Fundamental Rights

The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights).

Part III of the Constitution is rightly described as the *Magna Carta* of India.[1] It contains a very long and comprehensive list of 'justiciable' Fundamental Rights. In fact, the Fundamental Rights in our Constitution are more elaborate than those found in the Constitution of any other country in the world, including the USA.

The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.

The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. In short, they aim at establishing 'a government of laws and not of men'.

The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are 'fundamental' also in the sense that they are most essential for the all-round development (material, intellectual, moral and spiritual) of the individuals.

Originally, the Constitution provided for seven Fundamental Rights viz,

1. Right to equality (Articles 14–18)
2. Right to freedom (Articles 19–22)
3. Right against exploitation (Articles 23–24)
4. Right to freedom of religion (Articles 25–28)
5. Cultural and educational rights (Articles 29–30)

6. Right to property (Article 31)
7. Right to constitutional remedies (Article 32)

However, the right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978. It is made a legal right under Article 300-A in Part XII of the Constitution. So at present, there are only six Fundamental Rights.

Features of Fundamental Rights

The Fundamental Rights guaranteed by the Constitution are characterised by the following:

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
2. They are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such res-trictions are reasonable or not is to be decided by the courts. Thus, they strike a balance between the rights of the individual and those of the society as a whole, between individual liberty and social control.
3. Most of them are available against the arbitrary action of the State, with a few exceptions like those against the State's action and against the action of private individuals. When the rights that are available against the State's action only are violated by the private individuals, there are no constitutional remedies but only ordinary legal remedies.
4. Some of them are negative in character, that is, place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.
5. They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.
6. They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.
7. They are not sacrosanct or permanent. The Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act. Moreover, this can be done without affecting the 'basic structure' of the Constitution. (The amendability of fundamental rights is explained in detail in Chapter 11).
8. They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency). (The suspension of fundamental rights during a national Emergency is explained in detail in Chapter 16).
9. Their scope of operation is limited by Article 31A (saving of laws providing for acquisition of estates, etc.), Article 31B (validation of certain acts and regulations included in the 9th Schedule) and Article 31C (saving of laws giving effect to certain directive principles).
10. Their application to the members of armed forces, para-military forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament

(Article 33).

11. Their application can be restricted while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal circumstances to restore order (Article 34). It is different from the imposition of national emergency.
12. Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them. Such a law can be made only by the Parliament and not by state legislatures so that uniformity throughout the country is maintained (Article 35).

Definition of State

The term 'State' has been used in different provisions concerning the fundamental rights. Hence, Article 12 has defined the term for the purposes of Part III. According to it, the State includes the following:

(a) Government and Parliament of India, that is, executive and legislative organs of the Union government.
(b) Government and legislature of states, that is, executive and legislative organs of state government.
(c) All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.
(d) All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.

Thus, State has been defined in a wider sense so as to include all its agencies. It is the actions of these agencies that can be challenged in the courts as violating the Fundamental Rights.

According to the Supreme Court, even a private body or an agency working as an instrument of the State falls within the meaning of the 'State' under Article 12.

Laws Inconsistent with Fundamental Rights

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressively provides for the doctrine of judicial review. This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

The term 'law' in Article 13 has been given a wide connotation so as to include the following:

(a) Permanent laws enacted by the Parliament or the state legislatures;
(b) Temporary laws like ordinances issued by the president or the state governors;
(c) Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification; and
(d) Non-legislative sources of law, that is, custom or usage having the force of law.

Thus, not only a legislation but any of the above can be challenged in the courts as violating a Fundamental Right and hence, can be declared as void.

Further, Article 13 declares that a constitutional amendment is not a law and hence cannot be challenged. However, the Supreme Court held in the *Kesavananda Bharati* case[2] (1973) that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the 'basic structure' of the Constitution and hence, can be declared as void.

Table 7.1 *Fundamental Rights at a Glance*

Category	***Consists of***
1. Right to equality (Articles 14–18)	(a) Equality before law and equal protection of laws (Article 14). (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15). (c) Equality of opportunity in matters of public employment (Article 16). (d) Abolition of untouchability and prohibition of its practice (Article 17). (e) Abolition of titles except military and academic (Article 18).
2. Right to freedom (Articles 19–22)	(a) Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19). (b) Protection in respect of conviction for offences (Article 20). (c) Protection of life and personal liberty (Article 21). (d) Right to elementary education (Article 21A). (e) Protection against arrest and detention in certain cases (Article 22).
3. Right against exploitation (Articles 23–24)	(a) Prohibition of traffic in human beings and forced labour (Article 23). (b) Prohibition of employment of children in factories, etc. (Article 24).
4. Right to freedom of religion (Article 25–28)	(a) Freedom of conscience and free profession, practice and propagation of religion (Article 25). (b) Freedom to manage religious affairs (Article 26). (c) Freedom from payment of taxes for promotion of any religion (Article 27). (d) Freedom from attending religious instruction or worship in certain educational institutions (Article 28).
5. Cultural and educational rights (Articles 29–30)	(a) Protection of language, script and culture of minorities (Article 29). (b) Right of minorities to establish and administer educational institutions (Article 30).
6. Right to constitutional remedies (Article 32)	Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) *habeas corpus,* (ii) *mandamus,* (iii) prohibition, (iv) *certiorari,* and (v) *quo war-rento* (Article 32).

Table 7.2 *Fundamental Rights (FR) of Foreigners*

FR available only to citizens and not to foreigners	***FR available to both citizens and foreigners (except enemy aliens)***
1. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).	1. Equality before law and equal protection of laws (Article 14).
2. Equality of opportunity in matters of public employment (Article 16).	2. Protection in respect of conviction for offences (Article 20).
3. Protection of six rights regarding freedom of : (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19).	3. Protection of life and personal liberty (Article 21).
4. Protection of language, script and culture of minorities (Article 29).	4. Right to elementary education (Article 21A).
5. Right of minorities to establish and administer educational institutions (Article	5. Protection against arrest and detention in

30).	certain cases (Article 22).
	6. Prohibition of traffic in human beings and forced labour (Article 23).
	7. Prohibition of employment of children in factories etc., (Article 24).
	8. Freedom of conscience and free profession, practice and propagation of religion (Article 25).
	9. Freedom to manage religious affairs (Article 26).
	10. Freedom from payment of taxes for promotion of any religion (Article 27).
	11. Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

Right to Equality

1. Equality before Law and Equal Protection of Laws

Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This provision confers rights on all persons whether citizens or foreigners. Moreover, the word 'person' includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.

The concept of 'equality before law' is of British origin while the concept of 'equal protection of laws' has been taken from the American Constitution. The first concept connotes: **(a)** the absence of any special privileges in favour of any person, **(b)** the equal subjection of all persons to the ordinary law of the land administered by ordinary law courts, and **(c)** no person (whether rich or poor, high or low, official or non-official) is above the law.

The second concept, on the other hand, connotes: **(a)** the equality of treatment under equal circumstances, both in the privileges conferred and liabilities imposed by the laws, **(b)** the similar application of the same laws to all persons who are similarly situated, and **(c)** the like should be treated alike without any discrimination. Thus, the former is a negative concept while the latter is a positive concept. However, both of them aim at establishing equality of legal status, opportunity and justice.

The Supreme Court held that where equals and unequals are treated differently, Article 14 does not apply. While Article 14 forbids class legislation, it permits reasonable classification of persons, objects and transactions by the law. But the classification should not be arbitrary, artificial or evasive. Rather, it should be based on an intelligible differential and substantial distinction.

Rule of Law The concept of 'equality before law' is an element of the concept of 'Rule of Law', propounded by A.V. Dicey, the British jurist. His concept has the following three elements or aspects:

(i) Absence of arbitrary power, that is, no man can be punished except for a breach of law.

(ii) Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts[3].

(iii) The primacy of the rights of the individual, that is, the constitution is the result of the rights of the individual as defined and enforced by the courts of law rather than the constitution being the source of the individual rights.

The first and the second elements are applicable to the Indian System and not the third one. In the Indian System, the constitution is the source of the individual rights.

The Supreme Court held that the 'Rule of Law' as embodied in Article 14 is a 'basic feature' of the constitution. Hence, it cannot be destroyed even by an amendment.

Exceptions to Equality The rule of equality before law is not absolute and there are constitutional and other exceptions to it. These are mentioned below:

1. The President of India and the Governor of States enjoy the following immunities (Article 361):
   (i) The President or the Governor is not answerable to any court for the exercise and performance of the powers and duties of his office.
   (ii) No criminal proceedings shall be instituted or continued against the President or the Governor in any court during his term of office.
   (iii) No process for the arrest or imprisonment of the President or the Governor shall be issued from any court during his term of office.
   (iv) No civil proceedings against the President or the Governor shall be instituted during his term of office in any court in respect of any act done by him in his personal capacity, whether before or after he entered upon his office, until the expiration of two months next after notice has been delivered to him.
2. No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State (Article 361-A).
3. No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof (Article 105).
4. No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof (Article 194).
5. Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. The Supreme Court held that "where Article 31-C comes in, Article 14 goes out".
6. The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal

and civil proceedings.

7. The UNO and its agencies enjoy the diplomatic immunity.

2. Prohibition of Discrimination on Certain Grounds

Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. The two crucial words in this provision are 'discrimination' and 'only'. The word 'discrimination' means 'to make an adverse distinction with regard to' or 'to distinguish unfavourably from others'. The use of the word 'only' connotes that discrimination on other grounds is not prohibited.

The second provision of Article 15 says that no citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, or place of birth with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly by State funds or dedicated to the use of general public. This provision prohibits discrimination both by the State and private individuals, while the former provision prohibits discrimination only by the State.

There are three exceptions to this general rule of non-discrimination:

(a) The state is permitted to make any special provision for women and children. For example, reservation of seats for women in local bodies or provision of free education for children.

(b) The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes[4]. For example, reservation of seats or fee concessions in public educational institutions.

(c) The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions.

The last provision was added by the 93rd Amendment Act of 2005. In order to give effect to this provision, the Centre enacted the Central Educational Institutions (Reservation in Admission) Act, 2006, providing a quota of 27% for candidates belonging to the Other Backward Classes (OBCs) in all central higher educational institutions including the Indian Institutes of Technology (IITs) and the Indian Institutes of Management (IIMs). In April 2008, the Supreme Court upheld the validity of both, the Amendment Act and the OBC Quota Act. But, the Court directed the central government to exclude the 'creamy layer' (advanced sections) among the OBCs while implementing the law.

