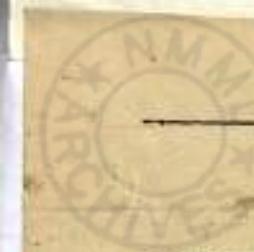


Summary of suggestions contained in the Notes on Fundamental Rights.

Headings	Note by Mr.K.M.Munshi. Articles referred to:	Note by Mr.K.T.Shah paras referred to:	Note by Sardar Hariram Singh paras referred to	Note by Sir A. Krishnaswamy Ayy pages referred to
I.Citizenship and Nationality	Persons born in India, others acquiring Indian nationality and persons born of Indian parents abroad shall have right of citizenship. Provision for single and double citizenship II-1. Nationality shall be acquired and terminated by the law of the Union II-2.	are acquired by birth or residence in the country or by naturalization. Para 8.		Law of citizenship of the Swiss or of U.S. type to be adopted.
Rights of Indian citizens.	All persons entitled to equal opportunities in all spheres -III-1. Women citizens are the equal of men citizens in all spheres III-3 & 6.	Every citizens of India should be guaranteed equal rights and opportunities in respect of education, training, health and employment irrespective of differences of birth etc.		
II.Rights of foreign citizens.		para 2.		
III.Rights to Freedom	Every citizens entitled to 1.Freedom of persons. personal liberty; to be informed within 24 hours of his deprivation of liberty the authority and ground for it.V-1-d&e.			

6



## Headings

Note by Mr.K.M.Munshi,  
Articles referred to:Note by Mr.K.T.SMah  
paras referred to:Note by Sardar Harnam Singh  
paras referred to:Note by Sir A.  
Krishnaswamy Ayy  
pages referred t

2. Judicial safeguards  
to secure freedom of  
person.

(i) Habeas Corpus. Vide XIII-2(a)

(ii) Trial by jury

(iii) Trial in the district  
where the crime is com-  
mitted.

(iv) Speedy and public  
trial.

(v) Assistance of counsel  
for defence.

(vi) Accused not to be  
forced to be a witness  
against himself.

No persons to be forced  
to be witnessed against  
himself. Burden of  
proving innocence not to  
be thrown on the accused.  
XIII-2.

No one shall be compelled to be a  
witness against himself in any criminal  
case para.52.

(vii) Witnesses to be  
confronted with the  
accused.

(viii) Compulsory process for  
obtaining witnesses.  
Release on bail

(ix) Excessive bail, excess-  
ive fine, cruel and unusual  
punishments.

No excessive bail etc.  
XIII-3.

Every accused is entitled to be release on  
bail except in non-bailable offences. para 49.  
Capital punishment is abolished. No punishment  
shall be inflicted which is excessive cruel or  
vindictive. Excessive bails and fines forbidden.  
para 50,51 and 57.

-255-

Headings	Note by Mr.K.M.Munshi Articles referred to:	Note by Mr.K.T.Shah paras referred to:	Note by Sardar Harnam Singh paras referred to:	Note by Sir A. Krishnaswamy Ayyar pages referred to:
No imprisonment on grounds of breach of contract.	No person to be imprisoned for breach of contract. XII-5.			:
(x) Punishment only in accordance with provisions of law.	No person shall be deprived of his life, liberty or property without due process of law. V-4. No Court shall recognise any custom imposing a civil disability. XII-4.	No one shall be deprived of life limb or property except under due process of law - para 53.		
(xi) Bill of attainder.				
(xii) Extraordinary tribunals.				
(xiii) Trial by one's legal judge.				
(xiv) Retroactive criminal laws.	No punishment for any act which was not punishable before commission XII-1.	No one shall be charged for offence under any law which was not in existence at the time the offence was committed - para 48.		
(xv) Protection from trial for a second time for the same offence.	No second trial XII-2.	No one shall be liable for trial a second time for the same offence - para 49.		
(xvi) Freedom of expression including freedom of press.	Every citizen entitled to the right of free expression V-1(a) Press shall be free V-2.	Every citizen entitled to freedom of thought and expression - paras 9, 11 & 12.	Freedom of press to be guaranteed. para 3.	

Headings

Note by Mr.K.M.Munshi  
Articles referred to:

Note by Mr.K.T.Shah  
paras referred to:

Note by Sardar Harnam Singh  
paras referred to:

Note by Sir A.  
Krishnaswamy Ayya  
pages referred to

Freedom of art, science  
teaching and research.

The conduct of research  
and the publication of  
its results to be free  
V.3 VI-2.

Vide para 20.  
Vide para 16.

4.Freedom of association  
and combination.

Every citizens entitled  
to free association and  
combination V-1b

Every citizen guaranteed  
freedom of association to  
promote any lawful object  
or interest - para 13.

Freedom of association  
should be guaranteed.

5.Freedom of Assembly.

Every citizens entitled to  
free assembly without arms.  
V-1.

Every citizen entitled  
to freedom of Assembly  
subject to certain  
conditions - para 14.

6.Inviolability of  
Residence.

Every citizen entitled to  
the inviolability of his  
home V.1f. No soldier shall  
be quartered without consent  
in time of peace and except  
in lawful manner in time of  
war.

Every dwelling inviolable  
para 2.

Quartering.

7.Freedom from unrea-  
sonable search or  
seizure.

General search warrants  
are illegal and forbidden -  
paras 54-56.

8.Privacy of correspon-  
dence.

Every citizen entitled to  
the secrecy of his corres-  
pondence. VI-g.

9.Right to keep and  
bear arms.

No individual or group of  
individuals shall be entitled  
to manufacture etc., armaments of any  
kind. These matters shall be state concern -

Unrestricted right for the  
Sikhs to manufacture, sell  
keep and wear Kirpans.  
page 10.

## Headings

Note by Mr.K.M.Munshi  
Articles referred to:

Note by Mr.K.T.Sheri  
paras referred to

Note by Sardar Harnam Singh  
paras referred to

Note by Sir A.  
Krishnaswamy Ayyar  
pages referred to:

X. Freedom from ecclesiastical jurisdiction.

IV. Rights to Free Movement.

1. Freedom of movement, residence, acquiring of property etc. within the State.

All citizens shall have the right to reside anywhere in the Union, to acquire property and pursue any lawful occupation.

III.6. Vide also VI.

Every citizen entitled to free movement and settlement in any part of the union. para.32.

There shall be interState and inter-Provincial movement.page.2.

Extradition from place or domicile

2. Right to emigration and expatriation.

Every citizen has the rights of emigration and expatriation.III-7.

V. Equality.

1. Equality before law.

All persons are equal before law and entitled to the same rights and subject to same duties.

III.1. Vide also III-10.

All equal before law. No subjects privileges of rank, birth, person or family. para.1.

1. Public legal privileges. titles of nobility, badges of honour, etc.

No privileged class of heritable distinction to be recognised para.3. No title or honour to be accepted from foreign sources except with the permission of the Head of the State. para.4. No dignities or privileges of India Rulers in future.paras 5 and 6.

2. Equality of rights to women.

Women citizens equal of men citizens in all fields.

III-3.



Headings.	Note by Mr.K.M.Munshi Articles referred to:	Note by Mr.K.T.Shah paras referred to:	Note by Sardar Harnam Singh paras referred to:	Note by Sir A.Krishna- swamy Ayyar Pages refer to
4. Equality of rights to all nationalities, racial and religious communities.	Right of access to all Hindu castes to all places of Hindu worship. XII-7.	All human beings to be treated as equal in regard to all rights & duties of public life social activity & economic opportunity - para 1.	All citizens to have equal rights of access to all places of public resort. para.13. Recognition of untouchability shall be a crime. para.12. Untouchability is abolished; its practice is punishable. All persons shall have right to equal facilities in public places. III-4.	
5. Equality of opportunities.	All citizens entitled to equal opportunity in all spheres. II-2. All citizens entitled to equal opportunity in matters of public employment etc, trade, profession or calling and franchise.	Equal rights of access to all persons to every means of communication para 10. No institution of public utility or social service to be permitted to be founded whose use is restricted on grounds of caste sects etc. - para 19. Every citizen to have equal rights of access to all public places and means of communications - para 20. No restriction or condition can be attached to any place or institution donated for the general public - para 21.		
6. Equal rights and immunities among citizens of State inter se.				If there is to be a State of provincial citizenship, the citizen of each State to be entitled to privileges of several States. page.2.
VI. Economic Rights.				
1. Statement of economic ideas.				
2. Regulation of different aspects of economic life such as housing, land settlement and co-operation.				
(1) Freedom of trade and industry.	All citizens entitled to equal opportunity in trade, profession, or calling. III.5b. Vide also 5 I-I.		No subject shall be prohibited from carrying on any trade, business or profession on grounds such as religion. para 8. Freedom to choose one's occupation and to originate any enterprise or industry. para 14.	There shall be freedom of inter-State & inter-provincial trade. page.2. States to be prohibited from levying duties and imports.
(ii) Freedom of Contract.		- 259 -		<i>on exports</i>
(iii) Development of backward and frontier provinces.				

iv) Workers' and  
economic conditions

v) Right to property and  
meritocracy and conditions  
of expropriation.

vi) Slavery, servitude and  
decreed labour.

vii) Safeguards to manu-  
facturers and producers.

viii) Safeguard to middle-  
classes.

ix) Safeguards to labourers.

x) Freedom of expression and  
association.

- 260 -

Every inhabitant entitled to right to property is guaranteed, X-182. Establishments established to establish religious charitable societies under certain conditions. X-4. Right to property includes right to use of their own language, script and religion. They shall be entitled to ownership of such properties. Para 6. No subject shall be prohibited from acquiring property on grounds such as religion. Para-8.

All inhabitants entitled to right to property is guaranteed, X-182. Establishments established to establish religious charitable societies under certain conditions. X-4. Right to property includes right to use of their own language, script and religion. They shall be entitled to ownership of such properties. Para 6. No subject shall be prohibited from acquiring property on grounds such as religion. Para-8.

Headings Note by Mr. K. N. Manshi Note by Mr. K. N. Manshi Article referred to: Note by Barrister Hariram Bingley Note by Sir A. Peers referred to: Note by Barrister Hariram Bingley Note by Sir A. Krishnamoorthy Ayer Peers referred to:

Headings	Note by Mr.K.M.Munshi Articles referred to.	Note by Mr.K.T.Shah paras referred to.	Note by Sardar Harnam Singh paras referred to.	Note by Sir A. Krishnaswamy Ayyar pages referred to:
(iii) Economic well-being.	Decent standards of life and full enjoyment and opportunities. VII-1.	Right to employment with adequate remuneration be made available to citizens irrespective of caste or sects & in accordance with aptitude of each worker - paras 35 to 38.		
(a) Fight to work.	All workers are entitled to work. VII-1.			
(b) Fight to leisure.				
(c) Right to living wage.	All workers entitled to living wage.			
(d) Protection against sickness, old age, unemployment, disablement, etc.	These protections to be given to workers VII-2.	Every citizen shall be guaranteed the right of maintenance during illness or disability subject to prescribed conditions - paras 42 & 43.		
(e) Workers' and economic councils.				
(f) Others.				
(7) Development of backward classes such as Scheduled castes, irrespective of religious denominations.			Provision of special educational facilities, to enter public services, protection from social injustice and exploitation. para 11.	

Headings

Note by Mr.K.M.Munshi  
articles referred to:

Note by Mr.K.T.Shah  
paras referred to:

Note by Sardar Harnam Singh  
paras referred to

Note by Sir A.  
Krishnaswamy Ayyar  
pages referred to.

(iv) Safeguards for particular sections of labourers.

(a) Women.

No woman worker to be employed in unsuitable industries. VII-4.

(b) Children.

Child labour in all forms to be prohibited. VII-5.

Women and children shall be protected against dangerous employment. para 45.

(c) Others.

Producers of intellectual industry to have a property right in it. VII-6.

-do-  
(Mr.K.T.Shah)

VII. Political Rights.

1. Statement of political objectives.

2. Right of democratic citizenship.

(i) Right to petition

(ii) Right to public office.

