	✓	✓	✓	✓
29	Article 42	✓	✓	✓	✓	✓
30	Article 43	✓	✓	✓	✓	✓
31	Article 43A	✓	✓	✓	✓	✓
32	Article 43B	✓	✓	✓	✓	✓
33	Article 43C	✓	✓	✓	✓	✓
34	Article 43D	✓	✓	✓	✓	✓
35	Article 43E	✓	✓	✓	✓	✓
36	Article 43F	✓	✓	✓	✓	✓
37	Article 43G	✓	✓	✓	✓	✓
38	Article 43H	✓	✓	✓	✓	✓
39	Article 43I	✓	✓	✓	✓	✓
40	Article 43J	✓	✓	✓	✓	✓
41	Article 43K	✓	✓	✓	✓	✓
42	Article 43L	✓	✓	✓	✓	✓
43	Article 43M	✓	✓	✓	✓	✓
44	Article 43N	✓	✓	✓	✓	✓
45	Article 43O	✓	✓	✓	✓	✓
46	Article 43P	✓	✓	✓	✓	✓
47	Article 43Q	✓	✓	✓	✓	✓
48	Article 43R	✓	✓	✓	✓	✓
49	Article 43S	✓	✓	✓	✓	✓
50	Article 43T	✓	✓	✓	✓	✓
51	Article 43U	✓	✓	✓	✓	✓
52	Article 43V	✓	✓	✓	✓	✓
53	Article 43W	✓	✓	✓	✓	✓
54	Article 43X	✓	✓	✓	✓	✓
55	Article 43Y	✓	✓	✓	✓	✓
56	Article 43Z	✓	✓	✓	✓	✓
57	Article 43ZA	✓	✓	✓	✓	✓
58	Article 43ZB	✓	✓	✓	✓	✓
59	Article 43ZC	✓	✓	✓	✓	✓
60	Article 43ZD	✓	✓	✓	✓	✓
61	Article 43ZE	✓	✓	✓	✓	✓
62	Article 43ZF	✓	✓	✓	✓	✓
63	Article 43ZG	✓	✓	✓	✓	✓
64	Article 43ZH	✓	✓	✓	✓	✓
65	Article 43ZI	✓	✓	✓	✓	✓
66	Article 43ZJ	✓	✓	✓	✓	✓
67	Article 43ZK	✓	✓	✓	✓	✓
68	Article 43ZL	✓	✓	✓	✓	✓
69	Article 43ZM	✓	✓	✓	✓	✓
70	Article 43ZN	✓	✓	✓	✓	✓
71	Article 43ZO	✓	✓	✓	✓	✓
72	Article 43ZP	✓	✓	✓	✓	✓
73	Article 43ZQ	✓	✓	✓	✓	✓
74	Article 43ZR	✓	✓	✓	✓	✓
75	Article 43ZS	✓	✓	✓	✓	✓
76	Article 43ZT	✓	✓	✓	✓	✓
77	Article 43ZU	✓	✓	✓	✓	✓
78	Article 43ZV	✓	✓	✓	✓	✓
79	Article 43ZW	✓	✓	✓	✓	✓
80	Article 43ZX	✓	✓	✓	✓	✓
81	Article 43ZY	✓	✓	✓	✓	✓
82	Article 43ZZ	✓	✓	✓	✓	✓

This is the snip taken from your RDBFI guidelines 2015 volume 2 page 4. You can see that Karnataka has complied with the 74th constitutional amendment act you can see even Assam state has complied with the constitutional amendment act which happened at the central level and then how states translate that.

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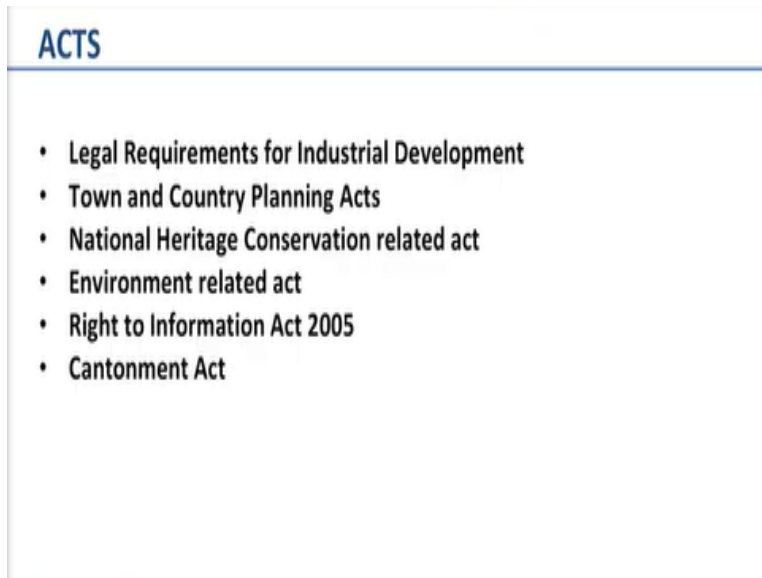
You can consider another example of the act we can see the right to fair compensation and transparency in land acquisition rehabilitation and resettlement act 2013 and the consecutive amendment adopted. So, we see here state of Karnataka has adopted this amendment in 2019; there is a snip of the document which we see here.