Creamy Layer The children of the following different categories of people belong to 'creamy layer' among OBCs and thus will not get the quota benefit :

1. Persons holding constitutional posts like President, Vice-President, Judges of SC and HCs, Chairman and Members of UPSC and SPSCs, CEC, CAG and so on.
2. Group 'A' / Class I and Group 'B' / Class II Officers of the All India, Central and State Services; and Employees holding equivalent posts in PSUs, Banks, Insurance Organisations, Universities etc., and also in private employment.
3. Persons who are in the rank of colonel and above in the Army and equivalent posts in the

Navy, the Air Force and the Paramilitary Forces.

4. Professionals like doctors, lawyers, engineers, artists, authors, consultants and so on.
5. Persons engaged in trade, business and industry.
6. People holding agricultural land above a certain limit and vacant land or buildings in urban areas.
7. Persons having gross annual income of more than `4.5 lakhs or possessing wealth above the exemption limit. In 1993, when the "creamy layer" ceiling was introduced, it was `1 lakh. It was subsequently revised to `2.5 lakh in 2004 and `4.5 lakh in 2008. Presently (2013), the proposal to raise creamy layer ceiling to `6 lakh a year is under consideration of the government.

3. Equality of Opportunity in Public Employment

Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State. No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

There are three exceptions to this general rule of equality of opportunity in public employment:

(a) Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority. As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh.[5]

(b) The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.

(c) A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.

Mandal Commission and Aftermath In 1979, the Morarji Desai Government appointed the Second[6] Backward Classes Commission under the chairmanship of B P Mandal, a Member of Parliament, in terms of Article 340 of the Constitution to investigate the conditions of the socially and educationally backward classes and suggest measures for their advancement. The commission submitted its report in 1980 and identified as many as 3743 castes as socially and educationally backward classes. They constitute nearly 52% component of the population, excluding the scheduled castes (SCs) and the scheduled tribes (STs). The commission recommended for reservation of 27% government jobs for the Other Backward Classes (OBCs) so that the total reservation for all ((SCs, STs and OBCs) amounts to 50%.[7] It was after ten years in 1990 that the V P Singh Government declared reser-vation of 27% government jobs for the OBCs. Again in 1991, the Narasimha Rao Government introduced two changes: **(a)** preference to the poorer sections among the OBCs in the 27% quota, i.e., adoption of the economic criteria in granting reservation, and **(b)** reservation of another 10% of jobs for poorer (economically backward) sections of higher castes who are not covered by any existing schemes of reservation.

In the famous *Mandal* case[8] (1992), the scope and extent of Article 16(4), which provides for reservation of jobs in favour of backward classes, has been examined thoroughly by the Supreme Court. Though the Court has rejected the additional reservation of 10% for poorer sections of higher castes, it upheld the constitutional validity of 27% reservation for the OBCs with certain conditions, viz,

(a) The advanced sections among the OBCs (the creamy layer) should be excluded from the list of beneficiaries of reservation.

(b) No reservation in promotions; reservation should be confined to initial appointments only. Any *existing reservation* in promotions can continue for five years only (i.e., upto 1997).

(c) The total reserved quota should not exceed 50% except in some extraordinary situations. This rule should be applied every year.

(d) The 'carry forward rule' in case of unfilled (backlog) vacancies is valid. But it should not violate 50% rule.

(e) A permanent statutory body should be established to examine complaints of over-inclusion and under-inclusion in the list of OBCs.

With regard to the above rulings of the Supreme Court, the government has taken the following actions:

(a) Ram Nandan Committee was appointed to identify the creamy layer among the OBCs. It submitted its report in 1993, which was accepted.

(b) National Commission for Backward Classes was established in 1993 by an act of Parliament. It considers inclusions in and exclusions from the lists of castes notified as backward for the purpose of job reservation.

(c) In order to nullify the ruling with regard to reservation in promotions, the 77th Amendment Act was enacted in 1995. It added a new provision in Article 16 that empowers the State to provide for reservation in promotions of any services under the State in favour of the SCs and STs that are not adequately represented in the state services. Again, the 85th Amendment Act of 2001 provides for 'consequential seniority' in the case of promotion by virtue of rule of reservation for the government servants belonging to the SCs and STs with retrospective effect from June 1995.

(d) The ruling with regard to backlog vacancies was nullified by the 81st Amendment Act of 2000. It added another new provision in Article 16 that empowers the State to consider the unfilled reserved vacancies of a year as a separate class of vaccancies to be filled up in any succeeding year or years. Such class of vacancies are not to be combined with the vacancies of the year in which they are being filled up to determine the ceiling of 50% reservation on total number of vacancies of that year. In brief, it ends the 50% ceiling on reservation in backlog vacancies.

(e) The 76th Amendment Act of 1994 has placed the Tamil Nadu Reservations Act[9] of 1994 in the Ninth Schedule to protect it from judicial review as it provided for 69 per cent of reservation, far exceeding the 50 per cent ceiling.

4. Abolition of Untouchability

Article 17 abolishes 'untouchability' and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

In 1976, the Untouchability (Offences) Act, 1955 has been comprehensively amended and renamed as the Protection of Civil Rights Act, 1955 to enlarge the scope and make penal provisions more stringent. The act defines civil right as any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution.

The term 'untouchability' has not been defined either in the Constitution or in the Act. However, the Mysore High Court held that the subject matter of Article 17 is not untouchability in its literal or grammatical sense but the 'practice as it had developed historically in the country'. It refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain castes. Hence, it does not cover social boycott of a few individuals or their exclusion from religious services, etc.

Under the Protection of Civil Rights Act (1955), the offences committed on the ground of untouchability are punishable either by imprisonment up to six months or by fine upto `500 or both. A person convicted of the offence of 'untouchability' is disqualified for election to the Parliament or state legislature. The act declares the following acts as offences:

(a) preventing any person from entering any place of public worship or from worshipping therein;
(b) justifying untouchability on traditional, religious, philosophical or other grounds;
(c) denying access to any shop, hotel or places of public entertainment;
(d) insulting a person belonging to scheduled caste on the ground of untouchability;
(e) refusing to admit persons in hospitals, educational institutions or hostels established for public benefit;
(f) preaching untouchability directly or indirectly; and
(g) refusing to sell goods or render services to any person.

The Supreme Court held that the right under Article 17 is available against private individuals and it is the constitutional obligation of the State to take necessary action to ensure that this right is not violated.

5. Abolition of Titles

Article 18 abolishes titles and makes four provisions in that regard:

(a) It prohibits the state from conferring any title (except a military or academic distinction) on any body, whether a citizen or a foreigner.
(b) It prohibits a citizen of India from accepting any title from any foreign state.
(c) A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president.
(d) No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument or office from or under any foreign State without the consent of the president.

From the above, it is clear that the hereditary titles of nobility like Maharaja, Raj Bahadur, Rai Bahadur, Rai Saheb, Dewan Bahadur, etc, which were conferred by colonial States are banned by

Article 18 as these are against the principle of equal status of all.

In 1996[10], the Supreme Court upheld the constitutional validity of the National Awards—Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri. It ruled that these awards do not amount to 'titles' within the meaning of Article 18 that prohibits only hereditary titles of nobility. Therefore, they are not violative of Article 18 as the theory of equality does not mandate that merit should not be recognised. However, it also ruled that they should not be used as suffixes or prefixes to the names of awardees. Otherwise, they should forfeit the awards.

These National Awards were instituted in 1954. The Janata Party government headed by Morarji Desai discontinued them in 1977. But they were again revived in 1980 by the Indira Gandhi government.

Right to Freedom

1. Protection of Six Rights

Article 19 guarantees to all citizens the six rights. These are:

(i) Right to freedom of speech and expression.

(ii) Right to assemble peaceably and without arms.

(iii) Right to form associations or unions or co-operative societies.[10a]

(iv) Right to move freely throughout the territory of India.

(v) Right to reside and settle in any part of the territory of India.

(vi) Right to practice any profession or to carry on any occupation, trade or business.

Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978.

These six rights are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc.

The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in the Article 19 itself and not on any other grounds.

Freedom of Speech and Expression It implies that every citizen has the right to express his views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner. The Supreme Court held that the freedom of speech and expression includes the following:

(a) Right to propagate one's views as well as views of others.

(b) Freedom of the press.

(c) Freedom of commercial advertisements.

(d) Right against tapping of telephonic conversation.

(e) Right to telecast, that is, government has no monopoly on electronic media.

(f) Right against bundh called by a political party or organisation.

(g) Right to know about government activities.

(h) Freedom of silence.

(i) Right against imposition of pre-censorship on a newspaper.

(j) Right to demonstration or picketing but not right to strike.

The State can impose reasonable restrictions on the exercise of the freedom of speech and expression on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

Freedom of Assembly Every citizen has the right to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrations and take out processions. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed. This provision does not protect violent, disorderly, riotous assemblies, or one that causes breach of public peace or one that involves arms. This right does not include the right to strike.

The State can impose reasonable restrictions on the exercise of right of assembly on two grounds, namely, sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned.

Under Section 144 of Criminal Procedure Code (1973), a magistrate can restrain an assembly, meeting or procession if there is a risk of obstruction, annoyance or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or any affray.

Under Section 141 of the Indian Penal Code, as assembly of five or more persons becomes unlawful if the object is (a) to resist the execution of any law or legal process; (b) to forcibly occupy the property of some person; (c) to commit any mischief or criminal trespass; (d) to force some person to do an illegal act; and (e) to threaten the government or its officials on exercising lawful powers.

Freedom of Association All citizens have the right to form associations or unions or co-operative societies[10b]. It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons. It not only includes the right to start an association or union but also to continue with the association or union as such. Further, it covers the negative right of not to form or join an association or union.

Reasonable restrictions can be imposed on the exercise of this right by the State on the grounds of sovereignty and integrity of India, public order and morality. Subject to these restrictions, the citizens have complete liberty to form associations or unions for pursuing lawful objectives and purposes. However, the right to obtain recognition of the association is not a fundamental right.

The Supreme Court held that the trade unions have no guaranteed right to effective bargaining or right to strike or right to declare a lock-out. The right to strike can be controlled by an appropriate industrial law.