All citizens entitled to equal opportunities in matters of public employment, power and honour.  
III 5a.

No disability to be attached to any citizen by reason of religion or

No subject shall be ineligible for any office on grounds such as religion. para 8.

sects in regard to public employment trade or profession or calling. para.17.

Headings	Note by Mr.K.M.Munshi Articles referred to:	Note by Mr.K.T.Shah paras referred to:	Note by Sardar Harnam Singh paras referred to:	Note by Sir A. Krishnaswamy Ayyar Pages referred to:
(iii) Other Rights. franchise and powers of legislation.	All citizens entitled to equal opportunities in the exercise of franchise. III 5c. Every citizen has the right to choose the Govt and legislators of the Union or his State on equal footing by secret free periodic elections.	Every citizen over eighteen years shall be guaranteed the right to vote or to stand for elections. para 46.	Major communal issues raised in the legislature of Punjab shall require majority votes of the three main communities as also of the majority of all the members voting. para 24. Any bill etc, affecting exclu- sively a single community shall not be voted upon by members of other community. para 25. No decision on any controversial matter shall be taken by the Punjab Govt except by three-fourths majority. para 26.	
3. Public servants.				
(i) Conditions of employ- ment and safeguards.				
(ii) Responsibility of the State for the ultra vires action of its servants and the right of citizens to compensation.	Compensation to be given for wrongful or ultra vires action of officers. IX-2.			
4. Right of racial, linguistic and other minorities.				
5. Other political Rights.				
(i) Right to protection: within the country and in relation to foreign powers.	All citizens within and without the territories of the Union are entitled to the protection of the Union. III.8. No citizen may be handed over to a foreign govt for trial or punishment. III.9.	(by Mr.K.M.Munshi) No person shall be denied equal protection of the laws. III.10.)		

Headings

Note by Mr.K.M.Munshi  
Articles referred to:

Note by Mr.K.T.Shah  
paras referred to:

Note by Sardar Harnam Singh  
paras referred to

Note by Sir A.  
Krishnaswamy Ayyar  
pages referred to:

(ii) Rights of communes to self-government.

\*III.Institution of family and marriage.

Every person has the right to the freedom of family relations. No lawful marriage shall be dissolved except according to law. XI.

(1) Large families.

(ii) Protection of mother-hood.

(iii) Children legitimate and illegitimate.

\*III.(\*)Social Rights.

Usury is prohibited.  
IX.1.

Headings.	Note by Mr. K.M. Munshi. Articles referred to:	Note by Mr. K.T. Shah. Paras referred to:	Note by Sardar Harnam Singh Paras referred to:	Note by Sir Alladi Krishnaswami Ayyar. Pages referred to:
L. Religion.	All citizens entitled to prefer and practice religion freely.	The state in the Union of India shall be a secular institution; no official religion or church; religious neutrality of State aided public institutions to follow the same policy - para 16.	There shall be freedom of religion - para 4. Freedom of religious practice in public or private; freedom of assembly for the same in public - para 5. All communities free to practice their religion - para 7.	
1. State Church: Endowments.	Right to national minorities to manage at their expense, religious etc. institutions - VI - 3. Persons under 18 cannot change religion without consent of parents conversion by coercion etc. is punishable - VI - 7.	Without prejudice to existing property acquired by way of gift by religious bodies no property shall be alienated to, or owned by such. Nor shall such be free from payment of tax - para 29. The State may take over any property dues or privileges of any such subject to payment of compensation - para 30.	All inhabitants entitled to establish religious charitable social and educational institutions with right to the free use of their own language, script and religion. They shall be entitled to ownership of such properties - para 6. The State shall maintain all religions and charitable institutions and the endowments - para 21.	<i>ad</i>
2. State recognition of religious customs.			Use of 'Jhatka Meat' and 'Halal Meat' to be on par in public institutions - para 9.	
3. Freedom of conscience.	All citizens equally entitled to freedom of conscience - VI - 1.		There shall be freedom of conscience - para 4.	

Headings.	Note by Mr. K.M. Munshi Articles referred to:	Note by Mr. K.T. Shah. Paras referred to:	Note by Sardar Harnam Singh Paras referred to:	Note by Sir Alladi Krishnaswami Ayyar. Pages referred to:
4. Freedom for compulsion to participate from any religious practice.				
5. Religious bodies: rights and duties.			Religious minorities shall have right to establish autonomous cultural institutions.	
6. Taxation for religious purposes.	Person belonging to one religion not be compelled to pay taxes for institutions of other religions - VI - 4.		Religious minorities to have power to levy taxes to maintain their cultural institutions - para 15.	
7. Religion and civil and political rights.				
8. Religion and Education.	Religious instruction not to be compulsory for members of other communities - VI - 5.		Vide para 6.	

Headings.

Note by Mr. K.M. Munshi

Articles referred to:

9. Other provisions.

Note by Mr. K.T. Shah.

Paras referred to:

Note by Sardar Harnam Singh

Paras referred to:

Note by Sir Alladi Krishnaswami Ayyar.

Pages referred to:

X. Language and Education.

Vide para 6.

1. National language and linguistic rights of minorities.

Hindustani, including Hindi & Urdu shall be the national language of the Union at the choice of a citizen in the Nagari or Persian characters -

IV - 1.

Union competent to declare Hindustani as official or educational medium in any state - IV - 2.

Instructions in primary schools to be given in mother tongue in certain circumstances. - VI - 8.

All citizens entitled to the use of their mother tongue and script - VI - 2.

The culture, language & script of specified minorities as well as of different linguistic areas to be protected - para 18.

Protection of culture, language and script of various communities and linguistic areas - para 16.

Punjabi to be employed for social and cultural intercourse and in the conduct of official and administration business in the Punjab. - para 17.

Instruction in mother tongue to children of religious minorities - para 20.

## Headings.

	Notes by Mr. K.M. Munshi	Notes by Mr. K.T. Shah.	Note by Sardar Harnam Singh	Note by Sir Alladi Krishnaswami Ayyar.
	Articles referred to:	Paras referred to:	Paras referred to:	I Pages referred to:

- Every citizen entitled to learn national language - VIII - 3.
2. Educational ideals. Equal opportunities of education to all citizens - VIII - 4. Services and the Arts and the teaching thereof should be unrestricted - para 20.
3. Educational system and organisation.
4. Education of the poor.
5. Right to Education: guarantee of a minimum standard of education. Free, primary, compulsory education up to the age of 14 for boys and standard of literacy for adults. - VIII - 1 & 2. Free education up to a prescribed standard shall be guaranteed to every citizen - para 41. Elementary education to be obligatory and free in primary schools.
6. Private schools. Legislation regarding State aid without discrimination on the basis of religion or language - VI - 9. State aid for schools under management to be given without discriminating between religious denominations - para 19.
7. Rights of parents re: education of their children.
8. Safeguards for teachers.

contd...../-

Headings.

Note by Mr. K.M. Mun. i.  
Articles referred to:

Note by Mr. K.T. Shah  
Paras referred to:

Note by Sardar Harnam Singh.  
Paras referred to:

Note by Sir Alladi  
Krishnaswami Ayyar.  
Pages referred to:

9. Religious instruction.			
10. Educational safeguards to religious and linguistic minorities.		Provision of special educational facilities to backward classes - para 11. Establishment of Minority Schools - para 18.	
11. Protection of historical monuments, etc. monuments to be art treasures, etc.	Protection of artistic monuments to be art treasures, given - VI - 10.		
XI. Duties of citizenship.			
1. Payment of taxes.			
2. Obedience to laws & protection of constitution.	No person may refuse to obey on grounds of religion and to fulfil any duties - XIV - 1.		
3. Receiving of education.			
4. Military service & defence of state.	National defence duties not to be construed as limitation of fundamental rights - XIV - 2. Union to have unrestricted powers at time of war and internal emergency - XIV - 3. Union Legislature entitled to abridge right of the members	Every citizen has the right to join in the defence of the country and to be entitled to bear arms - para 23. Union Govt. shall be entitled to conscript for the purpose of defence - paras 25 & 27. Such conscription may also be ordered by the component parts for any	Due regards to the claims of Sikh community in framing rules for recruitment - para 22.

- 269 -

Headings.

Note by Mr. K.M. Munshi.	Note by Mr. K.T. Shah	Note by Sardar Harnam Singh.	Note by Sir Alladi Krishnaswami Ayyar.
Articles referred to:	Paras referred to:	Paras referred to:	Pages referred to:

engaged on maintenance emergency - paras 26 & of public order -XIV - 27.  
4.

5. Performance of public duties.

Every citizen bound to help in the maintenance of public peace and tranquility - para 31.

6. Other duties.

III. Unenumerated Rights and Duties.

XIII. Enforcement of Fundamental Rights.

1. Supremacy of constitution and guarantee of fundamental rights.

2. Conditions for aborigion of fundamental rights.

3. Denial of certain rights to army men.

contd..../-

Headings.

Note by Mr. K.M. Munshi.  
Articles referred to:

Note by Mr. K.T. Shah  
Paras referred to:

Note by Sardar Harnam Singh  
Paras referred to:

Note by Sir Alladi Krishnaswami Ayyar.  
Pages referred to:

4. Institutions with authority to interpret and enforce fundamental rights. Appeal to Supreme Court from court's proceedings regarding Writs - XIII - 4.  
Jurisdiction of courts to be prescribed by Union Legislature - XIII - 7.

5. Right to move Courts to issue Writs of rights. Vide XIII - 1 to 3.

Institution of an Independent Minority Commission with the functions specified - para 27.

Supreme Court of the U.S.A. type or a Court of Error or Appeal to be established to enforce fundamental rights - page 3.

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— 271 —

N.M.L.

Note on Fundamental Rights by Mr. K.T. Shah.

M

The idea of defining and declaring the Rights of Man and of Citizen is not a very recent contribution to political theory.

Since the days of the French Revolution, the notion of defining Rights of Man and of Citizen has become an article of faith for liberalism. In the American Constitution, which preceded by a few years the French Revolution, the Bill of Rights definitely lays down, as the object of the Constitution the protection or guarantee of life, liberty and pursuits of happiness as the birth-rights of all human beings. The British Revolution also, 100 years before it, insisted upon a Bill of Rights after, which may well be said to have laid the foundation for a well defined and solemnly declared Code of Human Rights and the Rights of Citizens.

The Bill of Rights, as conceived and formulated by the British and American Revolutions, was however, more in answer to the sufferings or grievances of those people against their then Rulers than a formal declaration of abstract Rights. This does not mean, indeed that these Rights of Man must be considered only as remedies for specific wrongs. Even if the experience of mankind shows there have been wrongs the rights embodied in those documents are such essential claims of humanity that their declaration and enforcement must be deemed to be the primary function of every civilised Government.

Until, however, these Rights came to be defined and made an integral part of a country's Constitution, they were in the nature of pious wishes of progressive thinkers and liberal Government, rather than accepted obligations of the State towards the Citizens, and of civilised Society towards all mankind. The conception of such Rights was unknown in ancient Greece where Society was divided into free citizens and Slaves who had no rights. It was, moreover, confined within the limits of a single town and its adjoining territories, where the idea of a Body of Rights solemnly declared and made part of the Constitution, providing guarantees to the individual, be he citizen or stranger was unthinkable. The idea made some advance under Rome and her Empire. But even then formal definition in any decrees of the Senate or of the Emperor was unknown. Roman citizenship itself was of course a prized possession, carrying considerable privileges in the earlier days of the Republic and even under the first Ceasars. But in those days Rome was conscious of her own Separate individuality; and had evolved a legal system suited to her own citizens. The distinction between the Roman citizen and the rest of the subjects of Rome was a distinction between Roman and others, which was certainly not the same thing as the recognition of the Rights of Man as such.

So far as mere theory is concerned, it was, therefore not until the establishment and advancement of Christianity that the sacredness of human life and personality began to be theoretically accepted and practically given effect to. It was simply an attempt to realise the commandment, "Thou Shalt not kill". The Civil Codes elaborate under the auspices of the Church tried to enforce/distinctions of the Feudal Regime and uphold the privileges not only of the Church, the Noblesse, and the anointed Kings.

