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CONSTITUTIONAL LAW – I

(Subject Code - LC 0601)

LL.B. – I (Sem. – II), B.A.LL.B. – III (Sem. – VI) and
B. B.A.LL.B. – III (Sem. – VI) Pattern – 2017

By

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Ph. D. Guide, Dept. of Law,
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Pune

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STUDY MATERIAL
FOR

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ADEMIC YEAR
2019-20

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I should thank and deeply appreciate to all respected office bearers of our Sanstha namely Ahmednagar Jilha Marath Vidya Prasarak Samaj, Ahmednagar. I would like to special mention about its President, Shri. Nandakumar Zaware-Patil, Vice President, Shri. Ramchandra Dare, Secretary, Shri. G. D. Khandeshe, Joint Secretary, Adv. Vishwasrao Athare Patil, Treasurer, Dr. Vivek Bhapkar and Trusty Adv. Deeplaxmi Mhase Patil for their esteemed help, support, co-operation and encouragement to undertake this activity.

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It is true this acknowledgement shall be incomplete without my expression of gratitude to my wife Adv. Aruna and other family members for sparing me to complete this study material.

Place: Ahmednagar

Date: 26th March 2020

Dr. More Atul Lalasaheb
(Asso. Prof. (Law))

Preface

The course of ***Constitutional Law – I*** Paper (Subject Code - LC 001) of LL.B. – I (Sem. – II), B.A.LL.B. – IIV (Sem. – VI) and B. B.A.LL.B. – III (Sem. – VII) Pattern – 2017 is designed on the basis of recommendations of Bar Council of India and UGC, New Delhi. I am glad to reveal that the syllabus of this paper which is framed by Committee of BoS (Faculty of Law), SPPU, Pune, I was a member of that Committee. The syllabus is framed with an objective to acquaint the students with the basic principles of Constitution and Constitutionalism. The reason and justifications of the growth of Fundamental Rights, the operation of Fundamental Rights, Directive Principles in India and its effect is to be studies. In this context the syllabus of this paper need to be taught with the help of appropriate judicial decisions to realize importance of this basic law of land.

As it is said that the Constitution of India is living document hence, I am of the view that it will be advantageous to study the content of this paper in the *Social, Economic and Political* context in which the Constitution of India operates. I would like to particularly mention about various amendments done in the Constitution of India regarding Socialism, Secularism, Unity and Integrity of the Nation, Affirmative Actions in the favour of SCs, STs, OBCs, Minorities and Women, Extension of Right to Know, Dynamic application of Right to Life and Personal Liberty, effective implementation of Directive Principles of State Policy and Fundamental Duties etc, The Apex Court also has given positive response by laying down important rulings in this behalf. Hence, under this study material I have discussed most of the relevant and important components which are need to be studied in the respective Modules of the syllabus of this paper.

I would like to suggest to all law students, researcher and readers of this subject that in order to avoid lengthiness of study material I have mentioned only those relevant aspects which needs to be studied in each module, so you should read in detail those aspects from the reference material which I acknowledged at the end leaf of this study material. Really I appreciate the great work done by those authors in this subject.

I hope this study material will be useful to you, I will be happy to accept any relevant suggestions to improve the contents of this study material.

Dr. More Atul Lalasaheb
(Asso. Prof. (Law))

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Module - I
MAKING OF THE CONSTITUTION

The Constituent Assembly®

Generally, the task of framing the constitution of a sovereign democratic nation is performed by a representative body of its people. Such a body elected by the people for the purpose of considering and adopting a constitution may be known as the constituent assembly.

The concept of a constituent assembly had always been linked with the growth of the national movement in India. The idea of a constituent assembly, whereby Indians themselves might frame a constitution for their country, was implicit in the opposition to the 1919 Act. But, the first definite reference to a constituent assembly for India, though not in those words or under that particular name, was made by Mahatma Gandhi in 1922, soon after the inauguration of the Government of India Act, 1919.

In 1922 itself, a joint meeting of members of the two Houses of the Central Legislature was held at Simla at the initiative/of Mrs. Annie Besant, which decided to call a convention for the framing of a constitution. Yet another conference attended by members of the Central and Provincial Legislatures was held in Delhi in February 1923. This conference outlined essential elements of a constitution placing India on equal footing with the self-governing Dominions of the British Empire. A "National Convention" was called which met on 24 April, under the presidentship of Sir Tej Bahadur Sapru. This convention drafted the "Commonwealth of India Bill". The draft Bill was submitted in slightly amended form to a committee of the All Parties Conference held at Delhi in January 1925, which was presided over by Mahatma Gandhi. Finally, the draft was submitted to a Drafting Committee which published the Bill. The Bill was sent to an influential member of the Labour Party in Britain accompanied by a memorandum signed by 43 leaders of various political parties. It found wide support in the Labour Party and was accepted with slight modifications. The Bill had the first reading after it was introduced in the House of Commons. Though with the defeat of the Labour Government the fate of the Bill was sealed, it was a major effort by the Indians to outline a constitutional system for India with the

®. Subhash C. Kashyap: Our Constitution – An Introduction to India's Constitution and Constitutional Law, NBT, India, New Delhi, 2001,

help of peaceful and constitutional means.

The adoption of the famous Motilal Nehru resolution in 1924 and 1925 on the National Demand was a historic event inasmuch as the Central Legislature had, for the first time, lent its support to the growing demand that the future constitution of India should be framed by Indians themselves.

In November 1927, when the Simon Commission was appointed without any Indians represented on it, an all-party meeting held at Allahabad said that apart from being virtual negation of the "National Demand", it amounted to 'a "deliberate insult to the people of India" for, not only did it "definitely assign to them a position of inferiority" but also denied to them "the right to participate in the determination of the constitution of their own country".

Earlier on 17 May 1927, at the Bombay Session of the Congress, Motilal Nehru had moved a resolution calling upon the Congress Working Committee to frame a constitution for India in consultation with the elected members of the Central and Provincial Legislatures and leaders of political parties. Adopted by an overwhelming majority with amendments, it was this resolution on the Swaraj constitution which was later amplified and reiterated by Jawaharlal Nehru in a resolution passed by the Madras Session of the Congress on 28 December 1927. An All- Parties Conference organized at Bombay on 19 May 1928 appointed a committee, under the chairmanship of Motilal Nehru "to determine the principles of the constitution of India". The report of the Committee (submitted on 10 August 1928) was later to become famous as the Nehru Report. It was the first attempt by Indians to frame a full-fledged constitution for their country and has been described by Coupland as "not only an answer to the challenge that Indian nationalism was unconstructive" but "frankest attempt yet made by Indians to face squarely the difficulties of communalism". The Report embodied not only the perspective of the contemporary nationalist opinion but also an outline of a draft constitution for India. The latter was based on the principle of Dominion Status with full responsible government on the parliamentary pattern. It asserted the principle that sovereignty belongs to the Indian people, laid down a set of fundamental rights and provided for a federal system with maximum autonomy granted to the units but residuary powers vesting in the Central Government and joint electorates for elections to the Federal Lower House and the Provincial

Legislatures with reservation of seats for minorities in certain cases for a limited period.

It would be seen that the broad parliamentary system with a government responsible to Parliament, a chapter of justiciable fundamental rights and rights of minorities envisaged in the Nehru Report in 1928 were very largely embodied in the constitution of independent India that was adopted 21 years later, on 26 November 1949.

The White Paper issued after the third Round Table Conference outlined the British government's proposal for constitutional reforms in India. The Joint Parliamentary Committee which examined these proposals observed that "a specific grant of constituent power to authorities in India is not at the moment a practicable proposition".

In June 1934, the Congress Working Committee declared that the only satisfactory alternative to the White Paper was a constitution drawn up by a constituent assembly elected on the basis of adult suffrage. This was the first time that a definite demand for a constituent assembly was formally put forward. The Working Committee of the All India Congress Committee at its meeting held at Patna on 5-7 December 1934 adopted a resolution rejecting the scheme of Indian constitutional Reforms as recommended in the Report of the Joint Parliamentary Committee (1933-34) and reiterated the view that the only satisfactory alternative to the scheme was a constitution drawn up by a constituent assembly.

The failure of the Simon Commission and the Round Table Conference which led to the enactment of the Government of India Act, 1935 to satisfy Indian aspirations accentuated the demand for a constituent assembly of the people of India. The Congress adopted a resolution at its Lucknow Session in April 1936 in which it declared that no constitution imposed by an outside authority shall be acceptable to India; it has to be one framed by an Indian constituent assembly elected by the people of India on adult franchise.

Since the Congress had contested elections to the Provincial Legislatures on the issues of total rejection of the Act of 1935 and the demand for a, constituent assembly, following a decisive victory it adopted at Delhi on 18 March 1937 a resolution asserting the electorate's approval of the demand for a constituent assembly. It desired to frame "a constitution based on national independence, through the medium of a constituent assembly elected by adult franchise". This demand was firmly reiterated by the All India National Convention of Congress Legislators held

in Delhi in March, 1937. During August-October 1937, the Central Legislative assembly and the Provincial Assemblies of each of the Provinces where the Congress held office, adopted resolutions reiterating the Congress demand to convene a constituent assembly to frame a new constitution for a free India.

After the outbreak of the War in 1939, the demand for a constituent assembly was reiterated in a long statement issued by the Congress Working Committee on 14 September, 1939.

Gandhiji wrote an article entitled "The Only Way" in the *Harijan* of 19 November 1939 in which he expressed the view that" constituent assembly alone can produce a constitution indigenous to the country and truly and fully representing the will of the people". He declared that the only way out to arrive at a just solution of communal and other problems was a constituent assembly.

The demand for a constituent assembly was for the first time authoritatively conceded by the British Government, though in an indirect way and with important reservations, in what is known as the" August Offer" of 1940.

The Cripps proposals marked an advance over the "August Offer" in that the making of the new constitution was now to rest solely and not merely "primarily" in Indian hands and a clear undertaking to accept the constitution framed by the proposed constitution-making body was given by the British Government. After the failure of the Cripps Mission, no steps were taken for the solution of the Indian constitutional problem until the War in Europe came to an end in May, 1945.

In July, with the new Labour Government coming into power in England, its Indian policy was announced on 19 September 1945 by Lord Wavell who had succeeded Lord Linlithgow as Viceroy in 1943. The Viceroy affirmed His Majesty's Government's intention to convene a constitution making body" as soon as possible".

The Cabinet Mission realized that the most satisfactory method to constitute a constitution-making body would have been by election based on adult franchise, but that would have caused "a wholly unacceptable delay" in the formulation of the new constitution. "The only practicable course" according to them was, therefore, "to utilize the recently elected Provincial Legislative Assemblies as electing bodies". As what they called the "fairest and as most practicable plan" in the circumstances, the Mission recommended that the representation of the Provinces in the constitution making body be on the basis of population,

roughly in the ratio of one Member to a million and the seats allocated to the Provinces be divided among the principal communities, classified for this purpose as Sikhs, Muslims and General (all except Sikhs and Muslims), on the basis of their numerical strength. The representatives of each community were to be chosen by members of that community in the Provincial assembly and voting was to be by the method of proportional representation with single transferable vote. The number of Members allotted to the Indian States was also to be fixed on the same basis of population as adopted for British India, but the method of their selection was to be settled later by consultation. The strength of the constitution-making body was to be 389. Of these 296 representatives were to be from British India, (292 representatives drawn from the eleven Governors' Provinces of British India and a representative each from the four Chief Commissioners' Provinces of Delhi, Ajmer-Merwara, Coorg and British Baluchistan) and 93 representatives from the Indian States.

The Cabinet Mission recommended a basic framework for the constitution and laid down in some detail the procedure to be followed by the constitution-making body.

Elections for the 296 seats assigned to the British Indian Provinces were completed by July-August 1946. The Congress won 208 seats including all the General seats except nine and the Muslim League 73 seats, that is, all but five of the seats allotted to Muslims.

The party-wise break-up of the assembly's British

Indian membership was as follows:

Congress	208
Muslim League	73
Unionist	1
Unionist Muslim	1
Unionist Scheduled Castes	1
Krishak Praja	1
Scheduled Castes Federation	1
Sikh (Non-Congress)	1
Communist	1
Independents	8
	296

With the partition and independence of the country, on 14-15 August 1947, the Constituent Assembly of India could be said to have become free from the fetters of the Cabinet Mission Plan. It became a fully sovereign body and the successor to the British Parliament's plenary authority and power in the country. Moreover, following the acceptance of the Plan of 3 June, the members of the Muslim League .party from the Indian Dominion also took their seats in the assembly. The representatives of some of the Indian states had already entered the Assembly

on 28 April 1947. By 15 August .1947 most of the States were represented in the Assembly and the remaining States also sent their representatives in due course.

The Constituent Assembly thus became a body, it was believed, fully representative of the states and provinces in India and fully sovereign of all extema1 authority. It could abrogate or alter any law made by the British Parliament applying to India, including the Indian Independence Act itself.

The 'Constituent Assembly duly opened on the appointed day Monday, the ninth day of December, 1946 at eleven in the morning.

The historic Objectives Resolution was moved in the Constituent Assembly by Nehru, on 13 December 1946, after it had been in session for some days. The beautifully worded draft of the Objectives Resolution cast the horoscope, so to say, of the Sovereign Democratic Republic that India was to be. The resolution envisaged a federal polity with the residuary powers vesting in the autonomous units and sovereignty belonging to the people. "Justice, social, economic and political; Equality of status, of opportunity and before the law; Freedom of thought, expression, belief, faith, worship, vocation, association and l, action" were to be guaranteed to all the people along with "adequate safeguards" to "minorities, backward and tribal areas and depressed and other backward classes". Thus, the Resolution gave to the Assembly its guiding principles and the philosophy that was to permeate its tasks of constitution making. It was finally adopted by the Assembly on 22 January 1947 and later took the form of the Preamble to the Constitution.

Framing the Constitution

The assembly appointed a number of committees to deal with different aspects of the problem of framing the constitution. These included the Union Constitution Committee, Union Powers Committee, Committees on Fundamental Rights, Minorities, etc. Some of these Committees were headed by either Nehru or Patel to whom the President of the assembly gave the credit for working out the fundamentals of the constitution. The Committees worked hard and in a businesslike manner and produced valuable reports. Between the third and the sixth sessions, the Assembly considered the reports of committees on Fundamental Rights, on Union Constitution, on Union Powers, on Provincial Constitution, on Minorities and on Scheduled Areas and Scheduled Tribes. Recommendations of the other Committees were later considered by the

Drafting Committee.

The first draft of the constitution of India was prepared in October, 1947 by the Advisory Branch of the Office of the Constituent Assembly under Sir B.N. Rau. Before the preparation of this draft, voluminous background material had been collected and supplied to the members of the assembly in the shape of three series of 'Constitutional Precedents' which gave salient texts from the constitutions of about 60 countries. The Constituent Assembly on 29 August 1947 appointed the Drafting Committee with Dr. B.R. Ambedkar as the Chairman to scrutinize the draft of the text of the constitution of India prepared by the Constitutional Adviser (B.N. Rau) giving effect to the decisions taken in the assembly.

The Draft Constitution of India prepared by the Drafting Committee was submitted to the President of the assembly on 21 February 1948. A large number of comments, criticisms and suggestions for the amendment of the Draft Constitution were received. The Drafting Committee considered all these. A special committee was constituted to go through them along with the recommendations of the Drafting Committee thereon. The suggestions made by the Special Committee were again considered by the Drafting Committee and certain amendments were picked up for incorporation. To facilitate reference to such amendments the Drafting Committee decided to issue a reprint of the Draft Constitution which was submitted to the President of the assembly on 26 October 1948.

While introducing the Draft Constitution in the assembly for consideration on 4 November 1948, Dr. Ambedkar replied to some common criticisms of the Draft, particularly the criticism in regard to there being very little in it that could claim originality. He observed:

One likes to ask whether there can be anything new in a constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a constitution should be has long been settled. Similarly what are the fundamentals· of a constitution are recognised all over the world. Given these facts, all constitutions in their main provisions must look similar. The only new things, if there can be any, in a constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the constitutions of other countries is based, I

am sure, on an inadequate study of the constitution. As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a constitution.

On 4th Nov. 1948 Dr. B. R. Ambedkar introduced draft constitution before the assembly.[1]

Mr. President: I think we shall now proceed with the discussion. I call upon the Honourable Dr. Ambedkar to move his motion.

The Honourable Dr. B. R. Ambedkar (Bombay: General):Mr. President, Sir, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee was appointed by a Resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935 should be followed. Except on points which are referred to in my letter of the 21st February 1948 in which I have referred to the departures made and alternatives suggested by the Drafting Committee, I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution as it has emerged from the Drafting Committee is a formidable document. It contains 315Articles and 8 Schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution. It would be difficult for those who have not been through it to realize its salient and special features.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more than sufficient time to express their reactions to the provisions contained in it. I daresay some of them are based on misunderstanding and inadequate understanding of the Articles. But there the criticisms are and they have to be answered.

[1]. Motion re draft Constitution moved by Dr. B. R. Ambedkar, Chairman of Drafting Committee on 4th Nov. 1948

For both these reasons it is necessary that on a motion for consideration I should draw your attention to the special features of the Constitution and also meet the criticism that has been leveled against it.

Before I proceed to do so I would like to place on the table of the House Reports of three Committees appointed by the Constituent Assembly (1) Report of the Committee on Chief Commissioners' Provinces[♣] (2) Report of the Expert Committee on Financial Relations between the Union and the States,[*] and (3) Report of the Advisory Committee on Tribal Areas,[♦] which came too late to be considered by that Assembly though copies of them have been circulated to Members of the Assembly. As these reports and there commendations made therein have been considered by the Drafting Committee it is only proper that the House should formally be placed in possession of them.

Turning to the main question. A student of Constitutional Law if a copy of a Constitution is placed in his hands is sure to ask two questions. Firstly what is the form of Government that is envisaged in the Constitution; and secondly what is the form of the Constitution? For these are the two crucial matters which every Constitution has to deal with. I will begin with the first of the two questions.

In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian

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♣. Appendix A
*. Appendix B
♦. Appendix C (1 to 3).

Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do-nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognize this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions - (1) It must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is anon-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is parliamentary Executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive being independent of parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament become more responsible. The Parliamentary system

differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A. the assessment of the responsibility of the Executive is periodic. It is done by the Electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the Executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, Resolutions, No-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The Daily assessment of responsibility which is not available under the American system is it is felt far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability.

So far I have explained the form of Government under the Draft Constitution. I will now turn to the other question, namely, the form of the Constitution.

Two principal forms of the Constitution are known to history - one is called Unitary and the other Federal. The two essential characteristics ofA Unitary Constitution are :(1) the supremacy of the Central Polity and (2) the absence of subsidiary Sovereign polities. Contrariwise, a Federal Constitution is marked: (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words. Federation means the establishment of a Dual Polity. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the fieldassigned to them respectively by the Constitution. This dual polity resembles the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States which correspond respectively to the Union Government and the States Government of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor is the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the

American Constitution come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two.

The points of difference between the American Federation and the Indian Federation are mainly two. In the U.S.A. this dual polity is followed by a dual citizenship. In the U.S.A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rigours of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Anderson, in certain political matters, including the right to vote and to hold public office, States may and do discriminate in favour of their own citizens. This favoritism goes even farther in many cases. Thus to obtain employment in the service of a State or local Government one is in most places required to the be a local resident or citizen. Similarly in the licensing of persons for the practice of such public professions as law and medicine, residence or citizenship in the State is frequently required; and in business where public regulation must necessarily be strict, as in the sale of liquor, and of stocks and bonds, similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish in a sense belong to the State. It is customary for the States to charge higher hunting and fishing license fees to non-residents than to its own citizens. The States also charge non-residents higher tuition in State Colleges and Universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may and does legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed nonresidents. These advantages, given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the State. The transient and the temporary sojourner is everywhere under some special handicaps.

The proposed Indian Constitution is a dual polity withal single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

The dual polity of the proposed Indian Constitution differs

From the dual polity of the U.S.A. in another respect. In the U.S.A. the Constitutions of the Federal and the States Governments are loosely connected. In describing the relationship between the Federal and State Government in the U.S.A., Bryce has said:

"The Central or national Government and the State Governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other."

Distinct they are, but how distinct are the State Governments in the U.S.A. from the Federal Government? Some idea of this distinctness may be obtained from the following facts:

1. Subject to the maintenance of the republican form of Government, each State in America is free to make its own Constitution.
2. The people of a State retain forever in their hands, altogether independent of the National Government, the power of altering their Constitution.

To put it again in the words of Bryce:

"A State (in America) exists as a commonwealth by virtue of its own Constitution, and all State Authorities, legislative, executive and judicial are the creatures of,and subject to the Constitution."

This is not true of the proposed Indian Constitution. No States (at any rate those in Part I) have a right to frame its own Constitution. The Constitution of the Union and of the States is a single frame from which neither can get outland within which they must work.

So far I have drawn attention to the difference between the American Federation and the proposed Indian Federation. But there are some other special features of the proposed Indian Federation which mark it off not only from the American Federation but from all other Federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as federal system. But in times of wait is so designed as to make it work as though it was unitary system. Once the President issues a Proclamation which he is authorized to do under the Provisions of Article275, the whole scene can become transformed and the State becomes a unitary state. The Union under the Proclamation can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the power to give directions to the States as to how they should exercise their executive

authority in matters which are within their charge, (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution, and all other Federations we know of.

This is not the only difference between the proposed Indian Federation and other federations. Federalism is described as a weak if not an effete form of Government. There are two weaknesses from which Federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute. A Federal Constitution cannot but be a written Constitution and a written Constitution must necessarily bee rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that anyinvasion by the Federal Government in the field assigned to the States and vice versa is a breach of the Constitution and (2) such breach is a justiciable matter to be determinedly the Judiciary only. This being the nature of federalism, a federal Constitution have been found in a pronounced forming the Constitution of the United States of America.

Countries which have adopted Federalism at a later date have attempted to reduce the disadvantagesfollowing from the rigidity and legalism which are inherent therein. The example of Australia may well be referred to in this matter. The Australian Constitution has adopted the following means to make its federation less rigid:

(1) By conferring upon the Parliament of the Commonwealth large powers of concurrent Legislation and few powers of exclusive Legislation.

(2) By making some of the Articles of the Constitution of a temporary duration to remain in force only "until Parliament otherwise provides."

It is obvious that under the Australian Constitution, the Australian Parliament can do many things, which are not within the competence of the American Congress and for doing which the American Government will have to resort to the Supreme Court and depend upon its ability, ingenuity and willingness to invent a doctrine to justify it the exercise of authority.

In assuaging the rigor of rigidity and legalism the Draft Constitution follows the Australian plan on a far more extensive scale than has been done in Australia. Like the Australian Constitution, it has a long list of subjects for concurrent powers of

legislation. Under the Australian Constitution, concurrent subjects are 39. Under the Draft Constitution they are 37. Following the Australian Constitution there are as many as six Articles in the Draft Constitution, where the provisions are of a temporary duration and which could be replaced by Parliament at anytime by provisions suitable for the occasion. The biggest advance made by the Draft Constitution over the Australian Constitution is in the matter of exclusive powers of legislation vested in Parliament. While the exclusive authority of the Australian Parliament to legislate extends only to about 3 matters, the authority of the Indian Parliament as proposed in the Draft Constitution will extend to 91 matters. In this way the Draft Constitution has secured the greatest possible elasticity in its federalism which is supposed to be rigidly nature.

It is not enough to say that the Draft Constitution follows the Australian Constitution or follows it on a more extensive scale. What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere.

First is the power given to Parliament to legislate on exclusively provincial subjects in normal times? I refer to Articles 226, 227 and 229. Under Article 226 Parliament can legislate when a subject becomes a matter of national concern as distinguished from purely Provincial concern, though the subject is in the State list, provided are solution is passed by the Upper Chamber by 2/3rd majority in favour of such exercise of the power by the Centre. Article 227 gives the similar power to Parliament in national emergency. Under Article 229 Parliament can exercise the same power if Provinces consent to such exercise. Though the last provision also exists in the Australian Constitution the first two are a special feature of the Draft Constitution.

The second means adopted to avoid rigidity and legalisms the provision for facility with which the Constitution could be amended. The provisions of the Constitution relating to the amendment of the Constitution divide the Articles of the Constitution into two groups. In the one group are placed Articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the Courts. All other Articles are placed in another group. Articles placed in the second group cover Avery large part of the Constitution and can be amended by Parliament by a double majority, namely, a majority of knotless than two thirds of the members of each House present and voting and by a majority of the

total membership of each House. The amendment of these Articles does not require ratification by the States. It is only in those Articles which are placed in group one that an additional safeguard of ratification by the States is introduced.

One can therefore safely say that the IndianFederation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

There is another special feature of the proposed Indian Federation which distinguishes it from other federations. Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity inlaws, in administration and in judicial protection. Upton ascertains point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But thievery diversity when it goes beyond a certain point escapable of producing chaos and has produced chaos in many federal States. One has only to imagine twenty different laws-if we have twenty States in the Union-of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State testate only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three

(1) A single judiciary,

(2) uniformity-in fundamental laws, civil and criminal, and

(3) A common All-India Civil Service to man important posts.

A dual judiciary, a duality of legal codes and duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in federation. In the U. S. A. the Federal Judiciary and testate Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law. Thesis done to eliminate all diversity in all remedial procedure. Canada is the only country which

furnishes close parallel. The Australian system is only an approximation.

Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great Codes of Civil & Criminal Laws, such as the Civil Procedure Code, Penal Code, the Criminal Procedure Code, the Evidence Act, Transfer of Property Act, Laws of Marriage Divorce, and Inheritance, are either placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

The dual polity which is inherent in a federal systems I said is followed in all federations by a dual service. In all Federations there is a Federal Civil Service and astute Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with one exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the caliber of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what these strategic posts are. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India service recruited on anal India basis with common qualifications, with uniform scale of pay and the members of which alone could be appointed to these strategic posts throughout the Union.

Such are the special Features of the proposed Federation. I will now turn to what the critics have had today about it.

It is said that there is nothing new in the Draft Constitution, that about half of it has been copied from the Government of India Act of 1935 and that the rest of it has-been borrowed from the Constitutions of other countries. Very little of it can claim originality.

One likes to ask whether there can be anything new in constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly what are the fundamentals of constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in constitution framed so late in the day are the variations made to remove

the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based; I am sure, on an inadequate study of the Constitution. I have shown what is new in the Draft Constitution and I am sure that those who have studied other Constitutions and who are prepared to consider the matter dispassionately will agree that the Drafting Committee in performing its duty has not been guilty of such blind and slavish imitation as it is represented to be.

As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity which justifies their inclusion. Grote, the historian of Greece, has said that:

"The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of a government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendency for themselves."

By constitutional morality Grote meant "a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own." (Hear, hear.)

While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the

administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality such as the one described by Grote the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature

To prescribe them. The question is, can we presume such a diffusion of Constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution.

Another criticism against the Draft Constitution is that no part of it represents the ancient polity of India. It is said that the new Constitution should have been drafted on the ancient Hindu model of a State and that instead of incorporating Western theories the new Constitution should have been raised and built upon village Panchayats and District Panchayats. There are others who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many village Governments. The love of the intellectual Indians for the village community is of course infinite if not pathetic (laughter). It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than another cause to the preservation of the people of India ,through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities have lasted where nothing else lasts. But those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country; and why? Their part in the destiny of the country has been well described by Metcalfe himself who says:

"Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hondo, Padhan, Mogul, Mahasabha, Sikh, English are all masters in turn but the village communities remain the same. In times of trouble they Armand fortify themselves. A hostile army passes through the country. The village communities collect their little cattle within their walls, and let the enemy pass unprovoked."

Such is the part the village communities have played in the history of their country. Knowing this, what pride canone feel in them? That they have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.

The Draft Constitution is also criticized because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong forth minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge someday into one. The solution proposed by the Constituent Assembly is to be welcomed because it is absolution which serves this twofold purpose. To diehards who have developed a kind ofFanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The others that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson "ask for any safeguard you like for the Protestant minority but let us have a United Ireland."Carson's reply was "Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.

The most criticized part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics fundamental rights are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution. In Gitlow Vs. New York in which the issue waste constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said:

"It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.

It is argued that if any fundamental rights require qualification, it is for the

Constitution itself to qualify them as is done in the Constitution of the United States and where it does not do so it should be left to be determined by the Judiciary upon a consideration of all the relevant considerations. Allthis, I am sorry to say, is a complete misrepresentation if not a misunderstanding of the American Constitution. The American Constitution does nothing of the kind. Except in one matter, namely, the right of assembly, the American Constitution does not itself impose any limitations upon the fundamental rights guaranteed to the American citizens. Nor is it correct to say that the American Constitution leaves it to the judiciary to impose limitations on fundamental rights. The right to impose limitations belongs to the Congress. The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every state has inherent in it police power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

"That a State in exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question. . . . . "

(What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue ofParliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.)

In the Draft Constitution the Fundamental Rights are followed by what are called "Directive Principles". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force.

This criticism is of course superfluous. The Constitution itself says so in so many words. If it is said that the Directive Principle have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of Democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized well when the forces of right contrive to capture power.