Freedom of Movement This freedom entitles every citizen to move freely throughout the territory of the country. He can move freely from one state to another or from one place to another within a state. This right underline the idea that India is one unit so far as the citizens are concerned. Thus, the purpose is to promote national feeling and not parochialism.

The grounds of imposing reasonable restrictions on this freedom are two, namely, the interests of

general public and the protection of interests of any scheduled tribe. The entry of outsiders in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

The Supreme Court held that the freedom of movement of prostitutes can be restricted on the ground of public health and in the interest of public morals. The Bombay High Court validated the restrictions on the movement of persons affected by AIDS.

The freedom of movement has two dimensions, viz, internal (right to move inside the country) and external (right to move out of the country and right to come back to the country). Article 19 protects only the first dimension. The second dimension is dealt by Article 21 (right to life and personal liberty).

Freedom of Residence Every citizen has the right to reside and settle in any part of the territory of the country. This right has two parts: (a) the right to reside in any part of the country, which means to stay at any place temporarily, and (b) the right to settle in any part of the country, which means to set up a home or domicile at any place permanently.

This right is intended to remove internal barriers within the country or between any of its parts. This promotes nationalism and avoids narrow mindedness.

The State can impose reasonable restrictions on the exercise of this right on two grounds, namely, the interest of general public and the protection of interests of any scheduled tribes. The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation. In many parts of the country, the tribals have been permitted to regulate their property rights in accordance with their customary rules and laws.

The Supreme Court held that certain areas can be banned for certain kinds of persons like prostitutes and habitual offenders.

From the above, it is clear that the right to residence and the right to movement are overlapping to some extent. Both are complementary to each other.

Freedom of Profession, etc. All citizens are given the right to practise any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood.

The State can impose reasonable restrictions on the exercise of this right in the interest of the general public. Further, the State is empowered to:

(a) prescribe professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; and

(b) carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise.

Thus, no objection can be made when the State carries on a trade, business, industry or service either as a monopoly (complete or partial) to the exclusion of citizens (all or some only) or in competition with any citizen. The State is not required to justify its monopoly.

This right does not include the right to carry on a profession or business or trade or occupation that is

immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc,). The State can absolutely prohibit these or regulate them through licencing.

2. Protection in Respect of Conviction for Offences

Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:

(a) No *ex-post-facto* law: No person shall be (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.

(b) No double jeopardy: No person shall be prosecuted and punished for the same offence more than once.

(c) No self-incrimination: No person accused of any offence shall be compelled to be a witness against himself.

An *ex-post-facto* law is one that imposes penalties restrospectively (retroactively), that is, upon acts already done or which increases the penalties for such acts. The enactment of such a law is prohibited by the first provision of Article 20. However, this limitation is imposed only on criminal laws and not on civil laws or tax laws. In other words, a civil liability or a tax can be imposed retrospectively. Further, this provision prohibits only conviction or sentence under an *ex-post-facto* criminal law and not the trial thereof. Finally, the protection (immunity) under this provision cannot be claimed in case of preventive detention or demanding security from a person.

The protection against double jeopardy is available only in proceedings before a court of law or a judicial tribunal. In other words, it is not available in proceedings before departmental or administrative authorities as they are not of judicial nature.

The protection against self-incrimination extends to both oral evidence and documentary evidence. However, it does not extend to (i) compulsory production of material objects, (ii) compulsion to give thumb impression, specimen signature, blood specimens, and (iii) compulsory exhibition of the body. Further, it extends only to criminal proceedings and not to civil proceedings or proceedings which are not of criminal nature.

3. Protection of Life and Personal Liberty

Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens.

In the famous *Gopalan* case[11] (1950), the Supreme Court has taken a narrow interpretation of the Article 21. It held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. This means that the State can deprive the right to life and personal liberty of a person based on a law. This is because of the expression 'procedure established by law' in Article 21, which is different from the expression 'due process of law' contained in the American Constitution. Hence, the validity of a law that has prescribed a procedure cannot be questioned on the ground that the law is unreasonable, unfair or unjust. Secondly, the Supreme Court held that the 'personal liberty' means only liberty relating to the person or body of the

individual. But, in *Menaka* case[12] (1978), the Supreme Court overruled its judgement in the *Gopalan* case by taking a wider interpretation of the Article 21. Therefore, it ruled that the right to life and personal liberty of a person can be deprived by a law provided the procedure prescribed by that law is reasonable, fair and just. In other words, it has introduced the American expression 'due process of law'. In effect, the protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action. Further, the court held that the 'right to life' as embodied in Article 21 is not merely confined to animal existence or survival but it includes within its ambit the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living. It also ruled that the expression 'Personal Liberty' in Article 21 is of the widest amplitude and it covers a variety of rights that go to constitute the personal liberties of a man.

The Supreme Court has reaffirmed its judgement in the *Menaka* case in the subsequent cases. It has declared the following rights as part of Article 21:

(a) Right to live with human dignity.
(b) Right to decent environment including pollution free water and air and protection against hazardous industries.
(c) Right to livelihood.
(d) Right to privacy.
(e) Right to shelter.
(f) Right to health.
(g) Right to free education up to 14 years of age.
(h) Right to free legal aid.
(i) Right against solitary confinement.
(j) Right to speedy trial.
(k) Right against handcuffing.
(l) Right against inhuman treatment.
(m) Right against delayed execution.
(n) Right to travel abroad.
(o) Right against bonded labour.
(p) Right against custodial harassment.
(q) Right to emergency medical aid.
(r) Right to timely medical treatment in government hospital.
(s) Right not to be driven out of a state.
(t) Right to fair trial.
(u) Right of prisoner to have necessities of life.
(v) Right of women to be treated with decency and dignity.
(w) Right against public hanging.
(x) Right to hearing.

(y) Right to information.

(z) Right to reputation.

4. Right to Education

Article 21 A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine. Thus, this provision makes only elementary education a Fundamental Right and not higher or professional education.

This provision was added by the 86th Constitutional Amendment Act of 2002. This amendment is a major milestone in the country's aim to achieve 'Education for All'. The government described this step as 'the dawn of the second revolution in the chapter of citizens' rights'.

Even before this amendment, the Constitution contained a provision for free and compulsory education for children under Article 45 in Part IV. However, being a directive principle, it was not enforceable by the courts. Now, there is scope for judicial intervention in this regard.

This amendment changed the subject matter of Article 45 in directive principles. It now reads—'The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.' It also added a new fundamental duty under Article 51A that reads —'It shall be the duty of every citizen of India to provide opportunities for education to his child or ward between the age of six and fourteen years'.

In 1993 itself, the Supreme Court recognised a Fundamental Right to primary education in the right to life under Article 21. It held that every child or citizen of this country has a right to free education until he completes the age of 14 years. Thereafter, his right to education is subject to the limits of economic capacity and development of the state. In this judgement, the Court overruled its earlier judgement (1992) which declared that there was a fundamental right to education up to any level including professional education like medicine and engineering.

In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009. This Act seeks to provide that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. This legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all.[12a]

5. Protection Against Arrest and Detention

Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive and preventive. **Punitive detention** is to punish a person for an offence committed by him after trial and conviction in a court. **Preventive detention**, on the other hand, means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from committing an offence in the near future. Thus, preventive detention is only a precautionary measure and based on suspicion.

The Article 22 has two parts—the first part deals with the cases of ordinary law and the second part deals with the cases of preventive detention law.

(a) The first part of Article 22 confers the following rights on a person who is arrested or

detained under an ordinary law:

(i) Right to be informed of the grounds of arrest.

(ii) Right to consult and be defended by a legal practitioner.

(iii) Right to be produced before a magistrate within 24 hours, excluding the journey time.

(iv) Right to be released after 24 hours unless the magistrate authorises further detention.

These safeguards are not available to an alien or a person arrested or detained under a preventive detention law.

The Supreme Court also ruled that the arrest and detention in the first part of Article 22 do not cover arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. They apply only to an act of a criminal or quasi-criminal nature or some activity prejudicial to public interest.

(b) The second part of Article 22 grants protection to persons who are arrested or detained under a preventive detention law. This protection is available to both citizens as well as aliens and includes the following:

(i) The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. The board is to consist of judges of a high court.

(ii) The grounds of detention should be communicated to the detenu. However, the facts considered to be against the public interest need not be disclosed.

(iii) The detenu should be afforded an opportunity to make a representation against the detention order.

Article 22 also authorises the Parliament to prescribe **(a)** the circumstances and the classes of cases in which a person can be detained for more than three months under a preventive detention law without obtaining the opinion of an advisory board; **(b)** the maximum period for which a person can be detained in any classes of cases under a preventive detention law; and **(c)** the procedure to be followed by an advisory board in an inquiry.

The 44th Amendment Act of 1978 has reduced the period of detention without obtaining the opinion of an advisory board from three to two months. However, this provision has not yet been brought into force, hence, the original period of three months still continues.

The Constitution has divided the legislative power with regard to preventive detention between the Parliament and the state legislatures. The Parliament has exclusive authority to make a law of preventive detention for reasons connected with defence, foreign affairs and the security of India. Both the Parliament as well as the state legislatures can concurrently make a law of preventive detention for reasons connected with the security of a state, the maintenance of public order and the maintenance of supplies and services essential to the community.

The preventive detention laws made by the Parliament are:

(a) Preventive Detention Act, 1950. Expired in 1969.

(b) Maintenance of Internal Security Act (MISA), 1971. Repealed in 1978.

(c) Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974.

(d) National Security Act (NASA), 1980.

(e) Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act (PBMSECA), 1980.

(f) Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985. Repealed in 1995.

(g) Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDPSA), 1988.

(h) Prevention of Terrorism Act (POTA), 2002. Repealed in 2004.

It is unfortunate to know that no democratic country in the world has made preventive detention as an integral part of the Constitution as has been done in India. It is unknown in USA. It was resorted to in Britain only during first and second world war time. In India, preventive detention existed even during the British rule. For example, the Bengal State Prisoners Regulation of 1818 and the Defence of India Act of 1939 provided for preventive detention.

Right Against Exploitation

1. Prohibition of Traffic in Human Beings and Forced Labour

Article 23 prohibits traffic in human beings, *begar* (forced labour) and other similar forms of forced labour. Any contravention of this provision shall be an offence punishable in accordance with law. This right is available to both citizens and non-citizens. It protects the individual not only against the State but also against private persons.