Throughout, therefore, of the days of Cannon and Civil Law, the idea of a specific declaration of the Rights of Man and of Citizen was impossible. Even the British Magna Charta was an attempt of the Feudal Barons to secure their own position against the King, not a Declaration of the Rights of all citizens, much less of all men.

The Progress of Liberal thought, however, brought greater and greater recognition of human life, the sanctity of which was more often ignored than observed in the socalled Dark Ages. Sanctity and fullness of life through an amplitude of opportunity duly secured to all is the only guarantee for the continuance of the respect for human life and personality. But the church had to face the class

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race and the acceleration of its progress. Life was cheap in the age of incessant warfare and therefore the Legal Systems which grew up then, thought more of liberty and privileges than of the sanctity of life or the dignity of labour.

The notion, however, gathered momentum when social thinkers first began to realise the need for solemn declaration, and substantial guarantee of its enforcement. The Rights of Man, when proclaimed by Thomas Mann, appeared to make a revolution in a society dominated by privilege, the more so as even the Liberal thinkers were apt to confine the civil liberties they had won, by hard and long struggle against absolute monarchs as the exclusive possession of certain favoured peoples rather than of mankind as a whole. The idea was not born in a political vacuum; it was the creature of circumstances peculiar to the age.

Once accepted, however, the idea rapidly progressed till not only human but other forms of life began to obtain recognition, though this larger conception is embodied in the Constitutions of the Countries making up human society. Sanctuaries, for example, for birds and beasts are being formed in several advanced communities so as not only to prevent particular species of animals or birds becoming extinct by ceaseless slaughter, but also to guard against man degenerating into a mere beast of prey. A National Sanctuary has been established in more than one country to preserve the species most commonly menaced getting rarer through other reasons. Several Treaties have, for example, been concluded between the countries concerned for regulating in some measure the hunting destruction of whales or oysters. If such consideration is beginning to be shown to the lower animals it goes without saying that man of all races, creeds and colour, cannot be excluded from the operation of this ideal.

Until very recently, however, the declaration of human rights was rather in the nature of Rights of Citizens, unilaterally provided for in the Constitutions of particular countries than a general agreement amongst the civilised peoples of the world. We had to wait for two World Wars, an intense period of economic distress due to widespread Depression and a frenzied exhibition of race mania, before we could get a general agreement in the socalled United Nations' Charter on this subject. The Charter contains direct reference to some Rights of Mankind irrespective of race, colour, or sex which the countries accepting the Charter have pledged themselves not to declare but also to observe and enforce in their jurisdiction. Machinery is also being devised to see that these rights do not merely remain paper declarations; but become daily realities in the ordinary life of the average man.

With the progress of this notion, a distinction had inevitably to be drawn between what may be called the Rights of Citizens and the Rights of man. The latter is a much wider term than the former though both must have corresponding obligations. The popular belief emphasises such rights almost to the exclusion of corresponding duties. But the Constitution would be incomplete, and even futile, if equal stress were not laid on obligations corresponding to rights.

Another elaboration of the idea of Rights of Man has of late made rapid progress, namely the rights of Minorities. The term "Minorities" in this connection refers not to political minorities, but those fixed and unchanging entities distinguished by religion or nationality, but culture or language, which make small groups in the midst of larger populations. They have fundamental difference regarding the ways of life which demand special safeguards and protection with reference to those items which they prize specially, namely religion, culture or language.

Rights of Minorities are not of the individual, but of the group. They are more in the nature of safeguards, than of positive privileges; and they follow inevitably as a corollary once the generic conception of

rights of man in a civilised State is accentuated. It may be added that this particular category of Rights will be meaningless, if and when a real "World State is set up in which all enjoy the same rights and liberties.

As will be pointed below almost every one of these rights would be impossible to realise, unless, side by side toleration is cultivated and enforced. The rights of life and liberty, and claims for equality of treatment to all, and not only of a privileged class are common to all; and unless all realise that these rights of any one are as sacred as that of any other, the commonest right of any one would be in jeopardy.

In the Statement of the Fundamental Rights appended special reference is made to the rights of Minorities due to the peculiar conjuncture of circumstances in India at the moment. In reality, however, they are rather obligations of Majorities that they shall cultivate toleration and equal regard for the ways of life, thought, or worship of their sister communities however much they may differ from them, or safeguard for Minorities rather than positive privileges of the latter.

Defining the Rights of Man, or Citizens, or Minorities is as important and necessary under modern conditions as it was in the days when the fight for civil liberty was first begun against absolute monarchs or privileged classes. For the fear of a single political party, and the causes governing that Party dominating the entire country is by no means an apprehension of excessively nervous people. Contemporary history in Europe, America and Asia fully confirms the apprehension. In the days of the Nazi or Fascist domination it was a daily nightmare of millions not only in single-party States, but also amongst their neighbours, near or far. When a single party works for the people as a whole as the Communists claim to do in the U.S.S.R. or as the Congress is believed to do in India the objection diminishes in force. But the instinct for power concentrated in one individual is the same whether with the Nazi or the nationalist, the Communist or Kuomintang; and the moment the common aim is achieved, or danger overcome, the naked greed for personal power asserts itself. For the moment it is true the Nazi and the Fascist is down; but even now the seed-bed for his resurrection in a new form is not destroyed. Without seeking elsewhere for precedent or parallel in the world today, it would do us no harm to note that the Indian National Congress, almost in sight of its original goal, has begun to taste power and must therefore pay for those who have brought that Party into power. These last, it is well known are privileged groups of Capitalists and land-owners who found British commercial rivalry backed by British bayonets, too strong to leave them a free field for exploitation which could make an effective bid for power. In so far as the Congress is the creature of these classes, and its leaders, have even unconscious affinity or sympathy with them, the masses of India would have but changed the colour of their exploiters' skin.

Whatever the intellectual convictions or professions some of the Congress Leaders have unmistakable affinity with the privileged exploiter and unless effective safeguards are devised against any invasion of the Rights of Man and of Citizens, the masses of India would have struggled and suffered and sacrificed only to win independence for their exploiters, who have not the excuse of being aliens in race, creed, or colour. As a prominent Minister of a Great Indian State put it "Paramountcy is gone; but independence remains".

Notwithstanding this danger, there is a value in having the Constitutions of individual countries and of Minorities incorporated not only in these Rights of Man and of Citizen but also in a more sacred form in the World Charter which provides so to say, the sanction of the United Nations for the actual realisation or enforcement of such Rights for all.

will be counterbalanced by their obligations of mutual toleration, and conformity to the laws of the place they live in, however, unaccustomed they may be to such laws, until those laws get amended or altered by force of public opinion. Finally the Rights of Minorities however, fully guaranteed and truly enforced, cannot avoid the obligation of these groups not to use these Rights to impede or blackmail the majority. Toleration and cooperation for common good are as much expected of Minorities as of the majority.

Mention may be made in this connection of the seeming conflict in certain rights themselves, which is due, so to say in the right of one person or of one group, becoming the obligation of another. Here, too, the Universal obligation for toleration and mutual understanding will help to solve the problem.

Let us now proceed to consider what these rights are, and how they are to be observed in practice, enforced. The most convenient method for appreciating these rights would be to divide them into some definite categories, which would comprise almost everyone of the rights or privileges that have been incorporated hitherto in the individual Constitutions, and also referred to in the United Nations' Charter. The most important categories are:-

1. Civil Rights.
2. Political Rights.
3. Economic and Social Rights.

To these one more class of Scientific Rights is added by some in the interest of proper publicity. This is not quite an exhaustive classification. For practical purposes however it is sufficient.

Notwithstanding this classification, there are certain vital rights common to all men irrespective of their nationality, race, sex, speech or religion, which constitute the very foundation of all these rights included in the several categories. The right to life for example is at the root of all this idea.

This does not merely mean the sanctity of either human or animal life, which must not be infringed by any other human being, except for stated reasons or by due process of law. It means also the fullest opportunity to develop one's personality and potentiality to the highest level possible in the existing stage of our civilisation. Life, that is to say the mere right to exist, will have little value, if it is to be bereft of any opportunity to develop or bring out what is in every man or woman. It follows inevitably that the right to live is the right to live decently as a member of a civilised society and to have all the freedom and advantages that would go to make life agreeable, and living assured in a reasonable standard of comfort and decency. This right and all it implies cannot be conditioned or restricted except by its own corresponding obligations.

Being the basis for all other rights, the Right to life naturally will require adequate and effective protection, guarantee, or safeguard included in the Constitution, or in the Civil or Criminal Procedure Codes, or the laws of Social Order under which any given member of humanity lives.

The same may also be said of the Right to Equality, which is an indispensable prerequisite of proper system of justice, and due respect for human personality. Here also the term by itself is likely to be misconceived or interpreted unduly narrowly, if it is not added that equality is not merely equality of treatment before the established system of Law and Order but also of opportunity for self-expression or self-realisation that may be inherent in every human being. One

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Turn we now to the other side of the shield the Rights of Man or of Citizen however clearly defined and solemnly guaranteed, must not be treated as absolute and unconditional. Corresponding to the Rights on any category, there are also Obligations of Citizens, of Minorities and of humanity collectively, as well as of the State, and of the United Nations. At first sight, the Rights of Citizens, for instance, would appear as obligations of the State; and the functions that the State has to exercise will also result in some obligations upon its citizens. Similarly, the rights of man guaranteed as sacred in all United Nations

(continued on page 4)

-276-<sup>89</sup>

important condition for the due maintenance of such equality is that no restriction be placed in such matters on any human being on the ground of sex, race, speech, creed or colour. All these have in the past been used as excuses for exclusiveness, which must go if equality is to be real and effective for all persons. It would also imply equality in the matter of thought and expression, which are conveniently described as Freedom of Conscience, of Expression, or of Association. That will be considered more fully when we come to the special categories to which these belong.

Yet another right of all mankind consists in the Freedom of Movement anywhere at any time. Present day restrictions, even in the most progressive countries, against foreign immigration, or equal right to settle and live in any part of the world, are a violation of this primary right of all mankind.

Fundamental & essential as these rights may be claimed to be, they are nevertheless the outcome of peculiar conditions, best and most suited to the environment in which they have to be enforced. The conditions under which human life is to be lived are rapidly changing, due to incessant advance in Science and Technology, that make the standard of living of one age utterly unequal and impossible in another. This is not a limitation of the rights stated above; it is only a recognition of the condition concomitant, apart from which the Right itself would have no meaning.

These are some of the most important of the Rights of man, irrespective of citizenship. They may be declared and enforced in individual constitutions, they must be agreed to and observed by the United Nations, who constitute the first step towards a World State, its common citizenship and human brotherhood.

Let us now consider the Rights of Citizens and Minorities in the setting up of individual constitutions; and in the several categories mentioned above.

In the last 200 years Civil Rights have become fairly standardised; and are incorporated in varying terms in the several Constitutions of the World's leading countries. They are founded on the conception of justice as between man and man, which cannot be secured without equality in the social system and before the Tribunals of Justice.

The most important of these relate to the liberty of the person, and privacy of the home. No interference with that right can be allowed without due process of the law. This is a guarantee against arrest, imprisonment, or detention without due process of law, or search warrants of a general character, invasion of the home and the like. Under the absolute Monarchy of the days gone by, these had been amongst the principal grievances of the common people. It is now generally admitted that these are conditions essential and indispensable for living on any decent level of existence.

Though these Rights are described as Civil Rights they are not necessarily confined to citizens only; but may well be regarded as the rights of humanity in general. It is in this group that the right to life and its fullest development or expression would be in an individual constitution included. So far, however, as the mere sanctity of life is concerned it applies to both citizens and strangers. But so far as enabling individuals to enjoy the fullness of life and opportunities for self-expression or self-realisation are concerned, they involve considerable outlay on the part of the State to provide the necessary facilities, by way of education, health, entertainment, and the like, and the wherewithal for such outlay will come principally, if not entirely from the citizens.