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You can also see that Jharkhand state also adopted the amendment of land acquisition act of 2013. Likewise, we have many acts which facilitate how these objectives can be met without really interfering between the rights and also taking care of the duties and responsibilities of the citizens.

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We see that we have acts related with legal requirements for industrial development. We see town and country planning acts we see national heritage conservation related act we see environment related act we also see right to information act, cantonment act which of these some of them selective ones will be looking at into certain detail in the following lectures. Moving on, we will try to understand rights.

I have taken this part from political science literature lessons. This lesson is authored by Dr Jag Rup Kaur as per the lesson the concept of rights is regarded as bedrock of democratic system. It has been accepted that unless the citizens of the state are guaranteed a certain number of rights, it is not possible for them to live a full life. A right is a claim of an individual recognized by the community and the state.

So, if it is your right, it is important that the others recognize it and also the state recognizes and recognizes it and enforces it.

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Defining Rights

"Rights are nothing more than nothing less than social conditions which are necessary or favourable to the development or personality. Rights are in their essence aspects of social life." - Dr. Beni Prasad

"A right is a claim recognized by society and enforced by the state" - Bosanquet

"a man's capacity of influencing the acts of another by means of the opinion and force of society." - Holland

In the words of Dr Beni Prasad, we see rights are nothing more than or nothing less than social conditions which are necessary or favourable to the development or personality. Rights are in their essence aspects of social life. According to another definition we see a right is a claim recognized by society and enforced by the state. So, this is important aspect for you to understand. Holland defines right as man's capacity of influencing the acts of another by means of the opinion and force of society.

So, now let us look into the characteristic of rights on the basis of the meaning and definition of rights.

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Characteristics of Rights

A claim of the individual must receive social recognition :

Since individual's claim is backed by a disinterested desire, it receives social recognition.

For example, an individual's claim that none should take his life, receives social recognition as every individual wills in the same direction.

A recognition of the claim of this type leads to the creation of right to life.

Thus, the claim of an individual becomes a right only after it is accepted by the other members of the society

Rights are the claims of an individual or group of individuals. In fact, rights are the claim of an individual but not every claim can be right. It is required that a claim should be like a disinterested desire, that is in asserting a claim one should feel like rendering a public service. A claim of individual must receive social recognition, it is very important. Since individuals claim is back end by disinterested desire, it receives social recognition.

For example, the author gives the example here and individuals claim that none should take his life, receives social recognition as every individual will in the same direction. A recognition of the claim of this type leads to the creation of the rights to people. So, everybody understands that, everybody accepts that. So, thus the claim of individual becomes a right only after it is accepted by the other members of the society, the state does not create rights.

So, we see that it is not up to the state to create the right, it only recognizes, maintains and coordinates only so, that all may realize the benefits of such rights and in case of violation may protect them. So, the; state guarantees equal rights to every citizen.

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Characteristics of Rights

Rights are not Absolute:

- No right in a state is absolute and no individual can lay claim to any right in the absolute sense
- Rights are limited in their scope and are conditioned by the needs of the entire community.
- Subject to reasonable restrictions in a social context.

Further we see that rights are not absolute that means no right in a state is absolute and no individual can lay claim to any right in the absolute sense. So, it is very important for us to understand in the Indian context. Rights are limited in their scope and are conditioned by the

needs of the entire community. They are subject to reasonable restrictions in social context. There will be disorder in a state.

If every individual proclaims the absolute nature of his/her right, none has the right to spread evil in the society they are based on the use of intelligence and good behaviour.

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Characteristics of Rights

Rights and duties are co-related and can never be separated

- Every side has a corresponding obligation
- The rights of an individual become the duties of all the other individuals of society.
- Every individual recognizes the rights of others in society and lives in a manner which enables others to realize these rights.
- It is only in the world of duties that rights can exist.

Further we see that rights and duties are correlated and can never be separated. So, they go hand in hand every side has a corresponding obligation. The rights of an individual become the duties of all others individual of the society.

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Characteristics of Rights

Rights must be Definite :

- Rights should be universally applicable.
- Given equally to all individuals in the society.
- No discrimination on the basis of religion, race, caste, gender, class or creed.

Further we see right must be definite. Rights should be universally applicable; they are given equal to all individuals in the society. There can be no discrimination on the basis of religion, race, caste, gender, class or creed. If rights are given to one section of society is against the other, they become privileges.

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Characteristics of Rights

Rights – Dynamic:

- Rights have tendency to grow with change in the social, political and economic environment and the needs of man, the rights also grow, develop and expand.