That it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should begiven in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgment their proper place is in Schedules III A& IV which contain Instrument of Instructions to the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as to how they should exercise their powers. But that is only a matter of arrangement.

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution, has out-grown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight.

The Draft Constitution is criticized for having one sort of constitutional relations between the Centre and the Provinces and another sort of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those which come under Defence, Foreign Affairs and Communications. They are not bound to accept subjects included in the Concurrent List. They are not bound to accept the State List contained in the Draft Constitution. They are free to create their own Constituent Assemblies and to frame their own constitutions. All this, of course, is very unfortunate and, I submit quite indefensible. This disparity may even prove dangerous to the efficiency of the State. So long as the disparity exists, the Centre's authority over all-India matters may lose its efficacy. For, power is no power if it cannot be exercised in all cases and in all places. In a situation such as maybe created by war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy. What is worse is that the Indian States under the Draft Constitution are permitted to maintain their own armies. I regard this as a most retrograde and harmful provision which may lead to the break-up of the unity of India and the overthrow of the Central Government. The Drafting Committee, if I am not misrepresenting its mind, was not at all happy over this matter. They wished very much that there was uniformity between the Provinces and the Indian States in their constitutional relationship with the Centre. Unfortunately, they could do nothing to improve matters. They were bound by the decisions of the Constituent Assembly, and the Constituent Assembly in its turn was

bound by the agreement arrived at between the two negotiating Committees.

But we may take courage from what happened in Germany. The German Empire as founded by Bismarck in1870 was a composite State, consisting of 25 units. Of these 25 units, 22 were monarchical States and 3 were republican city States. This distinction, as we all know, disappeared in the course of time and Germany became one land with one people living under one Constitution. The process of the amalgamation of the Indian States is going to be much quicker than it has been in Germany. On the 15th August 1947we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken them as Centrally Administered Areas there have remained some20/30 States as viable States. This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate Constitution and they will lose nothing that is of value to them. I feel hopeful that my appeal will not go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States.

Some critics have taken objection to the description of India in Article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is Federal, does no violence to usage. But what is important is that the use of the word Union is deliberate. I do not know why the word ‘Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and thattheFederation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee

thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

The provisions relating to amendment of the Constitution have come in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. (To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The Powers of amendment are left with the Legislature Central and Provincial. It is only for amendments of specific matters - and they are only few - that the ratification of the State legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done bya majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simpler method of amending the Constitution.)

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some Article of the Constitution which has acted as an obstacle in their way Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the

Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

I believe I have dealt with all the adverse criticisms that have been leveled against the Draft Constitution as settled by the Drafting Committee. I don't think that I have left out any important comment or criticism that has been made during the last eight months during which the Constitution has been before the public. It is for the Constituent Assembly to decide whether they will accept the constitution as settled by the Drafting Committee or whether they shall alter it before passing it.

But this I would like to say. The Constitution has been discussed in some of the Provincial Assemblies of India. It was discussed in Bombay, C.P., West Bengal, Bihar, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions of the constitution and in Madras to Article 226.But excepting this, in no Provincial Assembly was any serious objection taken to the Articles of the Constitution. No Constitution is perfect and the Drafting Committee itself is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the Constitution as settled by the Drafting Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is that Man was vile. Sir, I move.

The clause by clause consideration of the Draft Constitution was completed during 15 November 1948 to 17 October 1949. The Preamble was the last to be adopted. The Drafting Committee, thereafter, carried the consequential or necessary amendments, prepared the final draft and placed it before the assembly.

The Second Reading of the constitution was completed on 16 November 1949 and on the next day the Assembly took up the Third Reading of the constitution, with a motion by Dr. Ambedkar "that the constitution as settled by the assembly be passed".

The motion was adopted on 26 November 1949 and thus on that day, the people of India in the Constituent Assembly adopted, enacted and gave to themselves the Constitution of the Sovereign Democratic Republic of India.

Adoption of the Constitution was, however, not the journey's end. Dr. Rajendra Prasad in his concluding speech

observed that they had been able, on the whole, to draft a good constitution which he trusted would serve the country well. But, he added: If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective constitution. If they are lacking in these, the constitution cannot help the country. After all, a constitution like a machine is a lifeless thing. It acquires life because of men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who .will not sacrifice the interests of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences. We can only hope that the country will throw up such men in abundance.

The Chairman of the Drafting Committee, Dr. B. R. Ambedkar:[2]

Sir, looking back on the work of the Constituent Assembly it will now be two years, eleven months and seventeen days since it first met on the 9th of December 1946. During this period the Constituent Assembly has altogether held eleven sessions. Out of these eleven sessions the first six were spent in passing the Objectives Resolution and the consideration of the Reports of Committees on Fundamental Rights, on Union Constitution, on Union Powers, on Provincial Constitution, on Minorities and on the Scheduled Areas and Scheduled Tribes. The seventh, eighth, ninth, tenth and the eleventh sessions were devoted to the consideration of the Draft Constitution. These eleven sessions of the Constituent Assembly have consumed 165 days. Out of these, the Assembly spent 114 days for the consideration of the Draft Constitution.

Coming to the Drafting Committee, it was elected by the Constituent Assembly on 29th August 1947. It held its first meeting on 30th August. Since August 30th it sat for 141 days during which it was engaged in the preparation of the Draft Constitution. The Draft Constitution as prepared by the Constitutional Adviser as a text for the Draft Committee to work upon, consisted of 243 articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 Schedules. At the end of the consideration stage, the number of articles in the Draft Constitution

2. Concluding speech of Dr. B. R. Ambedkar on 25th Nov. 1949 in the CAD

increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635. Of them, the total number of amendments actually moved in the House were 2,473.

I mention these facts because at one stage it was being said that the Assembly had taken too long a time to finish its work that it was going on leisurely and wasting public money. It was said to be a case of Nero fiddling while Rome was burning. Is there any justification for this complaint? Let us note the time consumed by Constituent Assemblies in other countries appointed for framing their Constitutions. To take a few illustrations, the American Convention met on May 25th, 1787 and completed its work on September 17, 1787 i.e., within four months. The Constitutional Convention of Canada met on the 10th October 1864 and the Constitution was passed into law in March 1867 involving a period of two years and five months. The Australian Constitutional Convention assembled in March 1891 and the Constitution became law on the 9th July 1900, consuming a period of nine years. The South African Convention met in October, 1908 and the Constitution became law on the 20th September 1909 involving one year's labour. It is true that we have taken more time than what the American or South African Conventions did. But we have not taken more time than the Canadian Convention and much less than the Australian Convention. In making comparisons on the basis of time consumed, two things must be remembered. One is that the Constitutions of America, Canada, South Africa and Australia are much smaller than ours. Our Constitution as I said contains 395 articles while the American has just seven articles, the first four of which are divided into sections which total up to 21, the Canadian has 147, Australian 128 and South African 153 sections. The second thing to be remembered is that the makers of the Constitutions of America, Canada, Australia and South Africa did not have to face the problem of amendments. They were passed as moved. On the other hand, this Constituent Assembly had to deal with as many as 2,473 amendments. Having regard to these facts the charge of dilatoriness seems to me quite unfounded and this Assembly may well congratulate itself for having accomplished so formidable a task in so short a time.

Turning to the quality of the work done by the Drafting Committee, Mr. Naziruddin Ahmed felt it his duty to condemn it outright. In his opinion, the work done by the Drafting Committee is not only not worthy of commendation, but is positively below par. Everybody has a right to have his opinion about the work done by the Drafting

Committee and Mr. Naziruddin is welcome to have his own. Mr. Naziruddin Ahmed thinks he is a man of greater talents than any member of the Drafting Committee. The Drafting Committee would have welcomed him in their midst if the Assembly had thought him worthy of being appointed to it. If he had no place in the making of the Constitution it is certainly not the fault of the Drafting Committee.

Mr. Naziruddin Ahmed has coined a new name for the Drafting Committee evidently to show his contempt for it. He calls it a Drafting committee. Mr. Naziruddin must no doubt be pleased with his hit. But he evidently does not know that there is a difference between drift without mastery and drift with mastery. If the Drafting Committee was drifting, it was never without mastery over the situation. It was not merely angling with the off chance of catching a fish. It was searching in known waters to find the fish it was after. To be in search of something better is not the same as drifting. Although Mr. Naziruddin Ahmed did not mean it as a compliment to the Drafting committee. I take it as a compliment to the Drafting Committee. The Drafting Committee would have been guilty of gross dereliction of duty and of a false sense of dignity if it had not shown the honesty and the courage to withdraw the amendments which it thought faulty and substitute what it thought was better. If it is a mistake, I am glad the Drafting Committee did not fight shy of admitting such mistakes and coming forward to correct them.

I am glad to find that with the exception of a solitary member, there is a general consensus of appreciation from the members of the Constituent Assembly of the work done by the Drafting Committee. I am sure the Drafting Committee feels happy to find this spontaneous recognition of its labours expressed in such generous terms. As to the compliments that have been showered upon me both by the members of the Assembly as well as by my colleagues of the Drafting Committee I feel so overwhelmed that I cannot find adequate words to express fully my gratitude to them. I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of he Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was therefore greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman. There were in the Drafting Committee men bigger, better and more competent than myself such as my friend Sir Alladi Krishnaswami Ayyar. I am grateful to the Constituent Assembly and the Drafting Committee for reposing in me so much trust and confidence and to have chosen me as

their instrument and given me this opportunity of serving the country. (Cheers)

The credit that is given to me does not really belong to me. It belongs partly to Sir B. N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee who, as I have said, have sat for 141 days and without whose ingenuity of devise new formulae and capacity to tolerate and to accommodate different points of view, the task of framing the Constitution could not have come to so successful a conclusion. Much greater, share of the credit must go to Mr. S.N. Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equaled, nor his capacity for hard work. He has been as acquisition tot he Assembly. Without his help, this Assembly would have taken many more years to finalize the Constitution. I must not omit to mention the members of the staff working under Mr. Mukherjee. For, I know how hard they have worked and how long they have toiled sometimes even beyond midnight. I want to thank them all for their effort and their co-operation.(Cheers)

The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly has been merely a motley crowd, a tessellated pavement without cement, a black stone here and a white stone there is which each member or each group was a law unto itself. There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the Congress Party inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly.

The proceedings of this Constituent Assembly would have been very dull if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of yes' men. Fortunately, there were rebels. They were Mr. Kamath, Dr. P.S. Deshmukh, Mr. Sidhva, Prof. K.T. Shah and Pandit Hirday Nath Kunzru. The points they raised were mostly ideological. That I was not prepared to accept their suggestions, does not diminish the value of their suggestions nor lessen the service they have rendered to the Assembly in enlivening its proceedings. I am grateful to them. But for them, I would not have had the opportunity which I got for expounding the

principles underlying the Constitution which was more important than the mere mechanical work of passing the Constitution.

Finally, I must thank you Mr. President for the way in which you have conducted the proceedings of this Assembly. The courtesy and the consideration which you have shown to the Members of the Assembly can never be forgotten by those who have taken part in the proceedings of this Assembly. There were occasions when the amendments of the Drafting Committee were sought to be barred on grounds purely technical in their nature. Those were very anxious moments for me. I am, therefore, specially grateful to you for not permitting legalism to defeat the work of Constitution-making.

As much defence as could be offered to the constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr.. T.T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However a Constitution had may be, it may turn out to be good if those who are called to work it happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their purposes or will they prefer revolutionary methods of achieving them? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to play.

The condemnation of the Constitution largely comes from two quarters, the Communist Party and the Socialist Party. Why do they condemn the Constitution? Is it because it is really a bad Constitution? I venture to say no'. The Communist Party want a Constitution based upon the principle of the Dictatorship of the Proletariat. They condemn the Constitution because it is based upon parliamentary democracy. The Socialists want two things. The first thing they want is that if they come in power, the Constitution must give them the freedom to nationalize or socialize all private property without payment of compensation. The second thing that the Socialists want is that the Fundamental Rights mentioned in the Constitution must be absolute and without any limitations so that if their Party fails to come into power, they would have the

unfettered freedom not merely to criticize, but also to overthrow the State.

These are the main grounds on which the Constitution is being condemned. I do not say that the principle of parliamentary democracy is the only ideal form of political democracy. I do not say that the principle of no acquisition of private property without compensation is so sacrosanct that there can be no departure from it. I do not say that Fundamental Rights can never be absolute and the limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation or if you think this to be an over-statement, I say they are the views of the members of the Constituent Assembly. Why blame the Drafting Committee for embodying them in the Constitution? I say why blame even the Members of the Constituent Assembly? Jefferson, the great American statesman who played so great a part in the making of the American constitution, has expressed some very weighty views which makers of Constitution, can never afford to ignore. In one place he has said:-

"We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country."

In another place, he has said :

"The idea that institutions established for the use of the national cannot be touched or modified, even to make them answer their end, because of rights gratuitously supposed in those employed to manage them in the trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself. Yet our lawyers and priests generally inculcate this doctrine, and suppose that preceding generations held the earth more freely than we do; had a right to impose laws on us, unalterable by ourselves, and that we, in the like manner, can make laws and impose burdens on future generations, which they will have no right to alter; in fine, that the earth belongs to the dead and not the living;"

I admit that what Jefferson has said is not merely true, but is absolutely true. There can be no question about it. Had the Constituent Assembly departed from this principle laid down by Jefferson it would certainly be liable to blame, even to condemnation. But I ask, has it? Quite the contrary. One has only

to examine the provision relating to the amendment of the Constitution. The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution as in Canada or by making the amendment of the Constitution subject tot he fulfillment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution. If those who are dissatisfied with the Constitution have only to obtain a 2/3 majority and if they cannot obtain even a two-thirds majority in the parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public.

There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to Municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. Centre cannot by its own will alter the boundary of that partition. Nor can the Judiciary. For as has been well said:

> "Courts may modify, they cannot replace. They can revise earlier interpretations as new arguments, new points of view are presented, they can

shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another."

The first charge of centralization defeating federalism must therefore fall.

The second charge is that the Centre has been given the power to override the States. This charge must be admitted. But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind. The first is that these overriding powers do not form the normal feature of the constitution. Their use and operation are expressly confined to emergencies only. The second consideration is: Could we avoid giving overriding powers to the Centre when an emergency has arisen? Those who do not admit the justification for such overriding powers to the Centre even in an emergency do not seem to have a clear idea of the problem which lies at the root of the matter. The problem is so clearly set out by a writer in that well-known magazine "The Round Table" in its issue of December 1935 that I offer no apology for quoting the following extract from it. Says the writer:

"Political systems are a complex of rights and duties resting ultimately on the question, to whom, or to what authority, does the citizen owe allegiance. In normal affairs the question is not present, for the law works smoothly, and a man, goes about his business obeying one authority in this set of matters and another authority in that. But in a moment of crisis, a conflict of claims may arise, and it is then apparent that ultimate allegiance cannot be divided. The issue of allegiance cannot be determined in the last resort by a juristic interpretation of statutes. The law must conform to the facts or so much the worse for the law. When all formalism is stripped away, the bare question is, what authority commands the residual loyalty of the citizen. Is it the Centre or the Constituent State ?"

The solution of this problem depends upon one's answer to this question which is the crux of the problem. There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must be to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to all Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the Constituent States by these emergency powers? No more than this – that in an emergency, they should take into consideration alongside their own

local interests, the opinions and interests of the nation as a whole. Only those who have not understood the problem, can complain against it.

Here I could have ended. But my mind is so full of the future of our country that I feel I ought to take this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country (Cheers). What would happen to her independence? Will she maintain her independence or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lost it a second time? It is this thought which makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by the infidelity and treachery of some of her own people. In the invasion of Sind by Mahommed-Bin-Kasim, the military commanders of King Dahar accepted bribes from the agents of Mahommed-Bin-Kasim and refused to fight on the side of their King. It was Jaichand who invited Mahommed Gohri to invade India and fight against Prithvi Raj and promised him the help of himself and the Solanki Kings. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput Kings were fighting the battle on the side of Moghul Emperors. When the British were trying to destroy the Sikh Rulers, Gulab Singh, their principal commander sat silent and did not help to save the Sikh Kingdom. In 1857, when a large part of India had declared a war of independence against the British, the Sikhs stood and watched the event as silent spectators.

Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indian place the country above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood.(Cheers)

On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lost it again. This is

the second thought that comes to my mind and makes me as anxious as the first.

It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments-for the Sanghas were nothing but Parliaments – but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, Res Judicata, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.

This democratic system India lost. Will she lost it a second time? I do not know. But it is quite possible in a country like India – where democracy from its long disuse must be regarded as something quite new – there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgement we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not "to lay their liberties at the feet of even a great man, or to trust him with power which enable him to subvert their institutions". There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish Patriot Daniel O'Connel, no man can

be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest

possible moment or else those who suffer from inequality will blow up the structure of political democracy which is Assembly has to laboriously built up.

The second thing we are wanting in is recognition of the principle of fraternity, what does fraternity mean? Fraternity means a sense of common brotherhood of all Indians-if Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve. How difficult it is, can be realized from the story related by James Bryce in his volume on American Commonwealth about the United States of America.

The story is- I propose to recount it in the words of Bryce himself- that-

"Some years ago the American Protestant Episcopal Church was occupied at its triennial Convention in revising its liturgy. It was thought desirable to introduce among the short sentence prayers a prayer for the whole people, and an eminent New England divine proposed the words `O Lord, bless our nation'. Accepted one afternoon, on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word nation' as importing too definite a recognition of national unity, that it was dropped, and instead there were adopted the words `O Lord, bless these United States."

There was so little solidarity in the U.S.A. at the time when this incident occurred that the people of America did not think that they were a nation. If the people of the United States could not feel that they were a nation, how difficult it is for Indians to think that they are a nation. I remember the days when politically-minded Indians, resented the expression "the people of India". They preferred the expression "the Indian nation." I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the world, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult – far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity equality and liberty will be no deeper than coats of paint.

These are my reflections about the tasks that lie ahead of us. They may not be very pleasant to some. But there can be no gainsaying that political power in this country has too long been the monopoly of a few and the many are only beasts of burden, but also beasts of prey. This monopoly has not merely deprived them of their chance of betterment, it has sapped them of what may be called the significance of life. These down-trodden classes are tired of being governed. They are impatient to govern themselves. This urge for self-realization in the down-trodden classes must no be allowed to devolve into a class struggle or class war. It would lead to a division of the House. That would indeed be a day of disaster. For, as has been well said by Abraham Lincoln, a House divided against itself cannot stand very long. Therefore the sooner room is made for the realization of their aspiration, the better for the few, the better for the country, the better for the maintenance for its independence and the better for the continuance of its democratic structure. This can only be done by the establishment of equality and fraternity in all spheres of life. That is why I have laid so much stresses on them.

I do not wish to weary the House any further. Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. There is great danger of things going wrong. Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Governments for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.

Thus the speech of Dr. B. R. Ambedkar on 25 November 1949 sounded words of warning and wisdom.

The Constitution was finally signed by members of the Constituent Assembly on 24 January 1950-the last day of the assembly.

Besides framing the Constitution, the Constituent Assembly performed several other important functions like passing certain statutes of a constituent nature, adopting the national flag,

declaring the national anthem, ratifying the decision in regard to the membership of the Commonwealth and election of the first President of the Republic.[1]

It was no mean achievement that within a period of less than three years, the founding fathers succeeded in evolving a Constitution acceptable throughout the length and breadth of this vast and populous country and one capable of salvaging and strengthening the threads of national unity in the midst of the multiplicity of religions, races, languages and all the variants of diversity. Our founding fathers were some of the most distinguished and the wisest of men and women-great jurists, patriots and freedom fighters. It is difficult to imagine any better or more representative results at that time even if the Constituent Assembly was directly elected by the people on the basis of universal adult franchise.

The Constitution of India evolved an integrated method of resolving conflicts by incorporating provisions catering to the needs of the different identities and ideologies and balancing the proportion and priority of rights. By adopting a democratic form of government, the polity created choices and accommodated various pluralities. The fundamental right to speech and conscience became the platform to air grievances and maintain their identity without demolishing the structure of the polity. The constitutional format in respect of human rights is remarkable as a significant and unique attempt at conflict resolution for the delicate balance it sought to achieve between political and civil rights on the one hand and social and economic rights on the other or between the individual rights and the social needs. The philosophy behind this is the dialogue between individualism and social control and the belief that civil, political, economic and social rights are equally important and not contradictory.

The Constitution was the result of a great deal of mutual accommodation, compromise and wide ranging consensus. The makers of the Constitution realized that it was necessary to grapple with multiple pulls and pressures of various ethnic diversities, to transcend conflicts or to subsume them under the overall Indian national, identity. Where they failed to arrive at an acceptable consensus, they agreed to postpone the problem as in the case of the language issue where English was allowed to continue.

The institutions continued by us after Independence and/ or embodied in the Constitution were those which had grown and developed on the Indian soil itself. The Founding Fathers chose to

build further on the foundations of the old, on the institutions which they had already known, become familiar with and worked, despite all the limitations and fetters. The Constitution rejected British rule, but not the institutions that had developed during the period of British rule. Thus the Constitution did not represent a complete break with the colonial past.

Also, constitution-making and institution-building being a living, growing, dynamic process, it did not come to a stop on 26 November 1949 when the people of India in their Constituent Assembly, were said to have" adopted, enacted and given to themselves" the Constitution. Even after its commencement on 26 January 1950, the Constitution of India was being further made through its actual working, judicial interpretations and constitutional amendments. The Constitution kept growing for better or worse and acquired newer and newer meanings by the manner in which and the men by whom it was worked from time to time. The story continues. For the Constitution, there is no journey's end. We have to keep abreast of the times and remain prepared for necessary reforms from time to time while retaining the fundamentals of our polity.

Module - II
BASIC CONCEPTS, PREAMBLE, TERRITORY OF INDIA AND CITIZENSHIP

SALIENT FEATURES OF THE CONSTITUTION

Federal features of Indian constitution inconsistent with federal principle – Drawn from different source,

(1) Federal constitution- Union & 28 state,

(2) Federation is guaranteed, but the territorial integrity of the units is not guaranteed e.g. - State Reorganizations Act, 1956,

(3) Single citizenship – Citizenship Act 1955,

(4) Distribution of powers in three legislative lists (Art 246 read with Schedule – VII),

(5) Parliamentary executives, responsible government which remains in power so long as it commands the confidence of majority of the lower house,

(6) Emergency provision U/A 353 – National, U/A –356 – State, U/A 360 financial. On the grounds of war, external aggression or internal disturbance,

(7) Conversion of federal to unitary systems during emergency,

(8) Integrated judiciary Supreme Court & High Court,

(9) Equality of state right in the upper house not recognized,

(10) Amending process sensibly elastic as per significance & value of Articles under the Constitution (Amendment - Simple, Special majority & Special majority with ratification (1/2 state resolution)),

(11) Declaration of fundamental rights (Part – III) & remedies for their enforcement (Art 32),

(12) Fundamental Rights checkmated by Fundamental Duties (Part - IV),

(13) Judicial review expressly recognized,

(14) The longest known constitution – Detailed provisions (444 Articles & 12 Schedule)

Dr. B. R. Ambedkar – it would protect the constitution from surreptitious subversion by unscrupulous person.

(15) Role of convention under the constitution,

(16) No communal representation (Art. 325),

(17) Favors to weaker sections – Establishment of National Commission on S.C's/S.T.'s, National Commission on Women's, National

Commission for Children, National Commission for Minorities.

(18) Safeguards to Minorities (Art 26 – 28)

(19) Three tire government - Local government of District, Municipalities & Panchayat,

(20) Drawn from different sources,

(21) Recast by Amendments 42 & 44, 73 & 74 amendment (IX & IXA Part),

(22) Inbuilt mechanism to mitigate rigidity (Art 368). Power of Central government to change subject of List – II & III of VIIth Schedule,

(23) Unity in Basic matters – Judiciary, Civil & Criminal law, IAS etc.,

(24) Directive Principles of State Policy (Part - IV),

(25) Judicial Review. Supreme Court & High Courts role of sentinels,

(26) Protection given by IXth Schedule – Immunity to the Acts,

(27) Independent Judiciary – appointment, transfer, payment,

(28) Parliamentary form of government - Government hold office only if the majority in Lok Sabha supports it & must resign on losing confidence,

(29) Republic – elected president,

(30) Judicial supremacy – validity of legislation or Act,

(31) Universal franchise – election on basis of adult suffrage,

(32) Integration of Indian state about 600 States or Provinces integrated in independent India & eliminated Centuries old autocracies,

(33) Distribution of legislative & administration power,

(34) Freedom of Trade, Commerce & Intercourse – Intra & Inter State (Art 301 to 306).

(35) National Guaranteed Employment Scheme (Work – 100 days in a Year).

(36) Anti-Defection Provisions – Schedule X

(37) Protection to the govt. employee's u/a. 308 to 323 – appointment, service rules regulations, disciplinary action through inquiry etc.

THE PREAMBLE OF THE CONSTITUTION

The constituent Assembly first met in 9th Dec. 1946 and soon on 13th Dec. the objective Resolution declaring & defining the aims & purposes of the constitution.

Ernest Barker: Principle of Social & Political Theory 1961

The preamble of Indian constitution embodies the lofty principle in a charming lucid manner. The people of India should begin their independent life by subscribing

to the principles of a political tradition, which are something more than western countries.

Preamble

WE, THE PEOPLE OF INDIA having solemnly resolved to constitute India into – **SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC** and to secure to all its citizens,

JUSTICE, social, economical & political,

LIBERTY of thought, expression, belief, faith & worship;

EQUALITY of promote among then all

FRATERNITY assuring the dignity of the individual and the unity & Integrity of the Nation. **IN OUR CONSTITUENT ASSEMBLY** this twenty sixth day of November 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

Importance of preamble

In Golaknath v. State of Punjab[3] case the Supreme court held that the preamble contains in a nutshell the ideals and aspirations of the Indian people.

In re Berubari Union[4] the Supreme Court held that the Preamble is the key to open the mind of the constitution makers.

Thus it states the object, which the constitution makers seek to establish & promote, and also aids the legal interpretation of the constitution.

It serves two main purposes.

(i) It indicates the source of authority of the constitution.

(ii) It defines object which constitution seeks to establish and promote.

***Preamble whether part of the constitution?**

It is generally not regarded as part of the constitution though it considered as a key to the meaning of a state.

In Berubari case 1960 it was held as a part of the constitution

In Kesavananda Bharati Sripadagalvaru and Ors v. State of Kerala and Anr.[5] The Supreme Court held that Preamble is part of the constitution because it was separately passed after the enacting provision had been passed.

Whether preamble provides aid to interpretation?

Yes, but following propositions must take into consideration.

I. It is not a source of power – Power must be founded on a specific provision.

[3]. 1967 AIR 1643

[4]. AIR 1960 SC 845

[5]. AIR 1973 SC 1461

II. In Raghunath Rao v. Union of India[6] the Supreme Court held that Preamble can't be regarded as a source of prohibition or limitation upon powers of legislation.

III. Where the terms of an Art. Are ambiguous or capable of two meanings, in arriving the true meaning some assistance may be sought in the object enshrined in the preamble. This is held in K' Bharati Case

Meaning of the words used under the Preamble.

1) We the people of India.

It signifies that the constitution of India is ordained by the people of India through their representatives assembles in a sovereign constituent Assembly. Thus it declares that the ultimate sovereign lies with the people of India.

It also indicate India is a republican polity – it shall have no hereditary ruler and the people shall elect their government.

The republican tradition has not been foreign to our country from beginning of the history we have known republic Bhagwan Buddha belonged to the Republic of Kapilvastu.

2) Sovereign.

It refers to independence of the country in all its external & internal matters. It recognizes no controls or Limitations. The Republic created by the constitution is sovereign & there is no authority above it . It is free within & outside the country.

In Maganbhai Ishwaribhai Patel v. Union of India[7] the Supreme court held that being a Sovereign State, India is free from any type of external control. It can acquire foreign territory & if necessary cede a part of the territory in favour of foreign state subject to constitutional requirement.

In Synthetics v. State of Uttar Pradesh[8] the Supreme court held that the word sovereign means that the state has power to legislate on any subject in conformity with constitutional limitations.

In Charan Lal Sahu v. Union of India[9] the Supreme court held that the doctrine of *parent's patriac* can be invoked by reason of sovereign.

3) Democratic

Meaning of Democracy

Abraham Lincoln: (Gettysburg speech)

"It means government of the people, by the people, for the people, viz., Representative Democracy."

But the democracy is more than that it is not only political but also having social & Economic angles.

Dr. B. R. Ambedkar

"A form and method of government whereby revolutionary changes in the

[6]. 1993 AIR 1267 1993

[7] 1969 AIR 783 1969

[8] [1980] 2 SCC 441

[9] 1988 AIR 107

economic and social life of the people are brought about without bloodshed". [10]

Characteristics of Democracy

1. The core of democracy is choice.
2. Democratic society is always open to ideas & view therefore it is incompatible to any one form of idea i.e. socialism, collectivism or capitalism.
3. In Democracy groups with different ideas or view come together to find some conclusion agreeable to all or most of groups.
4. It entertains plurality of ideas & arrives at an agreed line of action by comparing them, ironing at the difference & forming a composition.
5. Process of selecting objective for state.
6. Every citizen has right to take part in government of country.
7. Universal suffrage & ministerial responsibility to the elected House.
8. Equality among all citizens & government official & single Electoral Roll. Is an evidence of Democracy in India.