It may be that the Right is not equal absolute and categoric for citizens as well as strangers; but that it is preferentially for citizens, whether or not on payment of any dues or fees levied by the State, while in the case of strangers, other conditions may be imposed to meet the latters' share to the fullest measure, in providing all the facilities of equipment and amenities at public expense.

In marked contrast with the Civil Rights is the group of the so-called Political Rights. Primarily these are Rights of Citizens, as distinguished from those of the Rights of Man. They are much more directly connected with corresponding obligations, whether expressly so stated or implicit. While the general level of civilisation and the amenities of life provided thereunder would be common to citizens and strangers in a civilised State, certain rights of citizens which become the obligations of the State are necessarily confined or at least primarily belong to citizens.

The most outstanding of these may be, in a democratic system of Government, the right to participate in the actual system of Government, because, ex Hypothesi, it is based on the consent of the people, the governed. Naturally this must belong to the citizens, or members of the State concerned so long as a World State, and its common citizenship are not evolved. As a counterpart of this right, obligation rests on the citizens to bear all the burdens of Government, and abide by its laws until changed. An equal obligation rests on the Government to provide such a Constitution and Administration system that the consent of the governed may be fully expressed, and truly observed.

Government in this case would be by the consent of the majority, not all the citizens. But the measure of real progress and enlightenment in the organisation and functioning of the State Machine would be judged by the extent to which as large a majority of the people as possible irrespective of their differences inter se on grounds of class, creed, or sex directly or indirectly consent to the Government being established and worked. The evolution of Political Parties, differentiated among themselves by real issues of policy and economy helps to make the majority as large and at the same time, as shifting as possible.

Another device to the same end is the principle of Ministerial Responsibility to the chosen representatives of the people. This means that so long as the representatives of the people support an Executive Ministry and their measures, - legislative or administrative, - that Government remains in office. But the moment they lost their confidence they have to vacate office, and yield place to those who are willing to revise their measures or policies more in accord with the people's Representatives. The latter, it need hardly be added, may themselves be changed, and the Party complexion of the Majority altered, by dissolution of an existing Legislature, and election of a new one to represent the wishes of the ultimate sovereign - the people.

It may be added that the Principle of Ministerial Responsibility is not absolutely essential to democratic Government in practice. Like all human institutions and devices, this principle of Responsible Ministers is likely to be abused, or at least distorted from the original intention. In the most democratic countries, the responsibility is with the Ministers collectively, and not with an individual Minister who may happen to have lost on a given measure the confidence of the majority of the People's representatives. Because, however, the responsibility is collective, all Ministers would have to go, where the principle operates at its fullest the moment the popular Representatives indicate a lack of confidence even though only one may have lost the confidence of the representatives. On the other hand, because of collective responsibility, a Party System develops which holds together on such stringent discipline its members with the representatives of the people, that the latter

are hardly free agents. For the same reasons, the Ministers themselves are tied to Party policies, irrespective of the merits of individual measures coming under those policies. Popular consent in such government can only be inferred; and that, too, on very broad general lines. Ministers are themselves chosen and their measures proposed not on merits exclusively, but, in accordance with the estimates of their being most acceptable to the majority of the voters on interests themselves. It is only when a people has become fully accustomed to this system of Political Parties and learnt to read between the lines of platform professions, can the system work satisfactorily. But with all these shortcomings of the system, the basic right of the citizen to have a system of Government based on his consent in the aggregate, remains undisputed in the final analysis.

The responsibility of Ministers may not be directly to the People's representatives, but may be to the executive head of the State, as in the United States, who is himself directly elected by the sovereign people. In so far, however, as the executive head is irremovable during his period of office; and in so far as he embodies the sovereign will of the people as their chosen representatives, the working of Ministerial responsibility would be considerably restricted.

The consent of the people or of the citizens is expressed or by means of free elections of the representatives. This is achieved usually by secret ballot so that, notwithstanding, the presence of Party Machines, Party Discipline, and party propaganda, the individual citizen can express, through his vote for a Representative, the general trend of public opinion on given issues which the Ministry formed on the results of these elections, will have to deal with. It is, therefore, listed as another important civic right.

A number of other devices, developing in consequence of this, such as the recurring elections at stated intervals of the entire body of the representatives, the so called power of the Purse vested in those representatives, and even of veto on certain measures of the executive, not to mention direct action by people themselves in the shape either of a Referendum on a highly important issue of national policy before action can be taken by the Legislature or the Executive; Direct Initiative in respect of certain measures desired by the people, or recall of an obnoxious Minister, are all meant to indicate the consent and authority of the people for the form and activities of the Government they desire to be governed by. Needless to add that all these developments and refinements of the basic principle are not included specifically among the Rights of citizens.

Other Rights in this category are the Freedom of Assembly, of Speech, - written or by means of the Press, - of Association, movement, and communication by words or symbols. All these rights are nowadays generally accepted as indisputable, and usually included in the basic Constitution of a country, or otherwise guaranteed. Most of them have already been included in the category of Civic Rights. These Rights however are not absolute or unconditional. Side by side with the Rights are obligations. For instance, the amenities of criticisms of public measures or persons must be subject to such limitations as are implied in the Law of Libel and Slander; or in the other provisions of the Local Penal Code which concern the maintenance of amicable relations between the several communities making up the State; or which injure needlessly the feelings of any individual or section of the people; or offend against the unwritten laws of public decency and morality.

For reasons of public safety, moreover, it may also be that the abuse of these rights by individuals may have to be adequately guarded against. For instance, the existence and working of Secret Societies, admittedly formed for purposes of subverting the existing order, or for other unlawful purposes,

may be absolutely prohibited. In the alternative, certain conditions may be demanded from all Societies, such as registration, publication of the list of members or at least of the executive committees, particulars of their funds etc. These are intended to be so many safeguards against unlawful or anti-social activities of any Association, without denying the fundamental right of free Association.

The trial by Jury, which has been regarded as amongst the bulwarks of Democratic Freedom, is often included in Political Rights; but it is not confined only to citizens, and should be common to all residents in a given place. In its origin, the Trial by Jury or by one's fellows, or peers, was rather oligarchic than democratic. With the abolition however of all political privileges, and other inequalities as between the different citizens, Trial by Jury acts as an important bulwark of civil Liberties.

It is difficult to classify the right to keep or bear arms, and join the organised defence of one's Motherland. This is both a right, and, in certain circumstances, an obligation of citizenship as well. The right to bear arms receives importance in a case like India, where the Arms Act for well nigh a century kept the people wholly disarmed; and utterly unable even to defend themselves in case of need against anti-social forces, let alone aggression from outside. So far as modern arms and armaments are concerned, the State has to insist on licensing and permits for keeping and carrying about dangerous weapons or explosives, that are a menace to public peace. On the other hand, the right of the State to provide for the Defence and security of the country may actually result in conscription of all adult citizens to be trained and available in times of need for national defence, or as part of the ordinary normal provision against possible emergency. Conscription however, may be for social as well as for military reasons. It is to be hoped that in the days to come the social demands of rebuilding a healthy, just, progressive civilisation would command the aid of Conscription much more freely and willingly than the destructive purposes of war have hitherto done. In a country, moreover, like India, lacking in trained personnel for all the tasks of revival and reconstruction, conscription may prove a most helpful aid to make for such temporary shortage of trained man-power. The still larger aim of effecting a redistribution of population all over the country from agriculture, on which the pressure rests unduly high, to Industry, will likewise be facilitated if the principle of Social Conscription, is unhesitatingly adopted.

#### Economic and Social Rights.

The most important group, however, of these rights is the third category of Economic and Social Rights. Based on the primary Right to life, in the wider sense nowadays given to it, these rights are indispensable, if the two preceding groups of Rights are not to be meaningless. The Right to free Election, without a full bellring would be a mockery.

Being so all-important, these Rights of Individuals must be treated as in some way the responsibilities of the entire civilised society, even though, immediately, they may be the obligation of each given State. So far as practicable, again, these obligations of each given State must not be conditioned and restricted by the accident of Citizenship; they must be made available to and enjoyed by all the people of each given region and so of all the world. They are the condition precedent and indispensable for the full development of human personality. As such they must be guaranteed by the combined resources of the civilised world as a whole, and not left to be realised by the individual resources of an isolated community.

The importance of these Rights may be reinforced by the words of the late President Roosevelt:-

We have come to the clear realisation of the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not free men. People who are out of a job are the stuff out of which Dictators are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights, under which a new basis of security and prosperity can be established for all regardless of station, race or creed.

Among these are:-

The right to earn enough to provide adequate food and clothing and recreation.

The right of every farmer to raise and sell his product at a return which will give him and his family a decent living.

The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad.

The right of every family to a decent home.

The right to adequate medical care, and the opportunity to achieve and enjoy good health.

The right to adequate protection from the economic fears of old age, sickness, accident and unemployment.

The right to a good education.

The President was convinced these promises would be implemented and realised after the war was won. He believed they were the only conditions of abiding peace all over the world, and attainment of new goals in the happiness and well-being of mankind as a whole.

It is, however, not quite clear if these rosy aspirations were meant for the American people, or for all the masses of the world. If the latter were his intention, the power and authority of the United Nations Organisation would have to be very considerably increased so as to entitle and enable it to intervene in the domestic affairs of individual states and rectify social injustice or economic exploitation of the class by another within a community. It is doubtful if the conscience of the Western Nations has awakened to these responsibilities of our co-operation to the heights of universal equality and fellowship.

The enumeration of these economic Rights, as given by the late President, is addressed primarily to a Society making a fetish of free enterprise. Perfect realisation, however, of the Rights so broadly stated, would only be possible in a classless Society, where from each member will be expected to contribute towards the common good in accordance with his ability; and to each member will be assured a standard of living in accordance with his necessity.

#### Obligations of the State.

These Rights, it may be added, form the corresponding obligations of the State which guarantees them. Thus, for instance, the very basic Right to life or liberty requires that the state keep up sufficient machinery at its disposal to prevent any would be aggressor aiming at the life or liberty of any one in the community. The Right to work, again, or Employment necessitates such organisation of the resources of the country, in a Plan, as would secure adequately, remunerative work for all citizens. The Right to health and Education

presupposes the establishment and maintenance of sufficient schools, colleges, libraries and Laboratories; as well as Hospitals, Nursing Homes, Dispensaries and medical and Nursing Service for treating and preventing disease, which only the State or its delegate can provide for all effectively.

There are, on the other hand, rights, which require the State to provide institutions and conditions, under which alone these Rights can be enjoyed. All the rights about the Liberty of the individual, would need the setting up and maintenance of proper Tribunals as well as suitable Codes of Civil and Criminal Procedure. Even where the Right in question is a simple assertion of individual freedom, e.g. freedom of Expression, the State must maintain and enforce such laws as will not jeopardise the equal freedom of others because of the exercise of this guaranteed freedom by some.

All rights are conditioned in civilised society, by the implicit requirement that similar rights of other members of the same society shall not be violated. Freedom of Association may be fully declared and guaranteed. But if it is used to destroy the freedom of others, - e.g. by totalitarian organisations, --the State must maintain machinery to prevent such associations operating to the prejudice of other citizens. The same applies to freedom of conscience and worship, which guaranteed to all cannot be permitted to any so as to deny to all others the same right.

#### Fundamental Rights of Citizens and Human Beings.

The Fundamental Rights of Citizens and of Human Beings in civilised society, based upon co-operation, are not absolute and unconditional. They are defined and limited by the very nature of the social organisation, the demands of industry, and the needs of mutual cooperation in a wide-spread division of labour.

Even the most sacred of all such Rights, the Right to life, - its dignity, sanctity and fullness, - is not absolute and unconditional. For the same right of every individual imposes an equal obligation of all to respect it for all his fellows; and whosoever violates that right of another must expect to be dealt with by the organised might of Society through its courts of justice.