Further we see that rights have tendency to grow. So, it evolves as our understanding, grows as a context changes the rights also evolve. With the change in social political and economic environment and the need of man the right also grows. So, we need to develop and expand in the rights and therefore it is said that rights are dynamic. Furthermore, it is said that because now we are coming into an era of technology climate change and scientific development.

It is time to relook into human rights and to expand the human rights. Further we see rights are compatible with the common good, the society gives recognition to only those rights which are for the welfare of the society as a whole and which promotes some common end or moral good. So, we have seen the characteristics of the rights on the basis of the characteristic. The characteristics which we saw it can be said that the rights are those claims.

That are socially recognized to make life happy harmonious and prosperous. Also, they are prior to the states, they fulfil the basic conditions of social life.

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Characteristics of Rights

The state does not create Right:

- Only **recognizes, maintains** and **co-ordinates right** so that all may realize the benefits of such rights
- In case of violation may **protect them**

The state does not create them. It only recognizes, maintains and coordinates them. So, that all may realize the; benefit of such rights and in case violation may be protected by them. It has also to create those conditions without which man cannot develop his/her inherent power and it involves equal opportunities for all. So, we looked into the characteristic of rights based on the meanings and definitions of the rights. So, now we look at the legal rights. So, we are going to just look at the very selective components.

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Legal Rights

- Those privileges of man which are recognised, sanctioned and enforced by the state.
- **Violation attracts penalty ranging from simple fine to capital punishment.**
- Embodied in the law of the country

Legal rights are those privileges of men women who are recognized sanctioned and enforced by the state, their violation attracts penalties. So, if you violate them, you can be penalized for that from simplifying to capital punishment. These rights are embodied in the law of the country, it is

important to understand that. The test of the legal rights is that it can be enforced in a court of law. So, this can if violation happens it can be taken to court. So, any bad judgment could lead the planning bodies to the court of law.

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Legal Rights :

Government- has to respect the basic or fundamental rights of citizens

If citizens are denied fundamental rights, Government can be legally and constitutionally enforced.

These rights are recognised by the state , the police and courts ensure their enforcements.

Government itself has to respect the basic or fundamental rights of the citizen. If citizens are denied these rights these can be legally and constitutionally enforced. Thus, these rights are recognized by the state and the police and the courts ensure their enforcements. Legal rights may be further classified into civil rights, political rights.

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Legal rights

(a) Civil Rights :

- The civil rights refer to those conditions which are absolutely essential for a civilized life.
- The enjoyment of these rights facilitates the all round development of an individual's personality.

Civil rights referred to those conditions which are absolutely essential for a civilized life. The enjoyment of these rights facilitates all round development of an individual's personality. They are called civil because they are essential conditions of a civilized society. Civil rights vary from state to state and from time to time, but all the democratic states value them greatly and provide safeguard against their encroachment either by the government or by the individual.

These rights are as follows, the right to life, right to life is basic right on which enjoyment of all rights depend. Rights to life as the most fundamental of all the civil rights as it without no other rights is possible. All the states whatever be their state of political development are duty bound to protect the life of its members, right to family, further we see right to property.

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Legal rights

Right to property :

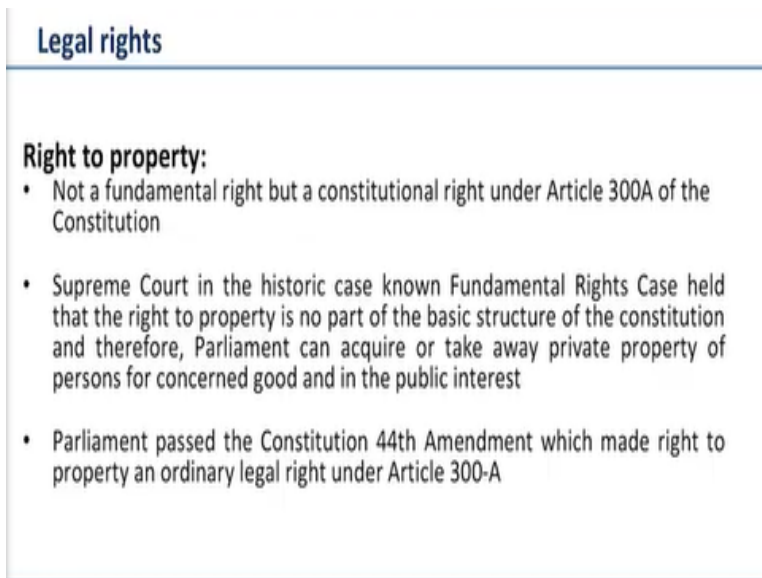
- Most important to understand from the planning domain
- Considered important civil rights of man
- Based on this assumption that owning property is a natural instinct in man and it provides incentive to hard work
- The right of property means the freedom to the individual to enjoy his property.

It is one of the most important to understand the problems with the planning domain and considered important civil rights of the man. This right is based on this assumption that owning property is a natural instinct of man and it provides incentive to hard work. The right of property means the freedom to the individual to enjoy his her property. It implies that the individuals has the right to acquire hold and dispose of the property without any restriction or hindrance.