4) Republic

All offices including highest offices are open to be elected to all citizens. Source of all authority under the constitution are the people & not hereditary ruler. Thus it refers to the election of the Head of State.

5) Socialist

Inserted by **42nd Amendment (1976),** it intends to give a positive direction to the government in formulating its policies. This word initially not there because the constitution doesn't commit the country to any particular form of economic structure. Though it's many of the tenets were included as the Directive Principles of State Policy. By avoiding this world the constitution makers wants to refrain from committing the country to any particular form of economical order & must allow future government to evolve such economic policies as may be considered suitable for them.

But even though after such Amendment the government reversed its economic policy. Instead of state ownership it adopted privatization.

The public ownership and controls of means of production and distribution were to be discontinued. The public sector was discontinued. The public sector was put on the private enterprise.

All those who take oath to bear full faith & allegiance to the constitution have disregarded a part of the constitution have disregarded a part of the constitution. They start their day by breaching the oath.

It was not prudent to disregard the wise precedent set up by the framers of the

[10]. Narake Hari, ed, Dr. Babasaheb Ambedkar Writings and Speeches, vol.17. Part3, op. cit.,p.475.

constitution therefore the constitution is not proper place for incorporation of party slogans.

In Excel wear v. Union of India[11] the Supreme Court held that the word socialist reference with Art 14 & 16 enabled the court to deduce a fundamental right to equal pay for Equal work.

In Dharwad Employees v. State of Karnataka[12] the Supreme Court held that when it references with Art 14 it enables the court to strike down a statute, which failed to achieve the socialistic goal to the fullest extent.

6) Secular

This word also Inserted by **42nd Amendment (1976).**

i) There is no official religion of India.
ii) State will not favour any particular religion.
iii) Equality of all person irrespective of Religion (U/A 14)
iv) No discrimination (U/A 15/16)
v) Freedom of religion is fundamental Right (25 to 28)
vi) Cultural Rights of minorities fundamental Right (29, 30)

In S. R. Bommai v. Union of India[13] Justice B. P. Jeewan Reddy observed that expression socialist and secular aren't capable of precise definition.

Criticism

1) Political parties define their own version of secularism.
2) Parties think that it is the duty of the state to conceal truth if community dislikes it.
3) Some gives a sort of veto to minorities - Whatever do minorities not approve is not secular.
4) Hostility to religion as the secular creed.

Meaning of Secularism

Webster's Dictionary

The belief that religion should not play a role in government, education, or other public parts of society.

Thus it is rational approach to life and it refuses to give plea for religion.

In St. Xavier's college v. State of Gujarat[14] case the Supreme Court held that secularism eliminates God from the matter of state and ensures that no one shall be discriminated against on the ground of religion.

However, in Atheist Society of India v. Government of Andra Pradesh[15] the Supreme Court held that person associated with the state function have to be taken, as performing ceremonies in their personal or individual capacity and performance of

[11]. 1979 AIR 25
[12]. 1990 AIR 883
[13]. AIR 1994 SC 1918
[14]. 1974 AIR 1389,
[15]. AIR 1992 AP 310

ceremonies could not be prohibited, as it would be violative to Art 25 of constitution.

7) Justice

This control distribution of Rights. It is the right ordering human relation. 3 types of Justices Social, Economical and political.

a) Social – Greatest good of the greatest number (*Bahujana Hitaya, bahujan sukhaya*) without putting restriction on the rights lean in favour of the weaker section of society. E.g. Art 17 & 18 Art 46.

b) Economical – No economic inequalities. These inequalities can't be wiped out so the state endeavors to lessen them. E.g. Land reformation, Labour Legislation Income – Tax contributes at different rates for different slabs of income.

c) Political – Right to participate in the election process. E.g. right to vote, appoint or elect to higher offices. Provision of Art 14 to 18 forms the base for political justice.

Art 18, 39, 39A, 41 & 46 in part IV providing content to the abstract notion of justice.

8) Liberty

Taken from U.S. Declaration 1787 – Liberty, Equality & Fraternity. There are numerous heads of Liberty. E.g. Political, Civil & Economic.

Civil – personal freedom, security of person & property, thought expression trade & industry, employment, assembly & association, conscience & worship.

Thus it includes freedom of physical activity as well as freedom of mind. E.g. Art 19, 25 to 28.

9) Equality

Right to treat equally with others in matters of - I) Justice, II) Taxation, III) Public Office & IV) Employment.

All Laws shall be applicable equally e.g. Art 14 to 18. Making all discrimination by the state is illegal.

10) Fraternity

Barker – It is principle of Co-operation, the feeling of brotherhood, which gives rise to a fellow felling that we must help each other and that together we can better our lives.

The preamble links fraternity with two things –

I) assuring dignity of individuals and
II) the unity and integrity of the nation.

Views of Constitution makers

As the sons of same soil the citizens are all brothers who must stay with each other through thick & thin. As brothers they stand and fall together. The brothers constitute a nation. There must be emotional bond with territory, its culture, tradition & common ancestor. It is the feeling of

Nationalism that is the unifying force that keeps the citizens as one therefore claiming more than one Nation in India does wrong.

In LIC v. Consumer Center[16] the Supreme Court held that the Right to dignity is fundamental right e.g. Art 17 – Ablution of untouchability, Art 18 Hereditary titles & offices are prohibited, There must have adequate means of livelihood or human condition of work therefore Art 39 (a), 42 & 43.

Importance of the Preamble

It is not compulsory or customary to have a Preamble to the Constitution. However, the framers of the Indian Constitution felt that to reflect the basic principles and philosophy of the Constitution, it is necessary to have a preamble. The Preamble to the Indian Constitution is modeled on the Constitution of the United State. The preamble aims at a social order where the people are sovereign, the government is representative and accountable to people. The importance and utility of the preamble has been stated in several decisions of our Supreme Court. It is regarded as the basic philosophy of the Constitution and a key to unravel the minds of the framers of the Constitution. Though it is not enforceable in a court of law, the preamble to a written Constitution serves three important purposes about the Constitution. First, it clearly states the source of authority that is people of India. "We the people of India" - The opening words of the preamble 'We the people of India' show that the authority of the Government of India is derived from the people. The powers, which are given to the government of India and the states, have not been given by any particular body but by the people of India. We have earlier seen that the Constitution of India has been framed by the people of India through their representatives and the same can be modified by them according to the procedure laid down in the Constitution.

Secondly, it contains the aspirations of the people and the ideals on the basis of which those aspirations to be achieved. India is declared as a Sovereign, Socialist, Secular, Democratic, Republic but these objectives are to be achieved with the values of justice, liberty, equality, fraternity and unity and integrity of the nation.

Lastly, it also contains the enactment clause that is when the Constitution was enacted or adopted and came into force. Thus, the Preamble is not only an introduction to the Constitution but also regarded as a mirror or essence of the whole Constitution.

[16]. 1995 AIR 1811

UNION AND ITS TERRITORY
PART – I (ARTICLES 1-4)

Art. 1 says that India, that is Bharat, is a Union of States.

There is an opinion that the term' Union of States' implies that India is a unitary system of government and is federal only in a secondary sense. However, the following explanation dispels such an interpretation.

In the Constituent Assembly, the Drafting Committee decided in favour of describing India as a Union, although its Constitution is federal in structure.

Moving the Draft Constitution for the consideration of the Constituent Assembly in 1948, Dr. Ambedkar explained the significance of the use of the expression "Union" instead of the expression "Federation". Two reasons are given

- Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source.
- The expression- India is a Union of States was chosen as India was already a Union at the time of the Constituent Assembly debates.

There are two expressions used in the context of governance in India- 'Union of India' and 'Territory of India' the former includes States that share federal powers with the Union Government, the latter includes not only States but all other units like UT's and soon. In other words, territory of India encompasses a larger area than Union of India. That is, Territory of India encompasses the entire territory over which Indian sovereignty is exercised while Union of India covers only the federal system. Government of India can acquire any territory by purchase, treaty, cession, conquest or any other method, administer it on the basis of Parliamentary Act. The States and the territories, thereof are specified in the First Schedule. 'The territory of India 'comprises of the territories of the States; the Union territories specified in the First Schedule; and such other territories as may be acquired.

Art.2 says that the Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Art 3. Formation of the States and alteration of areas, boundaries or names of existing States: - Parliament may by law:-
(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting

any territory to a Part of any State; (b) increase the area of any State; (c) diminish the area of any State; (d) alter the boundaries of any State; (e) alter the name of any State; The relevant Bill may be introduced in either House of Parliament only on the recommendation of the President. The Bill should be referred by the President to the Legislature/Legislatures of the State/States for expressing views within such period as may be specified in the reference. Such period may be extended by the President. The opinion of the State Legislatures is not binding on the President. The Bill can be introduced in the Parliament- either House- only on the recommendation of the President. The Bill needs to be passed by the Parliament by a simple majority.

Art. 4 says that laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and incidental and consequential matters are not to be deemed to be an amendment of this Constitution for the purposes of Article 368.

A federation is one consisting of 'an. indestructible Union of indestructible States' as in the USA. India, though a federation, has Constitutional mandate for the abolition of a state. That is, in India, states are not indestructible'. A state can he abolished or merged with another state. Its boundaries, area and name can be changed. The process is initiated by the Union Government and the role of the affected state is only to express its opinion which is not binding on the Union Government. Parliament needs to pass the Bill only by a simple majority. The Council of States (Rajya Sabha) which is the representative of states does not have any special powers in this matter. Thus, the process is Unitary. However, there are certain aspects that require consideration President is given the power to refer the Bill to the state concerned. The Bill can not be introduced in the Parliament without the Presidential recommendation. The President is unlikely to allow abuse of the power by the union government.

- The need for political integration after Independence even in the face of any provincial resistance was the overriding factor.
- The Constitution was drafted at a time when the country was partitioned and the danger from centrifugal tendencies made the Constituent Assembly members feel the need for a strong centre.

It is true that the provisions in Art. 2 and 3 are unitary in content. But, as shown the use of the provisions is truly federal.

The case of Pondicherry (Puducherry)

It is a former French colony. A treaty of cession was signed by India and

France in 1956. It was ratified by the French parliament in May 1962. Till 1962, therefore, it could not be given the status of a Union Territory and was given the status of 'acquired territory'. In 1962 India and France exchanged the instruments of ratification under which France ceded to India full sovereignty over the territories it held. It came to be administered as the Union Territory of Pondicherry from 1963. Its new name is Puducherry. Parliament in 2006 passed a Bill to rename the Union Territory (UT) of Pondicherry as Puducherry in response to the wishes of the people of the Union Territory expressed through a unanimous resolution by the legislative Assembly in 1980.The Bill amends Part VIII, the First and Fourth Schedules of the Constitution and the Government of Union Territories Act 1963. Puducherry encompasses four regions - Puducherry, Karaikal (near Nagapattinam in Tamil Nadu), Mahe (near Thalassery, Kerala) and Yanam (near Kakinada, Andhra Pradesh).

The Case of Sikkim

Sikkim was originally a protectorate* of India. Reflecting the wishes of the people of Sikkim, the Constitution (Thirty-fifth amendment) was passed in Parliament in 1974 to up-grade the status of Sikkim from a protectorate to an associate state of the Indian Union. Sikkim Assembly unanimously adopted a resolution in April, 1975, abolishing the institution of the Chogyal (royalty) and declaring Sikkim as a constituent unit of India. The Assembly also resolved to submit its resolution to the people of Sikkim by way of a general referendum. Consequently, Parliament made the Thirty- sixth Constitution Amendment Act in 1975 and Sikkim became the 22nd state of the Indian Union.

*In international law, a protectorate is a political entity that formally agrees by treaty to enter into a relationship with another, stronger state, called the protector, which agrees to protect it (diplomatically or militarily) against third parties, in exchange for which the protectorate usually accepts specified obligations.

Union Territories

'The reasons for having UTs differ with the Union Territory in question. General reasons are: unique history; geographical size/location; cultural heritage; Inter- State disputes; need for territories administered by the Union Government. Specific reasons are –

1. Delhi — capital of India.
2. Pondicherry - French colonial & cultural heritage - small far-flung areas.
3. Daman & Diu - Portuguese colonial & cultural heritage - far from Goa.
4. Dadra & Nagar Haveli - Portuguese heritage - far from Goa, Daman & Diu.

5. Andaman & Nicobar - group of islands deep into the Bay of Bengal far from the mainland.
6. Lakshwadweep - group of small islands deep into the Arabian Sea - far from mainland.
7. Chandigarh - dispute between states of Punjab & Haryana - Punjab Accord awarded to Punjab - transfer not yet through - continues as UT.

Creating New States

Even before Independence, Government was exploring the appropriate basis for states reorganization. Dhar Commission was set up by the President of the Indian Constituent Assembly in 1948 to consider the question of reorgnization of states in India. The Commission favoured reorganization on the basis of administrative efficacy and not language. The Indian National Congress at its Jaipur Session (1948) set up a high level committee called Linguistic Provinces Committee - consisting of Jawaharlal Nehru, Vallabh bhai Patel and Pattabhi Sitararniah to consider the Dhar Commission's recommendations. In its report (J.V.P. Report) the committee counseled utmost caution in proceeding with the proposal for the linguistic reorganization of states. Political movements for the creation of new language based states emerged after independence. The Telugu-speaking people agitated in Madras State for the formation of Andhra. In 1953, the 16 Telugu-speaking districts of Madras State became the new State of Andhra. It comprised Coastal Andhra and Rayalaseema Regions. In 1956 Andhra State was merged with the Telangana region of Hyderabad State to form a united Telugu-speaking state of Andhra Pradesh. Jawahar Lal Nehru subsequently appointed the States Reorganization Commission (1953) that included Fazl Ali, KM Panikkar and HN Kunzru. In 1955 the States Reorganization Commission submitted its report recommending that many British-imposed administrative boundaries be redrawn to recognize certain regional, cultural, and linguistic configurations. The change was justified or the basis of administrative efficiency - the use of a single language in a given state. Explaining the criterion of language as the basis for constituting a state, it said, "Linguistic homogeneity provides the only rational basis for reconstituting the state for it reflects the social and cultural pattern of living obtaining in well defined regions of the country"

The four criteria laid down by the States Reorganisation Commission (SRC) for accepting the demand by a region for the formation of a State are:

- Creation of new States should strengthen and preserve national unity.

- States are to be formed on the basis of linguistic and cultural unity.
- Financial, administrative and economic viability should govern the formation of new states.
- It should aid the process of implementation of five years plans.

Parliament passed the States Reorganization Act (1956) that was based on the SRC report. This was the beginning of states reorganization in India on a linguistic basis. It was a major development toward incorporating cultural identities into political and administrative units. The federal devolution of power strengthened this expression of cultural diversity. Linguistic reorganization of states was the only viable model as it helped administrative efficiency; greater citizen convenience; effective management of diversities and thus strengthening the federal system of governance. It prevents fissiparous tendencies like separatism and disintegration.

Formation of States in India on the basis of languages in 1956 was because language represented relatively acceptable base in comparison to other contending criteria like geography, ethnicity, ecology, economic development and so on.

States Reorganization Act 1956 and Constitution (Seventh) Amendment Act 1956

In order to understand the significance of the SR Act 1956 and the Constitution (Seventh) Amendment Act 1956, the nature of political and administrative organization under the British needs to be followed. British India had two types of territories

- provinces, governed directly by British officials who were responsible to the Governor-General of India and
- princely states under the control of local hereditary rulers having British government as the sovereign but enjoying autonomy based on a treaty When India became Independent on August 15, 1947, British dissolved their treaty relations with over 600 princely states, who had the option of acceding to either India or Pakistan. Most of the princely states joined India. Hyderabad was incorporated into India after armed intervention.

In the three year period during 1947-1950, the princely states were politically integrated into the Indian Union- either merged with the existing provinces or organised into new provinces.

The Constitution of India, when it came into existence on January 26, 1950 had three class of states.

- The nine Part A states, which were the former governors' provinces of British

India, were ruled by an elected governor and state legislature:

- The eight Part B states were former princely states or groups of princely states, governed by a Rajpramukhs, who was often a former prince, along with an elected legislature. The Rajpramukh was appointed by the President of India.
- The ten Part C states included both the former chief commissioners' provinces and other centrally administered areas except Andarnan and Nicobar islands. The chief commissioner was appointed by the President of India.

The States Reorganization Act 1956 brought about linguistic reorganization of the states under which absorbed the former British provinces and princely states on the basis of language. The Seventh Amendment to the Constitution (1956) abolished the difference between Part A and Part B states- both became "states" constituting a single category. Part C states were renamed "union territories." The personal privileges of the princes - the Privy Purse, the exemption from customs duty etc continued till they were abolished in 1971.

Criticism of Linguistic Reorganization of States

The linguistic reorganization of the states encouraged various ethnic groups to demand statehood. This was because ethnic identity was provided a territory under the scheme of linguistic reorganization. Such potential has been further sharpened because linguistic reorganization in a vast and diverse country like India cannot satisfy the cultural aspirations of all groups. The dissatisfactions of some of the unrecognized minority linguistic groups also continue to simmer. Such problems exist with regard to the Konkan region of Maharasthra/Goa, Nepali-speaking groups of Darjeeling, Sikkim, and Assam, and Maithili and Avadhi language groups in Bihar. There are several political parties which are ethnicity-based, and they will very willingly build their strength by exploiting the linguistic identities of their constituencies. The Sarkaria Commission (1988) hinted at weaknesses of the linguistic reorganization of states in this respect when it said: Very often, the sub-national sentiment which is initially based on linguistic, religious or ethnic groupings, gains strength with a blend of economic issues, such as those relating to... economic backwardness. One of the most significant developments has been the rise of linguistic chauvinism, rearrange-ment of the boundaries of the States on linguistic basis.., resulting in fissiparous tendencies. Three new states were created in 2000 not on the basis of language but primarily for good governance.

Since the SRC report was acted upon first in 1956, many new States came

into existence first in South and West and later in the Northwest arid the Northeast. The last phase of the reorganization was in the north and the Central India in 2000 There are demands for new States still like Harita Pradesh (western UP); Bundelkhand (UP) Koshal (western Orissa); Telangana (AP); Kodagu (Karnataka); Vidarbha (Maharashtra); Jatland (Haryana); Ladakh (Jammu and Kashmir); Bodoland (Assam); Gorkhaland (West Bengal); UTs of Puducherri and Delhi. Needless -to say, the demands could not he met as it would lead to proliferation of states to a point of making federal coordination difficult; they are not economically viable; national unity would he threatened ; small states may he unable to tackle political threats like naxalism; small states are not necessarily better governed as seen in the north east; administrative problems about creation of institutions like High Court; Secretariat etc; the costs of setting up a capital etc, to name some general reasons.

States reorganization has been taking place since mid-fifties-first in south and later in northwest and northeast and now in the northern, central and eastern India so that big states are made more governable through bifurcation on linguistic, cultural, ecological, economic or any other criterion or a combination of them. The case for small states rests on.

- big states needed to be divided for administrative viability
- better system of administration through participative planning
- avoid neglect of certain regions and sections of society
- remove regional economic imbalances etc.

Examples of Haryana, Punjab and Himachal Pradesh are shown as successful small states. Northeast is cited to show that without the reorganization, there would have been greater levels of insurgency. While there is no opposition to carving more states out of the big states like Bihar, MP and UP as social and economic indicators show that for reasons of governability, there should be bifurcation, the costs are cited as the following

- viability problems creating fiscal stress for Centre
- more demands by other regions
- leave the parent state with drastically reduced resources
- federal coordination becomes difficult
- higher rates of taxation on citizens to raise the required resources for the following reason: when a UT becomes a State, it foregoes financial - assistance that it enjoys as a UT. It necessitates resort to higher taxation to compensate for the central assistance that is no longer available.

According to some development experts, the need for division of big states is undeniable but the debate regarding the desirability of small states is basically one of how to enable balanced development and facilitate better administration. According to them, the answer lies in Local self government institutions; institutionalization of regional planning through autonomous councils etc; sustaining the existing funding mechanisms through Planning Commission (Gadgil formula for plan assistances) and Finance Commission -mediated transfers on the basis of poverty; special category states etc.

Second SRC

It has been more than fifty years since the States Reorganization Commission (SRC) gave its report. It had the mammoth task of regrouping the states essentially on linguistic lines and absorb the princely states. The process of states reorganization continued since- 1956 SR Act with three new states being formed in 2000- Chattisgarh, Jharkhand and Uttaranchal (renamed Uttarakhand by the Parliament, according to Art.3 in the winter session of 2006).

There are demands for seeing if the reorganization done so far has worked well. Also, there have been agitations for statehood in the Telangana, Vidarbha and Darjeeling regions and elsewhere in the country.

Telangana issue and the recommendation of the B.N. Srikrishna Committee

An early expression of regionalism was the Telangana movement in the state of Andhra Pradesh. The region consists of 10 northwestern districts of Andhra Pradesh including the state capital, Hyderabad. The Krishna and Godavari rivers flow through the region from west to east. In 1953, based on the recommendation of the States Reorganisation Commission, Telugu-speaking areas were separated from the former Madras States to form Andhra, India's first state established along linguistic lines. Telangana was merged with Andhra to form the new state of Andhra Pradesh in 1956.

The concerns about Telangana stem essentially from economic under-development. Compared to the costal region, the contrast is stark. Being backward, people of Telangana had the disadvantage in education and jobs. The Telangana movement grew out of a sense of regional identity and not from a sense of ethnic identity. The movement demanded redress for economic grievances and recognition of a sense of cultural distinctness. The local disadvantaged people of Telangana are called Mulkis.

The 1956 "gentlemen's agreement" provided reassurances to the Telangana people in education, jobs and ministerial berths. The use of Urdu was to continue in

the administration and the judiciary. A Regional Council for Telangana was to be responsible for economic development, and its members were to be elected by the members of the state legislative assembly from the region.
The demand for Telangana as a separate state re-emerged in recent years and it is mentioned in the NCMP that the demand will be considered at an appropriate time after due consultations and consensus. To look into the issue of Telangana region B.N. Srikrishna Committee was formed in.

The demand for seperate states has led to a range of Constitutional and non-constitutional mechanisms to be put in place to satisfy demands for autonomy and respect for cultural identity. The demand for statehood has the following explanatory factors:

- "Development deficit" due to the uneven development of the country is one reason. Those regions that have not seen fruits of growth want a new state.
- Population explosion- electorate today is about 70 crores which is a five fold increase over the 1950s figure. It has created pressures that have found expression as demands for special status.
- Cultural identities have become the basis for political agitations for separate statehood which is partly the offshoot of language-based statehood followed since 1950's.
- Political parties also are instrumental in encouraging such demands for their own ends.

So far, a range of Constitutional and non-Constitutional mechanisms have been put in place to satisfy demands for autonomy and respect for cultural identity.

- They are special category states like the north east, Himachal Pradesh, Uttarakhand etc that receive central plan assistance at liberal terms
- there are autonomous councils as in Ladakh, Darjeeling, Bodo where regions enjoy autonomy in administration
- development boards (Art. 371(2)) for the backward regions of the states of Maharashtra and Gujarat
- Finance Commission recommends more finances in terms of tax share and grants for the underdeveloped states
- 73rd and 74th Amendment Acts for local self government strive to satisfy local aspirations through decentralized governance
- Inclusions of languages in the 8th schedule of the Constitution for the cultural development of the people.
- Sixth Schedule benefits

In spite of the above facilities, there is a feeling that a second SRC be formed to recommend further steps.

Regionalism and its effect in stabilizaing the polity

Regionalism refers to a group of people in a region or a state coming together to demand and agitate for more powers of autonomy or a separate state for any of the following reasons

- Collective feeling of neglect
- Economic backwardness
- Their resources are being spent on others
- The state is too large for them to be given adequate attention in development.

Government reacted to the regionalist demands in the following manner

- Grant of a separate state- Uttarakhand, Chattisgarh and Jharkhand in 2000.
- Autonomous council
- Inclusion of the language in the Eighth Schedule as in the case of Bodos
- Special provisions for certain regions in a State which are underdeveloped- Art. 371(2) for Gujarat and Maharashtra.
- Constitutional establishment of the local self government institutions (73rd and 74th Amendment Acts in 1992).

Regionalism as seen in Tamil Nadu, Andhra Pradesh, Assam and elsewhere has the effect of stabilizing the polity with the following contributions

- Ensuring that the regional feeling of neglect does not degenerate into separatism
- Checking the centralization tendency and help the states receive more powers and thus develop 'cooperative federalism'
- Contribute to better management of "cultural diversities' through devolution of powers
- Greater proximity of the government to the people and thus help evolve participative planning systems.

Citizenship Part – II

State has two elements.

I. Territory (Material Resources)

II. Human population living in the territory.

The population may consist of 3 types.

(I) Citizens – persons who are full member of the state & who owe allegiance to it. These citizens enjoy full civil & political rights.

(II) Aliens – persons who are citizens of some other state. They are not entitled to all constitutional & other rights. E.g. right to life & liberty U/A 21 but not freedom U/A 19.

Aliens are of two types.

1. Friendly aliens – As above.
2. Enemy aliens – whose country at war with India, they suffer special disabilities not entitle right U/A 22.

(III) Stateless persons – This category very small & may not exist in some countries. They are not citizens of any country. Have similar rights to aliens have.

The aspect of citizenship can be understood by studying provision from constitution & citizenship Act 1955.

I] Constitution

The constitution has only identified the persons who became citizens at the commencement of constitution. The constitution doesn't lay down a comprehensive law regarding citizenship covering all aspects.

Rights of citizens.

Under constitution , the citizens have the following rights which are not available to aliens.

I] Fundamental rights which are conferred on citizens alone. U/A 15,16,19 & 29.

II] Restriction on rights of citizens. U/A 18 (2) not to accept any title from a foreign state.

III] Citizens alone are eligible to hold certain office. E.g. President (U/A 58) Vice – President (Art 66) Judge of supreme court (U/A 124) High court Judiciary , Governor (157) , Attorny General (76) ,Advocate General (165)

IV] citizens only are eligible to vote for Lok Sabha & state legislative Assembly (326) .

V] only citizens are qualified for being member of parliament (84) & state legislative Assembly. (191) .

Person who became citizens on 26th Jan. 1950.

They are following persons.

(I) A person who was domiciled in India. & born in territory of India. (U/A 5 (a) . It is no material whether the parents were Indian National.

(II) A person who was domiciled in the India & either of whose parents was born in India. U/A 5 (b) . It is not material whether parents were Indian National. The place of Birth may be any place.

(III) A person domiciled in territory of India & who has been residing in India equal to or less than 5 Years before commencement of the constitution. U/A 5 (c) Nationality of parents Immaterial.

Prakash v. shahni 1956.

Domicile of widow retains the husbands domicile until changed by her own act.

Naziranbai v. State of Madhya pradesh 1957.

Domicile of an infant generally follows the domicile of his father .

Aslam kha v. Fazal Khan 1959.

Intention is an important element in determining the domicile of person. It can't be inferred from conduct of person.

II] Citizenship for immigrants to India from U.K. U/A 6 .

Person who migrated from Pakistan became Indian citizens on following conditions.

(1) U/A 6 (a) He or either of his parents was born in India (Undivided individual)

(2) U/A 6 (b)

i) Migrated before 19th July 1948 & the date of migration had been ordinarily resident in the territory of India.

ii) Migrated on / after 19th july 1946. he had been registered as a citizen of India by an officer authority for purpose. Provided at least 6 months reside in India Before date of his application.

III] U/A 67 person migrated to Pakistan but after 1st March 1947 return to India. Under a permit for resettlement or permanent return issued by the government of India. He must obtain registration in the manner provided U/A 6 (b) .

Kulathi v. State of Kerala 1967.

Supreme court – migrated – voluntarily going from India to Pakistan permanently / temporarily.

Meaning of Domicile

It is the relationship between a man & a territory If a person lives in a place & has the intention to make the place his permanent abode then that place is the domicile of that person.

Domicile is not effected if the person moves away from the place but has the intention to comeback & settle permanently.

Types of Domicile

I. Domicile of origin.- Every person is born with a domicile of origin. It is the country in which his father was domiciled at the time of his birth The domicile of origin is a concept of law that clings to a man till he abandons it.

II. Domicile of choice – It can –be acquired by two ways.

A] Actual residence in a particular place and

B] Intention to remain there permanently / for an indefinite period.

In Dr. Pradeep Jain v. Union of India[17] the Supreme Court held that under Indian constitution, there is only one domicile i.e. domicile of country & there is no separate domicile for state.

In Mohammed Raza v. State of Bombay [18] (Extention of Residence in India) the Supreme court held that thedomicile of choice continues until the former domicile has been resumed / another has been acquired.

In Louis De Raedt v. Union of India[19] the Supreme Court held that the Domicile of origin is lost only on mere continuous stay in other country .

In Karimunissa v. State of Madhya Pradesh[20] the Supreme Court held that the Married women having domicile of her husband.

IV] citizenship of persons of Indian origin residing outside India under Article 8 .