"Freedom" is a convenient term to express some of these Rights. But absolute Freedom, in the sense of freedom to action undisciplined impulse can only belong to the savage cave dweller, or the beast of the jungle. Rights are coupled with or counter-balanced by obligations or duties of citizenship, which needs as much to be emphasised as Rights. Some of these Rights are common to all mankind, transcending all political frontiers, and barriers of race, creed or sex. Where deemed necessary, they are so expressly stated in the articles which follow.

Subject to this general observation, the following are declared and guaranteed by this Constitution to be the Fundamental Rights and Obligations of Citizens, irrespective of birth, wealth, sex, creed or complexion.

Whereas this Constitution for the Union of India has been ordained by the people of India to assure and guarantee the sanctity and dignity to life to all persons living in the Union of India, and in particular to make available to the citizens of India full benefits of political freedom, civil liberties, and economic opportunities, it is hereby ordained, assured and guaranteed as follows:-

1. All Human Beings are born equal, and must be treated as equal in regard to all Rights and duties, privileges and responsibilities, of public life, social activity, and economic

opportunity.

2. Every citizen of India has, and is hereby guaranteed equal rights and opportunity in respect of education, training, health and employment in any post, office, or capacity, irrespective of any differences of birth, sex, wealth, creed or colour.

3. No artificial or man-made distinction between citizens, by way of titles, honours, privileges - whether personal or inheritable, - shall be recognised by and enforceable under this Constitution, or laws made thereunder; provided that academic degrees, official titles, or popular honorifics, whether of Indian or foreign origin, or confirmation, may be permitted in so far as they create no privileged classes or inheritable distinction.

4. No citizen of India shall be entitled to accept any title or honour or distinction inheritable or otherwise, from any foreign Ruler, Government, or Society, except with the permission of the Head of the State for the Union of India.

5. Existing Titles and Dignities or Privileges of the Rulers of Indian States shall be discontinued and abolished upon the death or deposition or abdication of the present Rulers. No titles shall be used or permitted for any of their heirs, relations or connections.

6. Subject to such arrangements as may be made in connection with the Titles, Dignities, or privileges of existing Rulers of Indian States no inheritable titles, dignities, or honours shall be recognised, or permitted under this Constitution, to any citizen of the Union of India.

7. Subject to the preceding, all existing titles, honours distinctions and/or privileges shall cease to exist.

8. Citizenship is a privilege which entails obligations, as well as brings to certain rights. It is acquired by birth in the country, or residence for a prescribed minimum period, or Naturalisation, subject to such conditions as may be prescribed by law.

9. Every citizen has, and is hereby guaranteed, freedom of thought and expression of opinion, subject to such laws as are in force at any time and relate to the maintenance of friendliness and good relations between the several communities and citizens as well as to libel or slander. Such freedom of thought and expression shall also be available to non-citizens also on the same conditions as to citizens. The term "freedom of expression" includes the spoken as well as written, printed or published, material, pictures, photographs, cartoons, and the like.

10. All means of communications, the post, the telegraph, the telephone, the radio and the like, shall be equally accessible to all.

11. The right to free expression of thought includes freedom from any censorship by any public authority, except under special legislation in times of emergency like a war, and for the duration of that emergency.

12. The freedom from censorship applies not only to the sanctity of communication conveyed through the public post, but also to communications by means of the Telegraphs, Telephones or the Wireless Radio Communication.

13. Every citizen has and is hereby guaranteed the right of free association with his fellows to promote or achieve any lawful object or interest, in clubs, learned societies, commercial concerns, joint stock corporations, Trade Unions, Professional Organisations, co-operative Societies, and the like, without prejudice to the equal rights of others; and subject to such laws as relate to registration, freedom of trade and intercourse among individuals in different parts of the country. The right to the Freedom of Association includes

the right to take all steps and adopt all peaceful measures to attain the objective or promote the interest.

14. Every citizen has and is hereby guaranteed the right to assemble peacefully and without arms in any place at any time, for any purpose not opposed to law or morality or public peace, provided that, in times of civic commotion or national emergency declared to be such by the proper Constitutional Authority, such assemblies may be forbidden for a defined and limited period or in a specified place or places, by an appropriate lawful authority, acting in the normal exercise of the powers conferred by law.

15. Every person living in the Union of India has, and is hereby guaranteed the right to freedom of conscience, which includes freedom of belief, worship, or profession of any religion, faith, or doctrine, as well as the narration of any such belief, subject to such laws as ensure the maintenance of public peace, tranquility, and good relations amongst the various sects and communities in the country.

16. The State in the Union of India, and in every component part thereof, shall be entirely a secular institution. It shall have or maintain no official religion or established church; and shall observe absolute neutrality in matters of religious belief, worship, or observance. All public institutions, maintained, aided, or supported in any way by the State shall observe the same policy of absolute neutrality in matters of religious worship, belief or observance.

17. No disability shall attach to any citizen by reason of his religion, creed, or sex, in regard to public employment, office of profit or honour or in exercise of any trade, profession, or calling.

18. The culture, language and script of specified religious or communal minorities, as well as of the different linguistic areas in the Union, or in any component part thereof, shall be duly protected, and safeguarded, without prejudice to any public encouragement or support being given for the development of a single national language for official or public intercourse throughout the Union as the official national medium of intercourse and expression in all public documents, before all public bodies, or tribunals, and for all public purposes.

19. No individual or corporation shall be permitted to found, support or maintain any institution of public utility or social service, like a school, college, library, hospital, well, tank, canal, whose use is restricted on any ground of caste, creed, community, sex or colour.

20. Every citizen has and is hereby guaranteed equal right of access to and use of all public places, wells, tanks, canals, roads and other means of transport and communications, schools and colleges, parks, gardens and museums, hospitals, dispensaries, and all other places of public utility or resort, maintained at public expense from local, provincial or central funds or aided from the same.

21. Any place, or institution, dedicated by any person for use by the general public shall be free from any restriction or condition. If any restriction is imposed or condition made by the donor for the use of such place or institution by any class or section of the people of India, such restriction or condition shall be null and void ab initio and of no effect.

22. Every citizen of India has the right to join in the defence of the country. This right shall also be an obligation, which shall not be avoided except for just cause specified by law passed by the Union Legislature from time to time.

23. For this purpose of joining in the Defence of the Union as well as to provide for his personal safety, shall be entitled

to bear arms, subject to such laws as regards licensing and the use of explosives, made in the interest of public safety, as may be in force in the Union or any Local Legislature.

24. No individual or group of individuals, corporations, Jointstock Companies, or any other organisations shall be entitled to manufacture armaments of any kind, offensive or defensive, or means of destruction in war-time. These shall be made exclusively in Factories, Arsenals, or workshops owned and worked wholly by the Union Government, or the Government of any component part thereof, under specific agreement with the Union Government for the purpose. The storage of such material shall be solely in Government Depots in the several parts of the Union of India.

25. For organising properly the defence of the Union Government shall be entitled to conscript all the man power (and woman power) of the country, and to assign to any conscript such duties, functions, or tasks as may be provided for by rules made under laws passed by the Union Legislature authorising such conscription.

26. Such conscription may also be ordered by the Local Government in any component part of the Union of India for any social service, or to meet a sudden emergency, or natural calamity or for maintaining peace and tranquility under express legislation specifically authorising such conscription and applying to that unit.

27. The right of the Union or of any Local Government to conscript man power and woman power for purposes stated in the preceding Articles shall carry with it the obligation to provide the Conscript man power the necessary food, housing, equipment, clothing, transport, arms and ammunition, medical treatment and nursing aid in the case of those disabled and injured in national defence.

28. Every citizen has and is hereby guaranteed the right of acquiring, owning, holding, selling or mortgaging property, real or personal, in any part of the Union, subject to such laws as relate to tenure, taxation, public dues, local rates, stamp duties, and other such imposts, and regulations, duly enacted and in force in any such part of the Union. Provided that, in virtue of its sovereign authority, the Union of India (or any component part thereof) shall be free and entitled to acquire any private property held by any private individual or corporation as may be authorised or permitted under the law for the time being in force.

29. Without prejudice to the existing property in land or other form, acquired by way of gift and owned and held by any religious body, corporation, temple, mosque, church, synagogue, Dargah or any other religious institution no property real or personal, shall be alienated to, or owned or held by any such religious body, authority or institution. Nor shall any such property held by any such religious order corporation or organisation shall be exempt from any taxation fees, dues or other charges levied by the Union, Provincial, State or local Governing Authority.

30. The State may, in virtue of its sovereign power and authority at any time take over any property dues or privileges held by a religious body or institution or in trust on its behalf, subject to such compensation, if any, as may be deemed reasonable and appropriate.

31. Every citizen of India is in duty bound to help in the maintenance of public peace and tranquility. For this purpose, any local legislature is authorised to enact such legislation as may be deemed necessary or proper at any time to organise Civic Guards, or Social Service Corps, and provide for their maintenance equipment, training, and discipline.

32. Every citizen has and is hereby guaranteed the right of free movement and settlement in any part of the Union, subject to such laws made by the Union, or Local Legislature as may relate to residence and means of transport in any part of the country.

33. No proprietary rights shall be allowed to or recognised for any private individuals or corporations, whether citizens of India or others in:-

- a) any industry concerned with the production or supply of arms, ammunition, armament or explosives, including vessels and vehicles of war of every type or class.
- b) the soil or sub soil of the country.
- c) Mines, forests, and other forms of natural wealth like rivers or waterfalls.
- d) Any other industry which is declared by Legislation of the Union of India to be key industry, or industry vital to the existence of the nation, or which is a parent of some other industry.
- e) Any public utilities, social services, and the production and supply of equipment and material necessary for the operation of any such utility or service.

34. Existing rights of ownership of any degree in agricultural land and any other items mentioned in the preceding article shall be acquired by and on behalf of the State of India and vested in the Government of the Union subject to such compensation if any as may be deemed proper and reasonable.

35. The right to employment, with adequate remuneration sufficient to assure all the necessities of life like food and such of its comforts and amenities like housing as may be declared and accepted to be the irreducible national minimum of civilised existence, shall be guaranteed and made available to every citizen of India irrespective of caste, creed, or sex.

36. The work or employment mentioned in the preceding article shall be in accordance with the training, ability or aptitude of each such worker.

37. No one shall be suffered to remain idle or unemployed except those who on account of age are superannuated, or are disabled or incapacitated by illness or accident from work, temporarily or permanently like expectant mothers, or who are too young to work, or are under training. All work shall be regarded as equally honourable and productive. Work is an inescapable obligation of citizenship in India.

38. It shall be the unquestioned obligation of the State in India, - whether the Union of India or any component part thereof, - to provide work and employment for all its citizens, suited to the ability, aptitude and training of each individual.

39. Slavery of any kind is forbidden. No rights which would amount to property of any kind in human beings, or enslavement of one individual by another, or by groups or corporation, shall be recognised. All human beings in the Union of India are and shall be free and equal before the law.

40. All labourers attached to land and working thereon in any degree of servile condition shall be deemed to be free workers, remunerated for their toil by wages at prescribed or agreed rates. All forced labour or Begar of any kind is forbidden.

41. Every citizen has and is hereby guaranteed the right to free education upto a standard prescribed as the irreducible minimum by the Union Legislature, or the Legislature of any

component part thereof.

42. Every citizen of India has and is hereby guaranteed the right of maintenance at public expense during periods of illness or temporary disability through accident, or old age, or maternity, for such period and on such a scale as may be prescribed by Legislation of the Union or of any component part thereof; provided that such Legislation may impose such obligation to contribute towards the Fund providing benefits under this head as may be deemed appropriate for each category of workers and for every contingency of illness, accident, old age, maternity, or temporary unemployment.

43. No one shall be entitled to maintenance who does not work or has not worked in the past for a prescribed period, for his living, except those under or over age, or those disabled by illness or accident, or those excused for reasons of public importance for given period from working.

44. Every worker or peasant has the right to form or join a Trade Union. All workers shall be organised in an appropriate Trade Unions, or professional Organisations, to facilitate the co-ordination and distribution of employment, as well as to maintenance of benefits during period of illness, accident, old age, maternity and the like.

45. Women and children below 18 years of age shall be protected against dangerous employment by laws specifically passed in that behalf.