It also means that he she individual is free to eliminate property by way of gift or exchange or will. So, you should be able to sell it, gift it or you can should be able to exchange it. Most of the democrat's states recognize in one form or the other the right to private property and give

protection to it. So, we may think of how a proposed plan or an action can restrict or hinder the property right.

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Legal rights

Right to property:

- Not a fundamental right but a constitutional right under Article 300A of the Constitution
- Supreme Court in the historic case known Fundamental Rights Case held that the right to property is no part of the basic structure of the constitution and therefore, Parliament can acquire or take away private property of persons for concerned good and in the public interest
- Parliament passed the Constitution 44th Amendment which made right to property an ordinary legal right under Article 300-A

Looking at the Indian context, right to property right to property is not a fundamental right, but a constitutional right under the article 300A of the constitution. During the first decade of the independence era, it was felt that the right to property as a fundamental right was a great obstruction in reaching the socio-economic order or the goal which we were targeting in order to facilitate that this right to property was made just the constitutional right and not the fundamental right.

So, we see that parliament passed the constitution 44th amendment which made right to property and ordinary legal right under article 300 and A. In order to overcome the hurdle of development supreme court in historic case known as fundamental rights case held that the right to property is no part of the basic structure of the constitution and therefore parliament can acquire or take away the private property of persons for concerned good and in the public interest.

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Legal rights

Right to freedom of thought and expression :

- Every individual must have the right to freedom of speech and expression.
- Without such a right, it is impossible for citizens to make their best contribution to the society and the state.

Further we see we have right to freedom of thought and expression this also in we see a lot of conflicts with the planning process. Every individual must have the right to freedom of speech and expression. Without such a right it is impossible for citizens to make their best contribution to the society and the state. Further we see right to form association and move about freely is another right.

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Legal rights

Right of equality :

- Importance in the modern democratic states.
- Absence of legal discrimination against any one individual, group, class, or race.
- Under the constitution of India, right to equality has been granted to all persons and discrimination on ground of religion, race, caste, sex or place of birth has been forbidden.
- The right of equality does not deprive the state of the right to make special provision for the benefit of backward sections of the society.

We see that right of equality. This right is also given great importance in the modern democratic states. This right means the absence of legal discrimination against any one individual group class or race.

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Further we see right to education. The state also provides facilities for higher and technical education of the people. We see right to religion, right to contract, right to work. The right to work which is another important civil right is to corollary to the right to live as one who lives has to work. You see many of the government programs aligned with the urban planning address this. We further see the political rights.

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Political rights are those rights which enable a citizen to participate in the political affair and governance of the country. We see that the right to vote, right to contest election, right to public office, right to petition, right to criticize the government. So, these were the political rights.

Further moving on we see the fundamental rights. Fundamental rights in addition to the above civil and political rights generally the citizens are granted certain fundamental rights.

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Fundamental Rights

- Fundamental Rights are described as fundamental because they are fundamental to the development of individual personality.
- They are superior to the civil and political rights enjoyed by the citizens because they are incorporated in the constitution.
- Are justifiable because their violation can be enforced through the courts of laws.
- Known constitutional rights because they are enshrined in the constitution.
- The constitution of India has laid down the fundamental rights of its citizens in **part III** of the constitution.

These rights are described as fundamental because they are fundamental to the development of individual personality. They are superior to the civil and political rights which you had seen because they are incorporated in the constitution. These rights are justifiable, because their violation can be enforced through the courts of law, for any violation you could be taken to court. These rights are also known as constitutional rights because they are enshrined in the constitution.

The constitution of India has laid down the fundamental rights of its citizens in part three of the constitution. The fundamental rights provided in part three of constitution guarantee civil rights to all Indians and prevent the state from encroaching any individual's liberty while simultaneously placing upon its obligation to protect the citizens' right from encroachment by the society. So, these rights are applied without discrimination on the basis of race, religion, gender and so on.

Significantly, fundamental rights are enforceable by the courts subject to certain conditions. So, we see that Dr. Ambedkar said that the responsibility of the legislature is not just to provide fundamental rights but also and rather more importantly to safeguard them.

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Six Fundamental Rights of Indian Constitution

- Right to Equality (Article 14-18)
- Right to Freedom (Article 19-22)
- Right against Exploitation (Article 23-24)
- Right to Freedom of Religion (Article 25-28)
- Cultural and Educational Rights (Article 29-30)
- Right to Constitutional Remedies (Article 32)



We see that there are six fundamental rights of Indian constitution; right to equality, right to freedom, right against exploitation, right to freedom of religion, culture and education, right to constitutional remedies.

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Fundamental Rights — Cultural and Educational Rights — Articles 29 to 30

- it guarantees to preserve, maintain and promote the culture and language of its citizens.
- Allows minorities to establish and maintain educational institutions of their own.
- The state shall not discriminate against any educational institution while granting the financial aid on the grounds that it is being run by a minority community.
- These rights ensure that minorities will get assistance from the state in the preservation of their language and culture.