In case of a person who was born in India / any of his parents / grand parents were born in India (As defined in government of India Act, 1935) and who was ordinarily residing in a country outside India shall become a citizen of India on being register by the designated authority.

This provision was enacted for those Indians who were, at the time of commencement of constitution living in a foreign country.

[B] **Citizenship under citizenship Act 1955** Art 11. of constitution has conferred power on the parliament to legislate on all matters relating to citizenship . This Act prescribes the following ways for acquisition of citizenship.

I] By Birth under sec. 3. – Every person born in India on / after 26th Jan 1950 is a citizen of India by Birth.

II] By Descent under sec. 4. – A person born outside India on / after 26 th Jan 1950 shall be a citizen by descent if either of is parents is a citizen of India at the time of the persons birth.

III] By Registration under sec. 5.- A person not covered by above two may acquire citizenship by registration if he satisfies certain conditions such persons fall in various categories. e. g. - Persons married to citizen of India , persons of Indian origin.

IV] By naturalization under sec.6.

A foreigner becomes a citizen of India when his application for naturalization is accepted by the government of India.

[17] 1984 AIR 1420
[18] 1966 AIR 1436
[19] **1991 AIR 1886**
[20] **1955 CriLJ 28**

Qualification for Naturalization

(1) He must not citizen of a country where India citizens are prevented from becoming citizen by Naturalization .
(2) Renaunced the citizenship of other country
(3) Reside in India / Government service for 12 m. before date of application / during 7 years.prior to 12 months he resided / in government services for not less than 4 years.
(4) Has to take oath of allegiance.
(5) Having good character.
(6) Having adequate knowledge of a language recognized by the constitution. &
(7) He must have intention to reside in India after granting citizenship by Naturalization.

If central government think that applicant has rendered distinguished service to the science , philosophy, art, literature, world peace / human progress then all the above condition may waive for naturalization of the applicant.

V] Incorporation of Territory under sec.7.

If a new territory becomes part of India, the government shall specify the persons of that territory who shall be citizens of India.

Termination of Citizenship

I) Renunciation under Article 8 – Any citizen of India who is a major & has legal capacity may renounce his citizenship by making a declaration. This declaration can be made only by a person who is a citizen / National of any country other than India.
II) Termination under sec. 9 - Any citizen of India who has voluntarily acquired citizenship by Naturalisation / registration etc. and who voluntary acquires the citizenship of another country ceases to be a citizen of India.
III) Deprivtion under sec. 10 – A person become citizen of India by Naturalisation / Art 5 / by registration etc may be deprived of citizenship by an order of central government of following ground .
    (a) There is fraud / concealment of any material fact.
    (b) He is disloyal / disaffected towards the constitution of India.
    (c) He unlawfully traded with / assisted the enemy during war.

To whom preference can be given.

Under Article 15 (1) – No discrimination on ground of religion , race, caste, sex, place of birth. It doesn't mention Residence. Therefore state government can make restriction on basis of Residence.

In D.P. Joshi v. State of Madhya Pradesh[21] the Supreme Court held that Higher capition fee for administration in Medical

[21]. 1955 AIR 334

college valid. However in Pradeep Jain v. Union of India[22] the Supreme Court held that it is not valid as it is inconsistent with National unity and Integrity.

In Narayan Sharma v. Pankaj R. Lehkar[23] the Supreme Court held that the reservation must be within reasonable limitation only to socially and educationally backward. Administration to post graduation strictly on merit basis. Thus only administration to Medical colleges is the only area in which residence may be imposed as a necessary qualification.

Difference between citizen by Birth & a naturalized citizen.

Citizen by birth having all fundamental rights and can't deprive. Citizen by Naturalization having some fundamental right & can be deprive .

Indian constitution doesn't bar Naturalized citizen from being a candidate at an election as well as they are eligible for all offices under constitution e.g. president , vice – president , prime minister, Governor .

But in U.S. all offices except president they are eligible to be appointed.

Status of Corporation

In State Trading Corporation v. the Commercial Tax Officer[24] Case the Supreme Court held that the corporation only juristic person therefore not citizens.

In Tata engineering co. v. State of Bihar[25] the Supreme court held that the corporation not citizen even though its all share holders as citizens

In Bennett Coleman & Co. v. Union of India[26] the Supreme Court held that only shareholder editor, the printer having freedom under Article 19.

[22]. 1984 AIR 1420
[23]. (2000) 1 SCC 44
[24]. 1963 AIR 1811
[25]. 1965 AIR 40
[26]. 1973 AIR 106

Module - III
General Principles Relating to Fundamental Rights (Articles 12 and 13)

FUNDAMENTAL RIGHTS

PART III, ARTICLES 12-35®

Representing the crystallization of the values and concepts held dear in India's varied and rich cultural heritage and having its roots Jeep in the motivational forces of the national struggle for independence, the formulation of a bill of rights was among the first tasks to which the Constituent Assembly addressed itself. A comprehensive charter of rights was soon evolved through various stages in the Assembly and its Committees. Described by Dr. Ambedkar as *"the most criticized part"* of the Constitution, Part III dealing with the fundamental rights was discussed for as many as 38 days in the Sub-Committee, 2 in the Advisory Committee and 25 in the Constituent Assembly. Coming closely on the heels of the Universal Declaration of Human Rights, inclusion of a bill of rights in the Constitution of India accorded with the contemporary democratic and humanitarian temper and constitutional practice in other nations of the world. It reflected in no small measure the anxiety of the founding fathers to incorporate and implement the basic principles enunciated in the Universal Declaration. Also, incorporation of a Charter of Fundamental Rights in our Constitution became necessary in view of the special problem of minorities and the need to assure them of the fullest protection of their rights.

The Fundamental Rights incorporated in Part III, the Directive Principles in Part IV and the Fundamental Duties in Part IV A added later actually constitute one organic whole which follows from the Preamble. Taken together, they really proclaim the fundamental values and constitute the foundational principles of the Constitution. Thus, the preambular assurance of the dignity of the individual, which in fact happens to be the basic principle underlying the Universal Declaration of Human Rights, is sought to be implemented through various provisions of Parts III and IV. The values of freedom and equality befitting the dignity of the human individual, made more complete and substantive by ideals of economic and social justice, so eloquently proclaimed by the Preamble, are elaborated in the Fundamental Rights and the Directive Principles.

®. Subhash C. Kashyap: Our Constitution – An Introduction to India's Constitution and Constitutional Law, NBT, India, New Delhi, 2001 p.94-164)

Part III of the Constitution which contains perhaps one of the most elaborate charters of human rights yet framed by any State, consistent with the aim of the unity of the nation and the interests of the public at large, has been described by Justice Gajendragadkar as the "very foundation and cornerstone of the democratic way of life ushered in this country by the Constitution".[27] These fundamental rights substantially cover all the traditional civil and political rights enumerated in articles 2 to 21 of the Universal Declaration. According to Justice Bhagwati:

These fundamental rights represent the basic values cherished by the people· of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a 'pattern of guarantee' on the basic structure of human rights and impose negative obligations on the State not to encroach on individual liberty in its various dimensions.[28]

The fundamental rights have been guaranteed under six broad categories, namely,

1. the right to equality including equality before law and the equal protection of laws (article 14), prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth (article 15), equality of opportunity in matters of public employment (article 16); and abolition of untouchability and the system of titles (articles 17 and 18);
2. the right to freedom including the right to protection of life and personal liberty (article 21), and the right to freedom of speech and expression, assembly, association or union, movement and to reside and settle in any part of India, and the right to practise any profession or occupation (article 19).
3. the right against exploitation, prohibiting all forms of forced labohr, child labour and traffic in human beings (articles 23 and 24);
4. the right to freedom of conscience and free profession, practice and propagation of religion (articles 25 to 28);
5. the right of minorities to conserve their culture, language and script and to establish and administer educational institutions of their choice (articles 29 and 30);
6. the right to constitutional remedies for the enforcement of all these Fundamental Rights (article 32).

Some of the fundamental rights like 'equality before law and equal protection of all laws' (article 14), protection in respect of

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[27]. Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

[28]. Maneka Gandhi v. Union of India, AIR 1978 SC 597.

conviction for offences (article 20), protection of life and personal liberty (article 21), free and compulsory education for all children of 6-14 years (article 21A) protection against arrest and detention in certain cases (article 22), freedom of religion (articles 25 28) etc. are available to all 'persons'. There are, however, some rights which can be claimed only by the citizens e.g. not to be discriminated on grounds of religion, race, caste, sex or place of birth (article 15), equality of opportunity in the matter of public employment (article 16) and freedom of speech and expression, assembly, association, movement, residence and profession (article 19).

Originally, article 19(1)(f) and article 31 contained the right to property i.e. to acquire, hold and dispose of property subject to the right of the State to compulsory acquisition for public purpose by authority of law. However, right to property ceased to be a fundamental right when the Constitution (Forty-fourth Amendment) Act, 1978 omitted sub-clause(f) of clause (1) of article 19 and the whole of article 31 from the Constitution.

Articles 31A and 31B inserted by the First Constitutional Amendment and article 31C inserted by the Twenty-fifth Amendment sought to protect laws providing for acquisition of estates', Acts and regulations specified in the Ninth Schedule and laws giving effect to Directive Principles.

Articles 33 35 deal with the power of Parliament to modify the rights conferred by Part III of the Constitution in their application to forces.

It is true that the fundamental human rights enshrined in the Constitution of India are hedged in by many limitations and restrictions. Replying to the criticism that the Fundamental Rights were riddled with so many restrictions that no value could be attached to them and referring in particular to critics who had relied on the U.S. Constitution in support of their contention that Fundamental Rights were not 'fundamental' unless they were also 'absolute', Dr. Ambedkar had observed in the Constituent Assembly on November 4, 1948 as follows:

The whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while nonfundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them. In the second place, it is wrong to say that fundamental rights in America are absolute ... The Supreme Court invented the

doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every State has inherent in it police power which is not required to be conferred on it expressly by the Constitution ... There is really no difference in the result. What one does directly, the other does indirectly. In both cases, the fundamental rights are not absolute.

The fundamental rights secured to the individual are in the nature of limitations or restrictions on the actions of the State. As Patanjali Sastry, Chief Justice, said:

The whole object of Part III of the Constitution is to provide protection for the freedoms and rights mentioned therein against arbitrary invasion by the State. (State of West Bengal v. Subodh Gopal Bose, AIR 1954 SC 92).

The Supreme Court has, however come to believe that fundamental rights are not only 'negative' or 'against the state' but also have a positive content inasmuch as they cast certain' responsibilities on the state. This, in a way, has heralded the beginning of what has come to be regarded as 'judicial activism' with its by-product of public interest litigation.[29]

Described by Dr. S. Radhakrishnan "as a pledge to our people and a pact with the civilized world", the fundamental rights are made binding on the State, i.e. the executive as well as the legislature.

Article 13(2) declares all laws and executive orders in force immediately before the commencement of the Constitution, inconsistent with the fundamental rights to be ultra vires and void to the extent of such inconsistency. It also says:

The state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall to the extent of contravention be void.

The article thus provides for judicial review of all legislation in India whether past or present through acts done before the commencement of the Constitution in contravention of the provisions of any law which becomes void by virtue of Part III, are not affected retrospectively.[30] In R.C. Cooper v. Union of India (AIR 1973 SC 106), the Supreme Court expressed the view that the State action must be adjudged in the light of its operation upon the rights of the individual and group of individuals in all its dimensions.

Clause (4) of article 13 makes it clear that the term "law" in that article does not

[29]. Sunil Batra v. Delhi Administration, AIR 1978 SC 1675; AIR 1980 SC 1579; Maneka Gandhi v. Union of India, AIR 1978 SC 597; Hussainara v. State of Bihar, AIR 1979 SC 1369; Sher Singh v. State of Punjab, AIR 1983 SC 465. Also see under the chapter on 'Judiciary'.

[30]. Habeeb Mohd. v. State of Hyderabad, AIR 1953 SC 287.

cover constitutional amendments made' under article 368 and therefore validity of a constitutional amendment cannot be questioned on the ground of its being violative of fundamental rights unless a fundamental right is held to be part of the basic feature, of the Constitution.[31]

Under article 12, "the State" includes (i) the Government and Parliament of India, (ii) the Government and the Legislature of each of the States, (iii) all local authorities like municipalities, district boards, Panchayats, Improvement Trusts etc. and (iv) other authorities within the territory of India or under the control of the Government of India. The last category "other authorities" naturally posed some difficulties. However, it has been held to include many authorities created by the Constitution or statute on whom powers are conferred by law, e.g. Rajasthan Electricity Board, Cochin Devasom Board, Children Aid Society, etc. The Life Insurance Corporation, the Oil and Natural Gas Commission, the Delhi Transport Corporation, the Airports Authority and the Finance Commission have similarly been held to be 'State' under article 12.[32] Even a private body, it has been held, may be "State" covered by the term "other authorities" if it is entrusted with some public service responsibility as an agency or instrumentality of the State.[33]

On the other hand, the Supreme Court in Sabhajit Tewary v. India (AIR 1975 SC 1329) held that a body like the Council of Scientific and Industrial Research, registered under the Societies Registration Act, was not a 'state'. In another case, a registered society (Regional Engineering College) was held to be an 'authority' for purposes of article 12. Justice P. N. Bhagwati said:

The mandate of a corporation may be adopted in order to free the Government from the inevitable constraints of red tapism and slow motion but by doing so, the Government cannot be allowed to play truant with the basic human rights. Otherwise, it would be the easiest thing for the Government to assign to a plurality of corporations almost every State business such as Post and Telegraph, TV and Radio, Rail Road and Telephone-in short every economic activity-and thereby cheat the people of India out of the Fundamental Rights guaranteed to them.[34]

Earlier in Raman D. Shetty v. International Airports Authority (AIR 1979 SC 1628), the Supreme Court holding the Airports Authority in the category of "other authorities"

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31. See chapter 21 'Amendment of the Constitution'.
32. Electricity Board, Rajasthan v. Mohan Lal, AIR 1967 SC 1857; P.B.M.Namboodiripad v. Cochin Devasom Board, AIR 1956 SC 19; D.T.C. v. Mazdoor Congress, AIR 1991 SC 101; Sukhdev v. Bhagat Ram, AIR 1975 SC 1331.
33. Star Enterprises v. City & industrial Dev. Corp. Maharashtra (1990) 3SCC 280.
34. Ajay Hasia v. Khalid Mujib, AIR 1981 SC 481.

propounded the proposition that an 'instrumentality' or 'agency' of the Government would be regarded as an 'authority' or 'state' and also laid down some tests to examine the question, For example, the Courts may examine whether the body in question is wholly controlled by the Government in carrying out its functions. Is the entire share capital owned by the Government? Is the administration of the body controlled by the directors appointed by the Government and whether they are subject to Government control? Does the state exercise deep and pervasive control over the body? Or, does it enjoy monopoly status conferred or protected by the state? And so on. The list is not exhaustive but each case has to be decided by the Courts on whether the body in question falls within the purview of article 12. In regard to 'judiciary', the Supreme Court has held that even if a court is treated as 'state' a writ under article 12 cannot be issued to a High Court of competent jurisdiction against its judicial orders, because such orders cannot be said to violate the fundamental rights.[35]

The National Commission to Review the Working of the Constitution (2002), among others, recommended that:

(i) freedom of the press should be specifically mentioned as a fundamental right,

(ii) truth should be made admissible as a defence in contempt of court cases,

(iii) those deprived of life or liberty should have an enforceable right to compensation,

(iv) law must ensure the right to rural wage employment for a minimum of 80 days in a year,

(v) right of access to Courts and Tribunals should be guaranteed to everyone and should include the right to reasonably speedy and effective justice,

(vi) right to equal justice and free legal aid should become fundamental rights,

(vii) every child should have the right to care and assistance and the right of free education upto 14 years of age,

(viii) every one should be guaranteed safe drinking water, protection of environment, prevention of pollution and ecological degradation, promotion of conservation, use of natural resources etc.

[35]. Naresh v. State of Maharashtra, AIR 1967 SC 1; Tejinder Singh v. Petroleum Corp. (1986) 4 SCC 237; State of Punjab v. Raja Ram, (1981) 2 see 66; Sam Prakash v, Union of India, AIR 1981 SC 212. See also Subhash C. Kashyap, Constitutional Law of India, Universal, New Delhi, 2008, . Vol. I, pp. 401-425.

Module – IV
Right to Equality (Articles 14 to 18)

RIGHT TO EQUALITY

Equality before the law or Equal protection of the laws:

Article 14 of the Constitution enunciates the fundamental right of every person not to be denied "equality before the law" or the "equal protection of the laws" within the territory of India. Here the protection provided by the article is not limited to citizens only but is applicable to all persons. It embodies the principle contained in the Universal Declaration of Human Rights that" All are equal before the law and are entitled without discrimination to equal protection of the law". The two expressions" equality before the law" and "equal protection of the laws" used in our Constitution, in fact, embody the concepts of the rule of law and of equal justice. 'Law' in singular in the term 'equality before the law' means what Dicey meant by rule of law or the concept of law or of justice including the principle that no one is above law, that there is absolute supremacy of law as opposed to arbitrary power of Government and that there is one system of law and Courts for all. The word 'laws' in plural in the term' equal protection of the laws', on the other hand, clearly refers to statute law and the provision thereby enjoins the State to ensure that the laws that are made should provide equal protection to all without any distinction i.e. the laws passed by the legislature and their implementation by the executive should lead to non-discriminatory and equal protection to all. However, there has been no occasion for the Supreme Court to enunciate or appreciate any such distinction. In fact, it has been observed by Patanjali Sastri, Chief Justice, that the second expression is really a corollary of the first and it is difficult to imagine a situation in which the violation of the equal protection of the laws will not be the violation of the equality before the law. It is quite conceivable that there are laws which violate the' rule of law' or 'equality before law' principles. The founding fathers had not obviously forgotten what Gandhi meant by 'lawless laws',[36]

The guiding principle underlying article 14 is that all persons and things similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Laws should be applied to all in the same condition.[37]

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[36]. State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.

[37]. B.C. & Co. v. Union of India, AIR 1973 SC 106.

Not only should the laws be non-discriminatory for persons in the same condition but the processes of implementation by the administrative agencies should also not discriminate between them.[38]

The Supreme Court has held that the varying needs of different classes of persons often require separate treatment. Those who are not equal are not only allowed to be treated unequally but they have got to be so treated.[39] The maxim of equality before the law therefore leads to the inevitability of classification. For, article 14 applies where equals are treated differently without any reasonable basis. Where equals and unequals are treated differently, it does not apply. It thus forbids only class legislation but not reasonable classification. But it is necessary that the classification must not be "arbitrary, artificial or evasive" and should be based on some real and substantive distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation.[40] It can be based on the basis of geography or other objects or occupation.[41] Permissible classification, to be valid, must in fact fulfill two conditions, namely, (i) the classification must be founded on an intelligent differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question.[42] The test was followed in several cases since then, e.g. Chiranji Lal v. Union of India, AIR 1951 se 41; Budhan Choudhary v. State, AIR 1955 se 191; Ramkrishna Dalmia v. Justice Tendulkar, AIR 1958 se 538; Prabodh Verma v. State of U.P (1984) 4 see 251; Atam Prakash v. State of Haryana, AIR 1986 se 859; Rajpal Sharma v. State of Haryana (1985) Supp. see 72, 75.

In E.P Royappa v. State of Tamil Nadu (AIR 1974 se 555) the traditional concept of equality was challenged and a new approach to the right of equality under article 14 was propounded when Justice Chandrachud, and Justice Krishna Iyer observed:

Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and

38. Indian Express Newspapers v. Union of India, AIR 1986 se 319; Iron and Metal Traders v. Jaskiel, AIR 1984 se 629; G.J. Fernandez v. State of Karnataka, AIR 1990 se 958.
39. St. Stephens' v. University of Delhi, (1992) 1 sce 558; Chiranjit Lal v. Union of India, AIR 1951 se 41, as per Das J.
40. R.K. Garg v. Union of India, AIR 1981 SC 2138; Prabhakar Rao v. State of Andhra Pradesh, AIR 1986 SC 210.
41. Shashi Mohan v. State of West Bengal, AIR 1958 SC 194.
42. Das, J. in State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.

arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit that it is unequal both according to political logic and constitutional law and is therefore violation of article 14.

Justice PN. Bhagwati, concurring with this approach, speaking for himself and Justice Krishna Iyer observed:

Article 14 enunciates a vital principle which lies at the core of our republicanism and shines like a beacon light towards the goal of classless egalitarian socio-economic order which we promised to build for ourselves when we made a tryst with' destiny on that fateful day when we adopted our Constitution. If we have to choose between fanatical devotion to this great principle of equality and feeble allegiance to it, we would unhesitatingly prefer to err on the side of the former as against the latter.

He went on to say:

What the equality clause is intended to strike at are real and substantial disparities and arbitrary and capricious actions of the executive and it would be contrary to the object and intendment of the equality clause to exalt delicate distinctions, shades of harshness and theoretical possibilities of prejudice into legislative inequality or executive discrimination. (M. Chhaganlal v. Greater Bombay Municipality, AIR 1974 SC 2009, 2029 and 2039).

In later judgments[43] Justice Bhagwati became more forthright in his approach to article 14 which received unanimous approval of a Constitution Bench of the Court in the following words:

It must…now be taken to be well settled that what article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not paraphrase of article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question, is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, (of (i) intelligible differentia and (ii) rational relationship between the differentia and the object sought) the impugned legislation or executive action would plainly be arbitrary and the guarantee of equality under article 14 would be breached. Wherever, therefore, there is arbitrariness in state action whether it be of the legislative or of the executive or of an 'authority' under article 12, article 14

[43]. Maneka Gandhi v. Union of India, AIR 1978 SC 597; Ramana Dayaram Shetty v. International Airports Authority, AIR 1979 SC 1628; and Ajay Hasia v. Khalid Mujib, AIR 1981 SC 487.

immediately springs into action and strikes down such State action," (AIR 1981 SC 487).

Thus, the approach propounded by the Supreme Court has widened the scope of application of article 14.[44] It is clear that an arbitrary. or unreasonable action-any act which is so arbitrary or unreasonable that no fair minded authority could ever have made it-would be per se discriminatory and violative of article 14.[45]

Non-discrimination on grounds of religion, race, caste, sex or place of birth

While article 14 covers all persons and proclaims the general principle of equality before the law and equal protection of the laws, the subsequent articles 15 to 18 specify some areas for application of the general principle mostly in regard to the citizens of India.[46]

Article 15 is available only to citizens and enjoins the state not to discriminate against any citizen on grounds only of religion, caste, race, sex, place of birth or any of them. The use of the word" only" is significant. A discrimination based on one or more of these grounds and also on other ground or grounds would not be affected by the article,[47] nor would discrimination based on residence be invalidated.[48]

Clause (2) of the article provides for special application of the injunction which declares that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. The prohibition obviously covers actions both on the part of the State as well as the citizens at large.

Clauses (3), (4) and (5) of article 15 embody exceptions to the general principles of non-discrimination. They respectively empower the State to make special provisions for women and children and for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. The 93rd constitutional amendment assented to by the President on 20 January 2006 - added the new clause (5) which empowers Parliament to make special provisions by law for socially and educationally backward classes and for Scheduled Castes and Scheduled Tribes in

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44. A.L. Kalra v. Project and Equipment Corporation, (1984) 3 see 316, 328.
45. Shri Sita Ram Sugar Co. Ltd. v. Union of India, AIR 1990 se 1277.
46. State of Sikkim v. S.P. Sharma, JT (1994) 3Se 372.
47. Dattatraya v. State of Bombay, AIR 1953 BOM 311.
48. See D.P. Joshi v. State of Madhya Bharat, AIR 1955 SC 334.

regard to admission to educational institutions including private aided or unaided institutions other than minority institutions. The pronouncements of the Supreme Court on the validity of certain measures for protection of these sections of the society amply bear out the need and justification for these exceptions.[49] However, inspite of these special provisions, it has been held that the general prohibition under article 14 would nevertheless apply to such cases also; the special provisions which the State makes should not be arbitrary or unreasonable.[50]

The biggest problem raised by article 15(4) and (5) is regarding determination of who constitute the "socially and educationally backward classes". The Constitution does not define the term. Various factors would naturally come into play in evolving proper criteria for such determination. As held by the Supreme Court, the caste of a person cannot be the sole test for ascertaining whether a particular class is a backward class or not. In Chitralekha v. Mysore (AIR 1964 SC 1823) it ruled that though caste may be a relevant circumstance in ascertaining the backwardness of a class, there is nothing to preclude the authority concerned from determining the special backwardness of a group of citizens if it can do so without reference to caste. In another case the Supreme Court held that "caste and poverty may be both relevant for determining the backwardness. But neither caste alone nor poverty alone could be the determining test".[51]

Reservations for OBCs

The question of reservations on grounds of social and educational backwardness has assumed great significance and received considerable political attention in recent years. Intense pressure has been exerted for providing reservations for various classes and groups besides the Scheduled Castes and Scheduled Tribes. It is important to remember that while in the cases of the Scheduled Castes and the Scheduled Tribes, reservation is provided in legislative seats also, the reservations for OBCs as at present are intended to be confined to Government jobs and admission to educational institutions.

It must be acknowledged that basically any reservation would be discriminatory for it would violate the principle of equality and give a lower priority to merit, thus causing frustration to many a deserving candidate. The

[49]. See Yusuf Abdul Aziz v. State of Bombay, AIR 1954 SC 321; Girdhar v. State, AIR 1953 MB 147; State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.

[50]. See N. Vasundara v. State of Mysore, AIR 1971 SC 1439; State of Sikkim v. S.P. Sharma, JT (1994) 3SC 372; V.A. Sawant v. Municipal Corp. Bombay, JT (1994) 3 SC 573; State of A.P. v, Balram, AIR 1972 SC 1375; Jayashree v. State of Kerala, AIR 1976 SC 2381.

[51]. K.S. Jaysree v. Kerala, AIR 1976 SC 2381; Also see Chhotey Lal v. Uttar Pradesh, AIR 1979 All. 135.

validity of any reservation could therefore be tested on whether it was based on any rational and relevant criteria.

From time to time, the Supreme Court has indicated the types of classification which would be discriminatory. The Uttar Pradesh Government had made reservation of seats for admission to Medical Colleges in the State in favour of candidates hailing from the rural areas, Hill and Uttarakhand areas. The Supreme Court in State of U.P. v. Pradeep Tandon (AIR 1975 SC 563) held that while reservation for candidates coming from rural areas was unconstitutional, for those coming from the Hill and Uttarakhand areas was valid. It observed that these areas were instances of socially and educationally backward-class citizens. It held that reservation for 80 per cent of the State's population which was in 'rural areas' could not be a homogenous class by itself. Likewise, the Supreme Court declared the fixation of districtwise quota on the ratio of district population to the total population of the State as discriminatory.[52] In the Chandhala case, however, university-wise allocation of seats for admission to Medical Colleges in the State of Kerala was held to be valid.[53] Since then it has been decided to cover certain castes under the expression "socially and educationally backward classes" and provide reservations to them subject to total reservations not exceeding 50 per cent. In fact, in some states this quota is allowed to exceed 50 per cent by legislation e.g. in Tamil Nadu and Karnataka.

From time to time, the Supreme Court has indicated the types of classification which would be discriminatory.

In P. A. Inamdar and others v. State of Maharashtra the Supreme Court in its judgment of August 2005 abolished state quotas in private unaided professional colleges. This was followed by the government bringing forth before Parliament a Bill to amend the Constitution and the Constitution was amended for the 93rd time. Taking advantage of the constitutional amendment, the Union Government brought forth a legislation for reservation of seats not exceeding 50% in all for the socially and educationally backward classes and Scheduled Castes and Scheduled Tribes in institutions of higher learning and professional institutes like IIMs, IITs and Medical colleges including private ones whether aided or unaided. However, provision of reservation was not to apply to minority institutions.

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52. P. Rajendran v. Madras, AIR 1971 SC 2303.
53. D.N. Chandhala v. Mysore, AIR 1971 SC 1762; Also see Ajay Kumar v. State of Bihar, JT (1994) 3SC 662 holding reservation in medical colleges valid.

The legislation[54] generated a great deal of controversy, tension and protests particularly from the medical colleges, IITs, Management Institutes and other professional institutions. It is to be noted that the 93rd Amendment - article 15(5) - does not specifically provide for 'reservation' as such. It is only an enabling provision which empowers the legislature to lay down by law 'special provisions' in the matter of admission to 'educational institutions'. There is no particular mention of institutions of higher learning, universities or professional institutions as such. Educational institutions could also mean primary and secondary schools. Also, the 'special measures' could mean several measures other than reservation. In fact, article 15(4) already provided for' any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes'. Article 15(5) practically reproduces this provision with the addition of a specific reference to admission to educational institutions aided or unaided - and to pointedly exclude minority institutions from the effect of the special provision.

On 10 April 2008, the Supreme Court delivering its judgment in Ashok Thakur v. Union of India, put its stamp of approval on 27% reservations for OBCs in educational institutions subject to exclusion of creamy layer and a review of the quota every five years.