46. Every citizen of India over 18 years of age has and is hereby guaranteed the right to vote or stand as candidate for all elections to Executive or Legislative bodies, including local governing bodies, subject to such rules regarding residence and minimum age or other qualifications as, without prejudice to the generality of the preceding, may be laid down under the laws passed by the Union or any Local Legislature for the purpose; provided that no such Legislation shall debar any citizen of India from the right to vote on any ground of creed, sex, or wealth.

47. Except in the case of an Impeachment, or prosecution before Court Martial in time of war, and in regard to offenses by members of the armed forces, every citizen of India accused of any offence under the Indian Penal Code is entitled to Trial by Jury.

48. No one accused for any offence shall be held in custody or detained without trial, or due process of law and conviction for unreasonable period. No one shall be charged or tried for offence under any law which was not in existence at the time the offence was alleged to have been committed.

49. Every citizen of India, being accused of any crime, and about to be arrested shall be entitled to be released on bail, except in the case of offences specified as non-bailable. No one shall be liable for the same offence to be twice put in jeopardy of life and limb.

50. Capital punishment shall be abolished.

51. No punishment which is excessive, cruel, or vindictive, shall be inflicted on any offender duly tried and convicted. Crime shall be looked upon as a symptom of disease, which must be treated and dealt with accordingly and not pursued vindictively. Punishment of duly convicted offenders shall be regarded as a cure of disease, not a mode of revenge.

52. No one shall be compelled to be a witness against himself in any criminal case.

53. No one shall be deprived of life, limb or property except under due process of law.

54. General search warrants are illegal and forbidden.

55. Every citizen of India has and is hereby guaranteed security in his person, papers, property, house or effects against unreasonable search or seizure.

56. No search warrants shall be issued, except on reasonable grounds, supported by oath or affirmation, and specifically describing the place to be searched, document to be seized or the persons or things to be apprehended if found.

57. Excessive bail shall not be required, nor excessive fines imposed.

58. In civil suits, involving claims exceeding Rs.100/-, the rights of trial by jury shall be preserved.

59. No fact ascertained by or tried before a Jury shall be otherwise re-examined in any court, except in accordance with the Rules of Procedure and Evidence prevailing or prescribed.

60. The powers, rights or authority of the State in India, not expressly granted to the Union nor prohibited to the Component parts thereof, shall be deemed to be reserved to the component parts of the Union and to the people of the Union, respectively.

PRELIMINARY.

1. This Chapter deals with the totality of human rights vested in every citizen of the Union throughout the territories thereof and in some cases in every person within it. It is intended to be a legal instrument creating definite and legally enforceable rights and corresponding duties between the Union, units and the citizens of India. The American and French Declaration of Rights were in a like manner constituted the highest law of the State binding both upon its supreme legislature and executive organs.

2. Mere precepts are claimed to have a shaping influence on public opinion. They form, it is said, a solemn restatement of high purposes round which public opinion may rally and supply a moral standard for act and omissions of the State. But most of the general declarations found in national constitutions and international documents have proved ineffective to check the growing power of the modern State. The fate of the Weimar Constitution is an instance in point. On the contrary they create an unwarranted impression of progress and freedom. In India, particularly, general precepts which may be considered less than necessary by an advanced thinker on socialist lines will not be looked at, much less understood, or applied in some parts of the country where feudal notions still deeply ingrained. It is also a moot point whether India will necessarily imitate the socialistic solutions of the West or evolve a characteristic solution of its own.

3. Though Clause 20 of the Statement of May 16, contemplates the possibility of distributing Fundamental Rights of citizens between the Union, Groups, and the Units, Fundamental Rights of citizens of the Union have no value if they differ from Group to Group or from Unit to Unit or are not uniformly enforceable. Fundamental Rights and Duties have since the World War I been accepted as an indispensable condition of the peaceful progress of the world. During World War II it has been accepted as an axiom that world wide guarantees of the Rights of Man are an essential condition of stable international society. They play a great part in preventing single party dictatorship and solving

the problems of minorities as they remove the danger of a minority forming a State within a State and looking to foreign States for protection. But in order to achieve this purpose, rights must be so embedded in the positive law of the country as superior to the powers of any government that they become effective guarantees against the action of the State.

4. Judicial review of Fundamental Rights is prescribed by the Constitution of U.S.A.; Switzerland (Article 113); and in the Constitution of Danzig. In Ireland, the Federal High Court is vested with original jurisdiction (Article 34 of the Constitution of 1927) to decide the questions involving the validity of any law having regard to the provisions of the Constitution. It provides expressly that no law shall be enacted excepting such cases from the Appellate jurisdiction of the Supreme Court. There is an express provision in the Brazilian Constitution of 1891 and 1926 (Articles 59 and 60). In Argentine, Article 100 of the Constitution (1860) has been interpreted as conferring such powers upon the Supreme Court. Such is the case also in Venezuela (Article 83 of the Constitution of 1901; in Haiti (Article 99 of the Constitution of 1918; Honduras, (Article 135 of the Constitution of 1925); and in Nicaragua, (Article 122 of the Constitution of 1911). There are similar provisions in Article 1 and 2 of the Constitution of Czechoslovakia (1920); and in the Austrian Constitution of 1920 (Article 140); Spanish Constitution of 1932 established in Article 121 a Court of Constitutional Guarantees which had jurisdiction, inter alia, to hear appeals on the ground of unconstitutionality of laws and for the protection of individual guarantees. The appeal was open, among others, to every individual, even if not directly affected. Similar provision is made in Article 103 of the Constitution of Rumania (1923). In most of these countries where the system of the prerogative writs do not appear to be in vogue, the matter, it appears can only be brought before the Supreme Court by proceedings both costly and tardy.

193

5. Judicial review of unconstitutional acts are expressly excluded in the Belgian Constitution of 1931; in the Italian Constitution of 1921; in the constitution of Peru(1920); Gautamala (1879); in Paraguay (1870); in Ecuador (1906). Except the Belgian Constitution the others were framed at a time when the English model was supposed to be an ideal one. Even the Simon Commission in 1930 stated:-

" We are aware that such provisions have been inserted in many constitutions, notably in those of the European States formed after the war. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will and the means to make them effective."

But the English precedent is based on a misconception. According to the constitutional doctrine adopted in Great Britain the supremacy of the Parliament is absolute. But prerogative writs have become parts of the positive law to such an extent that the Parliament would never dream of over-riding or abrogating them. The British Courts with strong traditions of independence have always insisted upon their right to examine the legality or illegality of any executive action brought before them. The Nehru Report, The Karachi Resolution on Fundamental Rights and the Sapru Report show that the Indian political outlook has always insisted on Fundamental Rights being included in the Constitution. The Cabinet Mission's Statement has accepted the necessity of including Fundamental Rights in the Indian Constitution.

6. The essential conditions for an effective guarantee of Fundamental Rights are :-

(a) Enforceability must be the essence of any instrument defining Fundamental Rights and Duties;

(b) A person or a State under an obligation cannot claim the right to determine whether he would comply with the obligation and if so to what extent.

(c) The observance of the Fundamental Rights and Duties must be determined by a procedure and a machinery common to the Union as a whole;

(d) Limitations to such law whenever necessary must only be imposed by the law of the Union.

7. If the Fundamental Rights and Duties have to be legally enforceable adequate and speedy remedies in the nature of judicial review have to be provided. As a matter of experience rights guaranteed by Constitutions like the Weiman Constitution and the Minority Treaties and even by the League of Nations, remained ineffective for want of such remedies. On the other hand the Fundamental Rights in U.S.A. and the civil liberties in Great Britain have been preserved by reason of two factors (a) an independent judiciary; and (b) the prerogative writs of Habeas Corpus, Mandamus, Prohibition, Certeiorari and Quo Warranto.

8. A comprehensive writ of Habeas Corpus expressly finds a place in the Constitution of Ireland (Article 6) and that of U.S.A. (Article I Sec.9(2)). In Commonwealth countries other writs are issued. The Writ of Amparo is provided for by Article 107 of the Constitution of Mexico (1917). It blends the elements of the Writs of Habeas Corpus, Certeiorari, Mandamus, and its use is stated to be most extensive. Curiously, however, it does not permit any general statement of law but allows individual relief on the basis of the court's view of what the law is; at best, a very unsatisfactory way of dealing with Fundamental Rights.

9. Civil Liberties in British India can also be traced ultimately to the fact that the charter of the Supreme Court of Calcutta, the first High Court in the country, drafted by Sir Eliza Impey, gave it the wide power of issuing prerogative writs in the like manner as the Kings Bench Division in England. In this connection it is to be noted that only the High Courts of Madras, Calcutta and Bombay are vested with the power to issue within their original jurisdiction these Writs, by virtue of their being Courts of record and by virtue of Sec.45 of the Specific Relief Act which only applies to them. There is no such power vested in these High Courts in respect of the mofussil and no such power at all in the other High Courts with the result that except in these three Presidency Towns the machinery for enforcing the rights is

the tardy remedy of a suit and the public conscience is not keenly alive to the assertion of rights against the executive.

10. In India, however, with the traditions of the King's Bench which the High Courts as Courts of Record have inherited there has grown up a very strong tradition of these prerogative writs. In recent years, these writs (including that of Habeas Corpus under Sec. 491 of the Cr.P.C.) have been utilised for controlling the arbitrary actions of the executive and quasi-judicial bodies which are being multiplied under modern Government. They have been utilised for establishing civil liberty against the detention powers under the Defence of India Act (Keshav Talnade vs. Emperor 1943 F.L.R. 49; 46 Bom.L.R. 22(P.C.); Basant Chandra Ghose vs. King Emperor (1945) VIII F.L.J.D. 40 (P.C.); Emperor vs. Sibnath Bannerji & Others (1945) VIII F.L.J. p.222 (P.C.); for testing the validity of summary courts and procedure (King Emperor vs. Bansori Lal Sarma & Others (1945) VIII F.L.J. 1 (P.C.)). Prohibition and Certiorari have been used to test the validity of orders under the Defence of India Act (Lady Binshaw Petit vs. Noronha 47 Bom.L.R. 500; Jiggilal Kamlapat vs. Collector of Bombay 47 Bom.L.R. p.1070; Tan Bug Tein vs. Collector of Bombay 47 Bom.L.R. p.1010; under the Revenue Acts, (Dinshaw vs. Commissioner of Income Tax, Central, 45 Bom.L.R. 31); and even the action of a provincial government in taking over a Municipality (Re- Banwarilal Roy (1944) 48 C.W.N. 766).

11. A typical instance was Pardiwala's case reported in A.I.R. 1944 Lahore p.196. A petition was filed in the High Court of Lahore for a writ of Habeas Corpus for Mr. Jaiprakash Narayan, Mr. Pardiwala, Bar-at-Law from Bombay went to Lahore for the purpose. He was arrested in the court premises and detained and the detention of Mr. Jaiprakash Narayan was converted from one under the Defence of India Act into one under the Act III of 1818 taking away the Court's power to issue Habeas Corpus. Even Mr. Pardiwala's petition to the High Court for a writ of Habeas Corpus was withheld by the Police Superintendent. Mr. Pardiwala then obtained a rule for contempt against the Police Officers which was

upheld. But for these speedy remedies provided by Habeas Corpus and Contempt there would have been no relief.

12. If Writs of the Constitution are not provided people will have to subject themselves to the loss of valuable rights before the constitutionality of the act of a government is tested in a suit, which might take years to be finally decided. It is also of the highest importance that the question whether a law is valid or not must be decided at the earliest moment. Any uncertainty about its validity will lead to great hardships. The object of the Fundamental law will be frustrated if people have to serve sentences, pay fines or deny themselves the privileges given by the Constitution for a long time under an invalid law. Without such prompt remedies election laws may be so narrowed down as to endanger free election and thereby suppress democracy. Lastly, if the constitutional rights and the power to punish disobedience of the Court's order in Contempt proceedings are not given by the Constitutional Law the State law may alter the effect of the Fundamental Rights to such an extent as to make them ineffective. Without such prompt machinery of enforcement, therefore, the Union and State governments might conceivably lapse into a programme inimical to freedom.