Looking at the culture and education rights, it guarantees to preserve maintain and promote the culture and language of the citizens allows minorities to establish and maintain educational institutions of their own and so on.

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**Fundamental Rights - Right To Constitutional Remedies —
Articles 32 to 35**

- Indian Constitution provides Legal remedies for the protection of all these rights against their violation by the individuals, State or other institutions.
- The Indian citizens have the right to move to the Supreme Court or High Courts for the enforcement of the Fundamental Rights.
- In case of imprisonment, any citizen can ask the court to see if it is according to the provisions of the law of the country by lodging a public interest litigation PIL.
- This procedure of asking the courts to preserve or safeguard the citizen's fundamental rights can be done in many ways.

Further we see rights to constitutional remedies, Indian constitution provides legal remedies for the protection of all these rights against their violation of individuals. The Indian citizens have the right to move to Supreme Court or higher courts for an enforcement of the fundamental rights. So, we have seen characteristics and some type of rights. Now we see why are human rights important?

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HUMAN RIGHTS

UN Habitat 2017 HUMAN RIGHTS IN CITIES HANDBOOK SERIES explains

“Human rights are set the minimum standards that are essential for people to live in freedom, equality and dignity. They give everyone the freedom of choice and expression and the rights to basic needs necessary for their full development and enjoyment of their rights, including education, water, sanitation, food, health, and housing”.

As for the UN Habitat 2017, human rights in cities handbook series explain that human rights are set minimum standards that are essential for people to live in freedom, equality and dignity. They give everyone the freedom of choice and expression and the rights to basic needs necessary for

their full development and enjoyment of their rights including education, water, sanitation, food, health and housing.

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HUMAN RIGHTS

“Human rights also protect against their abuse by people or entities that are more powerful.

Furthermore, human rights inform the relationship that exists between individuals and their governments, distinguishing between every human being and governmental and non-governmental actors obligated to respect, protect, and fulfil these rights”.

Human rights also protect against their abuse by people or entities that are more powerful. Furthermore, human rights inform the relationship that exists between individuals and the governments distinguishing between every human being and government and non-governmental actors obliged to respect, protect and fulfil these rights. So, these are grounded in international law fulfilling human rights is legally binding for states upon ratification of human rights instrument.

Further looking into what is the source of human rights. We see that the universal declaration of human rights adopted by UN general assembly in 1948. This was the first legal document to set out the fundamental human rights to be universally protected. Further we see that universal declaration of human rights continues to be foundation of all international human rights law. Its 30 articles provide the principles and building blocks of current and the future human rights conventions, treaties and other legal instruments

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SOURCE OF HUMAN RIGHTS

International Bill of Rights:

- The UDHR, together with the 2 covenants –
- International Covenant for Civil and Political Rights,
- The International Covenant for Economic, Social and Cultural Rights

OHCHR 1996-2021

We see that this UDHR together with the two covenants. The two covenants are the international covenant for civil and political rights and the international covenant for economic, social and cultural rights. These all together make international bill of rights.

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9 Core Human Rights Treaties

1. International Convention on the Elimination of All Forms of Racial Discrimination, 1965
2. International Covenant on Civil and Political Rights, 1966
3. International Covenant on Economic, Social and Cultural Rights, 1966
4. Convention on the Elimination of All Forms of Discrimination against Women, 1979
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
6. Convention on the Rights of the Child, 1989
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
8. International Convention for the Protection of All Persons from Enforced Disappearance, 2006
9. Convention on the Rights of Persons with Disabilities, 2006

So, this gives 9 core human rights treaties which you can see here.

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SOURCE OF HUMAN RIGHTS

The International Bill of Human Rights consists of the five core human rights treaties of the United Nations that function to advance the fundamental freedoms and to protect the basic human rights of all people.

The Bill influences the decisions and actions of Government, State and Non-State actors to make economic, social and cultural rights a top-priority in the formation and implementation of national, regional and international policy and law.

The international bill of human rights consists of five core human rights treaties of the United Nations that function to advance the fundamental freedom and to protect the basic human rights of all people. The bill influences the decision and action of the government state and non-state actors to make economic, social and cultural rights a top priority in promotion and implementation of national regional and international policy and law.

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Important Rights United Nations Universal Declaration of Human Rights

- Right to **self-determination**
- Right to **liberty**
- Right to **due process of law**
- Right to **freedom of movement**
- Right to **freedom of thought**
- Right to **freedom of religion**
- Right to **freedom of expression**
- Right to **peaceably assemble**
- Right to **freedom of association**

So, we see here some of the important rights by united nation and universal declaration of human rights such as right to self-determination, liberty, due process of law, freedom of movement, freedom of thoughts, freedom of religion, freedom of expression, peaceably assemble, freedom of association. For every country it is the constitution that enforces these rights. And further

rights are enforced through different schemes and programs through the states. We also see rights of indigenous Adivasi people given both at the international and national level.