The expression 'traffic in human beings' include (a) selling and buying of men, women and children like goods; (b) immoral traffic in women and children, including prostitution; (c) *devadasis*; and (d) slavery. To punish these acts, the Parliament has made the Immoral Traffic (Prevention) Act[13], 1956.

The term '*begar* ' means compulsory work without remuneration. It was a peculiar Indian system under which the local zamindars sometimes used to force their tenants to render services without any payment. In addition to *begar*, the Article 23 prohibits other 'similar forms of forced labour' like 'bonded labour'. The term 'forced labour' means compelling a person to work against his will. The word 'force' includes not only physical or legal force but also force arising from the compulsion of economic circumstances, that is, working for less than the minimum wage. In this regard, the Bonded Labour System (Abolition) Act, 1976; the Minimum Wages Act, 1948; the Contract Labour Act, 1970 and the Equal Remuneration Act, 1976 were made.

Article 23 also provides for an exception to this provision. It permits the State to impose compulsory service for public purposes, as for example, military service or social service, for which it is not bound to pay. However, in imposing such service, the State is not permitted to make any discrimination on grounds only of religion, race, caste or class.

2. Prohibition of Employment of Children in Factories, etc.

Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway. But it does not prohibit their employment in any harmless or innocent work.

The Child Labour (Prohibition and Regula-tion) Act, 1986, is the most important law in this

direction. In addition, the Employment of Children Act, 1938; the Factories Act, 1948; the Mines Act, 1952; the Merchant Shipping Act, 1958; the Plantation Labour Act, 1951; the Motor Transport Workers Act, 1951; Apprentices Act, 1961; the Bidi and Cigar Workers Act, 1966; and other similar acts prohibit the employment of children below certain age.

In 1996, the Supreme Court directed the establishment of Child Labour Rehabilitation Welfare Fund in which the offending employer should deposit a fine of `20,000 for each child employed by him. It also issued directions for the improvement of education, health and nutrition of children.

The Commissions for Protection of Child Rights Act, 2005 was enacted to provide for the establishment of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights.

In 2006, the government banned the employment of children as domestic servants or workers in business establishments like hotels, dhabas, restaurants, shops, factories, resorts, spas, tea-shops and so on. It warned that anyone employing children below 14 years of age would be liable for prosecution and penal action.

Total Ban on Child Labour

In August 2012, the Union Cabinet approved a proposal to completely ban employment of children below 14 years in all occupations and processes.

The Child Labour (Prohibition & Regulation) Act, 1986, will be amended to incorporate the changes and will be renamed a Child and Adolescent Labour (Prohibition) Act. Giving more teeth to the Act, offences under it have been made cognizable and the punishment has been increased.

Presently, children under the age of 14 are prohibited from employment in "hazardous occupations and processes" while their conditions of work in non-hazardous occupations and processes are merely regulated.

The amendments include increasing the age of prohibition for employment of children and adolescents in hazardous occupations, such as mining, from 14 to 18. Employment of children below 14 years is presently prohibited in 18 occupations and 65 processes.

The maximum punishment for offences under the Act has been increased from one year to two years of imprisonment and from `20,00 to `50,000 fine or both. For repeated offences, it has been raised to three years of imprisonment.

Right to Freedom of Religion

1. Freedom of Conscience and Free Profession, Practice and Propagation of Religion

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are:

(a) *Freedom of conscience:* Inner freedom of an individual to mould his relation with God or Creatures in whatever way he desires.

(b) *Right to profess:* Declaration of one's religious beliefs and faith openly and freely.

(c) *Right to practice:* Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.

(d) *Right to propagate:* Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But, it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all the persons alike.

From the above, it is clear that Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights are available to all persons—citizens as well as non-citizens.

However, these rights are subject to public order, morality, health and other provisions relating to fundamental rights. Further, the State is permitted to:

(a) regulate or restrict any economic, financial, political or other secular activity associated with religious practice; and

(b) provide for social welfare and reform or throw open Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 25 also contains two explanations: one, wearing and carrying of *kirpans* is to be included in the profession of the Sikh religion; and two, the Hindus, in this context, include Sikhs, Jains and Buddhists.[14]

2. Freedom to Manage Religious Affairs

According to Article 26, every religious denomination or any of its section shall have the following rights:

(a) Right to establish and maintain institu-tions for religious and charitable purposes;

(b) Right to manage its own affairs in matters of religion;

(c) Right to own and acquire movable and immovable property; and

(d) Right to administer such property in accordance with law.

Article 25 guarantees rights of individuals, while Article 26 guarantees rights of religious denominations or their sections. In other words, Article 26 protects collective freedom of religion. Like the rights under Article 25, the rights under Article 26 are also subject to public order, morality and health but not subject to other provisions relating to the Fundamental Rights.

The Supreme Court held that a religious denomination must satisfy three conditions:

(a) It should be a collection of individuals who have a system of beliefs (doctrines) which they regard as conductive to their spiritual well-being;

(b) It should have a common organisation; and

(c) It should be designated by a distinctive name.

Under the above criteria, the Supreme Court held that the 'Ramakrishna Mission' and 'Ananda Marga' are religious denominations within the Hindu religion. It also held that Aurobindo Society is not a religious denomination.

3. Freedom from Taxation for Promotion of a Religion

Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion. This provision prohibits the State from favouring, patronising and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion. Thus, a fee can be levied on pilgrims to provide them some special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

4. Freedom from Attending Religious Instruction

Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

Further, no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to attend any religious instruction or worship in that institution without his consent. In case of a minor, the consent of his guardian is needed.

Thus, Article 28 distinguishes between four types of educational institutions:

(a) Institutions wholly maintained by the State.

(b) Institutions administered by the State but established under any endowment or trust.

(c) Institutions recognised by the State.

(d) Institutions receiving aid from the State.

In (a) religious instruction is completely prohibited while in (b), religious instruction is permitted. In (c) and (d), religious instruction is permitted on a voluntary basis.

Cultural and Educational Rights

1. Protection of Interests of Minorities

Article 29 provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. Further, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, or language.

The first provision protects the right of a group while the second provision guarantees the right of a citizen as an individual irrespective of the community to which he belongs.

Article 29 grants protection to both religious minorities as well as linguistic minorities. However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as it is commonly assumed to be. This is because of the use of words ‘section of citizens’ in the Article that include minorities as well as majority.

The Supreme Court also held that the right to conserve the language includes the right to agitate for the protection of the language. Hence, the political speeches or promises made for the conservation of the language of a section of the citizens does not amount to corrupt practice under the Representation of the People Act, 1951.

2. Right of Minorities to Establish and Administer Educational Institutions

Article 30 grants the following rights to minorities, whether religious or linguistic:

(a) All minorities shall have the right to establish and administer educational institutions of their choice.

(b) The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them. This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleted the right to property as a Fundamental Right (Article 31).

(c) In granting aid, the State shall not discriminate against any educational institution managed by a minority.

Thus, the protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29). However, the term 'minority' has not been defined anywhere in the Constitution.

The right under Article 30 also includes the right of a minority to impart education to its children in its own language.

Minority educational institutions are of three types:

(a) institutions that seek recognition as well as aid from the State;

(b) institutions that seek only recognition from the State and not aid; and

(c) institutions that neither seek recognition nor aid from the State.

The institutions of first and second type are subject to the regulatory power of the state with regard to syllabus prescription, academic standards, discipline, sanitation, employment of teaching staff and so on. The institutions of third type are free to administer their affairs but subject to operation of general laws like contract law, labour law, industrial law, tax law, economic regulations, and so on.

Right to Constitutional Remedies

A mere declaration of fundamental rights in the Constitution is meaningless, useless and worthless without providing an effective machinery for their enforcement, if and when they are violated. Hence, Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen. In other words, the right to get the Fundamental Rights protected is in itself a fundamental right. This makes the fundamental rights real. That is why Dr Ambedkar called Article 32 as the most important article of the Constitution—'an Article without which this constitution would be a nullity. It is the very soul of the Constitution and the very heart of it'. The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it cannot be abridged or taken away even by way of an amendment to the Constitution. It contains the following four provisions:

(a) The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights is guaranteed.

(b) The Supreme Court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include *habeas corpus, mandamus,* prohibition, *certiorari* and *quo-warranto.*

(c) Parliament can empower any other court to issue directions, orders and writs of all kinds. However, this can be done without prejudice to the above powers conferred on the Supreme Court. Any other court here does not include high courts because Article 226 has already conferred these powers on the high courts.

(d) The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution. Thus the Constitution provides that the President can suspend the right to move any court for the enforcement of the fundamental rights during a national emergency (Article 359).

It is thus clear that the Supreme Court has been constituted as the defender and guarantor of the fundamenetal rights of the citizens. It has been vested with the 'original' and 'wide' powers for that purpose. Original, because an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. Wide, because its power is not restricted to issuing of orders or directions but also writs of all kinds.

The purpose of Article 32 is to provide a guaranteed, effective, expedious, inexpensive and summary remedy for the protection of the fundamental rights. Only the Fundamental Rights guaranteed by the Constitution can be enforced under Article 32 and not any other right like non-fundamental constitutional rights, statutory rights, customary rights and so on. The violation of a fundamental right is the *sine qua non* for the exercise of the right conferred by Article 32. In other words, the Supreme Court, under Article 32, cannot determine a question that does not involve Fundamental Rights. Article 32 cannot be invoked simply to determine the constitutionality of an executive order or a legislation unless it directly infringes any of the fundamental rights.

In case of the enforcement of Fundamental Rights, the jurisdiction of the Supreme Court is original but not exclusive. It is concurrent with the jurisdiction of the high court under Article 226. It vests original powers in the high court to issue directions, orders and writs of all kinds for the enforcement of the Fundamental Rights. It means when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

Since the right guaranteed by Article 32 (ie, the right to move the Supreme Court where a fundamental right is infringed) is in itself a fundamental right, the availability of alternate remedy is no bar to relief under Article 32. However, the Supreme Court has ruled that where relief through high court is available under Article 226, the aggrieved party should first move the high court.

Writs—Types and Scope

The Supreme Court (under Article 32) and the high courts (under Article 226) can issue the writs of *habeas corpus, mandamus,* prohibition, *certiorari* and *quo-warranto*. Further, the Parliament (under Article 32) can empower any other court to issue these writs. Since no such provision has been made so far, only the Supreme Court and the high courts can issue the writs and not any other court. Before

1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs. Article 226 now empowers all the high courts to issue the writs.