13. The existence of a legal right in the Constitution must necessarily imply a right in the individual to intervene in order to make the legal right effective. The Writs of Mandamus in its English form, the Writs of Prohibition, of Cetecorari, Quo Warranto and Habeas Corpus, and the power to commit the offenders for contempt of court must therefore appropriately form part of this Chapter.

— 107 —

CITIZENS, THEIR FUNDAMENTAL RIGHTS

AND DUTIES.

ARTICLE. I.

(1). Unless otherwise expressly qualified by this Constitution all citizens of the Union are under and by virtue of this Constitution equally entitled to all the rights and subject to all the duties described in this Chapter throughout the territories of the Union.

(2). In this Chapter 'right' includes 'power' 'privilege' or 'immunity' and the right to enforce the same according to the remedies mentioned in this Chapter or otherwise, 'duty' includes 'liability' and 'obligation' and words importing masculine gender only include the feminine gender.

(3). Fundamental Rights and Duties shall mean the rights and duties in this Chapter.

(4). All existing law or usage in force within the territories of the Union inconsistent with the Fundamental Rights and Duties shall stand abrogated to the extent of such inconsistency, nor shall any such right or duty be taken away, abridged or modified save as provided in this Chapter by legislative action of the Union or a State or otherwise.

(5). No restriction on Fundamental Rights may be imposed unless in the manner provided by this Chapter and unless it is general in character and applicable to all persons within the same class and must be in the interest of,

- (a) public order, morality, or health, and general welfare;
- (b) the correlative duty to respect the rights of others; and
- (c) National Defence.

ARTICLE. II.

CITIZENSHIP.

(1). (a) All persons born in India, (b) and all other persons who have acquired Indian nationality and (c) persons born of Indian parents abroad and subject to the jurisdiction of the Union are Indian nationals and citizens both of the Union and the State wherein they reside.

Provided that persons who are citizens of or domiciled in, another State not a member of the Union, either of their own will or by acceptance of the law of such a State shall not be citizens of the Union.

(2). Nationality in the Union and in the States is acquired and terminated by the law of the Union.

Provided that no person shall be deprived of his nationality by way of punishment or deemed to have lost nationality except concurrently with the acquisition of a new nationality.

~~108~~

ARTICLE.III.

RIGHT TO EQUALITY.

(1). All persons irrespective of religion, race, ~~colour~~, caste, language or sex are equal before the law and are entitled to the same rights, and are subject to the same duties.

(2). All citizens are entitled to equal opportunities in all spheres, political, economic, social and cultural.

(3). Women citizens are the equal of men citizens in all spheres of political, economic, social and cultural life and are entitled to the same civil rights and are subject to the same civil duties unless where exception is made in such rights or duties by the law of the Union on account of sex.

(4) (a) Untouchability is abolished and the practice thereof is punishable by the law of the Union.

(b) All persons shall have the right to the enjoyment of equal facilities in public places subject only to such laws as impose limitations on all persons, irrespective of religion, race, ~~colour~~, caste or language.

(5) All citizens are entitled to equal opportunity -

(a) in matters of public employment and office of power and honour;

(b) in the exercise of trade, profession or calling; and

(c) in the exercise of franchise according to the law of the Union;

and no citizen shall be denied the right on grounds of religion, race, ~~colour~~, caste or language.

(6) All citizens of the Union have the right to reside in any part of the territories of the Union that they choose, to settle there, acquire property, and pursue any means of lawful occupation, subject only to the restrictions imposed by the law of the Union.

(7) Every citizen has the right to emigrate to countries outside the Union and the right of expatriation.

(8) All citizens within and without the territories of the Union are entitled to the protection of the Union.

(9) No citizen may be handed over to a foreign government for trial or punishment.

(10) No person shall be denied equal protection of the laws within the territories of the Union.

ARTICLE IV.

109

NATIONAL LANGUAGE

(1) Hindusthani, including Hindi and Urdu shall be the national language of the Union written at the choice of a citizen in the Nagari or Persian characters.

(2) It shall be competent to the Union by law to declare that all official or educational medium in any State or a part thereof shall be Hindusthani in addition to any other language.

ARTICLE V.

RIGHTS TO FREEDOM.

(1) Every citizen within the limits of the law of the Union and in accordance therewith has

- (a) the right of free expression of opinion;
- (b) the right of free association and combination;
- (c) the right to assemble peacefully and without arms;
- (d) the right to personal liberty;
- (e) the right to be informed within twentyfour hours of his deprivation of liberty by what authority and on what grounds he is being so deprived;
- (f) the right to the inviolability of his home;
- (g) the right to the secrecy of his correspondence;
- (h) the right to maintain his person secure by the law of the Union from exploitation in any manner contrary to law or public morality; and
- (i) the right of free movement and trade within the territories of the Union.

(2) The Press shall be free subject to such restrictions imposed by the law of the Union as in its opinion may be necessary in the interest of public order or morality.

(3) The conduct of research and/or the publication of the results thereof shall be free subject to the restrictions imposed by the law of the Union in the interests of a fair return to those responsible for the results and of national defence.

(4) No person shall be deprived of his life liberty or property without due process of law.

(5) Every citizen has the right to choose the government and legislators of the Union and his State on the footing of equality, in accordance with the law of the Union or the Unit as the case may be, in free, secret and periodic elections.

ARTICLE VI.

THE RIGHT TO RELIGIOUS AND CULTURAL

FREEDOM.

(1) All citizens are equally entitled to freedom of conscience and to the right freely to profess and practice religion in a manner compatible with public order, morality or health.

Provided that the economic, financial or political activities associated with religious worship shall not be deemed to be included in the right to profess or practice religion.

(2) All citizens are entitled to cultural freedom, to the use of their mother tongue and the script thereof, and to adopt, study or use any other language and script of his choice.

(3) Citizens belonging to national minorities in a State whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense, charitable religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religion.

✓(4) No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of religious requirements. ~~which do not profess such religion~~

(5) Religious instruction shall not be compulsory for a member of a community which does not profess such religion.

✓(6) No person under the age of eighteen shall be free to change his religious persuasion without the permission of his parent or guardian.

(7) Conversion from one religion to another brought about by coercion, undue influence or the offering of material inducement is prohibited and is punishable by the law of the Union.

(8) It shall be the duty of every Unit to provide, in the public educational system in towns and districts in which a considerable proportion of citizens of other than the language of the Unit are residents, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such citizens through the medium of their own language.

Nothing in this clause shall be deemed to prevent the Unit from making the teaching of the National Language in the variant and script of the choice of the pupil obligatory in the schools.

(9) No legislation providing State-aid for schools shall discriminate against schools under the management of minorities whether based on religion or language.

(10) Every monument of artistic or historic interest or place of natural interest throughout the Union is guaranteed immunity from spoliation destruction, removal, disposal or export except under a law of the Union, and shall be preserved and maintained according to the law of the Union.

## ARTICLE VII.

### RIGHT OF WORKERS.

(1) All workers industrial, or otherwise are entitled to be secured to them by suitable legislation and economic organisation and in other ways, work, living wage, condition of work necessary to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities.

(2) Workers are entitled to be protected by legislation providing for insurance against the consequence of sickness old age employment or disablement.

OR



All workers are entitled as against a Unit to public assistance in case of unemployment old age, sickness, disablement and other cases of undeserved want, within the limits of the economic capacity and development of each State.

(3) Every form of slavery or traffic in human beings or compulsory labour other than public service equally incumbent upon all or as part of the punishment pronounced by a court of law is abolished and if such form, traffic or labour is enforced it shall be punishable by the law of the Union.

(4) No woman worker shall be employed in industries unsuited to them and in respect of maternity benefits.

(5) Child labour in all forms is prohibited and employment of children for any purpose whatever shall not be permitted except under conditions prescribed by the law of the Union.

(6) Every producer of a work of intellectual industry, art or discovery or invention shall have a property therein unless he has been specifically employed on such work for remuneration.

#### ARTICLE VIII.

##### RIGHT TO EDUCATION.

(1) Every citizen is entitled to have free primary education and it shall be legally incumbent on every Unit of the Union to introduce free and compulsory primary education upto the age of 14 years and in the case of adults upto the standard of literacy.

(2) The duration, limits, and method of primary education shall be fixed by law.

(3) Every citizens is entitled to have facilities provided for learning the National Language ~~in the vernacular and script of his choice~~ <sup>in the vernacular and script of his choice</sup> at his choice either in the vernacular or in English.

(4) The opportunities of education must be open to all citizens upon equal terms in accordance with their natural capacities and their desire to take advantage of the facilities available.

#### ARTICLE IX.

##### SOCIAL RIGHTS AND DUTIES.

(1) Usury is prohibited.

(2) (a) Every person is entitled to compensation for wrongful or ultra vires acts of officers of the Union or States or local Governments.

(b) The Union, the State or the local Government as the case may be shall be jointly liable with the officer concerned.

(c) Previous authorisation for pursuing any legal remedy for such compensation shall not be prescribed.

(d) The Union, by law, shall prescribe the regulation of this right.

ARTICLE X.

RIGHT TO PROPERTY.

(1) The right to property is guaranteed by this Constitution to all citizens, corporations, and bodies, social, economic and religious.

(2) 'Property' in Section 1 shall include immoveable property or any undertaking run for profit or any interest in or in any company owning any such undertaking.

(3) No soldier, in time of peace, be quartered in any house, without the consent of the owner and in time of war except in a manner prescribed by the law of the Union.

(4) Expropriation for public reasons only shall be permitted upon conditions determined by law and in return for just and adequate consideration determined according to principles previously laid down by it.

(5) The right to private property includes the right to the free disposal of property subject however to limitations imposed by law or usage in the interests of such of the owners as are not capable of looking after their interests.

ARTICLE XI.

RIGHT TO FREEDOM OF FAMILY RELATIONS.

(1) Every person has the right to be free from interference in his family relations.

(2) No marriage valid according to the law of the Union or a State, shall be dissolved unless permitted by the law of the Union or the law of the State concerned and in accordance with the forms and under the conditions of the State concerned.

ARTICLE XII.

SPECIAL RIGHTS.

(1) No punishment may be inflicted for any act unless the act was designated as punishable before it was committed.

(2) No person shall be tried for the same offence more than once and he shall not be compelled in any criminal case to be a witness against himself; nor shall the burden of proving his innocence be thrown on him.

(3) No person shall be subjected to prolonged detention proceeding trial, to excessive bail, or unreasonable refusal thereof or to inhuman or cruel punishment or be denied adequate safeguards and procedure.

(4) No civil or criminal court shall, in adjudicating any matter or executing any order recognise any custom or usage imposing any civil disability on any person on the ground of his caste, status, religion, race or language.

✓(5) No person shall be imprisoned or held in servitude in consequence of a breach of contract.

(6) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof, and the manner

✓  
/and any rights in or over such property

in which such acts records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(7) (a) Notwithstanding any custom or usage or prescription, all Hindus without any distinction of caste or denomination shall have the right of access to and worship in all public Hindu temples, choultries, dharmashalas, bathing ghats, and other religious places.

(b) Rules of personal purity and conduct prescribed for admission to and worship in these religious places shall in no way discriminate against or impose any disability on any person on the ground that he belongs to an impure or inferior caste or menial class.

### ARTICLE XIII.

#### RIGHT TO CONSTITUTIONAL REMEDIES.

(1) Every citizen has the fundamental right, in addition to his right, by himself or a representative, to move the courts within the Union for the issue of a Writ or right.

(2) The following are the Writs of right viz

(a) The Writ of Person (Habeas Corpus) to secure the release of any person in the territories of the Union from unlawful or unjustifiable deprivation of the right of personal liberty.

(b) The Writ of Enforcement (Mandamus) to secure the performance of any specific act by a Unit, an Officer, a Corporation, in discharge of a definite public duty, obligation or requirement with which he is specifically charged by the Constitution or any other law for the time being;

Provided that no Writ shall be issued against the President or the Head of any State or any Minister of the Union or a State personally or against any Court of Law;

Provided further that no Writ shall be issued unless the applicant has no other specific adequate and equally speedy legal remedy.