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United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on Thursday, 13 September 2007,

Most comprehensive international instrument on the rights of indigenous peoples.

Establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world

Elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.

United nation declaration on rights of indigenous people provides the most comprehensive international instrument on the rights of indigenous people. In India we see there are several laws and constitutional provisions such as the fifth schedule for mainland India and the sixth schedule for certain areas of northeast India which recognize indigenous people's right to learn and self-governance.

Further moving on we see fundamental duties of the citizens. So, we had seen all the rights which people have we have also looked into the how states proceeds on performing its duty. Now we look at what are the fundamental duties of the citizens.

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Fundamental Duties of the Citizen

- Incorporated in the Indian Constitution by the 42nd amendment.
- **11 Fundamental Duties** for Indian Citizens drafted on the lines of **moral, ethical and culture code of conduct** followed by people.
- **Non-justifiable, without any legal sanction in case of their violation or non-compliance.**
- Fundamental Duties obligate all citizens to respect the **national symbols of India, including the Constitution, to cherish its heritage, preserve its composite culture and assist in its defense.**

We see that fundamental duties were incorporated in the Indian constitution by the 42nd amendment. There are 11 fundamental duties for Indian citizens drafted on the lines of morals, ethical and cultural code of conduct followed by the people. The duties are educative in nature and direct the citizens to behave in various behave in virtuous and honourable manner. So, these are the 11 fundamental duties which we see of the citizen.

We will look into case to understand the conflicts between planning interventions and rights through the case studies.

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Olga Telis V/s Bombay Municipal Corporation, 1985

IN THE SUPREME COURT OF INDIA

AIR 1986 SC 180

Petitioner

Olga Telis and Ors.

Respondent

Bombay Municipal Corporation and Ors.

Date of Judgement

10 July 1985

Bench

Hon'ble Justice V Chandrachud, C.J.; Vardarajan; Chinnappa Reddy; Murtaza Fazal Ali and D. Tulzapurkar

Petition Challenged The Eviction Of Pavement Dwellers

(Dixit, 2020; Kumar, 2020)



We will look at the case of Olga Telis versus Bombay municipal corporation of 1985. This case is a reputation filed by lady journalist Olga along with people's union for civil liberties and other organization under article 32 of the constitution of India. We see this petition challenged the eviction of pavement dwellers. The petitioner contended that order of the police under section 314 of bombing municipal corporation act of 1888 is violation of the article 14 which meant equality before law.

And also, article 19 and article 20 which addressed to the; protection of certain rights regarding freedom of speech, protection of life and personal liberty of the constitution of India. So, looking at the background of this we see that in the state of Maharashtra in 1981, the bombing municipal corporation decided to evict the pavement and slum dwellers in the city of Bombay. The chief minister ordered their eviction and then their deportation to the place of origin.

This order was under section 314 of Bombay municipal corporation act. The people who were upset with this, filed the petition in Bombay high court for a ban restricting the officer of Bombay municipal corporation. The high court of Bombay granted an ad interim ban to be forced until July 21 1981 and respondents agreed that huts will not be demolished until October 15 1981. But contrary to the agreement petitioners were deported out of Bombay.

The respondents challenged this order on grounds that it violates article 19 and 21 of the constitution also sections such as 312 and so on of the Bombay municipal corporation act and it also violates the article 14, 1921 of the constitution.

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Article 14

- The Article 14 of the Constitution states that every individual should be provided equality before law and equal protection of law without any discrimination on the ground of religion, sex, caste, race and place of birth.

Article 19(1)(e) and 19(1)(g)

- Article 19 provides protection to certain rights of the people. Here Article 19(1)(e) and 19(1)(g) are in question. Article 19 (1)(e) provides the right to reside and settle in any part of India and Article 19(1)(g) provides freedom to practise any profession, occupation, trade and business.

Article 21

- Article 21 provides for the right to life and livelihood and it can't be taken away without any procedure established by law.

Section 441 of IPC

- Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

You may look at the articles here and you look at the Bombay municipal corporation act of 1888 and see how the conflict arises.

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The issues involved

Scope of Right to life and livelihood under Article 21 of the constitution.

Constitutionality of Section 312, 313 and 314 of the Bombay Municipal Corporation Act.

Question of Estoppels against fundamental rights or Waiver of Fundamental Rights.

Whether pavement dwellers are 'trespasser' under IPC.



(Lawcirca/Dixit, 2020)

This issue involves if you look into its scope of right to life and livelihood under the article 21 of the constitution, the constitutionality of sections 312 and so on of the bombing municipal corporation act. There was question of Estoppels which means a legal principle that prevents someone from arguing something or asserting a right that contradicts what they previously said or agreed by law.

So, the issue was about fundamental rights or the waivers of fundamental rights whether pavement dwellers are trespassers under the IPC. So, looking at the argument of the petitioner, petitioners contended that the right to the life includes right to livelihood under article 21 and this eviction violates this right as evicting the dwellers from the slums and pavements deprives them from the basic livelihood and hence unconstitutional.