These writs are borrowed from English law where they are known as 'prerogative writs'. They are so called in England as they were issued in the exercise of the prerogative of the King who was, and is still, described as the 'fountain of justice'. Later, the high court started issuing these writs as extraordinary remedies to uphold the rights and liberties of the British people.

The writ jurisdiction of the Supreme Court differs from that of a high court in three respects:

1. The Supreme Court can issue writs only for the enforcement of fundamental rights whereas a high court can issue writs not only for the enforcement of Fundamental Rights but also for any other purpose. The expression 'for any other purpose' refers to the enforcement of an ordinary legal right. Thus, the writ jurisdiction of the Supreme Court, in this respect, is narrower than that of high court.
2. The Supreme Court can issue writs aga-inst a person or government throughout the territory of India whereas a high court can issue writs against a person residing or against a government or authority located within its territorial jurisdiction only or outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction.[15] Thus, the territorial jurisdiction of the Supreme Court for the purpose of issuing writs is wider than that of a high court.
3. A remedy under Article 32 is in itself a Fundamental Right and hence, the Supreme Court may not refuse to exercise its writ jurisdiction. On the other hand, a remedy under Article 226 is discretionary and hence, a high court may refuse to exercise its writ jurisdiction. Article 32 does not merely confer power on the Supreme Court as Article 226 does on a high court to issue writs for the enforcement of fundamental rights or other rights as part of its general jurisdiction. The Supreme Court is thus constituted as a defender and guarantor of the fundamental rights.

Now, we will proceed to understand the meaning and scope of different kinds of writs mentioned in Articles 32 and 226 of the Constitution:

Habeas Corpus

It is a Latin term which literally means 'to have the body of'. It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court then examines the cause and legality of detention. It would set the detained person free, if the detention is found to be illegal. Thus, this writ is a bulwark of individual liberty against arbitrary detention.

The writ of *habeas corpus* can be issued against both public authorities as well as private individuals. The writ, on the other hand, is not issued where the **(a)** detention is lawful, **(b)** the proceeding is for contempt of a legislature or a court, **(c)** detention is by a competent court, and **(d)** detention is outside the jurisdiction of the court.

Mandamus

It literally means 'we command'. It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any

public body, a corporation, an inferior court, a tribunal or government for the same purpose.

The writ of *mandamus* cannot be issued **(a)** against a private individual or body; **(b)** to enforce departmental instruction that does not possess statutory force; **(c)** when the duty is discretionary and not mandatory; **(d)** to enforce a contractual obligation; **(e)** against the president of India or the state governors; and **(f)** against the chief justice of a high court acting in judicial capacity.

Prohibition

Literally, it means 'to forbid'. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. Thus, unlike *mandamus* that directs activity, the prohibition directs inactivity.

The writ of prohibition can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

Certiorari

In the literal sense, it means 'to be certified' or 'to be informed'. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case. It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law. Thus, unlike prohibition, which is only preventive, *certiorari* is both preventive as well as curative.

Till recently, the writ of *certiorari* could be issued only against judicial and quasi-judicial authorities and not against administrative authories. However, in 1991, the Supreme Court ruled that the *certiorari* can be issued even against administrative authorities affecting rights of individuals.

Like prohibition, *certiorari* is also not available against legislative bodies and private individuals or bodies.

Quo-Warranto

In the literal sense, it means 'by what authority or warrant'. It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.

The writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution. It cannot be issued in cases of ministerial office or private office.

Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

Armed Forces and Fundamental Rights

Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces. The objective of this provision is to ensure the proper discharge of their duties and the maintenance of discipline among them.

The power to make laws under Article 33 is conferred only on Parliament and not on state legislatures. Any such law made by Parliament cannot be challenged in any court on the ground of

contravention of any of the fundamental rights.

Accordingly, the Parliament has enacted the Army Act (1950), the Navy Act (1950), the Air Force Act (1950), the Police Forces (Restriction of Rights) Act, 1966, the Border Security Force Act and so on. These impose restrictions on their freedom of speech, right to form associations, right to be members of trade unions or political associations, right to communicate with the press, right to attend public meetings or demonstrations, etc.

The expression'members of the armed forces' also covers such employees of the armed forces as barbers, carpenters, mechanics, cooks, chowkidars, bootmakers, tailors who are non-combatants.

A parliamentary law enacted under Article 33 can also exclude the court martials (tribunals established under the military law) from the writ jurisdiction of the Supreme Court and the high courts, so far as the enforcement of Fundamental Rights is concerned.

Martial Law and Fundamental Rights

Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India. It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force. The Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

The concept of martial law has been borrowed in India from the English common law. However, the expression 'martial law' has not been defined anywhere in the Constitution. Literally, it means 'military rule'. It refers to a situation where civil administration is run by the military authorities according to their own rules and regulations framed outside the ordinary law. It thus imply the suspension of ordinary law and the government by military tribunals. It is different from the military law that is applicable to the armed forces.

There is also no specific or express provision in the Constitution that authorises the executive to declare martial law. However, it is implicit in Article 34 under which martial law can be declared in any area within the territory of India. The martial law is imposed under the extraordinary circumstances like war, invasion, insurrection, rebellion, riot or any violent resistance to law. Its justification is to repel force by force for maintaining or restoring order in the society.

During the operation of martial law, the military authorities are vested with abnormal powers to take all necessary steps. They impose restrictions and regulations on the rights of the civilians, can punish the civilians and even condemn them to death.

The Supreme Court held that the declaration of martial law does not *ipso facto* result in the suspension of the writ of *habeas corpus*.

The declaration of a martial law under Article 34 is different from the declaration of a national emergency under Article 352. The differences between the two are summarised in Table 7.3.

Table 7.3 *Martial Law Vs National Emergency*

Martial Law	***National Emergency***

1. It affects only Fundamental Rights.	1. It affects not only Fundamental Rights but also Centre–state relations, distribution of revenues and legislative powers between centre and states and may extend the tenure of the Parliament.
2. It suspends the government and ordinary law courts.	2. It continues the government and ordinary law courts.
3. It is imposed to restore the breakdown of law and order due to any reason.	3. It can be imposed only on three grounds—war, external aggression or armed rebellion.
4. It is imposed in some specific area of the country.	4. It is imposed either in the whole country or in any part of it.
5. It has no specific provision in the Constitution. It is implicit.	5. It has specific and detailed provision in the Constitution. It is explicit.

Effecting Certain Fundamental Rights

Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures. This provision ensures that there is uniformity throughout India with regard to the nature of those fundamental rights and punishment for their infringement. In this direction, Article 35 contains the following provisions:

1. The Parliament shall have (and the legislature of a state shall not have) power to make laws with respect to the following matters:

(a) Prescribing residence as a condition for certain employments or appointments in a state or union territory or local authority or other authority (Article 16).

(b) Empowering courts other than the Supreme Court and the high courts to issue directions, orders and writs of all kinds for the enforcement of fundamental rights (Article 32).

(c) Restricting or abrogating the application of Fundamental Rights to members of armed forces, police forces, etc. (Article 33).

(d) Indemnifying any government servant or any other person for any act done during the operation of martial law in any area (Article 34).

2. Parliament shall have (and the legislature of a state shall not have) powers to make laws for prescribing punishment for those acts that are declared to be offences under the fundamental rights. These include the following:

(a) Untouchability (Article 17).

(b) Traffic in human beings and forced labour (Article 23).

Further, the Parliament shall, after the commencement of the Constitution, make laws for prescribing punishment for the above acts, thus making it obligatory on the part of the Parliament to enact such laws.

3. Any law in force at the commencement of the Constitution with respect to any of the matters specified above is to continue in force until altered or repealed or amended by the Parliament.

It should be noted that Article 35 extends the competence of the Parliament to make a law on the matters specified above, even though some of those matters may fall within the sphere of the state

legislatures (i.e., State List).

Present Position of Right to Property

Originally, the right to property was one of the seven fundamental rights under Part III of the Constitution. It was dealt by Article 19(1)(f) and Article 31. Article 19(1)(f) guaranteed to every citizen the right to acquire, hold and dispose of property. Article 31, on the other hand, guaranteed to every person, whether citizen or non-citizen, right against deprivation of his property. It provided that no person shall be deprived of his property except by authority of law. It empowered the State to acquire or requisition the property of a person on two conditions: **(a)** it should be for public purpose, and **(b)** it should provide for payment of compensation (amount) to the owner.

Since the commencement of the Constitution, the Fundamental Right to Property has been the most controversial. It has caused confrontations between the Supreme Court and the Parliament. It has led to a number of Constitutional amendments, that is, 1st, 4th, 7th, 25th, 39th, 40th and 42nd Amendments. Through these amendments, Articles 31A, 31B and 31C have been added and modified from time to time to nullify the effect of Supreme Court judgements and to protect certain laws from being challenged on the grounds of contravention of Fundamental Rights. Most of the litigation centred around the obligation of the state to pay compensation for acquisition or requisition of private property.

Therefore, the 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1)(f) and Article 31 from Part III. Instead, the Act inserted a new Article 300A in Part XII under the heading 'Right to Property'. It provides that no person shall be deprived of his property except by authority of law. Thus, the right to property still remains a legal right or a constitutional right, though no longer a fundamental right. It is not a part of the basic structure of the Constitution.

The right to property as a legal right (as distinct from the Fundamental Rights) has the following implications:

(a) It can be regulated ie, curtailed, abridged or modified without constitutional amendment by an ordinary law of the Parliament.

(b) It protects private property against executive action but not against legislative action.

(c) In case of violation, the aggrieved person cannot directly move the Supreme Court under Article 32 (right to constitutional remedies including writs) for its enforcement. He can move the High Court under Article 226.

(d) No guaranteed right to compensation in case of acquisition or requisition of the private property by the state.

Though the Fundamental Right to Property under Part III has been abolished, the Part III still carries two provisions which provide for the guaranteed right to compensation in case of acquisition or requisition of the private property by the state. These two cases where compensation has to be paid are:

(a) When the State acquires the property of a minority educational institution (Article 30); and

(b) When the State acquires the land held by a person under his personal cultivation and the land

is within the statutory ceiling limits (Article 31 A).