Equality of Opportunity in Public Employment

Under clauses (1) and (2) of article 16, all citizens of India are guaranteed equality of opportunity in matters relating to employment or appointment to any office under the State and no citizen can be discriminated against or be ineligible for any employment or office under the State on grounds only of religion, race, caste, sex, descent, place of birth or residence. The subsequent clauses (3), (4), (4A), (4B) and (5) however provide for situations when departures can be made from the general rule of equality of opportunity for, in effect, implementing the essence' of the principle of equality of opportunity. Thus, under clause (3), Parliament has been empowered to regulate the extent to which it would be permissible for a State or Union Territory to depart from or expand or supplement the general principles enunciated in clauses (1) and (2). By virtue of this power, Parliament passed the Public Employment (Requirement as to residence) Act, 1957 which while repealing all the laws in force prescribing any requirement as to residence within a State or Union Territory for any public employment, provided that no one will be

[54]. Central Educational Institutions (Reservation in Admission) Act 2006.

disqualified on the ground that one is not the resident of a particular State. The Act, however, made an exception in the case of Himachal Pradesh, Manipur, Tripura and the Telengana Area of Andhra Pradesh where residential qualifications were prescribed for a limited period not exceeding five years on grounds of the backwardness of the areas. In Narasimha Rao v. Andhra Pradesh (AIR 1970 SC 422), however, the Supreme Court declared part of the Act unconstitutional expressing the view that Parliament could impose a residential qualification in the whole State and not a part of it.

The basic principle in article 16 is that of equality of opportunity and non-discrimination in public employment. Clauses (1) and (2) state this principle. But, clauses that follow contain provisions allowing special advantages to certain sections of the people. The question is how to reconcile these opposites. In several cases upto the Devadasan v. UoI., the Supreme Court treated Clause (4), for example, as an exception to the general principle in Clauses (1) and (2) but subsequently in State of Kerala v. Thomas and Indra Sawhney v. U.O.I. (Mandal) Cases, the Supreme Court found that article 16 (4) was actually supportive of article 16 (1) and (2) or that it was only an extension or expansion of the general principle of equality and non-discrimination. It has however to be borne in mind that there are limits to the extent to which historical wrongs can be righted or compensated by the present generation. The need is to look forward and not backwards. Any policy that seeks to ameliorate the conditions of the backward classes in our society and make them, as early as a possible, worthy of competing with the others on terms of equality and non-discrimination, is unexceptionable and deserves to be appreciated as forward looking. On the other hand, any effort at compensating for past wrongs in perpetuity is bound to generate a vested interest in backwardness and smacks of an approach of looking backward and not forward. It seems governed not so much by any constitutional principles as by demands of vote bank politics.

Clause 4 as the second exception in article 16 empowers the State to make special provision for the reservation of appointments or posts in favour of any "backward class of citizens" which in the opinion of the State are not adequately represented in the services under the State. The clause however is only an enabling provision and no right or duty can be read into it.[55] But as held in the N.M. Thomas case (AIR 1976 SC 490), it is not an exception to the general principle in article 16(1) but an emphatic statement of equality of opportunity guaranteed under clause (1) which means

[55] Rajasthan v. Union of India, AIR 1968 SC 507

equality between members of the same class of employees and not equality between members of separate and independent classes. Thus, in the case of the Scheduled Castes and Scheduled Tribes who suffer from socio-economic backwardness, the fundamental right to equality of opportunity justifies separate categorisation for the purpose of "adequate representation in State services".[56] The courts, however held that article 16 (4) has to be read with article 335 inasmuch as the latter stated that while considering SC & ST claims maintenance of efficiency of administration must be kept in view.[57] Since then a proviso has been added to article 335 by the 82nd Amendment to clarify that it would be in order to provide for reducing the standards of evaluation and requirement of minimum marks for filling by promotion vacancies reserved for SC & ST in the services of the Union and the States.

The only condition for the exercise of the powers conferred by article 16(4) is that the State must be satisfied that any backward class of citizens is not adequately represented in the services. And, this condition may refer not only to the numerical inadequacy of representation in the services but also the qualitative one. In other words, the powers could be exercised not only to provide for reservation of appointments but also to provide for representation in selection posts as well as posts filled by promotion.[58] However, reservation should not be excessive and could not be taken to the extent of effacing the guarantee contained in article 16(1). In Devadasan v. Union of India (AIR 1964 SC 179) the Supreme Court when called upon to pronounce on the constitutionality of the "carry forward rule", held the rule ultra vires by a majority of four to one on the ground that the power vested in the State Government under article 16(4) could not be so exercised as to deny reasonable equality of opportunity in matters of public employment to members of classes other than backward. It declared that more than 50 per cent reservation of posts in a single year would be unconstitutional as it per se destroyed article 16(1).

The Mandal Commission had in its report recommended 27 per cent reservation for backward classes in view of the limit of 50 per cent imposed by the Supreme Court. In its judgment in what has come to be known as the Mandal case, the Supreme Court decided on 16 November, 1992 by a 6 to 3 majority that 27

[56]. A.B.S.K Sangh (Rly) v. Union of India, AIR 1981 se 298.

[57]. C&A G v. Jagannathan, AIR 1987 se 537; Devadasan v. Union of India, AIR 1985 se 983; KC. Vasant Kumar v. State of Karnataka AIR 1985 se 1495

[58]. General Manager S. Rly. v. Rangachari, AIR 1962 se 36; Comptroller and Auditor-General of India v. KS. Jagannath, (1986) 2 see 679.

per cent reservation of posts for the socially and educationally backward classes were in order provided that the advanced amongst them-lithe creamy layer"-were excluded from the list of beneficiaries, reservations were restricted to initial employment alone as article 16(4) did not permit any reservation in promotions, and the total reserved quota did not exceed 50 per cent except in some extraordinary situations. The court held that any reservation in promotions was invalid as "this would be a serious and unacceptable inroad into the rule of equality of opportunity" and would not be in the interest of efficiency of administration.

To meet the situation, article 16(4)(A) added by the seventy-seventh Constitution Amendment Act provided that in matters of promotion in services under the State in any category or categories, the State can make reservations for the Scheduled Castes and Scheduled Tribes. By adding a new clause (4B) to article 16, the Eighty-first Constitution Amendment Act (2000) however clarified that the unfilled reserved vacancies are to be treated as a separate class and are not to be included under the prescribed ceiling of fifty percent reservation of vacancies of the year. The Eighty-fifth Constitution Amendment (2001) further clarified that the employees so promoted shall also be entitled to consequential seniority. The Eighty-fifth Amendment came into operation w.e.f. 17 June 1995.

The term "backward class of citizens" has not been defined by the Constitution. But, since the emphasis in article 16(4) is on social and not economic backwardness, backward class cannot be identified only and exclusively with reference to economic criteria. The Court, therefore, struck down the notification which sought to reserve another 10 per cent posts for the economically backward sections not covered by any existing schemes of reservation. On the other hand, the Court held that a caste could quite often be a social class. "If it is socially backward, it would be a backward class for the purpose of article 16(4)". Also, several socially backward occupational groups, sects and denominations among the non-Hindus would also be covered by article 16(4). It would be incorrect therefore to say that the backward classes under article 16(4) were the same as the socially and educationally backward classes under article 15(4). Even though caste is mentioned in articles 15(2) and 16(2) as a prohibited ground of discrimination and the word used in articles 15(4) and 16(4) is "class", the majority judgment held that "identification of the backward classes can certainly be done with reference to castes among, and along with, other occupation groups, classes and sections of people". It, however, said that it may not be

advisable to provide for reservations in certain areas, e.g. in technical posts, research and development organisations, in specialties and super specialties in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and connected establishments. Reservations may also not be advisable in higher posts like those of professors in education, pilots in airlines, scientists and technicians in nuclear and space application etc.[59] In Kartar Singh v. the State of M.P. (1999) the Supreme Court disallowed lowering of qualifications for admission to super speciality medical course in favour of the reserved category candidates.

In Tamil Nadu, the total number of positions in the reservation quota far exceeded 50 percent. It was as much as 69 per cent. On the insistence of the Tamil Nadu government the Union Parliament had to pass the 76th Constitution Amendment to place the relevant Tamil Nadu law in the Ninth Schedule to the Constitution so that it became an entrenched law beyond judicial purview. Other States like Bihar, Orissa, U.P. and Karnataka were also proposing higher reservation quotas.

Another exception to the general rule of equality of opportunity in public employment is contained in clause 5 of article 16 which provides that a law may prescribe that the incumbent of an office in connection with the affairs of a religious or denominational institution, or a member of the governing body thereof shall belong to the particular religion or denomination.

Abolition of Untouchability

Article 17 abolishes "untouchability" and forbids its practice in any form. If practiced, it shall be treated as an offence punishable in accordance with law. The objective of the article was to end the inhuman practice of treating certain fellow human beings as dirty and untouchable by reason of their birth in certain castes.[60] The Supreme Court has held that the fundamental right against untouchability guaranteed in this article is available against private individuals and it is the constitutional duty of the State to take necessary steps to see that this right is not violated.[61]

Most importantly, it is the bounden duty of every citizen to ensure that untouchability is not practiced in any form. The Untouchability (Offences) Act, 1955 later modified to read as the Protection of Civil Rights Act, 1976 provided for punishment of offenders.

Abolition of Titles

[59]. Indra Sawhney v. Union of India, AIR 1993 SC 477.

[60]. Devarajiah c. Padmanna, AIR 1961 Mad 35.

[61]. People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

Article 18 prohibits the State to confer titles on anybody, whether an Indian citizen or a foreign national. An exemption has however been made in the case of Military and academic distinctions. Under clause (2) of the article, a citizen of India has also been prohibited from accepting any title from a foreign State. Clause (3) provides that a foreigner holding any office of profit or trust under the State cannot accept any title from a foreign State without the permission of the President. And under clause (4) no person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, employment, or office of any kind from or under any foreign State.

A question had arisen whether the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri civilian Awards conferred by the President on Republic Day for outstanding meritorious service were violative of article 18 of the Constitution. Under stay orders from the Supreme Court, no awards were announced for several years. Awards have since been resumed. The Supreme Court has held that these awards are not titles within the meaning of article 18 and that if any awardee uses the award as a title by suffixing or prefixing it with his or her name, he should forfeit the award.[62]

[62]. Balaji Raghavan v. Union of India, AIR 1996 SC 770

Module – V
Right to Freedom I (Article 19)

RIGHT TO FREEDOM

Article 19 of the Constitution specifically guarantees to the citizens of India six basic freedoms, viz. of speech and expression, of 'peaceable assembly, without arms', 'to form associations', of 'movement throughout the territory of India', of 'residing and settling in any part of India', and of 'practicing any profession and carrying on any occupation, trade or business'. These freedoms are recognised as the 'natural rights inherent in the status of a citizen'.[63] This enumeration of the freedoms has however been held to be not exhaustive by the courts for the full enjoyment of the democratic values of a free citizen. In their decisions, the courts have held several other freedoms also as necessary concomitants for a democratic polity even though they are not specifically mentioned in article 19,[64] as for example, the freedom to live,[65] to vote and contest election,[66] freedom of the Press,[67] the Government servants' right to continue in employment,[68] the right to strike,[69] the right to know.[70]

The right to the protection of the six freedoms against State action is available to all citizens. Not being citizens, corporations cannot invoke the article.[71] But the shareholders who are citizens have rights.[72] Article 19 does not confer an absolute or unlimited right. As observed by J. Das, "social interest in individual liberty may well have to be subordinated to other greater social interests".[73] Thus, clauses 2 to 6 of article' 19 empower the State to impose "reasonable" restrictions on the exercise of this right by enacting proper legislation "in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence". It is necessary that the restrictions imposed by law

63. State of W. Bengal v. Subodh Gopal Bose, AIR 1954 SC 92, 95.
64. Maneka Gandhi v. Union of India, AIR 1978 SC 597.
65. Jagmohan Singh v. State of U.P., AIR 1973 SC 947.
66. N.P. Punnuswami v. Returning Officer, AIR 1952 SC 64, 71.
67. Brij Bhushan v. State of Delhi, AIR 1950 SC 129.
68. P. Balkotiah v. Union of India, AIR 1958 SC 232, 238.
69. Radhey Shyam Sharma v. P.M.G., Nagpur, AIR 1965 SC 311, 313.
70. L.K. Koolwal v. State of Rajasthan, AIR 1988 Raj 2.
71. Khoday Industries v. State of Tamilnadu, AIR 1990 Mad 124.
72. D.C.M. v. Union of India, AIR 1974 SC 937.
73. A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

must be reasonable and not arbitrary or of excessive nature and the onus of proving it to the satisfaction of the court lies with the State.[74] The harsher the restriction, the heavier the onus to prove the reasonableness.[75]

Since the Constitution does not define the expression "reasonable restrictions", each case has to be judged on its own merits. The test could be the underlying purpose of the restrictions imposed, the extent, urgency and proportion of the evils sought to be remedied thereby, the prevailing conditions at the time and the duration of the restrictions.[76] The standard is really an elastic one and varies with time, space and condition from case to case.[77] The reasonableness of restrictions has to be determined not on abstract considerations but in an objective manner and from the point of view of persons upon whom the restrictions are imposed.[78] It is the effect of a law which really constitutes the test of its reasonableness; its object, whether good or bad is immaterial for this purpose. And, not only substantive but the "procedural provisions of a statute also enter the verdict of its reasonableness".[79] The restrictions must strike a proper balance between the freedoms guaranteed under article 19(1) and the social control permitted by clauses' (2) to (6) of article 19.[80] The restrictions imposed in carrying out the Directive Principles of State Policy have been held to be in favour of their reasonableness.[81]

Freedom of Speech and Expression

Freedom of speech and expression is a sine qua non of the functioning of a democratic polity. Democracy means a government by persuasion and unless there is freedom for discussion of political as well as other matters, the polity could not be termed democracy. And, as a natural corollary, the term includes freedom of the press as well. Its import has been succintly brought out by Justice Patanjali Sastri in the following words:

Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free p6litical discussion no public education, so essential for the proper functioning of the process of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have

74. Khyerbari Tea Co. v. State of Assam, AIR 1964 SC 925
75. Saghir Ahmed v. State of U.P., AIR 1954 SC 728, 738
76. State of Madras v. VG. Rao, AIR 1952 SC 196
77. Golak Nath v. State of Punjab, AIR 1967 SC 1643, 1655
78. Ranif Quareshi v, State of Bihar, AIR 1958 SC 751
79. N.B. Khare v, State of Delhi, AIR 1950 SC 211; Also see Kishan Chand Arora v, Commissioner of Police, AIR 1961 SC 705
80. Dwarkti Prasad Lakshmi Narain v. State of U.P, AIR 1954 SC 224, 227.
81. State of Bombay v. EN. Balsara, AIR 1951 SC 318, 328.

reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, that it is better to leave a few of its noxious branches to their luxuriant growth than by pruning them away, to injure the vigour of those yielding the proper fruits.[82]

Article 19(1)(a) guarantees to every Indian citizen the right to freedom of speech and expression. Though it does not specifically refer to the freedom of the press, this right has been held to be included in the right to freedom of speech and expression.

Freedom of the Press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate".[83]

This means that every citizen is free to express his views, beliefs and convictions freely and without inhibitions by word of mouth, through writing, printing, picturising or in any other manner.

Thus, imposition of free censorship on a newspaper[84] or prohibiting it from publishing its own views or those of its correspondents on a burning topic of the day would constitute a violation of the right to freedom of speech and expression.[85] The right is enjoyed by the citizens not only within the territory of India but also beyond its borders.[86] Freedom of the Press is regarded as the "mother of all liberties" in a democratic society but it is not absolute and unfettered. An unrestricted freedom of speech and expression would amount to an uncontrolled license and could lead to disorder and anarchy. The freedom is not to be misunderstood by the press so as to disregard its duty to be responsible. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by Court of Law. Some restrictions are, therefore essential even for preservation of the freedom of the Press itself.[87] The National Commission to Review the working of the Constitution (2002) recommended that freedom of the press be specifically included under article 19(1)(a).

Telephone tapping unless it comes within the grounds of restrictions under article 19(2) would infringe article 19 (1) (a) of the Constitution.[88] A government employee cannot seek the protection of article 19(1) against his

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82. Romesh Thapar v. State of Madras, AIR 1950 SC 124,128.
83. Express Newspapers (P) Ltd. v. Union of India, AIR 1958 SC 578; Indian Express Newspapers v. Union of India, (1985) 1 see 641.
84. Brij Bhushan v. State of Delhi, AIR 1950 SC 129.
85. Virendra v. Punjab, AIR 1957 SC 896.
86. Bhagwati, J. in Manekn Gandhi v. Union of India, AIR 1978 SC 597.
87. In reo Harijai Singh, In reo Vijay Kumar, AIR 1997 SC 73.
88. People's Union for Civil Liberties v. Union of India, AIR 1997 SC 568.

dismissal on account of misconduct in publicly making allegations against head of his organisation.[89]

Reasonable limits or restrictions can be imposed on the exercise of the right to freedom of speech under article 19(2) in the interests or on the grounds of: (i) Security of the State, (ii) Friendly relations with foreign countries, (iii) Public Order, (iv) Decency or morality, (v) Contempt of court, (vi) Defamation, (vii) Incitement to offence, and (viii) Sovereignty and integrity of India.

Right to Information: Article 19(1)(a) has been construed to include the right to know or to seek information. The Right to Information Act 2005 specifically confers on all citizens the right to access information and makes it obligatory for all public authorities to disclose official information only subject to certain essential restrictions. The Act aims at promoting openness, transparency and accountability in administration.

Security of the State: Security of the State refers only to "serious and aggravated forms of public disorder". In other words, rebellion, waging war against the State, insurrection etc. are most likely to threaten the security of the State. Thus, expression of views or making of speeches which tend to incite or encourage the people to commit violent crimes like murder, would constitute reasonable grounds for imposition of restrictions under article 19(2).[90] Making a speech which tends to overthrow the State can be made punishable.[91] Though 'public order' was added as a ground for imposing restrictions through the 1951 Constitution Amendment, ordinary breaches thereof like unlawful assembly, riot etc. would remain outside the purview of clause (2).

Friendly relations with foreign countries: This ground for imposing restrictions on freedom of speech and expression was brought in by the Constitution (First Amendment) Act, 1951 with a view to avoiding embarrassment to India through persistent and malicious propaganda. The ground, however has been criticized for being susceptible of supporting regulation curbing even criticism of the Government's foreign policy.

Public Order: This ground too was added by the 1951 Amendment to overcome the situation arising out of the Supreme Court judgment in Romesh Thapar v. State of Madras (AIR 1950 SC 124) wherein it was held that ordinary or local breaches of public order were no grounds for imposing restrictions on the freedom of speech and expression, observing that "public order" was an expression of wide connotation and signified "that state of

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89. M.H. Devendrappa v. Karnataka State Small Industries Development Corporation, AIR 1998 SC 1064.

90. State of Bihar v. Shailbala Devi, AIR 1952 SC 329.

91. Santosh Singh v. Delhi Administration, AIR 1973 SC 1091.

tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established"

Decency or Morality: With no clear meanings and the perceptions changing in regard thereto from time to time, these terms have obviously been included as grounds for imposing restrictions on the freedom of speech and expression mainly to safeguard the society from depraved and corrupt actions or behaviour. Sections 292-294 of the Indian Penal Code which indicate the scope of indecency or obscenity were upheld because "the law against obscenity seeks no more than to promote public ,decency and morality."[92] The Supreme Court in the instant case had followed the test laid down in the English case of R. v. Hicklin, (LR 3 QB 360) holding Lady Chatterley's Lover as an obscene book, as it had the tendency to corrupt the mind of those who read it. The term 'morality' in clause (2) has to be given a wider meaning to include not only 'public morality' but 'morality as understood by the people as a whole'.[93] Contempt of Court: The underlying idea for this ground for imposing restrictions is to preserve the authority of courts in punishing for their contempt. In Parashuram v. King (1945 AC 264) it was observed that contempt power is a power which the court must, of necessity, possess but its usefulness depends upon the wisdom and restraint with which it is used. The power of courts to punish for their own contempt has been considerably modified in U.K., U.S.A. and other countries. The Phillimore Committee in U.K. recommended that truth in public benefit should be admissible as a defence in a charge of contempt. In U.S.A. contempt plea is admissible only in cases of 'clear and present danger to administration of justice.'

Articles 129 and 215 of our Constitution empower the Supreme Court and the High Courts respectively to punish for their respective contempt. The Contempt of Courts Act 1971 seeks to codify the Indian Law of Contempt of Court. The Supreme Court has upheld the law of contempt under article 129 as reasonable under article 19(2).[94] Since contempt jurisdiction is exercised in certain cases contrary to the dictum that no one should be a judge in his own case, judges have to be careful. Public' criticism of a judgment cannot be stifled so long as it is fair, reasonable and legitimate. The conduct of a judge in his judicial capacity can also be subject of a fair and proper comment.[95] Path of justice is not strewn with roses and Justice is not a cloistered

[92]. Ranjit Udeshi v. Maharashtra, AIR 1965 SC 881.

[93]. Manohar v. Maharashtra, AIR 1984 BOM 47.

[94]. C.K. Daphtary v. G.P. Gupta, AIR 1971 SC 1132.

[95]. Rama Dayal Markarha v. State of M.P., AIR 1978 SC 922.

virtue and she must be allowed to suffer the scrutiny and be respectful, even though outspoken, comments of ordinary men.[96] In E.M.S. Namboodiripad v. T.N. Nambiar (AIR 1970 SC 2015) the Court observed that freedom of speech shall always prevail except where contempt of court is manifest, mischievous or substantial. Justice Krishna Iyer laid down the principle in Barada Kant v. Registrar Orissa High Court (AIR 1974 SC 710) thus: *The cornerstone of the contempt law is the accommodation of two constitutional values - the right to free speech and the right to independent justice. The ignition of contempt action should be substantial and malafide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel.*

In re Mulgaonkar (AIR 1978 SC 72) Justice Iyer asserted that the keynote was to be 'justice' and not 'judge' and that activist efforts at judicial reforms should not be stalled under contempt action. The Supreme Court also suggested some guidelines for action under the contempt of court law. The Court took a liberal view of the law of contempt in M.R. Parashar v. Farooq Abdullah (AIR 1984 SC 615) also and said:

Bona fide criticism of any system or institution is aimed at inducing the administration of that system or institution to look inwards and improve its public image. Courts do not like to assume the posture that they are above criticism and that their functioning needs no improvement.[97]

The National Commission to Review the Working of the Constitution (2002) found that under the law of contempt as it stood and as it was interpreted (e.g. in Dr. Saxena case) even truth could not be pleaded as a defence to a charge of contempt of court. The Commission recommended that a proviso be added to article 19(2) to say that in matters of contempt it shall be open to the court to permit a defence of justification by truth on satisfaction as to the bona fides of the plea and it being in public interest.

Since then the contempt of Courts Act, 1971 has been amended (2006) to allow truth as a defence against contempt charges. It is, however doubtful whether, in the absence of a constitutional amendment as recommended by the Constitution Commission, the law would be deemed binding on the Supreme Court and the High Courts.

Defamation: The right to free speech and expression does not entitle a citizen to defame a person. The constitutional validity of Section

[96]. Perspective Publications v. State of Maharashtra, AIR 1971 SC 221.

[97]. Also see Conscientious Group v. Md. Yunus (AIR 1987 SC 145); P.N. Duda v. Shiv Shankar (AIR 1988 SC 1208); and In reo Dr. D.C. Saxena Contemnor v. Hon'ble Chief Justice. of India, AIR 1996 SC 2481.

499 of the Indian Penal Code which defines the law of defamation as exposing a man to hatred, ridicule or contempt has been upheld by the courts. The press is also subject to the defamation law.[98]

Incitement to an offence: This ground for restricting freedom of speech and expression was also added in 1951. The Supreme Court has taken the view that incitement to murder or other violent crimes would generally endanger the security of the State. Hence a restriction imposed on this ground would be valid under article 19(2).[99]

Sovereignty and integrity of India: This ground for imposing restrictions on the right to freedom of speech and expression was added by the Sixteenth Amendment in 1963 so as not to permit anyone to challenge the integrity or sovereignty of India or to preach cession of any part of the territory of India.

Freedom to Assemble

Meetings, processions and demonstrations are inevitable corollaries of a democratic system. The people can be informed, educated or persuaded only through such exercises. Article 19(1)(b) secures to all citizens bf India the right "to assemble peaceably and without arms". This consequentially leads to the conferment of the right to hold public meetings and demonstrations and take out processions peacefully.[100] The two inherent restrictions for any assembly are of remaining peaceful and to be unarmed. In addition, under clause (3), reasonable restrictions can be imposed on the right by the State by law "in the interests of the sovereignty and integrity of India or public order" as may be deemed necessary from time to time. Thus, an assembly declared unlawful can be validly banned and the people thereof ordered to be dispersed.

Freedom of Association

Article 19(1)(c) guarantees to all citizens the right to form associations and unions for pursuing lawful purposes. Under clause 4 of the article, however, reasonable restrictions can be imposed by the State "in the interests of the sovereignty and integrity of India or public order or morality". The associations so formed would include political parties, societies, clubs, companies, organisations, partnership firms, trade unions and indeed any body of persons. There is complete liberty to form associations for lawful purposes subject to reasonable restrictions. The Supreme Court has held that even a liberal interpretation of article 19(1)(c) cannot mean that the trade unions have a guaranteed right to strike. The right to strike

98. Printers Mysore v. Asstt. Comm. Law Officer, JT (1994) ISC 692.
99. State of Bihar v. Shailabala Devi, AIR 1952 SC 329.
100. Babulal v. State of Maharashtra, AIR 1961 SC 884.

can be controlled by appropriate industrial legislation.[101] Similarly, nobody can be compelled to become a member of a Government sponsored union.[102]

Freedom of Movement and Residence

The right of every citizen of India "to move freely throughout the territory of India" and his right "to reside and settle in any part of the territory of India" guaranteed under clauses (d) and (e) respectively of article 19(1) are really interlinked. Both the rights lay stress on the oneness of the territory of India. Any citizen can travel to or reside in any part of India Clause 5 of article 19 however, provides for imposition of reasonable restrictions on the exercise of either of them by law "in the interests of the general public or for the protection of the interests of any Scheduled Tribe". Both the rights get affected whenever restrictions are placed on the movement or residence of a citizen. Generally, the protection afforded by these rights is invoked to challenge the validity of externment or deportation orders which go to curtail the two freedoms. In N.B. Khare v. State of Delhi (AIR 1950 SC 211), the Supreme Court held that the mere fact that the externment order depended on the subjective satisfaction of the Executive, and there was no provision for judicial review in the impugned Act, did not render it invalid. In another case the court ruled that a law which subjected a citizen to the extreme penalty of a virtual forfeiture of his citizenship upon conviction for a mere breach of the permit regulations (under the Influx from Pakistan (Control) Act, 1949) or upon a reasonable suspicion of having committed such breach could hardly be justified upon the ground that it imposed a reasonable restriction in the interests of the general public.[103] Restrictions to protect the interests of the Scheduled Tribes have been provided keeping in view mostly the aboriginal tribes which have their own distinct culture, language and customs. Unrestricted entry of outsiders in the areas inhabited by the tribal people might jeopardize their interests.[104] Restrictions imposed on prostitutes to carryon their trade within a specified area and to reside in or move from particular areas have been held to be valid.[105] Likewise, restrictions on residence imposed on habitual offenders have been upheld by the courts as being reasonable.[106] Restrictions on the movements

[101]. All India Bank Employees Association v. The National Industrial Tribunal, AIR 1962 SC 171; Delhi Police Sangh v. Union of India, AIR 1987 SC 379.

[102]. Raghubar Dayal v. Union of India, AIR 1962 SC 263.

[103]. Ebrahim Wazer Mavat v. State of Bombay, AIR 1954 SC 229.

[104]. Ohan Bahadur Ghorti v. State, AIR 1953 ASS. 61.

[105]. State of U.P v. Kaushalya, AIR 1964 SC 416.

[106]. Arumugham v. State of Madras, AIR 1953 Mad. 664.

of persons afflicted by AIDS have been held by the Bombay High Court to be valid.[107]

Freedom of Profession and Trade

Under article 19(1)(g) every citizen of India has the right to practice any profession or to carryon any occupation, trade or business. The right to carry on a business includes the right to close it any time the owner likes.[108] Thus no citizen can be compelled to carryon business against his will. In Excel Wear v. Union of India[109] the court held that refusal or approval for closure of a business was invalid when the owner could not pay even the minimum wages to his employees.

As in the case of the various rights to freedom, right to trade and profession is also not absolute and the State can impose reasonable restrictions on the exercise of this right too "in the interests of the general public". For example, there could be no fundamental right to carry on trade or business in noxious, hazardous or dangerous goods like intoxicating drugs or liquors, adulterated foods etc. or to indulge in trafficking in women or children.

Under clause 6 of article 19, the State has also been empowered to prescribe professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, as well as for enabling the State to carryon any trade or business to the exclusion of citizens wholly or partially. In fact, the State is competent to nationalize any trade or business wholly or partially to the exclusion of all citizens. In the Excel Wear case the court held that while there may be greater emphasis on nationalization and State ownership of industries, private ownership of industries is recognised and private enterprise forms an overwhelmingly large proportion of India's economic structure. Limited companies having shareholders own a large number of industries. There are creditors and depositors and various other persons having dealings with the undertakings. Socialism cannot go to the extent of ignoring the interests of all such persons.[110] Nevertheless, the State is not required to justify its trade monopoly as a 'reasonable' restriction or as being in the interests of the general public.[111] In fact, no objection can be taken under article 19(1)(g) if the State carries on a business either as a monopoly, complete or partial, to the exclusion of all or some citizens only, or in competition with any citizen.