It was also argued that within certain sections that Bombay municipal corporation act is arbitrary and unreasonable as it includes a provision which gives absolute power to municipal commissioner to evict the persons without requiring any prior notice. So, looking at the decision of the Supreme Court, the right to life has much wider scope. It does not only mean that life cannot be threatened except a procedural established by the law but as this definition restricts its ambit.

The court recognized that livelihood forms the basis of right to life as no person can sustain life without livelihood; not including livelihood in the fundamental rights is the easiest way to harm the spirit of the article 21. The Supreme Court added that deprivation of person from this right should only be in accordance with the law as depriving from this right can lead to deprivation of right to life of a person.

And not including it in right to life is also in contradiction of the article 39 and 41 of the constitution. The Supreme Court while establishing more stress on the inclusion of livelihood in article 21, also made it clearly visible that such laws can definitely be deprived by the procedure established according to the law. So, thus section 312 and so on which empowers commissioner to remove encroachments from foot path.

And public places cannot be regarded as unjust and unreasonable as these sections are not against the principle of natural justice but these are acting as exceptional rules hence, they are not arbitrary. So, you see how these kinds of actions can really create conflicts with the constitution and the fundamental rights of the people. So, looking at the judgment the chief justice of India then or Chandrachud delivered the unanimous judgment by the five judge bench consisting of himself.

And the team evicted dwellers do not have a right to alternative site, people do not have the right to encroach on foot parts pavement or any other place served or declared for the public purpose. In the current circumstances of bombing Municipal Corporation, it is not unreasonable. So, the actions which they had taken were not unreasonable. So, this case is stated as an example in which civil and political rights are used to advance social rights.

And hence the purview of very important right of a constitution. But the problem here is that it failed to provide the right to settlement and led to an injustice somewhere. So, that that is as for the review we see. Further now moving on we look quickly at another landmark case from New York to understand the conflict the case of Penn central transportation with New York city. Local government may act to protect sites with historical culture or significance by designating those peoples.

Those places landmarks in doing so, government are able to preserve those properties for future generation but landmark designation restricts the rights of property owners. Owners cannot change landmarks without prior government approval but they must bear the cost of maintaining the properties up to government standards. So, we look at this particular case. The owner of grand central terminal complaint was against the New York city landmark preservation.

Under this landmark law, the grand central terminal which is owned by Penn central's transportation cooperation and its affiliates was designated a landmark and block it occupies a landmark site. So, the appellant Penn central through opposing the designation before the commission did not seek judicial review of the final designation decision. Thereafter appellant pen central entered into the lease with appellant UGP properties where UGP was the construct a multi-storied office building over the terminal.

So, according to the appellant it was considered that he was taken away of his property rights, because of this limitation on the site.

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By Warren Weaver Jr. special to The New York Times
June 27, 1978

The Supreme Court ruled that New York City could prohibit the construction of a 53-story office building above Grand Central Terminal because the tower would significantly alter the terminal's status as a historic landmark.

In a 6-to-3 ruling, the justices **rejected the argument** of the owners of the 65-year-old railroad station that the **prohibition represented an unconstitutional taking of their property—the air space above the terminal—without just compensation.**

(Weaver, 1978)

So, when we look at the ruling the Supreme Court ruled that New York City could prohibit the construction of a 53-story office building above the Grand Central Terminal because the tower would significantly alter the terminal's status as a historic landmark. In a six-to-three ruling the justice rejected the argument of the owner of a 65-year-old railroad station that prohibition represents an unconstitutional taking of their property.

The airspace above the terminal without just compensation. So, we see this; another case which was there. So, now moving on looking at the new interventions in urban planning we see a rights-based approach to development followed in urban planning and attaining SDG.

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- One of the reasons the Sustainable Development Goals (SDGs) and the 2030 Agenda are a transformative development framework is that **they are based on human rights.**
- Over 90 percent of the goals and targets of the SDGs correspond to human rights obligations.

One of the reason the sustainable development goals and the 2030 agenda our transformative development framework is that they are based on human rights over 90% of the goals and the targets of SDGs correspond to the human rights obligations. So, we see that how we are heading on this direction and acknowledging more of human rights.

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Rights-Based Approach to Urban Development

- A rights-based approach to legislation is said to be imperative if the Post-2015 Goal of sustainable cities and human settlements are to be realized.
- Anticipated that this approach will have a profound outcome in the realization of other human rights standards in municipalities such as the integration of urban dwellers in the development decisions and planning outcomes that affect their daily lives.
- **New Urban Agenda(NUA) emphasizes the role of human rights and inclusivity in urban development.**
- Envisages "cities and human settlements where all persons are able to enjoy equal rights and opportunities."
- NUA asserts that inclusivity, non-discrimination and public participation are among its guiding principles.