The first provision was added by the 44th Amendment Act (1978), while the second provision was added by the 17th Amendment Act (1964).

Further, Articles 31A, 31B and 31C have been retained as exceptions to the fundamental rights.

Exceptions to Fundamental Rights

1. Saving of Laws Providing for Acquisition of Estates, etc.

Article 31A[16] saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) and Article 19 (protection of six rights in respect of speech, assembly, movement, etc.). They are related to agricultural land reforms, industry and commerce and include the following:

(a) Acquisition of estates[17] and related rights by the State;
(b) Taking over the management of properties by the State;
(c) Amalgamation of corporations;
(d) Extinguishment or modification of rights of directors or shareholders of corporations; and
(e) Extinguishment or modification of mining leases.

Article 31A does not immunise a state law from judicial review unless it has been reserved for the president's consideration and has received his assent.

This Article also provides for the payment of compensation at market value when the state acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limit.

2. Validation of Certain Acts and Regulations

Article 31B saves the acts and regulations included in the Ninth Schedule[18] from being challenged and invalidated on the ground of contravention of any of the fundamental rights. Thus, the scope of Article 31B is wider than Article 31A. Article 31B immunises any law included in the Ninth Schedule from all the fundamental rights whether or not the law falls under any of the five categories specified in Article 31A.

However, in a significant judgement delivered in January 2007, the Supreme Court ruled that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule. The court held that judicial review is a 'basic feature' of the constitution and it could not be taken away by putting a law under the Ninth Schedule. It said that the laws placed under the Ninth Schedule after April 24, 1973, are open to challenge in court if they violated fundamentals rights guaranteed under Articles 14, 15, 19 and 21 or the 'basic structure' of the constitution. It was on April 24, 1973, that the Supreme Court first propounded the doctrine of 'basic structure' or 'basic features' of the constitution in its landmark verdict in the Kesavananda Bharati Case.[19]

Originally (in 1951), the Ninth Schedule contained only 13 acts and regulations but at present (in 2013) their number is 282.[20] Of these, the acts and regulations of the state legislature deal with land reforms and abolition of the zamindari system and that of the Parliament deal with other matters.

3. Saving of Laws Giving Effect to Certain Directive Principles

Article 31C, as inserted by the 25th Amendment Act of 1971, contained the following two provisions:

(a) No law that seeks to implement the socialistic directive principles specified in Article 39(b)[21] or (c)[22] shall be void on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) or Article 19 (protection of six rights in respect of speech, assembly, movement, etc.)

(b) No law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

In the *Kesavananda Bharati* case[23] (1973), the Supreme Court declared the above second provision of Article 31C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away. However, the above first provision of Article 31C was held to be constitutional and valid.

The 42nd Amendment Act (1976) extended the scope of the above first provision of Article 31C by including within its protection any law to implement any of the directive principles specified in Part IV of the Constitution and not merely in Article 39 (b) or (c). However, this extention was declared as unconstitutional and invalid by the Supreme Court in the *Minerva Mills* case[24] (1980).

Criticism of Fundamental Rights

The Fundamental Rights enshrined in Part III of the Constitution have met with a wide and varied criticism. The arguments of the critics are:

1. Excessive Limitations

They are subjected to innumerable exceptions, restrictions, qualifications and explanations. Hence, the critics remarked that the Constitution grants Fundamental Rights with one hand and takes them away with the other. Jaspat Roy Kapoor went to the extent of saying that the chapter dealing with the fundamental rights should be renamed as 'Limitaions on Fundamental Rights' or 'Fundamental Rights and Limitations Thereon'.

2. No Social and Economic Rights

The list is not comprehensive as it mainly consists of political rights. It makes no provision for important social and economic rights like right to social security, right to work, right to employment, right to rest and leisure and so on. These rights are made available to the citizens of advanced democratic countries. Also, the socialistic constitutions of erstwhile USSR or China provided for such rights.

3. No Clarity

They are stated in a vague, indefinite and ambiguous manner. The various phrases and words used in the chapter like 'public order', 'minorities', 'reasonable restriction', 'public interest' and so on are not clearly defined. The language used to describe them is very complicated and beyond the comprehension of the common man. It is alleged that the Constitution was made by the lawyers for the lawyers. Sir Ivor Jennings called the Constitution of India a 'paradise for lawyers'.

4. No Permanency

They are not sacrosanct or immutable as the Parliament can curtail or abolish them, as for example, the abolition of the fundamental right to property in 1978. Hence, they can become a play tool in the hands of politicians having majority support in the Parliament. The judicially innovated 'doctrine of basic structure' is the only limitation on the authority of Parliament to curtail or abolish the fundamental right.

5. Suspension During Emergency

The suspension of their enforcement during the operation of National Emergency (except Articles 20 and 21) is another blot on the efficacy of these rights. This provision cuts at the roots of democratic system in the country by placing the rights of the millions of innocent people in continuous jeopardy. According to the critics, the Fundamental Rights should be enjoyable in all situations—Emergency or no Emergency.

6. Expensive Remedy

The judiciary has been made responsible for defending and protecting these rights against the interference of the legislatures and executives. However, the judicial process is too expensive and hinders the common man from getting his rights enforced through the courts. Hence, the critics say that the rights benefit mainly the rich section of the Indian Society.

7. Preventive Detention

The critics assert that the provision for preventive detention (Article 22) takes away the spirit and substance of the chapter on fundamental rights. It confers arbitrary powers on the State and negates individual liberty. It justifies the criticism that the Constitution of India deals more with the rights of the State against the individual than with the rights of the individual against the State. Notably, no democratic country in the world has made preventive detention as an integral part of their Constitutions as has been made in India.

8. No Consistent Philosophy

According to some critics, the chapter on fundamental rights is not the product of any philosophical principle. Sir Ivor Jennings expressed this view when he said that the Fundamental Rights proclaimed by the Indian Constitution are based on no consistent philosophy.[25] The critics say that this creates difficulty for the Supreme Court and the high courts in interpreting the fundamental rights.

Significance of Fundamental Rights

In spite of the above criticism and shortcomings, the Fundamental Rights are significant in the following respects:

1. They constitute the bedrock of democratic system in the country.
2. They provide necessary conditions for the material and moral protection of man.
3. They serve as a formidable bulwark of individual liberty.

4. They facilitate the establishment of rule of law in the country.
5. They protect the interests of minorities and weaker sections of society.
6. They strengthen the secular fabric of the Indian State.
7. They check the absoluteness of the authority of the government.
8. They lay down the foundation stone of social equality and social justice.
9. They ensure the dignity and respect of individuals.
10. They facilitate the participation of people in the political and administrative process.

Rights Outside Part III

Besides the Fundamental Rights included in Part III, there are certain other rights contained in other parts of the Constitution. These rights are known as constitutional rights or legal rights or non-fundamental rights. They are:

1. No tax shall be levied or collected except by authority of law (Article 265 in Part XII).
2. No person shall be deprived of his property save by authority of law (Article 300-A in Part XII).
3. Trade, commerce and intercourse throughout the territory of India shall be free (Article 301 in Part XIII).
4. The elections to the Lok Sabha and the State Legislative Assembly shall be on the basis of adult suffrage (Article 326 in Part XV).

Even though the above rights are also equally justiciable, they are different from the Fundamental Rights. In case of violation of a Fundamental Right, the aggrieved person can directly move the Supreme Court for its enforcement under Article 32, which is in itself a fundamental right. But, in case of violation of the above rights, the aggrieved person cannot avail this constitutional remedy. He can move the High Court by an ordinary suit or under Article 226 (writ jurisdiction of high court).

Table 7.4 *Articles Related to Fundamental Rights at a Glance*

Article No.	*Subject-matter*
	General
12.	Definition of State
13.	Laws inconsistent with or in derogation of the Fundamental Rights
	Right to Equality
14.	Equality before law
15.	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
16.	Equality of opportunity in matters of public employment
17.	Abolition of untouchability
18.	Abolition of titles

Right to Freedom	
19.	Protection of certain rights regarding freedom of speech, etc.
20.	Protection in respect of conviction for offences
21.	Protection of life and personal liberty
21A.	Right to education
22.	Protection against arrest and detention in certain cases
Right against Exploitation	
23.	Prohibition of traffic in human beings and forced labour
24.	Prohibition of employment of children in factories, etc.
Right to Freedom of Religion	
25.	Freedom of conscience and free profession, practice and propagation of religion
26.	Freedom to manage religious affairs
27.	Freedom as to payment of taxes for promotion of any particular religion
28.	Freedom as to attendance at religious instruction or religious worship in certain educational institutions.
Cultural and Educational Rights	
29.	Protection of interests of minorities
30.	Right of minorities to establish and administer educational institutions
31.	Compulsory acquisition of property—(Repealed)
Saving of Certain Laws	
31A.	Saving of laws providing for acquisition of estates, etc.
31B.	Validation of certain Acts and Regulations
31C.	Saving of laws giving effect to certain directive principles
31D.	Saving of laws in respect of anti-national activities—(Repealed)
Right to Constitutional Remedies	
32.	Remedies for enforcement of rights conferred by this part
32A.	Constitutional validity of State laws not to be considered in proceedings under Article 32—(Repealed)
33.	Power of Parliament to modify the rights conferred by this part in their application to forces, etc.
34.	Restriction on rights conferred by this part while martial law is in force in any area
35.	Legislation to give effect to the provisions of this part

Notes and References

1. ‘Magna Carta’ is the Charter of Rights issued by King John of England in 1215 under pressure

from the barons. This is the first written document relating to the Fundamental Rights of citizens.

2. *Kesavananda Bharati vs. State of Kerala,* (1973).
3. Dicey observe: "No man is above the law, but every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. Every official from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen". (A V Dicey, *Introduction to the Study of the Law of the Constitution*, Macmillan, 1931 Edition P. 183–191).
4. This second provision was added by the first Amendment Act of 1951.
5. By virtue of Article 371D inserted by the 32nd Amendment Act of 1973.
6. The first Backward Classes Commission was appointed in 1953 under the chairmanship of Kaka Kalelkar. It submitted its report in 1955.
7. In 1963, the Supreme Court ruled that more than 50% reservation of jobs in a single year would be unconstitutional.
8. *Indra Sawhney v. Union of India,* (1992).
9. The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in educational institutions and of appointments or posts in the services under the state) Act, 1994.
10. *Balaji Raghavan v. Union of India,* (1996).