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107. Lucy v. State of Goa, AIR 1990 Born. 355.
108. Hathisingh Mfg. Co. v. Union of India, AIR 1960 SC 923.
109. AIR 1979 SC 25
110. AIR 1979 SC 36; New Bihar Biri Leaves Co. v. Bihar, AIR 1981 SC 679.
111. Saghir Ahmed v. State of U.P., AIR 1954 SC 728; P T Society v. KT.A.,AIR 1960 SC 801.

Module – VI
Right to Freedom II (Articles 20 to 22)

Protection in Respect of Conviction for Offences

Under article 20, the Constitution has taken care to safeguard the rights of persons accused of crimes. This article has been considered so important that the Forty-fourth Amendment provides that it cannot be suspended even during an Emergency by an order under article 359.

Ex-post facto law: According to clause 1 of article 20, "no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence". Thus the Legislature is prohibited to make criminal laws having retrospective effect. This protection against ex post facto law provides immunity to the person liable for being convicted under it[112] though the immunity cannot be claimed against preventive detention[113] or against demanding security from a person.[114] It has also to be borne in mind that the protection granted under article 20(1) will apply only in cases of conviction for criminal offences but would not cover trial[115] nor is a person protected for civil liability.[116] The word 'penalty' is in fact used in a narrow sense in clause (1) as meaning a payment which has to be made or a deprivation of liberty which has to be suffered as a consequence of finding that the person accused of a crime is guilty of the charge.[117]

Double jeopardy: Clause (2) of article 20 incorporates the doctrine of "double jeopardy" inasmuch as it is emphatic that "no person shall be prosecuted and punished for the same offence more than once". The words "prosecuted" and "punished" have to be read together to invoke the protection. The principle has of course been already recognised in the existing law, i.e. vide Sec. 26 of the General Clauses Act and Section 300 of the Criminal Procedure Code. The protection afforded by clause (2) is, however, attracted only in respect of the punishment inflicted by a court of law or

[112]. Maharashtra v. K.K. Subramanian Ramaswamy, AIR 1977 SC 2091.
[113]. Prahlad v. Bombay, AIR 1952 Born. 1.
[114]. State of Bihar v. Shailbala, AIR 1952 SC 329.
[115]. Shiv Bahadur Singh v. State of Madhya Pradesh, AIR 1963 SC 394; Union of India v. Sukuman Pyre, AIR 1966 se 1206; G.P. Nayyar v. State, AIR 1979 SC 602.
[116]. Jawala Ram v. State of PEPSU, AIR 1962 SC 1246; SCC also State of W.B. v. S.K. Ghosh, AIR 1963 SC 255.
[117]. See Shiv Dutt Rai Fateh Chand v. India, AIR 1984 SC 1194; R.S. Joshi v. Ajit Mills Ltd. (1977) 4 SC 98.

judicial tribunal. It does not immunize a person from proceedings which are not before a court of law. Thus, a Government servant prosecuted and convicted by a court of law can nonetheless be punished under departmental proceedings for the same offence.[118] Similarly, a person punished departmentally may be prosecuted in a court of law.[119] Also, since the operation of article 20(2) is limited to indictment before a criminal court, it does not ban proceedings before a civil court for disobedience of an injunction along with criminal proceedings, as the former are not in the nature of criminal proceedings.[120]

Prohibition against self-incrimination: Under the canons of common law criminal jurisprudence, a person is presumed to be innocent; the prosecution must establish his guilt. Secondly, a person accused of an offence need not make any statement against his will. These principles are embodied in clause (3) of article 20 which lays down that No person accused of any offence shall be compelled to be a witness against himself.

This privilege to an accused person contains three components, viz., that he has a right of protection against "compulsion to be a witness", and against such compulsion resulting in his giving evidence" against himself". In other words, the accused person is protected against incriminating himself under compulsion, e.g. making" a statement which makes the case against the accused person at least probable considered by itself". Compulsion in this context would mean "duress".[121] In the Nandini Sathpathy case[122] the court held that "relevant replies which furnish a real and clear link in the chain of evidence indeed to bind down the accused with the crime become incriminatory and offend article 20(3) if elicited by pressure from the mouth of the accused". It widened the scope of compulsion and held that “compelled testimony" is evidently procured not merely by physical threats or violence but also by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative proximity, overbearing and intimidating methods and the like. The court also laid down some guidelines for the police authorities for due observance, e.g. the accused must be informed that he has a right to call a lawyer before answering to any of their questions.[123]

Clause (3) of article 20, however only gives a privilege to the accused person which may be waived by him if he so likes. The

[118]. Motising Chhagansing Voghela v. S.D. Mehta, AIR 1966 Guj 233.
[119]. Venkataraman v. Union of India, 1954 SC 375.
[120]. Bachcha Lal v. Lalji, AIR 1976 All. 393.
[121]. State of Bombay v. Kathi Kolu Oghad, AIR 1961 SC 1808, 1816.
[122] (AIR 1978 SC 1025)
[123]. Nandini Sathpathy v. PL. Dani, AIR 1978 SC 1025.

article is not violated when he volunteers evidence against himself.[124]

The immunity granted to the accused does not extend to compulsory production of material objects or compulsion to give specimen writing, specimen signature, finger impression or compulsory exhibition of the body or giving of blood specimens.[125] Also, compulsion for production of documents is prohibited only if the documents convey the personal knowledge of the accused relating to the charge.[126]

Search of the premises of a person accused of an offence under a search warrant and seizure of documents are not violative of article 20(3) as a search warrant is issued to a police officer and so the search and seizure cannot be regarded as the acts of the occupier of the premises in question but of another to which the occupier is obliged to submit and are not therefore his testimonial acts in any case.[127] If any document is recovered as a result of the search and seizure, it can be produced in the courts as an evidence against the accused as he is not compelled to give evidence against himself.[128]

[124]. Laxmipat Chorasia v. Maharashtra, AIR 1968 SC 938.
[125]. See Destogir v. State of Madras, AIR 1960 SC 756.
[126]. State of Bombay v. Kathi Kolu, AIR 1961 SC 1808, 1816.
[127]. M.P Sharma v. Satish, 1954 SC 300, 306.
[128]. VS. Kuttan Pillai v. Ram Krishan, AIR 1980 SC 185.

Protection of Life and Personal Liberty

Article 21 of the Constitution guarantees that no person shall be deprived of his life or personal liberty “except according to procedure established by law". This right is available to the citizens as well as non-citizens. In the famous Gopalan case, 'personal liberty' was held to mean only liberty relating to or concerning the person or body of the individual. Also, it covered protection only against arbitrary executive action.[129]

But, later on, its ambit was widened to say that the 'procedure established by law' had to be just fair and reasonable. It must include protection against legislative action also and to cover within itself all the varieties of rights which go to make up the personal liberty of man, other than those provided in article 19(1). In Maneka Gandhi v. Union of India[130], the Supreme Court in fact over ruled the Gopalan's case expressing the view that the attempt of the Court should be to expand the reach and ambit of the Fundamental Rights rather than to attenuate their meaning and context by a process of judicial construction.

It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with

[129]. A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
[130] (AIR 1978 SC 597)

human dignity[131]. Elaborating this view in Francis Coralie v. Union Territory of Delhi[132] the Court said that the right to live is not restricted to mere animal existence. The Court further held that non-payment of minimum wages to the workers amounted to denial of their right to live with basic human dignity and violated article 21.[133] In the case popularly known as the Pavement Dwellers' case, the Supreme Court observed that the word 'life' in article 21 included the 'right to livelihood'. It said that if the right to livelihood was not treated as a part of the constitutional right to life the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood There-fore, right to livelihood is an integral facet of the right to life.[134]

In the various cases which came up before the Supreme Court, this liberal outlook and thinking has been all along sustained. Thus, it has been held:

- that imprisonment of a poor person for non-payment of debts amounted to deprivation of his personal liberty[135];
- that under the Bonded Labour System (Abolition) Act, 1976 it is not enough merely to identify and release bonded labourers but it is more important that they should be suitably rehabilitated to meet the plainest requirement of article 21[136];
- that section 309 I P C is ultra vires the Constitution as a person cannot be forced to enjoy the right to life to his detriment[137];
- that the expression 'life' is not limited to bodily restraint or confinement to prison but something more than mere animal existence[138]; that the 'right to privacy'-by itself-has not been identified under the Constitution but the right to converse on telephone without interference cij-n certainly be claimed as "right to privacy". Telephone tapping would infract article 21 unless permitted by law[139]; right to privacy would have to go through a process of case by case development[140]; this right is available even to a woman of easy virtue, and no one can invade her

[131] (AIR 1978 SC 597)
[132] (AIR 1981 SC 746)
[133]. People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.
[134]. Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180; Narendra Kumar v. State of Haryann, JT (1994) 2 SC 94.
[135] (folly George Verghese v. Bank of Co chin, AIR 1980 SC 470)
[136] (Neerja Choudhari v. State of M.P., AIR 1984 SC 1099)
[137] (P Rathinam N. Patnaik v. Union of India, JT (1994) 3SC 392)
[138] (Kharak Singh v. State of U.P, AIR 1963 SC 1295)
[139] (People's Union of Civil Liberties v. Union of India, AIR 1997 SC 568)
[140] (Govind v. State of M.P, AIR 1975 SC 1379)

privacy[141]; that handcuffing is permissible only in extraordinary circumstances[142]; the police and the jail authorities on their own shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport and in case of extraordinary circums tances necessitating handcuffing special orders of the Magistrate must be obtained[143];

- that public hanging of a convict is violative of article 21[144];
- that so long as surveillance by police officers is for the purposes of preventing crimes and confined to the limits prescribed by law, a person cannot complain against the inclusion of his name in the surveillance register but if it is excessive and goes beyond the prescribed limits, its validity may be challenged as infringing the right of privacy of a citizen as his fundamental right to personal liberty under article 21 and 'freedom of movement under article 19(1)(d)[145];
- that persons kept in jail without being charged or tried must be released[146];
- that an undertrial prisoner already in jail for a period more than the maximum awardable for the offence he is chargeq. of must be released[147];
- that refusal to grant bail in a murder case without reasonable ground would amount to deprivation of personal liberty under article 21[148];
- that protection of article 21 is available even to convicts in jails and the prisoners cannot be subjected to torture etc.[149];
- that arrestee subjected to inhuman treatment during police custody should be paid compensation by the State, the quantum of compensation depending upon the facts in each case[150];
- that if by imposing solitary confinement there is total deprivation of camaraderie amongst co-prisoners, coming and talking

[141] (State of Maharashtra v. MadhulkarNarain, AIR 1991 SC 207)
[142] (Sunil v. State of M.P, (1990) 2 SC 409
[143] (Citizens for Democracy v. State of Assam, AIR 1996 SC 2193)
[144] (Attorney-General v. Lachma Devi, AIR 1986 SC 467)
[145] (Malak Singh v. State of Punjab, AIR 1981 SC 760)

[146] (Mathews v. State of Bihar AIR 1984 SC 1854; Kamladevi v. State of Punjab, AIR 1984 SC 1895)
[147] (Hussainara v. State of Bihar, AIR 1979 SC 1369, 1377, 1819; RD. Ram v. State of Bihar, AIR 1987 SC 1333)
[148] (Babu Singh v. State of U.P., AIR 1978 SC 527)
[149] (D.B.M. Patnaik v. State of AP., AIR 1974 SC 2092; Javed v. 'State of Maharashtra, AIR 1985 SC 231; Sher Singh v. State of Punjab, AIR 1983 SC 465
[150] (D.K. Basu v. State of WB., AIR 1997 SC 610)

and being talked to, it would offend article 21[151];

- that speedy trial is a component of personal liberty[152];
- that a detenu can be subjected only to such restrictions on his personal liberty as are authorised by or under the law of preventive detention; imposition of any unauthorised restriction will violate article 21[153];
- that the 'right to travel abroad' is part of a person's 'personal liberty' which is a comprehensive term and a citizen's passport cannot be impounded for an indefinite period of time.[154];
- that it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting for legal formalities to be complied with by the police under Cr. P.C.[155]; failure to give timely medical treatment to a seriously injured person is violation of his right to life[156];
- that when one seeks relief for breach of Article 21, one must confine oneself to some direct, overt and tangible act which threatens the fullness of life or the lives of others in the community[157];
- that right to pollution free air falls within article 21[158];
- that compelling a person to live in sub-human conditions also amounts to the taking away of his life, not by execution of a death sentence but by a slow and gradual process by robbing him of all his human qualities and graces, a process which is much more cruel than sending a man to the gallows[159] ;
- that the requirement of a public hearing in a court of law for a fair trial is subject to the need of proceeding being held in camera to the extent necessary in public interest and to avoid prejudice to the accused[160].

[151] (Sunil Batra v. Delhi Administration, AIR 1978 SC 1675; AIR 1980 SC 1579)
[152] (Kartar Singh v. State of Punjab, IT (1994) 2 SC 423)
[153] (State of Maharashtra v. Prabhakar Pandurang, AIR 1986 SC 424)
[154] (Satwant Singh v. Assistant Passport Officer, AIR 1967 SC 1836; Maneka Gandhi v. Union of India, AIR 1978 SC 597)
[155] (Parmanand Katara v. Union of India, AIR 1989 SC 2039)
[156] (Paschim Banga Khet Mazdoor Samity v. State of West Bengal,/AIR, 1996, SC 2426)
[157] (Ramsharan Autrynuprasi v. Union of India, AIR 1989 SC 549 and 552)
[158] (Subhash v. State of Bihar, AIR 1991 SC 420)
[159] (Sankar Banerji v. Durgapur Project Ltd., AIR 1988 Cal. 136)
[160] (Vineet Narain v. Union of India, AIR 1998 SC 889)

In its judgment in Mohini Jain v. State of Karnataka[161], the Supreme Court extended the scope of article 21 further to include under the right to life, 'right to education' also. In fact, the Court declared even higher education in professional fields like medicine as a fundamental right. Later, however the Court overruled its decision in the Mohini Jain case and decided that under article 21, there is no fundamental right to education for a professional degree. Three of the five judges, however thought that early education up to the age of 14 could be a fundamental right of the citizens.[162]

In several judgments, the Supreme Court reiterated that right to life under article 21 included the right to livelihood because no person can live without the means of living. If the right to livelihood is not treated as a part of the right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood.[163]

Right to Education

Article 21A added as a new article by the Constitution (86th Amendment) Act 2002 provides for free and compulsory education for all children between the age of 6 to 14 years.

Protection Against Arrest and Detention

Detention of persons without trial was a common feature of the colonial rule and a major issue during the straggle for freedom. Article 22 in clauses 1 and 2 lays down that no person who is arrested shall be detained without being informed of the grounds of arrest, he shall not be denied the right to consult and be defended by a lawyer and he shall be produced before the nearest magistrate within 24 hours.

The Supreme Court has held that the communication of the grounds of arrest to the detenu, allowing consultation with and defence by a counsel and production before the nearest magistrate are mandatory requirements under the article.[164]

The Supreme Court has also clarified that arrest under the orders of the Court, deportation of an alien and arrest on a civil cause are not covered under article 22(1) and (2).[165] Also, clauses 1 and 2 do not apply to an alien or to cases of preventive detention.

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[161] (AIR 1992 SC 1858)

[162]. J.P. Unnikrishnan and others v. State of Andhra Pradesh and others, etc. JT 1993(1) SC 474.

[163]. Olga Tellis v. Bombay Municipal Corp., AIR 1986 SC 180; D.T.C. v. ITC Mazdoor Congress, AIR 1991 SC 101; Unni Krishnan v. State of A.P., AIR 1993 SC 2178; Madhu Kishwar v. State of Bihar, AIR 1996 SC 1964.

[164]. Copalan v. State of Madras (1950) SCR 88; Hansmukh v. State ofCujarat, AIR 1981 SC 28; State of M.P. v. Shobaram, AIR 1968 SC 1910; State of U.P. v. Abdul Samad, AIR 1962 SC 1506.

[165]. State of U.P. v. Abdul Samad, AIR 1962 SC 1506; In re Madhu Limaye, AIR 1969 SC 1014; State of Punjab v. Ajaib Singh, (1953), SCR 254.

Clauses (3) to (7) of article 22 cover cases of preventive detention under a law. Preventive detention is, by definition, for preventing an illegal act and not for punishing a person for any illegal act. Article 22 authorizes Parliament to make a law providing for preventive detention, laying down the circumstances, the Classes of cases, the maximum period of detention, establishing an Advisory Board and its procedure. It has been held that the State Government may, if satisfied with respect to any bootlegger or drug offender (or forest offender) or goonda or immoral traffic offender or slum grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order it is necessary to do so to make an order directing that such person be detained.[166]

As a protection against possible misuse of power of preventive detention, certain safeguards have been provided. Thus, preventive detention cannot be authorized by law to exceed 3 months unless an advisory board finds sufficient cause. In every case of preventive detention the grounds thereof shall be conveyed to the detenu who would also be afforded an opportunity to make a representation.

Courts have taken a very serious view of detention without trial except in the bona fide cases of preventive detention under a law. If the law is found to be unreasonable or unjust, it may be struck down or if any order of arrest and detention under the law suffers from an infirmity, the detenu may be ordered forthwith to be set free by the Court.[167]

Representation made in case of preventive detention must be considered by the Union Government even if it is in addition to the Advisory Board or when representation under COFEPOSA is received after the confirmation of the order by the Government.[168]

[166]. T. Devaki v. Government of Tamil Nadu, AIR 1990 SC 1086.

[167]. Gopalan v. State of Madras, (1950) SCR 88; A.D.M. v. Shukla, AIR 1976 SC 1207; Dharmandir Suganchand Chetawal v. Union of India, AIR 1990 SC 1196; Sanjeev v. Union of India, AIR 1990 SC 204; Vijay Kumar v. Union of India, AIR 1990 SC 1184.

[168]. Gracy v. State of Kerala, AIR 1991 SC 1090; Abdulla v. Union of India, AIR 1991 SC 574.

Module – VII
Right against Exploitation (Articles 23 and 24)

RIGHT AGAINST EXPLOITATION

Articles 23 and 24 seek to provide protection against (i) exploitation through traffic in human beings, (ii) begar and other forced labour, and (iii) employment of children in factories etc. Traffic in human beings-women, children etc.-and forced labour militate against human dignity which is a fundamental constitutional value enshrined in the Preamble. Under the old zamindari system, the tenants were sometimes forced to render free service to their landlords. This was called begar. Courts have held that even if some remuneration is paid, the labour may be a forced one.[169]

Children of the prostitutes may be made to live away from them and Devadasis are also covered under the term "traffic in human beings".[170]

The whole idea is not to allow the State or anyone to compel a person to work against his will or to misuse the human person in any way. The only exception allows the State to impose compulsory service for public purposes as, for example, military service or social service which should be imposed equally on all without any discrimination of religion, race, caste or class.

Article 24 specifically prohibits the employment of children below the age of 14 in factories or mines or in any other hazardous jobs. This is in keeping with the human rights concepts and United Nations norms.

Some laws have since been enacted by Parliament to implement the provisions of articles 23 and 24.

ARTICLE 23 – PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR

Article 23(1): Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

Article 23(2): Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

- Exploitation implies the misuse of others' services by force and/or labour without payment.

[169]. People's Union v. Union of India, AIR 1982 SC 1473; Sanjit v. Rajasthan, AIR 1983 SC 328.

[170]. Gaurav Jain v. Union of India, AIR 1990 SC 292; Vishal feet v. Union of India, AIR 1990 SC 1412.

- There were many marginalised communities in India who were forced to engage in manual and agricultural labour without any payment.
- Labour without payment is known as begar.
- Article 23 forbids any form of exploitation.
- Also, one cannot be forced to engage in labour against his/her will even if remuneration is given.
- Forced labour is forbidden by the Constitution. It is considered forced labour if the less-than-minimum wage is paid.
- This article also makes 'bonded labour' unconstitutional.
- Bonded labour is when a person is forced to offer services out of a loan/debt that cannot be repaid.
- The Constitution makes coercion of any kind unconstitutional. Thus, forcing landless persons into labour and forcing helpless women into prostitution is unconstitutional.
- The Article also makes trafficking unconstitutional.
- Trafficking involves the buying and selling of men and women for illegal and immoral activities.
- Even though the Constitution does not explicitly ban 'slavery', Article 23 has a wide scope because of the inclusion of the terms 'forced labour' and 'traffic'.
- **Article 23 protects citizens not only against the State but also from private citizens.**
- The State is obliged to protect citizens from these evils by taking punitive action against perpetrators of these acts (which are considered crimes), and also take positive actions to abolish these evils from society.
- Under Article 35 of the Constitution, the Parliament is authorized to enact laws to punish acts prohibited by Article 23.
- Clause 2 implies that compulsory services for public purposes (such as conscription to the armed forces) are not unconstitutional.

Laws passed by the Parliament in pursuance of Article 23:

1) Suppression of Immoral Traffic in Women and Girls Act, 1956
2) Bonded Labour System (Abolition) Act, 1976

ARTICLE 24 – PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES, ETC.

Article 24 says that "No child below the age of fourteen years shall be employed to work in

any factory or mine or engaged in any other hazardous employment."

- This Article forbids the employment of children below the age of 14 in any hazardous industry or factories or mines, without exception.
- However, the employment of children in non-hazardous work is allowed.

Read about important articles in the Indian Constitution in the linked article.

Laws that were passed in pursuance of Article 24 in India.

1) The Factories Act, 1948

This was the first act passed after independence to set a minimum age limit for the employment of children in factories. The Act set a minimum age of 14 years. In 1954, this Act was amended to provide that children below the age of 17 could not be employed at night.

2) The Mines Act of 1952

This Act prohibits the employment of people under the age of 18 years in mines.

3) The Child Labour (Prohibition and Regulation) Act, 1986

This was a landmark law enacted to curb the menace of child labour prevalent in India. It described where and how children could be employed and where and how this was forbidden. This Act designates a child as a person who has not completed his/her 14th year of age. The 1986 Act prohibits the employment of children in 13 occupations and 57 processes.

4) Child Labour (Prohibition & Regulation) Amendment Act, 2016

This Act completely forbids the employment of children below 14 years of age. It also bans the employment of people between the ages of 14 and 18 in hazardous occupations and processes. Punishments to violators of this law were made stricter by this amendment act. This Act allows children to be employed in certain family occupations and also as artists.

5) Child Labour (Prohibition and Regulation) Amendment Rules, 2017

The government notified the above Rules in 2017 in order to provide a broad and specific framework for prevention, prohibition, rescue and rehabilitation of child and adolescent workers. The Rules clarified on issues concerning the employment of family enterprises and also provides safeguards for artists in that the working hours and conditions are specified.

Module – VIII
Right to Freedom of Religion (Articles 25 to 28)

RIGHT TO FREEDOM OF RELIGION

The Preamble describes our Republic inter alia as secular. The concept of secularism in the Constitution is not that of irreligion or anti-religion. It only means that there is no State religion, there is equal respect for and protection of all religions, no one is to be discriminated against on grounds of religion and everyone is guaranteed full and equal freedom of religion. Articles 25 to 28 provide to all persons guarantees of the right to freedom of religion in all its aspects.

Freedom of Conscience and Religion

Article 25 lays down that all persons- not only citizens are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. This right to religious freedom is, however subject to (i) public order, (ii) morality (iii) health and (iv) other fundamental rights. The State would be free to regulate by law any secular activity associated with religious practice and to provide for social welfare and reform or the throwing open of Hindu temples etc. to all classes of Hindus. The wearing of Kirpans was to be deemed to be included in the profession of the Sikh religion and the Hindus for purposes of the article were to include Sikhs, Jains and Buddhists.

The Supreme Court has held that the right to propagate religion does not include any right to forcible conversions as these may disturb public order.[171] In the Anand Marg case the right to perform Tandav dance with lethal weapons and human skulls in a public procession was held not to be an essential religious practice and banning of the procession in the interest of 'public order and morality' was considered a reasonable restriction.[172] Similarly, cow slaughter on Bakrid was held not to be an essential practice of Islam and could therefore be prohibited by law in the interest of public order.[173] Laws regarding public order, morality and health cannot be violated in the name of freedom of conscience or religion.[174] Secular activities associated with religious practice which can be regulated by the State have been interpreted to mean non-essential aspects of religion or, for example, matters of secular administration of religions properties which must be handled in accordance with law.[175]

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[171]. Stainslaus v. State of M.P., AIR 1977 SC 908.
[172]. Jagdishwaranand v. Police Commissioner, AIR 1984 SC 51.
[173]. Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731.
[174]. TMA Pai case, AIR 2003 SC 355.
[175]. Ratilal v. State of Bombay, (1954) SCR 1055; Ramanuja v. State of Tamilnadu, AIR 1972 SC 1586; Commissioner, HRE v. Lakshmindra

Freedom to Manage Religious Affairs

Article 26 which flows from article 25 bestows a fundamental right on all religious denominations and sections thereof to establish and maintain institutions for religious and charitable purposes, to manage their own affairs in matters of religion, to own and acquire and administer property. But, the administration of property has to be according to law. As in the case of rights under article 25, those under article 26 are also subject to public order, morality and health but not subject to other fundamental rights. As under article 25, Courts have made a distinction between the essentials and non-essentials of religion. It has been held that administration of the property of religious institutions can be regulated by law but the right of administration cannot be taken away altogether.[176]

Articles 25 and 26 together seem to define the separate spheres and roles of the State and religion with both being free to carry on their secular and religious activities without interference from each other.

Freedom Not to Pay Taxes for Religious Promotion Article 27 says that no person shall be compelled to pay any taxes for expenses on promotion or maintenance of any particular religion i.e. there could be no objection if the taxes were used for promotion of all religions. This is in keeping with the concept of secularism which means equal respect for all religions.

Freedom Not to Attend Religious Instruction

Article 28 forbids totally any religious instruction being imparted in educational institutions wholly maintained by State funds. In case of other institutions recognized and aided by the State, there will be freedom for every person not to participate in religious instruction or worship.

(1954) SCR 1005; Digyadarshan v. State of Andhra Pradesh, AIR 1970 SC 181.

176. Ratilal v. State of Bombay, (1954) SCR 1055; Ramanuja v. State of Tamilnadu, AIR 1961 SC 1402; Sgrup v. State of Punjab, AIR 1959 SC 850; Narendra v. State of Gujarat, AIR 1974 SC 2092; Ram v. State of Punjab, AIR 1981 SC 1576.

Module – IX
Cultural and Educational Rights (Articles 29 to 30)

CULTURAL AND EDUCATIONAL RIGHTS

Protection of Interests of Minorities

Article 29 guarantees to "every section of the citizens" residing anywhere in India and "having a distinct language, script or culture" the right to conserve the same. No citizen can be denied admission to any educational institution maintained or aided by the State on grounds only of religion, race, caste or language.

Although the marginal heading of the article uses the term 'minorities', it has not been mentioned in the text of the article and it has been held that it is equally available to any section of citizens-whether in minority or majority.[177]

Right of Minorities to Establish and Administer Educational Institutions

The Constitution does not anywhere define the term 'minorities'. Article 30(1) says that all minorities, whether religious or linguistic, shall have the right to establish and administer educational institutions of their choice. Clause 1 (A) added by the 44th Amendment in effect provides that if the property of any such institution is acquired, the compensation paid would be proper and adequate so that the right given by the article remains meaningful. Clause 2 provides that in the matter of giving aid, the State shall not discriminate against minority-managed institutions.

Article 30 is strictly in the nature of a minority right, i.e. one intended to protect the rights of minorities. Autonomy of a minority institution cannot be taken away completely. It is quite wide inasmuch as it is not confined like article 29 only to conservation of language, script and culture.[178] Also, the right of minorities under this article to 'establish and administer' educational institutions 'of their choice' includes the right to choose the medium of instruction, curricula, subjects to be taught etc.[179]

The right to administer, however does not mean right to maladministration. The right is subject to regulatory power of the State. Legislation in the interests of social welfare,

[177]. Ahmedabad St. Xaviers College Society v. State of Gujarat, AIR 1974 SC 1389; DAV College Bhatinda v. State of Punjab, AIR 1971 SC 1731.

[178]. Rev. Father Proost v. State of Bihar, AIR 1969 SC 465; Ahmedabad St. Xaviers College Society v. State of Gujarat, AIR 1974 SC 1389; St. Stephens' College v. University of Delhi, (1992) SCC 558.