(Rules of the Game: Urban Legislation, 2017)

So, we see a right-based approach to legislation is said to be imperative if the post 2015 goal of sustainable cities and human settlements are to be realized. It is anticipated that this approach will have a profound outcome in realization of other human rights as well so, it and besides that cities and human settlements where all persons are able to enjoy equal rights and opportunities. New open agenda asserts that inclusivity non-discrimination and public participation are among its guiding principles. So, we also see apart from this.

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Diagnostic tools

- **The Planning Law Assessment Framework, developed by the Urban Legislation Unit of UN-Habitat, is a quick self-assessment tool that aims to identify the strengths and weaknesses of an urban planning law.**

(Planning Law Assessment Framework, 2018)

We also see diagnostic tools have been developed to identify the strength and weakness of the legislation in a structured, objective and systematic way. The planning law assessment framework developed by urban legislation unit of UN habitat is a quick self-assessment tool that aims to identify the strength and weakness of an urban planning law. It looks at the laws regulations and decrease that are applicable in a city and enacted at different levels.

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Countries where tool is tested

- Colombia (2012),
- Philippines (2013),
- Rwanda (2014),
- Mozambique (2014),
- Egypt (2015) and
- Saudi Arabia (2016).

(Planning Law Assessment Framework, 2018)

It has been tested in Colombia, Philippines, Rwanda, Mozambique, Egypt and South Arabia and this looks at gradual fulfilment of rights creating room for necessary societal negotiation about the assortment of regulatory system formal and informal and all this and all kinds. So, we see

coming to the end we see that effective urban legislation is an indispensable pillar of sustainable urban development as per the urban population is growing at an unprecedented rate.

It can result in disorder and increased inequality if not supported by effective and clear policy and legal institutional and governance framework.

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- “Good quality urban law provides predictability and order in urban development, from a wide range of perspectives, including spatial, societal, economic and environmental viewpoints.
- Through this it contributes to investment, strong economic performance and wealth creation”

(Rules of the Game: Urban Legislation, 2017)

So, we see that it is very important good quality urban law provides predictability and order in urban development for a wide range of perspective including spatial, societal, economic and environmental viewpoint. So, we see urban legislation has an important role to play by defining conditions for formal as well as informal access to land, infrastructure, housing and basic services as well as for planning and decision making and pushing for improved livelihoods and living conditions.

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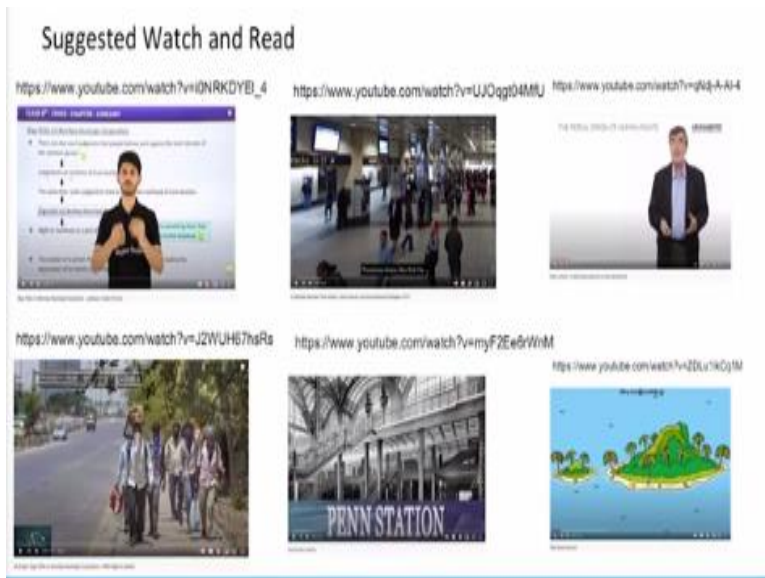
Coverage

- 1 Legislation – its Scope and Objective
- 2 Rights- its characteristics, legal rights, Fundamental Rights, Right to property, Right of Indigenous People
- 3 Duties of the Citizens
- 4 Study of conflicts through court cases
- 5 Rights-based approach to development in urban planning and attaining SDG
- 6 Significance of legislation

So, that is all for today summarizing we covered legislation and reviewed scope and objective of legislation and planning we discussed on the rights its characteristic legal rights, fundamental rights, rights to property. We also looked at the conflicts of rights from with the planning purpose. We also saw the fundamental duties of the citizen as well as we saw the court cases I have just mentioned briefly, you can look up in the additional reading.

We covered new interventions in this direction as well as we looked at the significance of legislation in the current times. Further as we move along in this legislation section, I would request you to keep reflecting on these aspects which you saw today while you look at the various legislations as well as you look into the previous lectures which we talked about the objective in SDGs.

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Our coverage was limited with the scope to make you aware of the topic. There are enormous readings and movies available to explore. Few are suggested here this is not an extensive list you may feel free to suggest more from your experience.

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Please feel free to ask questions let us know about your concerns you have. Do share your opinion, experiences and suggestions looking forward to interacting and co-learning with you while exploring cities and urban planning. So, that is all for today these were our references. Thank you.