(c) The Writ of Prohibition in prohibiting any Court other than the Supreme Court, of a person or body vested with judicial functions from continuing proceedings in contravention of this Constitution or in excess of the jurisdiction vested in it by law.

(d) Writ of Direction (Certeiorari) directing any judge other than a Judge of the Supreme Court or a person or body vested with judicial functions to transmit the record of proceedings pending before him or it and involving a question of a right or duty arising under or in respect of the Constitution or any question of law arising on an interpretation thereof for the purpose of quashing the proceeding or referring them to the appropriate tribunal.

(3) A Writ of Constitution may be issued at the instance of the Advocate General of the Union or of a State or any person duly authorised in order to safeguard one or more citizens in the free exercise of fundamental rights or to enforce performance of a fundamental duty under this Constitution or to have any act or legislation declared ultra vires of the Constitution.

(4) A final appeal shall lie to the Supreme Court from any decision given by a Court in proceedings initiated by the Writs.

(5) Disobedience to any order made by a competent court under this Chapter shall be enforceable by the proceedings for the contempt of each Court.

(6) Any person who under colour of any law, custom, or usage or any unit or territory subjects or causes to be subjected any citizen of the Union or other person within the jurisdiction thereof to the deprivation of any rights secured by the Constitution shall be liable to the party injured in a suit of law.

(7) The Union Legislature shall prescribe by law the jurisdiction of courts, procedure, and all other incidental matters in respect of the Constitutional remedies under this Article.

#### ARTICLE XIV.

##### EXEMPTIONS AND QUALIFICATION.

(1) No person may refuse, on the ground of religious opinion, to fulfil any duties of citizenship, fundamental or otherwise.

(2) The requisition of the services of a citizen to meet the needs of national defence shall not be construed as a limitation on any of the fundamental right or duty.

(3) Nothing in this Chapter shall be invoked to prohibit control or interfere with any act of the Union authorities during the existence of a State of war, armed rebellion or with the provisions of any law of the Union Legislature passed to meet a grave emergency.

(4) The Union Legislature by law shall be entitled to determine to what extent certain fundamental rights shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order to ensure the fulfilment of their duties and the maintenance of discipline.

**NOTE ON FUNDAMENTAL RIGHTS**

By  
Sir Alladi Krishnaswami Ayyar.

In formulating a charter of fundamental rights, regard must necessarily be had to the following points:

1. A distinction has necessarily to be drawn between rights which are justiciable and rights which are merely intended as a guide and directing objectives to state policy. This distinction has been maintained and indicated in the recent Fire Constitution. Under the American constitution, all the guaranteed rights being legal and constitutional in their nature are justiciable and as such enforceable by Courts. The rights however having been formulated in very general and comprehensive terms, the American Supreme Court had to necessarily read into these rights implied reservations and exceptions. The Supreme Court has been discharging the trust of drawing the line between personal liberty and the need for social control, delicate as the task is. In the result, the Supreme Court has created new limitations upon social control and has put new limitations upon personal liberty. The due process clause has been largely availed of in either expanding or narrowing the scope of the clauses guaranteeing personal liberty. This has been illustrated in regard to the provisions relating to the freedom of the press, the freedom from censorship, religious liberty guaranteed by the First Amendment, privilege to bear arms, privileges of assembly and petition, in the interpretation given to slavery and involuntary servitude, searches and seizures public trial, the equal protection guaranteed by the 14th amendment and generally the elastic interpretation put upon 'due process' from time to time by the Supreme Court. The later constitutions framed on the model of the U.S. have tried to expand the working in the U.S. Constn. by compendiously seeking to incorporate the effects of the American decisions. The question before the Constituent Assembly of India is whether to follow

the model of the United States or of the later constitutions.

Most of <sup>the</sup> later constitutions have in formulating fundamental rights merely refer to the rights of citizens while of course providing for law of citizenship or nationality. In this respect in the U.S. Constitution, certain human rights are guaranteed to all people for the time being resident in or under the protection of U.S. Whereas certain other rights are secured to citizens, as such, according to the decisions of the U.S. Supreme Court, most of the rights secured by the first 8 amendments are shared by every one in the U.S. including the famous Vth amendment, which enacts that no person shall be deprived of life, liberty or property without 'due process' of law.

/8 The first amendments refer only to Federal Government as such, but these provisions have practically been copied in all the State constitutions. The 14th amendment in terms applies to States and most of the principles underlying the first 8 amendments have been read into the latter part of the 14th amendment. The 15th and 19th amendments relating to franchise in terms refer only to the citizens of the United States. In this respect also the Constituent Assembly will have to address itself whether to follow the U.S. model or other models (?). Similar differentiations occur in the Swiss constitution.

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The Union powers being restricted in scope, care will have to be taken to bring in (a) the freedom inter-state and inter provincial trade (b) inter-state and inter-provincial movement (c) if there is to be a state or provincial citizenship, a provision like Art.4, sec.2 of the U.S. constitution that the citizens of each states shall be entitled to all the privileges and immunities of the several states or the Provinces, (d) A provision like S.10, preventing states or provinces levying duty on foreign exports or imports, the constitution will necessarily have to provide for a law

of nationality as citizenship as such law is the necessary foundation for formulating any such fundamental rights and with the peculiarities of the Indian political situation and the Federal Union being the foundation of constitutional structure, necessitate a double citizenship, that has to be provided for. In some of the constitutions as in U.S., at the present day, after the 14th amendment, the Federal citizenship is the main thing and State citizenship is incidental to it or flows from it with the additional qualification of residence. In a constitution like that of Switzerland the reverse processes has been adopted. This problem will also have to be tackled. Lastly, the machinery for the vindication and enforcement of the rights will have to carefully considered and in this connection the need for an ultimate court of Error or Appeal like the U.S. Supreme Court will have to be thought of.

48

— 305 —

MEMORANDUM ON MINORITIES BY  
RAJKUMARI AMRIT KAUR.

I venture to submit this short memorandum as a citizen of India. I hold that every question in connection with the framing of a just and righteous constitution for our country should be looked upon, by and large, from the point of view of a citizen. If this standpoint is fundamentally correct it follows that the primary duty of the Committee appointed to look into the problem of minorities is to suggest such ways and means as will help to eradicate the evil of separatism rather than expedients or palliatives which might, in the long run, only contribute to its perpetuation.

There is no gainsaying the fact that foreign domination has been one of the main causes, if not the main cause, of creating internal dissensions between the two major communities. But now that the foreign power is definitely leaving, it behoves us more than ever before to turn the searchlight inwards. Such means as the British employed, e.g. separate electorates, patronage in the realm of offices, honour, etc., side by side with an ignorant and impoverished populace, may not only not be tolerated by us but their continuance must be made impossible in the future. At the same time, it cannot be denied that whatever seeds of dissension were sown by the foreign rulers, the soil that nourished them and has allowed them to assume the menacing aspect they now bear is ours. The greater fault, therefore, is ours.

Personally, I regret that the question of minorities was not made a part of the work of the Committee appointed to draft Fundamental Rights. If the latter are broad-based and if suitable provision is made therein for the machinery to enforce them, they should really give to the individual as well as to the community to which he belongs all the protection he or it needs. Freedom in all spheres of life, consistent with the moral law, protection of life and property, perfect equality before the law and in society, unadulterated justice and, above all, full, free and equal opportunities for education and services are all that human beings and communities need for both individual and social growth. I am more than ever convinced that the stand taken by the majority of educated women in the matter of refusal to ask for any special privileges for themselves in any sphere of life is wholly correct. Women may be said, technically, to be the largest single minority in India. Not only have custom and usage dealt harshly with us, but even the law has militated, and still continues to militate, against us. But we do not, and must never, look upon ourselves as anything but an integral part of the whole, nor must we claim any privileges. Equality before the law and in society and equal opportunities for education and service are all we claim as human beings, and I believe that in the proper fulfilment of our duties as citizens --and duties must go hand in hand with rights--lies our best safeguard.

Although a member of a small and financially poor community, I appeal to its members to eschew privileges. Such an attitude would be wholly in keeping with the spirit of the teachings of Jesus Christ. A community that can boast the highest percentage in comparison with any other in the sphere of education among women and which is unhampered by such social injustices as exist elsewhere in the forms of purdah, polygamy, untouchability and laws of inheritance cannot or should not be afraid to rely for its progress mainly on opportunities for service in a state where human rights are fully guaranteed. Privileges and safeguards

really weaken those that demand them. They are a definite bar to unity, without which there can be no peace, as also to efficiency without which the standards of good governance are lowered. Axiomatically there is no reason why the interests of any individual or community should not be safe in the hands of a good person or persons, irrespective of their personal religion.

Joint electorates will help to a large extent to create this confidence and must be embodied in the constitution,

Rather than say for how long any safeguards are necessary, I would plead with the minorities to say that the necessity for safeguards should only be considered after a period of, say, five or seven years, if their trust in the majority communities has, in this interval, been proved to be wholly unjustified.

Trust in the goodness of men is the best way of invoking generosity in them. I am, therefore, of opinion that no minority should demand any safeguards but should be brave enough to rely solely on the goodwill of the majority and its own inherent moral strength. Nevertheless it is up to the majority communities to inspire the necessary confidence in the minorities as to enable them to adopt this attitude. The larger responsibility is really theirs. No constitution, however carefully worded and framed, can guarantee the absence of strife if there is no good will among the parties concerned. The ideal of men living happily and at peace with each other definitely implies the rule of reason instead of passion. Bitterness, prejudice and dissension are negative and destructive, but they exist in our land today. Clemency, compassion and consideration are positive virtues without which there can be no human understanding and, therefore, no hope of building up solidarity and unity.

It is a big tragedy that the task of framing a constitution has come to us at a time when hatred and mistrust dominate the minds of men. But we may not forget that underneath man's brutish passions, in spite of greed and ignorance, he is a reasoning being. Passions rage and flame and destroy, as they are doing today, but they will also exhaust themselves, and man does inherently prefer to live in keeping with the dignity of a human being rather than follow the law of the jungle.

While consistently holding that safeguards for minorities are wholly undesirable, I nevertheless fear that the appeal for a non-demand of all such will today be a lone cry. Having regard to the tense atmosphere in which we live and having said that it is up to the majority communities to inspire the necessary confidence in the minorities, I venture to submit a few suggestions for their consideration. These suggestions naturally carry no legal knowledge or authority but are only in the nature of a way of approach to the solution of this vexed question.

Would it not be wise for the majority communities to consider the solution of the problem mainly in terms of division of responsibility and power? Division of territory and/or exchange of populations do not really go to the root of the matter. In the long run, these expedients might even serve to separate rather than unite. It should, however, be possible to banish fear, restore confidence and generate goodwill by the sharing of power, on a population basis, both at the Centre and in the Provinces. For example, important and not so important portfolios may in turn be held by members of the different communities according as their population and importance at the Centre and in a particular province merit.

While the Legislative Assembly is elected on a system of joint electorates there could be a senate or Board of Members elected by the different communities in which no community can have more than one vote. This body could veto by a majority any measure which it felt was not for the general good. At the same time, no one community should be allowed to stand in the way of other communities

wishing to carry out projects, the veto in that case applying only to the community concerned.

As to what are or are not communal questions there might be a special Tribunal constituted at the Centre to decide the issue.

The Senate or Board or some other Body may be appointed to see that the members of all communities have a reasonable chance given them in all services beginning from the lowest sphere to the highest. But in order to ensure maximum efficiency it should be a sine qua non that promotion shall be only and strictly on the basis of integrity and merit. I place integrity advisedly before merit because high standards of public morality must be maintained if the state is to be a great moral agency.

To this end, I am quite certain that in drawing up a code of Fundamental Rights there should also be drawn up a code of duties of citizens. Rights should really follow duties, a wise axiom which is lost sight of in the maze of fear and suspicion in which today we live and move and have our being.

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- 308 -