[179] D.A.V College Bhatinda v. State of Punjab, AIR 1971 SC 1731; in re Kerala Education Bill, AIR 1958 SC 956.

industrial relations, academic standards, efficiency, discipline, health, sanitation, public order, morality, reasonable regulation to prescribe syllabus etc. does no violence to article 30 so long as it does not deprive the minority of its right to manage the institution. A law made to safeguard the service interests of teachers and regulate their conditions of service in the matter of dismissal, removal or reduction in rank did not violate article 30.[180]

Also, educational institution must be genuinely an educational institution of the minorities to be entitled to the right given by article 30(1). The Government, the University and the Court could go behind the claim of a minority institution. Where the claim was a mere cloak or pretension and the real motive was business adventure, the protection of article 30(1) would not be available.[181]

In T.M.A. Pai v. State of Karnataka, (AIR 2003 SC 355, (2004) 1 SCC 86) and Islamic Academy v. State of Karnataka, (AIR 2003 SC 3724, (2003) 6 SCC 697) the Supreme Court in their judgments of 31 October 2002 and 14 August 2003 held:

(i) Private educational institutions have a right to determine their own fee structure but education cannot be made a means of personal profit or help in other profession or business. Every State shall constitute a committee which will settle the appropriate fee structure for every private educational institution. It will be impermissible to ask for additional amounts in the name of donation or capitation fee.

(ii) It will not be correct to say that under article 30 minority educational institutions do not have any special rights which are not available to educational institutions of the majority community. The protection of article 30 is not for members of the majority community.

(iii) National interest must stand above the fundamental rights of individuals. Therefore, it is necessary that in professional (medical, engineering etc.) colleges-whether of the majority or minorities-the basis for admission should be merit alone.

In non-minority professional institutions, with the exception of seats reserved for the management, all admissions should be on the basis of merit determined through common entrance tests conducted by official agencies. Even in

[180]. In re Kerala Education Bill, AIR 1958 SC 956; Ahmedabad St. Xaviers College Society v. State of Gujarat, AIR 1974 SC 1389; St. Stephens' v. University of Delhi (1992) 1 SCC 558; State of T.N. v. Joseph, (1991) 3 SCC 87; Frank Anthony Public School Employees' Association v. Union of India, (1986) 4 SCC 707; Virendra Nath v. Delhi, (1990) 2 SCC 307; All Saints High School v. Government of Andhra Pradesh, AIR 1980 SC 1042.

[181]. A.P. Christians Medical Education Society v. Government of A.P., AIR 1986 SC 1490.

professional institutions established and administered by minority communities, admissions should be on the basis of merit but this merit has to be determined among the candidates of the concerned minority community only. The number of seats that should be reserved for minority candidates would depend upon the particular requirements of the minority community in each state. Such colleges can select meritorious candidates on the basis of private common admission tests.

(iv) Every state shall set up a standing committee to see that the admission procedure and tests etc. are transparent and just.

Article 30 has been criticized inter alia on the ground that the right to establish and administer educational institutions of their choice available to the minorities is denied to the majority community. Also, since the term 'minority' has not been defined in the Constitution anywhere and there are advantages in belonging to the minority, groups within the majority Hindu fold have started claiming minority status e.g. Arya Samaj in Punjab. The Ramakrishna Mission in Bengal had to declare that it is not Hindu at all but represented an independent minority religion. All this became necessary to claim the protection and benefits of article 30 for the DAV and Ramakrishna Mission institutions.[182]

RIGHT TO PROPERTY AND SAVING OF CERTAIN LAWS

The right to property has proved to be the most complicated and controversial. It had a very chequered history in our Constitution. During the various stages of the framing of the Constitution of India in the Constituent Assembly, the property provisions had proved to be the most controversial and had taxed the framers' imagination, sagacity, drafting skill and the spirit of accommodation and compromise to the maximum. At last a consensus was found which each of the contenders interpreted in his own way.

At one stage, speaking on a compromise formula proposed by Nehru, the eminent jurist and Drafting Committee member, Alladi Krishnaswami Ayyar said that although he had not always seen eye to eye with Nehru in regard to the property clause, he accepted Nehru's view on compensation without any reservation.[183] Nehru himself had said that the judiciary could not stand in

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[182]. Vide affidavit filed by Ramakrishna Mission in Calcutta High Court, Constitutional Writ Jurisdiction, E.O. No.1283, W. of 1980; DAV College v. State of Punjab, AIR 1971 SC 1731, 1737; Arya Samaj Education Trust v. Director of Education, AIR 1976 Del. 207.
Also see under the Chapter on 'Language Provisions'.

[183]. CA Deb., Vol. IX, pp. 1272-74

judgment over the sovereign will of Parliament or function as a kind of third house of correction.[184]

The consensus was embodied in articles 31 and 19(1)(f) of the Constitution. But, even after the commencement of the Constitution, the property clauses remained the most contentious. They caused sharp confrontations between the legislature and the judiciary and necessitated several constitutional amendments. Finally, the Constitution (44th Amendment) Act, 1978 repealed articles 19(1)(f) and 31 from the category of fundamental rights completely with effect from 20 June, 1979. Instead, in Part XII of the Constitution, a new Chapter-Chapter IV- and a new article-300A was added to provide that no person shall be deprived of his property save by authority of law. Thus, the right to property ceased to be a fundamental right. It still remains a legal and constitutional right. Article 300A gives protection against executive action but not against legislative decision.

Notwithstanding the repeal of article 31"articles 31A (added by the 1st Amendment in 1951 and amended by the 4th, 17th, 42nd and 44th Amendments), 31B (added by the 1st Amendment in 1951) and 31C (added by the 25th Amendment in 1971 and amended by 42nd & 44th Amendments) remain part of the Fundamental Rights. These are intended to save certain laws providing for acquisition of estates etc. from being questioned and invalidated on grounds of inconsistency with articles 14 and 19, certain Acts and Regulations listed in the 9th Schedule being specifically validated and saved against challenge on the ground of inconsistency with any of the fundamental rights and certain laws giving effect to Directive Principles being saved from being questioned and invalidated on grounds of inconsistency with articles 14 and 19.

In Kesavananda Bharti v. State of Kerala[185] the Supreme Court held that the words "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" were invalid, that despite inclusion in the 9th Schedule, a law could be challenged on the ground of being violative of the basic features of the Constitution and the power of judicial review to question whether a law was in pursuance of directive principles could not be taken away. In the Minerva Mills v. Union of India[186] the Court said tl1at omnibus withdrawal of legislation from judicial review by the 42nd Amendment to article 31C

[184]. Ibid., pp. 1191-3.

[185]. AIR 1973 SC 146

[186]. AIR 1980 SC 1789

undermined the basic structure of the Constitution.[187]

[187]. Also see Srinivasa v. State of Karnataka, AIR 1987 SC 1518; Minerva Mills v. Union of India, AIR 1986 SC 2030; Sanjeev Coke v. Bharat Coking, AIR 1983 SC 239; State of Maharashtra v. Basantibai (1986) 2 see 516; Waman Rao v. Union of India, AIR 1980 SC 273; Niyami v. Union of India, AIR 1990 SC 2128; Assam Sillimanite v. Union of India, (1992) Supp (1) SCC 692.

Module – X
Right to Constitutional Remedies (Articles 32 to 35)

RIGHT TO CONSTITUTIONAL REMEDIES

Rights in order to be meaningful must be enforceable and backed by remedies in case of violation. Our Constitution not only guarantees certain fundamental rights but under article 32 it also guarantees the right to move the highest court in the land directly by appropriate proceedings for the enforcement of the fundamental rights. The Supreme Court may issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Parliament may empower any other courts also to exercise these powers. The right guaranteed by article 32 cannot be suspended except as provided by the Constitution. For example, during a proclamation of Emergency (a) the right to move court for enforcement of any of the fundamental rights except articles 20 and 21 can be suspended under article 359 and (b) executive and legislative power of the State shall not stand restricted under article 358 by the rights to freedom enshrined in article 19. Where the suspension of fundamental right is protected by the Constitution, article 32 will not apply.[188] It has been held by the Supreme Court that this right cannot be taken away even by amending the Constitution as it is a basic feature of the Constitution.[189] Even at the time of framing the Constitution, Dr. Ambedkar had described this provision as the very soul and heart of the Constitution. Only the fundamental rights guaranteed by the Constitution can be enforced under article 32. Article 32 is not exactly concerned with an erroneous order or even with the unconstitutionality of a legislation unless it directly affects or invades any of the fundamental rights.[190] Since right to constitutional remedy under article 32 is itself a fundamental right, the Supreme Court may not refuse relief for violation of a substantive fundamental right. Article 226 grants powers to the High Courts also to issue various writs. In case of violation of fundamental rights, the Supreme Court and the High Courts both have concurrent jurisdiction and an affected person can approach either.[191] However, the Supreme

[188]. Somavanti v. State of,Punjab, AIR 1964 SC 131.

[189]. Fertilizer Corporation of India v. Union of India, AIR 1981 SC 344; Kihoto v. Zachilhu, AIR 1993 SC 412.

[190]. Chiranjee Lal v. Union of India, 1950 SC 109; Sadhu Singh v. Delhi Administration, AIR 1965 SC 9; Gopal Das v. Union of India, AIR 1955 SC 1; Haji Esmail v. Competent Officer, AIR 1967 SC 1244; Kuriakose v. State of Kerala, AIR 1977 SC 1509.

[191]. Kochuni v. State of Madras, AIR 1959 SC 725; M.K. Copalan v. State of Madhya Pradesh, (1955) ISCR 168; Basappa v. Nagappa, (1955) ISCR 250.

Court has since held that where relief through High Court under article 226 is available, the High Court should be approached first.[192]

Under the new concept of public interest litigation propounded by the Supreme Court in the Transfer of Judges case, it is no more necessary to be the affected party to approach the Court for violation of fundamental rights. Any member of the public can do so even through a letter on behalf of a person or group of persons who for any reason may not 'be in a position to approach the Court.[193]

Article 33 empowers Parliament to modify the application of fundamental rights to the armed forces or forces charged with maintenance of public order, intelligence personnel, etc. in the interest of discharge of duties and maintenance of discipline.[194] However, even when the appellate jurisdiction of courts is excluded in cases of court martial, the writ jurisdiction remains (unless taken away by law under article 33) and there have been several resorts to the remedy.[195]

Under article 34, Parliament may by law indemnify any person for anything done in contravention of fundamental rights for maintenance of order during the operation of martial law.

Article 35 lays down that the power to make laws to give effect to certain specified fundamental rights shall vest only in the Union Parliament and not in State Legislatures

[192]. Kanubhai Brahmbhatt v. State ofCujarat, AIR 1987 SC 1159; PN. Kumar v. Municipal Corporation of Delhi (1987) 4 SCC 609.

[193]. S.P Gupta v. President of India, AIR 1982 SC 149.

[194]. Copal v. Union of India, AIR 1987 SC 413; Ram Sarup v. Union of India, AIR 1965 SC 247; Delhi Police Sangh v. Union of India, AIR 1987 SC 379; Achudan v. Union of India (1976) ISCWR 80.

[195]. Ranjit v. Union of India, AIR 1987 SC 2386; Mukherjee v. Union of India (1990) 3 SC J 93; Laxmi v. Union of India (1991) 2 SCJ 86.

Module – XII
Directive Principles of State Policy (Articles 36 to 51) and Fundamental Duties (Article 51A)

DIRECTIVE PRINCIPLES

PART IV, ARTICLES 36-51

The Directive Principles of State Policy embodied in Part IV are a unique feature of our Constitution. Besides the precedent of the Irish Constitution, the basic inspiration for the Directive Principles chapter came from the concept of a welfare state.[196] While seeking to protect the basic rights of the individual, the framers of the Constitution also wanted it to become an effective instrument for social revolution. The possible conflict between the rights of the individual and the needs of the community was sought to be resolved on the one hand by hedging the fundamental rights themselves by necessary restrictions in 'public interest' etc. and, on the other, by incorporating a chapter on the more positive 'Directive Principles of State Policy'. Article 37 declares that the Directive Principles are "fundamental in the governance of the country" and that "it shall be the duty of the State to apply these principles in making laws". Thus, it is clear that these constitutional directives were not intended to be merely moral precepts but were to be treated as positive mandates and part and parcel of the human rights provisions of the Constitution. The Directive Principles, however, did not give rise to any legal rights for the violation of which any individual could seek a remedy nor did these bestow any power on the legislature. Also, no law could be declared ultra vires on the ground of inconsistency with these principles.[197]

These mandates were made "not enforceable by the courts" and were deliberately couched in terms that left to the Legislature a measure of latitude in deciding the order, the time and mode of fulfilling them as their implementation depended on several imponderable factors, such as the availability of requisite resources, the readiness of society to accept the socio-economic changes envisaged, etc.

Speaking in the Constituent Assembly, Dr. Ambedkar had categorically said that the Directive Principles were not intended to be mere pious declarations. They were instead in the nature of an instrument of instructions and

[196]. Kesavananda Bharti v. State of Kerala, AIR 1973 SC 146.

[197]. State of Madras v. Champakam Dorairajan, (1951) SCR 525; In re Kerala Education Bill, AIR 1958 SC 956; Deep Chand v. State of U.P.; AIR 1959 SC 648; UPSE Bd. v. Hari, AIR 1979 SC 65.

whoever captured power "will have to respect these". He had said:

It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country.

The non-justiciability clause in article 37 sought only to make it clear that the judiciary could not compel the State to perform a 'duty' under the 'Directives' because as Dr. Ambedkar said:

A State just awakened from freedom with its many preoccupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.

The Directive Principles constitute an operative part of the Constitution and an important part at that, for through them the Constitution seeks to achieve the ideal of a democratic welfare state set out in the Preamble and to bring about the social and economic revolution of which the founding fathers of our republic dreamt. In the words of Justice K.S. Hegde:

The purpose of the fundamental rights is to create an egalitarian society, to free all citizens from coercion or restriction by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution the Constitution seeks to fulfill the basic needs of the common man and to change the structure of our society. It aims at making the Indian masses free in the positive sense.

The decisions of the Supreme Court from the 1970s onwards have emphasized the positive aspects of the Directive Principles. These have been held to supplement fundamental rights for achieving the objective of a welfare state. Even the fundamental rights may be amended by Parliament to implement the Directives and such legislation may be held to be valid unless it offends any of the basic features of the Constitution. It has been held by the apex court that under articles 38, 39 and 46, it is the duty of local bodies-Panchayats, Zila Parishads and Municipalities - to implement the Directive Principles in a planned manner by annual budgets providing right to residence to the poor.[198]

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[198]. State of Kerala v.Thomas, AIR 1976 SC 496; Mehta v. Union of India, (1992) Supp (2) SCC 85; Chief Justice v. Dikshitulu (1979) 2 SCC 34; Mukesh v. State of M.P., AIR 1985 SC 537; Laxmi Kant v. Union of India, AIR 1987 SC 232; VA Sawant v. Municipal Corp., Bombay, JT (1994) 3 SC 573; Ahmedabad Municipal Corp. v. N.K.G. Khan, AIR 1997 SC 152; State of Haryana v. Ram Chander, AIR 1997 SC 2468.

The Directive Principles are directed towards the ideals of building a true welfare state and inter alia envisage an end to economic exploitation and staggering inequalities and inequities and cast upon the State the duty to secure a just social order. Thus, article 38 which is the keystone or the core of the Directive Principles lays down that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life.

Article 39 says that the State shall direct its policy in such a manner as to secure that all men and women have the right to an adequate means of livelihood, that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the economic system is not allowed to result in the concentration of wealth and means of production to the detriment of the common good, that there is equal pay for equal work for both men and women,[199] that the health and strength of workers, men and women, and the tender age of children are not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, and that the children are given opportunities and facilities to develop in a healthy manner in freedom and dignity and that childhood and youth are protected against exploitation. This article has been referred to for interpreting the fundamental rights.[200] Article 41 seeks, within the limits of the State's economic capacity and development, to make effective provision for securing the right to work, education and public assistance in the event of unemployment, old age, sickness and disablement or other cases of undeserved want. Articles 42 and 43 provide for endeavouring to secure for workers a living wage, humane conditions of work, maternity relief, a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Invoking the provisions of articles 39, 41 and 47 and the Child Labour (Prohibition and Regulation) Act, 1986, the Supreme Court held in M.C. Mehta v. State of Tamil Nadu (AIR 1997 SC 699) that the offending employer should be asked to deposit in a Child Welfare Fund Rs.20,000 for each child employed and the State should put Rs.5,000.

Some of the important Directives relate to promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections (article 46); duty of the State to raise the level

[199]. "not a fundamental right but a constitutional goal" -Randhir v. Union of India, AIR 1982 SC 879; Ramchandra v. Union of India, AIR 1984 SC 541.

[200]. Kesavananda Bharti v. State of Kerala, AIR 1973 SC 146; Srinivasa v. State of Karnataka, AIR 1987 SC 1518.

of nutrition and the standard of living and to 'improve public health (article 47); organization of agriculture and animal husbandry and prohibition of cow slaughter (article 48); organisation of village Panchayats (article 40); separation of judiciary from the executive (article 50); promulgation of a uniform civil code for the whole country (article 44); protection of national monuments (article 49); and the promotion of international peace and security, just and honourable relations between nations, respect for international law and treaty obligations and settlement of international disputes by arbitration (article 51). It has to be remembered that international treaties do not automatically become part of the national law. These have to be adopted/ incorporated by legislation. This comes under the jurisdiction of the Union under article 253. While interpreting national law, courts try to maintain harmony with principles of international law but in case of conflict national law has to be respected.[201]

There has been considerable and continuing controversy in regard to the directive regarding a Uniform Civil Code enshrined in article 44. In the Constituent Assembly, Dr. Ambedkar was strongly in favour of a uniform code. In S.R. Bommai v. Union of India (AIR 1994 SC 1918), the Court upheld the legislative power of Parliament to reform personal laws and urged the government to enact a uniform civil code to promote national integration. The Court regretted that article 44 had remained a dead letter. In a case where a marriage solemnized under one personal law was sought to be dissolved under another personal law after conversion of one partner, the Court dissolved the dissolution and again urged the need for a Uniform Civil Code.[202] In Pannalal Bansilal Pitti v. State of A.P, (1996 (2) SCC 498) the court favoured a gradual reform towards bringing about uniformity, preferably from within. In the famous Ahmad Khan v. Shah Banu (AIR 1985 SC 945) when the Court granted maintenance, under the Cr. P.C, Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act 1986 to annul the Court's decision. In the (July 2003) Christian Bequests Case, the Court held Section 118 of the Indian Succession Act 1925 unconstitutional because it imposed restrictions only on Christians. The Court said that marriage and succession laws could not be saved under the right to profess and propagate religion. Again, it stressed the need for a uniform civil code.

Even though made non-justiciable, the Directive Principles have thus far guided the

[201]. In re Berubari Union, AIR 1960 SC 845; Gramophone Co. v. Birendra, AIR 1984 SC 667.

[202]. Sarla Mudgal v. Union of India, AIR 1995 SC 1531.

Union and State Legislatures in enacting social reform legislation, the courts have cited them in support of their interpretation of constitutional provisions and the Planning Commissions have accepted them as useful guidelines for determining their approach to national reconstruction and rejuvenation.

The Constitution (Forty-second Amendment) Act, 1976 added certain new directives to the effect :

i. that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity (article 39(f));

ii. that the operation of the legal system promotes justice, on a basis of equal opportunity, and in particular the State provides free legal aid in cases of economic or other disability (article 39A). This right was inherent in article 21 also;[203]

iii. that the participation of workers in management of industries is secured (article 43A); and

iv. that the environment is protected and improved and the forests and wild life are safeguarded (article 48A).

The Forty-fourth Amendment added a clause to article 38 to say that the State shall, in particular, try to reduce inequalities of income and eliminate inequalities in status, facilities and opportunities among individuals and among groups of people living in different areas or engaged in different vocations. (Also see the chapter on 'Fundamental Rights' under 'Right to Property and Saving of certain Laws', article 31 C).

Besides, (i) by amending article 31 C, it was laid down that no law giving effect to any or all of the Directive Principles shall be void on ground of contravening any of the fundamental rights under articles 14, 19 or 31, and (ii) a new article 31 D provided specifically that no law authorising prevention or prohibition of anti-national activities or associations would be void on ground of inconsistency with any of the fundamental rights under articles 14, 19 and 31.

Article 45 originally provided for free and compulsory education for all children upto the age of 14. But the Eighty sixth Amendment (2002) made education a fundamental right for children of 6 to 14 years by inserting a new article 21A. As a corollary, article 45 was substituted by a new article providing for early child care and education to children below 6 years.

[203]. State of Haryana v. Darshana, AIR 1979 SC 855; Khatri v. State of Bihar, AIR 1981 SC 928; Suk Das v. Union Territory, AIR 1986 SC 991.

The Relationship between the Preamble, the Fundamental Rights and the Directive Principles

It should be remembered that the Preamble, the Fundamental Rights and the Directive Principles are all integral parts of the same constitutional edifice. They are all equally important and have to be read with each other.

The emphasis in the entire scheme of the Constitution under the headings of the Preamble, the Fundamental Rights and the Directive Principles is on building an egalitarian society and' on the concept of socio-economic justice. Inasmuch as the Directive Principles though declared to be fundamental as guiding principles for making and administering laws were not made enforceable in courts of law, they represented a subtle compromise between what the framers, as the leaders of the freedom struggle, looked upon as the ideal or the goal and what, as realists, they found to be immediately feasible. The Fundamental Rights and the Directive Principles together constituted the soul of the Constitution:

It is now clearly understood that there is no essential dichotomy between Rights and Duties or between the Fundamental Rights and the Directive Principles. They complement and supplement each other.[204] If the Fundamental Rights represent the don'ts for the Government and the legislature, the Directive Principles represent the do's. There is no conflict. While moving for the reference of the Constitution (First) Amendment Bill, 1951 to a Select Committee, Jawaharlal Nehru referred to the possibility of a conflict between the Fundamental Rights and the Directive Principles and explained the difficulty thus:

The real difficulty which has come before us is this: The Constitution lays down certain Directive Principles of State Policy and after long discussion we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain Fundamental Rights. Both are important. The Directive Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental Rights represent something static, to preserve certain rights which exist. Both again are right. But somehow and sometime it might so happen that that dynamic movement and that static standstill do not quite fit into each other.

A dynamic movement towards a certain objective necessarily means certain changes taking place: that is the essence of movement. Now, it may be that in the process of dynamic movement certain existing

[204]. Kesavananda Bharti v. State of Kerala, AIR 1973 SC 146.

relationships are altered, varied or affected. In fact, they are meant to affect those settled relationships and yet if you come back to the Fundamental Rights they are meant to preserve, not indirectly, certain settled relationships. There is a certain conflict in the two approaches, not inherently, because that was not meant, I am quite sure., But there is that slight difficulty and naturally when the' courts of the land have to consider these matters they have to lay stress more on the Fundamental Rights than on the Directive Principles of State Policy. The result is that the whole purpose behind the Constitution, which was meant to be a dynamic Constitution leading to a certain goal step by step, is somewhat hampered and hindered by the static element being emphasized a little more than the dynamic element and we have to find out some way of solving it.

.. .If in the protection of individual liberty you protect also individual or group inequality, then you come into conflict with that Directive Principle which wants, according to your own Constitution, a gradual advance, or let us put it in another way, not so gradual but more rapid advance, wherever possible to a state where there is less and less inequality and more and more equality. If any kind of an appeal to individual liberty and freedom is construed to mean as an appeal to the continuation of the existing inequality, then you get into difficulties. Then you become static, unprogressive and cannot change and you cannot realize that ideal of an egalitarian society which I hope most of us aim at.

While speaking on the Constitution Fourth Amendment in the Lok Sabha, Nehru declared that the responsibility for the economic and social welfare policies of the nation should lie with Parliament and not with the courts. In so far as the decisions of courts had shown that there was some inherent contradiction between the Fundamental Rights and the Directive Principles, it was for Parliament to remove the contradiction and "make Fundamental Rights subserve the Directive Principles of State Policy."

As the Supreme Court said later in 1971:

Freedom of trade does not mean freedom to exploit. The provisions of the Constitution are not erected as barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social, economic or political: It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental in the governance of the country, we see no conflict on the whole between the provisions contained in Part III and Part IV. They are

complementary and supplementary to each other. The provisions of Part IV enable the Legislature and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare society in which justice, social, economic and political, shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met.[205]

Again, in Keshavananda Bharti's case, Justice Mathew made the following significant observations:

The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abridgment, curtailment, and even abrogation of these rights in circumstances not visualized by the Constitution-makers might become necessary; their claim to supremacy or priority is liable to be overborne at particular stages in the history of the nation by the moral claims embodied in Part IV. Whether at a particular moment in the history of the nation, a particular fundamental right should have priority over the moral claim embodied in Part IV or must yield to them is a matter which must be left to be decided by each generation in the light of ,its experience and its values. And, if Parliament in its capacity as the amending body, decides to amend the Constitution in such a way as to take away or abridge a Fundamental Right to give priority value to the moral claims embodied in Part IV of the Constitution, the Court cannot adjudge the constitutional amendment as bad for the reason that what was intended to be subsidiary by the Constitution-makers has been made dominant. Judicial review of a constitutional amendment for the reason that it gives priority value to the moral claims embodied in Part IV over the Fundamental Rights embodied in Part III is impermissible.[206]

A distinction is sometimes sought to be made between what may be called 'positive rights' and 'negative rights'. Broadly speaking, while Part III deals with areas of individual freedom and the extent to which the State can restrain it, Part IV deals with positive duties cast upon the State to attain the ideal9f social and economic justice. Even among the fundamental rights, however, there are some positive injunctions which seek to protect the interests of the society and the rights of the poor citizens from encroachment by

[205]. Chandra Bhavan Boarding and Lodging Bangalore Vs. The State of Mysore and others, 1970, 2 SCR 600.

[206]. 1973 (4) SCC 225

entrenched sections. Thus, article 17 abolishes untouchability and makes its practice in any form an offence punishable by law. Article 15 inter alia provides that no citizen shall be discriminated against in the use of public places like shops, wells, roads, eating houses etc. on account of his religion, race, caste, sex or place of birth. Article 23 prohibits another great social evil, that of forced labour. The whole effort has been to ensure that the fundamental rights of the citizens do not degenerate into the liberties of the few against the interests of the many.

The National Commission to Review the Working of the Constitution (2002) inter alia recommended:

(i) A strategic plan of action to create a large number of employment opportunities,

(ii) Setting up a National Education Commission every five years to report on compulsory education etc.,

(iii) Promoting through civil society initiatives interfaith and interreligious harmony.-and social solidarity, and

(iv) Establishing a high status body to review the implementation of Directive Principles.

FUNDAMENTAL DUTIES
PART IVA, ARTICLE 51A

Even though brought in by the Constitution (Forty-Second Amendment) Act, 1976 during the operation of the proclamation of Emergency, Part IV A, laying down certain duties of the citizens, is one of the most valuable parts of the Constitution. It is also the most neglected.

The fundamental duties enshrined in article 51A now are in consonance with article 29(1) of the Universal Declaration of Human Rights which says: Everyone has duties to the community in which alone the free and full development of his personality is possible.

While the Fundamental Rights provisions covered the rights of the individual and the Directive Principles the duties of the State, there were until 1976 no provisions in our Constitution laying down the duties of the individual even though the traditions and temper of Indian thought through the ages laid greater emphasis on duties. As the Verma Committee (HRD Min. GOI, 1999) on Fundamental Duties said:

Essentially all that is contained in the Fundamental Duties is just a codification of tasks integral to the Indian way of life. A close scrutiny of the clauses of article 51A indicate that a number of these clauses basically refer to such values as have been a part of the Indian tradition, mythology, religions and practices. At this juncture of history, the nation realizes an urgent need to re-emphasize these in a manner that would be acceptable to and be imbibed by all generations. To achieve these objectives, it would be essential to create public awareness of the need to appreciate and internalize the concept and practice of Fundamental Duties with particular emphasis on the necessity of creating a harmonious society with a scientific outlook, free from tensions and turmoils.

The Supreme Court of India has in several cases relied on Fundamental Duties contained in article 51A to determine the duty of the State, and when necessary, give directions or frame guidelines to achieve the purpose. This has been done in several cases relating to preservation and conservation of environment, ecology, and prevention of degeneration of forests, wild life, flora and fauna, etc. The court has observed that preservation of environment and maintenance of the ecological balance are the responsibility not only of the Government but also the Fundamental Duty of every citizen.

Even though belatedly, it was thought appropriate that citizenship must carry with it certain fundamental obligations and that these should be specifically and explicitly incorporated in the Constitution. It does not mean that before the Forty-second Amendment the citizens had no duty. There was a specific provision in article 33 regarding the need "to ensure the proper discharge of the duties and the maintenance of discipline" among the armed forces etc. Also, each of the Fundamental Rights of individual citizens and others embodied in Part III of the Constitution implied a corresponding duty and obligation. In fact, there can be no rights in a society where there are no duties. Rights and duties are not only reconcilable but inseparable. For every right, there is a corresponding duty. Duty is an inalienable part of right the two represent the two sides of the same coin. What is duty for one is another's right and vice versa. If all men have a right to life, a duty is also cast upon all men to respect human life and not to injure another person. The right to freedom implies that the citizens must create conditions and so fashion society that freedom for every individual is assured. Freedom by its very nature requires self-discipline and promotion of social and political harmony. For the freedom of one individual is limited by the similar freedom of other individuals. And each individual comes to have a duty to accord the

same rights to others which he wants for himself. Freedom for each individual can endure when one respects the freedom of all other individuals. Discharge of duties by them strengthens their own rights.