10a. The provision for "co-operative societies" was made by the 97th Constitutional Amendment Act of 2011.

10b. Ibid

11. *A K Gopalan v. State of Madras,* (1950).
12. *Menaka Gandhi v. Union of India,* (1978).

12a. The Constitution (Eighty-sixth amendment) Act, 2002 and the Right of Children to Free and Compulsory Education Act, 2009 have come into force w.e.f. 1 April 2010.

13. Originally known as the Suppression of Immoral Traffic in Women and Girls Act, 1956.
14. In this clause, the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina and Buddhist relig-ion and the reference to Hindu religious institutions shall be construed accordingly (Article 25).
15. The second provision was added by the 15th Constitutional Amendment Act of 1963.
16. Added by the 1st Constitutional Amendment Act of 1951 and amended by the 4th, 17th and 44th Amendments.
17. The expression 'estate' includes any *jagir, inam, muafi* or other similar grant, any *janmam* right in Tamil Nadu and Kerala and any land held for agricultural purposes.
18. Article 31B along with the Ninth Schedule was added by the 1st Constitutional Amendment Act of 1951.
19. *Kesavananda Bharati v. State of Kerala,* (1973).

20. Though the last entry is numbered 284, the actual total number is 282. This is because, the three entries (87, 92 and 130) have been deleted and one entry is numbered as 257A.
21. Article 39 (b) says—The State shall direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
22. Article 39 (c) says—The state shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
23. *Kesavananda Bharati v. State of Kerala*, (1973).
24. *Minerva Mills v. Union of India, (1980)*.
25. *Sir Ivor Jennings wrote: 'A thread of nineteenth century liberalism runs through it; there are consequences of the political problems of Britain in it; there are relics of the bitter experience in opposition to British rule; and there is evidence of a desire to reform some of the social institutions which time and circumstances have developed in India. The result is a series of complex formulae, in twenty-four articles, some of them lengthy, which must become the basis of a vast and complicated case law'.*

Directive Principles of State Policy

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51[1]. *The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution*. Dr B R Ambedkar described these principles as 'novel features' of the Indian Constitution. The Directive Principles along with the Fundamental Rights contain the philosophy of the Constitution and is the soul of the Constitution. Granville Austin has described the Directive Principles and the Fundamental Rights as the 'Conscience of the Constitution'[2].

Features of the Directive Principles

1. The phrase 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws. These are the constitutional instructions or recommendations to the State in legislative, executive and administrative matters. According to Article 36, the term 'State' in Part IV has the same meaning as in Part III dealing with Fundamental Rights. Therefore, it includes the legislative and executive organs of the central and state governments, all local authorities and all other public authorities in the country.
2. The Directive Principles resemble the 'Instrument of Instructions' enumerated in the Government of India Act of 1935. In the words of Dr B R Ambedkar, 'the Directive Principles are like the instrument of instructions, which were issued to the Governor-General and to the Governors of the colonies of India by the British Government under the Government of India Act of 1935. What is called Directive Principles is merely another name for the instrument of instructions. The only difference is that they are instructions to the legislature and the executive'.
3. The Directive Principles constitute a very comprehensive economic, social and political programme for a modern democratic State. They aim at realising the high ideals of justice, liberty, equality and fraternity as outlined in the Preamble to the Constitution. They embody

the concept of a 'welfare state' and not that of a 'police state', which existed during the colonial era[3]. In brief, they seek to establish economic and social democracy in the country.

4. The Directive Principles are non-justiciable in nature, that is, they are not legally enforceable by the courts for their violation. Therefore, the government (Central, state and local) cannot be compelled to implement them. Nevertheless, the Constitution (Article 37) itself says that these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
5. The Directive Principles, though non-justiciable in nature, help the courts in examining and determining the constitutional validity of a law. The Supreme Court has ruled many a times that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a Directive Principle, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.

Classification of the Directive Principles

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal–intellectual.

Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state. They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities[4] (Article 38).
2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children[5] (Article 39).
3. To promote equal justice and to provide free legal aid to the poor[6] (Article 39 A).
4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
5. To make provision for just and humane conditions for work and maternity relief (Article 42).
6. To secure a living wage[7], a decent standard of life and social and cultural opportunities for all workers (Article 43).
7. To take steps to secure the participation of workers in the management of industries[8] (Article 43 A).
8. To raise the level of nutrition and the standard of living of people and to improve public

health (Article 47).

Gandhian Principles

These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

1. To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).
2. To promote cottage industries on an individual or co-operation basis in rural areas (Article 43).
3. To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies[8a] (Article 43B).
4. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46).
5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47).
6. To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).

Liberal–Intellectual Principles

The principles included in this category repre-sent the ideology of liberalism. They direct the state:

1. To secure for all citizens a uniform civil code throughout the country (Article 44).
2. To provide early childhood care and education for all children until they complete the age of six years[9] (Article 45).
3. To organise agriculture and animal husbandry on modern and scientific lines (Article 48).
4. To protect and improve the environment and to safeguard forests and wild life[10] (Article 48 A).
5. To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).
6. To separate the judiciary from the executive in the public services of the State (Article 50).
7. To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

New Directive Principles

The 42nd Amendment Act of 1976 added four new Directive Principles to the original list. They require the State:

1. To secure opportunities for healthy development of children (Article 39).
2. To promote equal justice and to provide free legal aid to the poor (Article 39 A).

3. To take steps to secure the participation of workers in the management of industries (Article 43 A).
4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).

The 44th Amendment Act of 1978 added one more Directive Principle, which requires the State to minimise inequalities in income, status, facilities and opportunities (Article 38).

Again, the 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.

The 97th Amendment Act of 2011 added a new Directive Principle relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

Sanction Behind Directive Principles

Sir B N Rau, the Constitutional Advisor to the Constituent Assembly, recommended that the rights of an individual should be divided into two categories—justiciable and non-justiciable, which was accepted by the Drafting Committee. Consequently, the Fundamental Rights, which are justiciable in nature, are incorporated in Part III and the Directive Principles, which are non-justiciable in nature, are incorporated in Part IV of the Constitution.

Though the Directive Principles are non-justiciable, the Constitution (Article 37) make it clear that 'these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws'. Thus, they impose a moral obligation on the state authorities for their application, but the real force behind them is political, that is, public opinion. As observed by Alladi Krishna Swamy Ayyar, 'no ministry responsible to the people can afford light-heartedly to ignore the provisions in Part IV of the Constitution'. Similarly, Dr B R Ambedkar said in the Constituent Assembly that 'a government which rests on popular vote can hardly ignore the Directive Principles while shaping its policy. If any government ignores them, it will certainly have to answer for that before the electorate at the election time.'[11]

The framers of the Constitution made the Directive Principles non-justiciable and legally non-enforceable because:

1. The country did not possess sufficient financial resources to implement them.
2. The presence of vast diversity and backwardness in the country would stand in the way of their implementation.
3. The newly born independent Indian State 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 Constitution makers, therefore, taking a pragmatic view, refrained from giving teeth to these principles. They believed more in an awakened public opinion rather than in court procedures as the ultimate sanction for the fulfilment of these principles'[12].

Criticism of the Directive Principles

The Directive Principles of State Policy have been criticised by some members of the Constituent Assembly as well as other constitutional and political experts on the following grounds:

1. No Legal Force

The Directives have been criticised mainly because of their non-justiciable character. While K T Shah dubbed them as 'pious superfluities' and compared them with 'a cheque on a bank, payable only when the resources of the bank permit'[13], Nasiruddin contended that these principles are 'no better than the new year's resolutions, which are broken on the second of January'. Even as T T Krishnamachari descri-bed the Directives as 'a veritable dust-bin of sentiments', K C Wheare called them as a 'ma-nifesto of aims and aspirations' and opined that they serve as mere 'moral homily', and Sir Ivor Jennings thought they are only as 'pious aspirations'.

2. Illogically Arranged

Critics opine that the Directives are not arranged in a logical manner based on a consistent philosophy. According to N Srinivasan, 'the Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions. It combines rather incongruously the modern with the old and provisions suggested by the reason and science with provisions based purely on sentiment and prejudice'[14]. Sir Ivor Jennings too pointed out that these principles have no consistent philosophy.

3. Conservative

According to Sir Ivor Jennings, the Directives are based on the political philosophy of the 19th century England. He remarked: 'The ghosts of Sydney Webb and Beatrice Webb stalk through the pages of the text. Part IV of the Constitution expresses Fabian Socialism without the socialism'. He opined that the Directives 'are deemed to be suitable in India in the middle of the twentieth century. The question whether they are suitable for the twenty-first century cannot be answered; but it is quite probable that they will be entirely out moded.'[15]

4. Constitutional Conflict

K Santhanam has pointed out that the Directives lead to a constitutional conflict **(a)** between the Centre and the states, **(b)** between the President and the Prime Minister, and **(c)** between the governor and the chief minister. According to him, the Centre can give directions to the states with regard to the implementation of these principles, and in case of non-compliance, can dismiss the state government. Similarly, when the Prime Minister gets a bill (which violates the Directive Principles) passed by the Parliament, the president may reject the bill on the ground that these principles are fundamental to the governance of the country and hence, the ministry has no right to ignore them. The same constitutional conflict may occur between the governor and the chief minister at the state level.

Utility of Directive Principles

In spite of the above criticisms and shortcomings, the Directive Principles are not an unnecessary

appendage to the Constitution. The Constitution itself declares that they are fundamental to the governance of the country. According to L M Singhvi, an eminent jurist and diplomat, 'the Directives are the life giving provisions of the Constitution. They constitute the stuff of the Constitution and its philosophy of social justice'[16]. M C Chagla, former Chief Justice of India, is of the opinion that, 'if all these principles are fully carried out, our country would indeed be a heaven on earth. India would then be not only democracy in the political sense, but also a welfare state looking after the welfare of its citizens'[17]. Dr B R Ambedkar had pointed out that the Directives have great value because they lay down that the goal of Indian polity is 'economic democracy' as distinguished from 'political democracy'. Granville Austin opined that the Directive Principles are 'aimed at furthering the goals of the social revolution or to foster this revolution by establishing the conditions necessary for its achivement'[18]. Sir B N Rau, the constitutional advisor to the Constituent As-sembly, stated that the Directive Principles are intended as 'moral precepts for the authorities of the state. They have at least an educative value.'