When Gandhiji was requested to give his thoughts on the Universal Declaration of Human Rights, he said:

The source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we-run after rights, they will escape us like will 0' the wisp, the more we pursue them, the further they will fly.

I learned from my illiterate but wise mother that all rights to be deserved and preserved come from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define duties of man and woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.

Gandhiji sought to emphasize the economic and social responsibilities of all citizens. It was in keeping with his ideas that the Constitution (Forty-Second Amendment) Act, 1976 added to the Constitution a new Part IV A titled 'Fundamental Duties' after the original Parts III and IV of Fundamental Rights and Directive Principles respectively.

The new Part IVA, article 51A (a) to (j) laid down 10 duties for every citizen of India. Later, the Constitution (Eighty-sixth Amendment) Act, 2002 added a new Clause (k) as the eleventh duty.

(1) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem: The first and the foremost duty assigned to every citizen of India is to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. These are the very physical foundations of our citizenship. All of us are supposed to maintain the dignity of the Constitution by not indulging in any activities in violation of the letter or spirit of the Constitution. Ours is a vast country with many languages, sub-cultures and religious and ethnic diversities, but the essential unity of the country is epitomized in the one Constitution, one flag, one people and one citizenship. We are all governed and guided by this Constitution irrespective of caste, religion, race, sex etc. The Constitution was the result of the many commitments, promises and pledges made by nationalist leaders to the people of India. Also, it embodied efforts at

reconciliation, accommodation and compromise. All of us and the Fundamental Rights of each of us are protected by it. Similarly the National Flag and the National Anthem are symbols of our history, sovereignty, unity and pride. If a citizen of India by any overt or covert act shows disrespect to the Constitution, the National Anthem or the National Flag, it would be not only an anti-social and anti-national activity but it would also spell doom to all our rights and our very existence as citizens of a sovereign nation. Each citizen must therefore not only refrain from any such activity but also do his best to prevent any miscreant trying to show disrespect to our national symbols. Every nation is proud of its citizens because of their dedication, sincerity and patriotism. We, the citizens of India, have to be equally proud of our nation, our Constitution, our Flag and our Anthem. We must put the nation above our narrow personal interests and then only we will be able to protect our hard-earned freedom and sovereignty.

(2) To cherish and follow the noble ideals which inspired our national struggle for freedom: The citizens of India must cherish and follow the noble ideals which inspired the national struggle for freedom. The battle of freedom was a long one where thousands sacrificed their lives for our freedom. It becomes our duty to remember the sacrifices' made by our forefathers for the cause of the country. But, what is much more important is to remember, imbibe and follow the ideals which pervaded our unique struggle. It was not a struggle merely for political freedom of India. It was for the social and economic emancipation of the people all over the world. Its ideals were those of building a just society and a united nation, of freedom, equality, non-violence, brotherhood and world peace. If we, the citizens of India remain conscious of and committed to these ideals, we will be able to rise above the various fissiparous tendencies raising their ugly heads now and then here and there.

Parties and politicians who use religion, casteism, separatism etc. for political ends and for capturing power are clearly violating their Fundamental Duties under the Constitution.

(3) To uphold and protect the sovereignty, unity and integrity of India: To protect the sovereignty, unity and integrity of India is a pre-eminent national obligation of all citizens of India. In a democratic system of governance, sovereignty lies with the people. To defend our sovereignty is our own responsibility. If the freedom and

unity of the country are jeopardized, the nation ceases to exist and if there is no nation, who lives?

(4) To defend the country and render national service when called upon to do so: The primordial origins of the State are said to be in the need to defend ourselves against external enemies. In modern nation-States, it is considered axiomatic that every citizen is bound to be ready to defend the country against war or external aggression. Present-day wars are not fought on the battlefield only nor are they won only by the armed forces; the citizens at large playa most vital role in a variety of ways. Sometimes, civilians may be required also to take up arms in defence of the country, if the situation warrants it. By fighting to defend the country, the citizens are fighting only to defend their own liberty and that of their posterity.

Here, mention may be made of article 23(2) where Under State is allowed to impose "compulsory service for public purposes" subject to the condition that no discrimination is made on grounds of religion, race, caste or class or any of them.

(5) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women: To promote harmony and the spirit of common brotherhood amongst all the people of India essentially flows from the basic value of fraternity enshrined in the Preamble to the Constitution. India is a country of different castes, languages, religions and many cultural streams but we are one people with one Constitution, one flag and one citizenship. Spirit of brotherhood should come very normally among the citizens of a country like India where the norm has been to consider the entire world as one family. The Constitution also casts upon us the Fundamental Duty of ensuring that all practices derogatory to the dignity of women are renounced. This again should come normally to a country where the ideals said that gods reside where women are worshipped. (yatra naryastu pujyante ramante tatra devata). It is for us to rise above the later day degenerations and aberrations which tarnished the image of our society. Incidentally, it may be noted that under Article 23(1) of the Fundamental Rights, traffic in human beings is prohibited.

(6) To value and preserve the rich heritage of our composite culture: To preserve the rich heritage of our composite culture is

another Fundamental Duty of every citizen. Our cultural heritage is one of the noblest and the richest. Also, it is part of the heritage of the earth. What we have inherited from the past, we must preserve and pass on to the future generations in tact. Each generation leaves its footprints on the sands of time. We must hold precious and dear what our fore-fathers have created and their successive generations bequeathed to us as symbols of their artistic excellence and achievements. Generations to come always draw inspiration from past history which stimulates them to aim at ever greater heights of achievement and excellence. It becomes the ardent duty of every citizen to ensure that these monuments and pieces of art are not in anyway damaged, disfigured, scratched .or subjected to vandalism or greed of unscrupulous traders and smugglers.

One of the most ancient civilizations of the world, India can take legitimate pride in having been a civilization unity without a break for more than five thousand years. We all are part of this great civilization and culture. Our contributions in the fields of art, sculpture, architecture, mathematics, science, medicine etc. are well-known. Some of the oldest, deepest and most sublime philosophical thought and literature was born in India. We have several historical monuments of great archaeological value spread over the entire country. These include forts, palaces, temples, etc. Also, this territory had had the honour of being the birth place of several great religions like Hinduism, Buddhism, Jainism and Sikhism. Our past has shown us the path of peace, love, non-violence and truth. As citizens of this country, it is the responsibility of all of us to work for the preservation of this rich heritage and its cultural values and live in love and harmony.

The Directive Principle under article 49 similarly enjoins the State to protect monuments and places and objects of national, artistic or historic importance.

(7) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures: In the face of menace of the increasing pollution and environmental degradation, it is the duty of every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The rising air, water and noise pollution and large-scale denudation of forests is causing immense harm to all human life on earth. The mindless and wanton

deforestation in the name of the needs of development is causing havoc in the form of natural calamities and imbalances. By protecting our forest cover, planting new trees, cleaning rivers, conserving water resources, reforesting wastelands, hills and mountains and controlling pollution in cities, villages and industrial units, we can help save the future of our fellow citizens and of planet earth itself. What is needed is a concerted effort at an awareness campaign and a planned strategy to move forward through voluntary citizen initiatives. Governmental steps alone cannot help bring about a pollution-free atmosphere to live now and in the future.

The mention of protection of environment etc. as a duty of citizens is intended to reinforce the other constitutional provision-Article 48A-under the Directive Principles which enjoins the State to protect and improve environment and safeguard the forests and wild life.

Earth is the common heritage of man and animals. We have no right to annihilate or drive away from their territory or natural habitat the wild denizens. Ancient Indian thought talks of Sarvesham Shantir bhavatu (peace unto all living beings and entire environment) or Ahimsa paramodharma, Ahimsa paramo tapah (non-violence is the greatest duty and the greatest penance).

(8) To develop the scientific temper, humanism and the spirit of inquiry and reform: One of our great Founding Fathers, Jawaharlal Nehru always laid great emphasis on the need for Indian citizens developing a scientific temper and a spirit of inquiry-an inquisitiveness for learning from developments around the world. This was particularly necessary because of the most revolutionary scientific advances during this century and in the context of our background of superstitions and obscurantism. Nehru laid the foundations of the the modern industrialised India by building the necessary scientific and technological infrastructures. Now, it is the bounden duty of every citizen to preserve and promote a scientific temper and a spirit of inquiry to keep pace with the fast changing world. Also, the Constitution ordains that science and technology must be tempered with a sense of humanism because ultimately the end of all progress is the human being and the quality of life and relationships that is developed.

(9) To safeguard public property and to abjure violence: It is most unfortunate that in a country which preaches nonviolence to the rest of the world, we see from time to time

spectacles of senseless violence and destruction of public property indulged in by a few of its citizens. This is why it became necessary to prescribe the responsibility "to safeguard public property and abjure violence" as a fundamental citizenship duty.

(10) To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement: The drive for excellence in all spheres of individual and collective activity is the demand of times and a basic requirement in a highly competitive world. Nothing but the best would have survival potential in tomorrow's world. This would include respect for professional obligations and excellence. Whatever work we take up either as individual citizens or as groups, our effort should be directed to achieving the goal of excellence. Also, special emphasis is called for in the area of collective activity. It is often said that the performance of individual Indians is excellent but we lack team spirit. If this drawback can be remedied we can put India on the map as a fast developing country.

(11) Every parent or guardian to provide opportunities for education to his child or ward between the age of 6 and 14 years: The National Commission to Review the Working of the Constitution had recommended making education a fundamental right for all children upto the age of 14. The Constitution (Eighty-sixth Amendment) Act 2002, however provided for free and compulsory education as a legally enforceable fundamental right for all children between the age of 6 and 14 years. To meet the criticism of not covering the children below 6 years, the Act amended Directive Principles to say that the State shall endeavour to provide early childhood care and education for all children below the age of six years. Also, it added a new clause (k) to chapter NA, Article 51A to cast on parents and guardians a duty to provide opportunities for education to children between the age of 6 and 14 years.

There is no provision in the Constitution for direct enforcement of the Fundamental Duties enshrined in article 51A nor is there any provision to prevent or punish their violation. But, as Justice Venkataramiah has pointed out, there is no provision declaring them non-justiciable either and in the context of the use of the terms' fundamental' and 'duties', these should prima facie be enforceable. It may be expected that in

determining the constitutionality of any law, if Supreme Court finds that it seeks to give effect to any of these Duties, it may consider such law to be "reasonable" in relation to article 14 or 19 and thus save such law from unconstitutionality.[207]

The purpose of incorporating the Fundamental Duties in the Constitution is to make the citizens aware of their social and economic obligations and to warn them to do and not to do certain things in the interest of their country, their fellow citizens and themselves.

For the implementation of at least some of the fundamental duties of citizens as the Verma Committee (1999) has stated, legal provisions exist:

1) The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence, inter alia, to prevent improper use of the National Flag and the National Anthem.
2) In order to ensure that no disrespect is shown to the National Flag, Constitution of India and the National Anthem, the Prevention of Insults to National Honour Act 1971 was enacted.
3) In order to ensure that correct usage regarding display of the National Flag is well understood, the instructions issued from time to time on the subject have been embodied in Flag Code India which has been made available to all the State Governments and Union Territory Administrations (UTs).
4) There are a number of provisions in the existing criminalla ws to ensure that'the activities which encourage enmity between different groups of people on grounds of religion, race, place of birth, residence, language, etc. are adequately punished. Writings,' speeches, gestures, activities, exercises, drills, etc. aimed at creating a feeling of insecurity or ill will among the. members of other communities, etc. have been prohibited under Section 153A of the Indian Penal Code (IPC).
5) Imputations and assertions prejudicial to national integration constitute a punishable offence under section 153B of the IPC.
6) A communal organization can be declared unlawful association· under the provisions of unlawful Activities (Prevention) Act 1967.
7) Offences related to religion and caste are covered in Sections 295 298 of the IPC (Chapter XV) and provisions of the Protection of Civil Rights Act, 1955 (earlier the Untouchability (Offences) Act 1955).

[207]. Mohan v. Union of India, (1992) 1 see 594.

8) Sections 123(3) and (3A) of the Representation of People Act, 1951 declare that soliciting of votes on the ground of religion and the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language is a corrupt practice. A person indulging in a corrupt practice can be disqualified for being a Member of Parliament or a State Legislature under Section 8A of the Representation of People Act, 1951.

The courts can certainly take fundamental duties of citizens into consideration while construing a law amenable to more than one interpretation. Article 51A(g) regarding protection of environment has particularly come up before the courts. Oral orders were issued by the Supreme Court for stopping quarrying operations in some areas in the State ofU.P. Also, orders were issued in respect of declaring certain disputed areas as reserved forests under the Indian Forests Act 1927 [Section 20].

The Verma Committee on Fundamental Duties has listed and documented as many as 138 Supreme Court cases in the area of environmental protection which are mainly as follows: Buffalo Traders Welfare Asso. v. Maneka Gandhi[208], (Slaughter House Idgah, Delhi); M.C. Mehta v. Union of India[209], (Air Pollution by industries); Vellore Citizens Welfare Forum v. Union of India,[210] (Right to clean environment); M.C. Mehta v. Union of India,[211] (Traffic Management and pollution, Delhi); T.N.G. Thirumulkpad v. Union of India,[212] (Protection of forests); M.C. Mehta v. Union of India,[213] (Protection of Taj Mahal); M.C. Mehta v. Union of India,[214] (Lead free petrol for pollution control); M.C. Mehta v. Union of India,[215] (Removal of hoardings); S. Jagannath v. Union of India,[216] (Coastal pollution due to shrimp farming); Indian Council for Enviro-Legal Action v. Union of India,[217] (Industrial Pollution).

The High Court of Allahabad in Ram Prasad v. State of U.P.[218] held that addition of Part N A in the Constitution has brought performance of citizenship duties within the sphere of constitutional law and the purview of courts. Discussing the significance of article 51A (g), the court

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[208]. 1994 Supp (3) SCC 448
[209]. 1994 Supp (3) SCC 717
[210]. AIR 1996 SC 2715
[211]. (1999) SCC 413
[212]. (1998) 9 SCC 632
[213]. (1998) 9 SCC 93
[214]. (1998) 8 SCC 648
[215]. (1998) 1 SCC 363
[216]. 1997 (1) JT 160
[217]. AIR 1997 SC 1446
[218]. AIR 1988 All. 309

Mumbai Kamgar Sabha v. Abdulbhai,[219]; Rural Litigation Kendra v. State of U.P,[220]; Sachidanand v. State of West Bengal,[221]; Banvasi Seva Ashram v. State of U.P,[222] said that it was intended to regulate behavior and to inspire citizens to strive towards excellence. Excellence meant surpassing merit, virtue, honest performance.

The Constitution expects the citizens to perform their duties in an excellent way rather than half-heartedly.

The rulers and the legislators-the Ministers, the lawmakers and the administrators-have to be conscious not only of the fundamental duties of citizens at large but also of their own fundamental duties as citizens. It is one of their most fundamental constitutional obligations to be all the time aware of the Fundamental Rights of the citizens under the Constitution. For, wherever an obligation is cast on the 'State' it is for the citizens in positions of authority to implement it.

Inasmuch as we are dependent on the Constitution of India and on the unity and integrity of the Indian nation for our continued status as citizens of India, it is our bounden duty not only to observe everyone of the citizenship duties enumerated in Part IVA of the Constitution but also to meticulously respect and try to implement through every means at our disposal and through all our conduct and actions all the citizenship values--explicit or implied-under the Constitution.

Justice Venkataramiah very aptly quotes a former U.S. Senator, Elihu Root on this point. The Senator says:

Of course, voting is fundamental and essential part of the qualified citizen's duty to the Government of his country. A man who does not think it worthwhile to exercise this right to vote for public offices and on such public questions as are submitted to the voters, is strangely ignorant of the real basis of all prosperity that he has or hopes for and the real duty which rests upon him as a man of elementary morals. A man who will not take the trouble to vote is a poor spirited fellow willing to live on the labours of others and to shirk an honourable obligation, to do his share in return.

The experiment of popular government cannot be successful unless citizens of a country generally take part in the government. There is no man free from responsibility which is exactly proportional to each man's capacity, to his education, to his experience in life, to his disinterestedness, to his capacity for leadership-in brief to his equipment for effective action in the great struggle that is continually going on to

[219]. AIR 1976 SC 1455
[220]. AIR 1987 SC 2426
[221]. AIR 1987 SC 1109
[222]. AIR 1987 SC 374

determine the preponderance of good and bad forces in government and upon the issue of which depend results so momentous to himself and his family, his children, his country and mankind. The selfish men who have special interests to subserve are going to take part, the corrupt men who want to take something out of government are going to take part, the demagogues who wish to attain places of power through passion and prejudice of their fellows are going to take part. The forces of unselfishness, of self-control, of justice, of love of country, of honesty are set off against them and these forces should have every possible attraction and personality and power among men, or they will go down in the irrepressible conflict. The scheme of popular government upon which so much depends cannot be worked successfully unless a great body of such men do their share and no one of us can fail to do his share without forfeiting something of his title to self-respect.

Public spirited citizens have to come forward to take interest in the local community problems and decision making processes. It will give them an understanding of what government is all about and thus feel involved in the life of the community and the country. Proper functioning of democracy is dependent on the quality of citizenship and this requires dedicated, dynamic, disciplined and intelligent citizens. The very right to live accrues to us only when we do our duties as good citizens. The Fundamental Duties that the Constitution enjoins on us, represent the minimum of our obligations as citizens.

A good citizen is law abiding. Enlightened citizenship requires placing public interest above personal interest. Individual citizens should observe certain standards of self discipline, control baser insticts, respect the rights of others, perform their duties to society, pursue national goals, and train themselves in the art of peaceful living and democratic governance through implementation of their Fundamental Rights and citizenship duties. Only with such a responsible citizenry can both the individual citizen and the society develop to their full potential and democratic polity attain its full stature.

The eleven fundamental constitutional duties for citizens are like the commandments-morally and ethically binding on all of us. In addition, every article of the Constitution casts a duty on citizens to see it fulfilled in letter and spirit.

There are some articles under Fundamental Rights like articles 17, 18 to 23 which seek to abolish untouchability and titles and prohibit traffic in human beings and forced labour or begar. These specifically obligate the citizens not to practise untouchability, not to accept or use titles and

not to indulge in traffic in human beings or in taking begar. Somewhat similarly, article 15(a) demands of citizens not to discriminate between fellow citizens on grounds of religion, race, caste, sex or place of birth.

In a democracy it is most important for citizens to exercise their right to vote with a great sense of responsibility to elect the right people. But, it is not enough to discharge the responsibility of casting a vote once in five years. It is even more important to exercise a constant vigil over the conduct and actions of our representatives and ensure that they keep to the right track, that power does not go to their head or corrupt them and that they do not indulge in antinational or anti-people activities. For, the ultimate responsibility is of the people (read citizens) themselves. Freedom and democracy cannot be sustained and citizenship itself cannot survive if we, the citizens of India do not respect the rights of others and do not fulfill our basic obligations towards our fellow citizens. For, the most fundamental citizenship value and constitutional obligation is that of caring for our fellow citizens as our equal brothers and sisters and respecting their liberty, freedom and rights.

In the ultimate analysis, the only way to bring about adherence to fundamental duties is through public opinion and education in citizenship values and duties, and building adequate awareness and a congenial climate wherein every citizen feels proud and bound to perform his constitutional duties to the nation and pay his debt to society.

The National Commission to Review the Working of the Constitution has recommended that for effectuating Fundamental Duties, the following steps should be taken:

(i) The first and foremost step required by the Union and State Governments is to sensitize the people and to create a general awareness of the provisions of fundamental duties amongst the citizens on the lines recommended by the Justice Verma Committee on the Subject. Consideration should be given to the ways and means by which Fundamental Duties could be popularized and made effective;

(ii) Right to freedom of religion and other freedoms must be jealously guarded and rights of minorities and fellow citizens respected;

(iii) Reform of the whole process of education is an immediate but immense need, as is the need to free it from governmental or political control; it is only through education that will power to adhere to our Fundamental Duties as citizens can be inculcated;

(iv) Duty to vote at elections, actively participate in the democratic process of

governance and to pay taxes should be included in article 51A; and

(v) The other recommendations of the Justice Verma Committee on operationalisation of Fundamental Duties of Citizens should be implemented at the earliest.

The following should also be incorporated as fundamental duties in article 51A of the Constitution:

(i) To foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children.

(ii) Duty of industrial organizations to provide education to children of their employees.

Module – XII
AMENDMENT OF THE CONSTITUTION (ARTICLE 368)

Nature demands change. A political society under goes changes with the passage of time, to face new problems & challenges changes and modification are called for in all aspects of National life.

E.g. – International development, Educational development, Industrial development, Social demands like decentralization of powers etc.

Therefore wise to provide for a mechanism to change the constitution in the constitution itself. Ours constitution is written & which is federal in character. Therefore some part of it can be amended by simple legislation while other parts amendment by special majority, & some part not only by special majority but also with consent of the state. Indian constitution provides amendments procedure in the form flexibility with rigidity.

Dr. B. R. Ambedkar

He said the Canadian constitution gave finality & in fallibility and denying people right to amend constitution. U. S. A. Constitution only in extraordinary terms & condition it can amend while Indian constitution by obtaining 2/3 majority it can be amend, if not 2/3 majority then there will not be will of general public & constitution can't be amend.

Amending process

1. Imperceptible or Informal
2. Perceptible or formal.

I. Imperceptible.

This can be done by 3 ways.

(1) **The courts by interpretation** – give new or altered meaning without changing the text of the constitution.

It plays crucial role in constitutions where the amending process is rigid & difficult.

As our constitution provides detailed provision therefore court can't undertake to mould the constitution. Its role must remain limited. E.g. Art 121.

(2) **Legislation** – filling gaps or supplementing the constitution. E.g. Art 18 Civil Right Protection Act.

(3) **Convention** – some time they make provision of constitution ineffective. E.g. President acts with the advice of council of ministers.

i. Exercise of veto by the President.
ii. Assent Bill by President or Governor.
iii. Acceptance of recommendation of the Finance Commission or UPSC.
iv. Role of Planning Commission.

These all are governed & guided by conventions.

II. Perceptible or formal process

It is an announced & overt process of change. It is most accepted way of adapting the constitution to face new development. It is the description of the manner in which the constitution may be changed to reflect the new meanings required by the changes in the society or for development of the nation.

In order to make balance & the distribution of powers between Union & the State the amend by special majority is provided – rigidity. It helps to protect the supremacy & permanency of constitution.

***Nature of amendability**

1. U.S. A., Canada & Australia – Rigid constitution.
2. U.K.& India – flexible with rigidity.

***Process**

a) By simple majority.
b) Special majority.
c) Special majority & ratified or consented by legislature of half of the states.

(I) Simple or ordinary majority

(a) The text of the constitution is not altered but the law is changed.

E.g. - 1) citizenship U/A. 5 to 10 Art 11 – Parliament can enact law for citizenship. Therefore it doest altered text of Art 5 to 10 but alter statute only passed under Art 11.

2) U/A. 124 – Supreme Court consists of chief justice & 7 judges. But parliament by exercising its power increased the strength of judges from 7 – 25.

(b) **Text of constitution changed**

E.g. -

1) Formation of New state,
2) Creation or abolition of legislative council.
3) Creation of council of ministers for Union Territory.
4) U/A 343 – Extending period of 15 years fixed for the use of English language.
5) U/A. 105 (3) defining parliamentary privilege.
6) Salaries & allowances of President, Vice Chancellery President & Judges etc.

(II) Special majority with rectification

Matters of federal structure of the constitution required to be made most rigid therefore to change or amend such matters two conditions are to be fulfilled.

(i) 2/3 member of each house present & voting. &

(j) Majority must more than 50% of total membership of that house.

In addition to this such amendment must be ratified by through ½ state legislature. In U.S.A. ¾ & not ½. In

following matters this process observed.

1) Manner of election of President.
2) Executive powers of the Union & the state.
3) Powers of supreme court & High court.
4) Legislative powers of Union & executive.
5) Representation of state in parliament.
6) Art 368 Amending power of parliament & its process.

(III) Amendment requires special majority only

Except above two the other provision of constitution amended by this process. The (2) condition as above U/R. 155–158 of Lok Sabha Rules of procedure. The special majority required at every stage of the passing of a constitution Amendment Bill.

***Stages of amendment**

These are marked by the following motions & voting.

1. The Bill be taken into consideration.
2. The Bill be referred to a select committee or to a joint committee.
3. The Bill be circulated for the purpose of eliciting public opinion.
4. Voting on clause & schedule.
5. Voting on amendments.
6. The Bill be passed.

***Amending procedure U/A 368**

(1) It is initiated by introducing a Bill for the purpose.
(2) Ordinary Bill may be introduced in either House (Money Bill introduced only in Legislative Assembly).
(3) It must passed by special majority or (2/3 rd present & voting & more than 50% of total membership)
(4) Federal matter ratified by ½ state.
(5) After this, the Bill is presented to the president.
(6) President
    i) If money Bill bound to give assent.
    ii) If ordinary Bill - a) Sent Bill for reconsideration or b) Withhold his assent.
(7) If disagreement between Houses no joint sitting, it must be passed each house sitting separately.
(8) Bill doesn't require previous sanction of the president as in case of Money Bill before its introduction.

AMENABILITY OF THE CONSTITUTION

The provisions, which aren't amendable, are called as entrenched provision or unamendable provisions and all other provision are amendable. The limitations imposed on amending power of

constitution are called as Express limitation. The limitation sellouts by the courts on this power are called Implied limitation.

Growth of Implied limitation

In Shankari Prasad v. Union of India,[223] the first amendment 1951 was challenged. The main issue in this case was whether amendment must have been conforming to Art. 13 or not?

The SC held that the amendment not needs to conform to Art. 13. The court further held that Art. 13 & 368 are different.

I) First Phase

In Sajjan Singh v. State of Rajasthan,[224] case 17th amendment was challenged. The SC by 3:2 majority adhered to Shankari Prasad. But by descending judgment Hidayatullah J. held that Art 13 & 368 both are same.

Generally the amendment to Fundamental right should be rectified by State because otherwise they would be playthings of a special majority.

Mudholkar said that every constitution has some fundamental features, which are immune from amendment or change.

II) Second Phase

I.C. Golaknath v. State of Punjab,[225] case 11 Judges Bench by 6:5 majority overruled Sajjan Singh & Shankari Prasad case.

Chief Justice Subbarao said that Art 368 contained only procedure for amendment. The power to amend is U/A 248 (Residuary power) while Art 13 (2) is bar on amending power. Therefore fundamental right can't be abridged taken away by the amendment.

Hidayatullah said that the procedure u/A 368 followed resulted into amendment of constitution Art 13 (2) & 368 are same therefore no amendment could abridge or destroyed a fundamental right.

Importance of this case

Doctrine of prospective overruling laid down i.e. the effect of *Golaknath wasn't to invalidate the amendment made between 1951 –67 but in future the principle in Golaknath would apply & Parliament would have no power to abridge or destroy the fundamental right. This help to avoid reopening of settled issues & to prevent multiplicity of proceedings. This doctrine applies only to constitution matter.

In Gangaram Moolchandani v. State of Rajasthan,[226] case

In this case the SC held that today this doctrine apply also to ordinary statutes.

III) Third Phase

[223]. AIR 1951 SC 458
[224]. AIR 1965 SC 845
[225]. AIR 1967 SC 1643
[226]. AIR 2001 SC 2616

In Keshwanand Bharti v. State of Kerala,[227] case the Supreme Court – 13 Judges Bench upheld the validity of 24th Amendment & overruled Golaknath case but put forth a new doctrine i.e. Doctrine of Basic Structure – Parliament has the competence to Amendment the part containing the Fundamental Right just like any other part of the constitution. But by amending the constitution the parliament can't abridge abrogate or destroy the basic structure of the constitution.

Thus after Golaknath case no Fundamental Rights could be taken away or abridged but after Keshawanand Bharati's case it is for the court to decide whether a fundamental rights is a basic structure or not. If it is so then can't be abrogated.

42nd Amendment (1976)

Inserted clause (4) to Art 368 – No amendment of this constitution (Including provision of part III) shall be called in question in any court on any ground.

Thus judicially created Doctrine of Basic Structure was sought to be nullified by this 42nd Amendment.

In Minerva Mills v. Union of India,[228] case the Supreme Court held that the Clause (4) of Art 368 is void as it purported to destroy Judicial Review, which is a Basic Structure of the constitution.

In Waman Rao v. Union of India,[229] case the Supreme Court held that the Doctrine of Basic Structure will apply to amend Acts passed subsequent to 24th Apr. 1973 i.e. it will apply prospectively & not retrospectively to earlier Legislation.

Thus result of these Amendment & Decision is –

(1) Fundamental Right can be amending.
(2) If amendment destroys basic structure then it is void
(3) Amendment having prospective affects i.e. only those Acts passed after 24th Apr. 1973.

It is to be noted that the Supreme Court hasn't defined in precise terms as to what constitutes "Basic features" from the decisions the following have emerged as a basic features.

1) Equality,
2) Judicial Review,
3) Federalism,
4) Secular character,
5) Supremacy of constitution.
6) Democratic form of Government,
7) Separation of powers,
8) Fundamental Right,
9) Directive principles of State policy etc.

227. (1973) 4 SCC 225)
228. AIR 1980 SC 1789
229. 1981 2 SCC 362

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