According to M C Setalvad, the former Attorney General of India, the Directive Principles, although confer no legal rights and creates no legal remedies, are significant and useful in the following ways:

1. They are like an 'Instrument of Instructions' or general recommendations addressed to all authorities in the Indian Union. They remind them of the basic principles of the new social and economic order, which the Constitution aims at building.
2. They have served as useful beacon-lights to the courts. They have helped the courts in exercising their power of judicial review, that is, the power to determine the constitutional validity of a law.
3. They form the dominating background to all State action, legislative or executive and also a guide to the courts in some respects.
4. They amplify the Preamble, which solemnly resolves to secure to all citizens of India justice, liberty, equality and fraternity.

The Directives also play the following roles:

1. They facilitate stability and continuity in domestic and foreign policies in political, economic and social spheres in spite of the changes of the party in power.
2. They are supplementary to the fundamental rights of the citizens. They are intended to fill in the vacuum in Part III by providing for social and economic rights.
3. Their implementation creates a favourable atmosphere for the full and proper enjoyment of the fundamental rights by the citizens. Political democracy, without economic democracy, has no meaning.
4. They enable the opposition to exercise influence and control over the operations of the government. The Opposition can blame the ruling party on the ground that its activities are opposed to the Directives.
5. They serve as a crucial test for the performance of the government. The people can examine the policies and programmes of the government in the light of these constitutional declarations.
6. They serve as common political manifesto. 'A ruling party, irrespective of its political

ideology, has to recognise the fact that these principles are intended to be its guide, philosopher and friend in its legislative and executive acts'[19].

Conflict Between Fundamental Rights and Directive Principles

The justiciability of Fundamental Rights and non-justiciability of Directive Principles on the one hand and the moral obligation of State to implement Directive Principles (Article 37) on the other hand have led to a conflict between the two since the commencement of the Constitution. In the *Champakam Dorairajan* case[20] (1951), the Supreme Court ruled that in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail. It declared that the Directive Principles have to conform to and run as subsidiary to the Fundamental Rights. But, it also held that the Fundamental Rights could be amended by the Parliament by enacting constitutional amendments acts. As a result, the Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.

The above situation underwent a major change in 1967 following the Supreme Court's judgement in the *Golaknath* case[21] (1967). In that case, the Supreme Court ruled that the Parliament cannot take away or abridge any of the Fundamental Rights, which are 'sacrosanct' in nature. In other words, the Court held that the Fundamental Rights cannot be amended for the implementation of the Directive Principles.

The Parliament reacted to the Supreme Court's judgement in the *Golaknath Case* (1967) by enacting the 24th Amendment Act (1971) and the 25th Amendment Act (1971). The 24th Amendment Act declared that the Parliament has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. The 25th Amendment Act inserted a new Article 31C which contained the following two provisions:

1. No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)[22] and (c)[23] shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property).

Table 8.1 *Distinction Between Fundamental Rights and Directive Principles*

Fundamental Rights	***Directive Principles***
1. These are negative as they prohibit the State from doing certain things.	1. These are positive as they require the State to do certain things.
2. These are justiciable, that is, they are legally enforceable by the courts in case of their violation.	2. These are non-justiciable, that is, they are not legally enforceable by the courts for their violation.
3. They aim at establishing political democracy in the country.	3. They aim at establishing social and economic democracy in the country.
4. These have legal sanctions.	4. These have moral and political sanctions.
5. They promote the welfare of the	5. They promote the welfare of the community. Hence, they are societarian and

individual. Hence, they are personal and individualistic.	socialistic.
6. They do not require any legislation for their implementation. They are automatically enforced.	6. They require legislation for their implementation. They are not automatically enforced.
7. The courts are bound to declare a law violative of any of the Fundamental Rights as unconstitutional and invalid.	7. The courts cannot declare a law violative of any of the Directive Principles as unconstitutional and invalid. However, they can uphold the validity of a law on the ground that it was enacted to give effect to a directive.

2. No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

In the *Kesavananda Bharati* case[24] (1973), the Supreme Court declared the above second provision of Article 31C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away. However, the above first provision of Article 31C was held to be constitutional and valid.

Later, the 42nd Amendment Act (1976) extended the scope of the above first provision of Article 31C by including within its protection any law to implement any of the Directive Principles and not merely those specified in Article 39 (b) and (c). In other words, the 42nd Amendment Act accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31. However, this extension was declared as unconstitutional and invalid by the Supreme Court in the *Minerva Mills* case[25] (1980). It means that the Directive Principles were once again made subordinate to the Fundamental Rights. But the Fundamental Rights conferred by Article 14 and Article 19 were accepted as subordinate to the Directive Principles specified in Article 39 (b) and (c). Further, Article 31 (right to property) was abolished by the 44th Amendment Act (1978).

In the *Minerva Mills* case (1980), the Supreme Court also held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles. They together constitute the core of commitment to social revolution. They are like two wheels of a chariot, one no less than the other. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between the two is an essential feature of the basic structure of the Constitution. The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights'.

Therefore, the present position is that the Fundamental Rights enjoy supremacy over the Directive Principles. Yet, this does not mean that the Directive Principles cannot be implemented. The Parliament can amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not damage or destroy the basic structure of the Constitution.

Implementation of Directive Principles

Since 1950, the successive governments at the Centre and in the states have made several laws and formulated various programmes for implementing the Directive Principles. These are mentioned below:

1. The Planning Commission was established in 1950 to take up the development of the country

in a planned manner. The successive Five Year Plans aimed at securing socio-economic justice and reducing inequalities of income, status and opportunities.

2. Almost all the states have passed land reform laws to bring changes in the agrarian society and to improve the conditions of the rural masses. These measures include **(a)** abolition of intermediaries like zamindars, jagirdars, inamdars, etc; **(b)** tenancy reforms like security of tenure, fair rents, etc; **(c)** imposition of ceilings on land holdings; **(d)** distribution of surplus land among the landless labourers; and **(e)** cooperative farming.
3. The Minimum Wages Act (1948), the Payment of Wages Act (1936), the Payment of Bonus Act (1965), the Contract Labour Regulation and Abolition Act (1970), the Child Labour Prohibition and Regulation Act (1986), the Bonded Labour System Abolition Act (1976), the Trade Unions Act (1926), the Factories Act (1948), the Mines Act (1952), the Industrial Disputes Act (1947), the Workmen's Compensation Act (1923) and so on have been enacted to protect the interests of the labour sections. In 2006, the government banned the child labour.
4. The Maternity Benefit Act (1961) and the Equal Remuneration Act (1976) have been made to protect the interests of women workers.
5. Various measures have been taken to utilise the financial resources for promoting the common good.These include nationalisation of life insurance (1956), the nationalisation of fourteen leading commercial banks (1969), nationalisation of general insurance (1971), abolition of Privy Purses (1971) and so on.
6. The Legal Services Authorities Act (1987) has established a nation-wide network to provide free and competent legal aid to the poor and to organise lok adalats for promoting equal justice. Lok adalat is a statutory forum for conciliatory settlement of legal disputes. It has been given the status of a civil court. Its awards are enforceable, binding on the parties and final as no appeal lies before any court against them.
7. Khadi and Village Industries Board, Khadi and Village Industries Commission, Small-Scale Industries Board, National Small Industries Corporation, Handloom Board, Handicrafts Board, Coir Board, Silk Board and so on have been set up for the development of cottage industries in rural areas.
8. The Community Development Programme (1952), Hill Area Development Programme (1960), Drought-Prone Area Programme (1973), Minimum Needs Programme (1974), Integrated Rural Development Programme (1978), Jawahar Rozgar Yojana (1989), Swarnajayanti Gram Swarozgar Yojana (1999), Sampoorna Grameena Rozgar Yojana (2001), National Rural Employment Guarantee Programme (2006) and so on have been launched for raising the standard of living of people.
9. The Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980, have been enacted to safeguard the wildlife and the forests respectively. Further, the Water and Air Acts have provided for the establishment of the Central and State Pollution Control Boards, which are engaged in the protection and improvement of environment. The National Forest Policy (1988) aims at the protection, conservation and development of forests.
10. Agriculture has been modernised by providing improved agricultural inputs, seeds, fertilisers and irrigation facilities. Various steps have also been taken to organise animal husbandry on

modern and scientific lines.

11. Three-tier panchayati raj system (at village, taluka and zila levels) has been introduced to translate into reality Gandhiji's dream of every village being a republic. The 73rd Amendment Act (1992) has been enacted to provide constitutional status and protection to these panchayati raj institutions.
12. Seats are reserved for SCs, STs and other weaker sections in educational institutions, government services and representative bodies. The Untouchability (Offences) Act, 1955, which was renamed as the Protection of Civil Rights Act in 1976 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, have been enacted to protect the SCs and STs from social injustice and exploitation. The 65th Constitutional Amendment Act of 1990 established the National Commission for Scheduled Castes and Scheduled Tribes to protect the interests of SCs and STs. The 89th Constitutional Amendment Act of 2003 bifurcated this combined commission into two separate bodies, namely, National Commission for Schedule Castes and National Commission for Schedule Tribes.
13. The Criminal Procedure Code (1973) separated the judiciary from the executive in the public services of the state. Prior to this separation, the district authorities like the collector, the sub-divisional officer, the tehsildar and so on used to exercise judicial powers along with the traditional executive powers. After the separation, the judicial powers were taken away from these executive authorities and vested in the hands of district judicial magistrates who work under the direct control of the state high court.
14. The Ancient and Historical Monument and Archaeological Sites and Remains Act (1951) has been enacted to protect the monuments, places and objects of national importance.
15. Primary health centres and hospitals have been established throughout the country to improve the public health. Also, special programmes have been launched to eradicate widespread diseases like malaria, TB, leprosy, AIDS, cancer, filaria, kala-azar, guineaworm, yaws, Japanese encephalitis and so on.
16. Laws to prohibit the slaughter of cows, calves, and bullocks have been enacted in some states.
17. Some states have initiated the old age pension schemes for people above 65 years.
18. India has been following the policy of non-alignment and panchsheel to promote international peace and security.

In spite of the above steps by the Central and state governments, the Directive Principles have not been implemented fully and effectively due to several reasons like inadequate financial resources, unfavourable socio-economic conditions, population explosion, strained Centre-state relations and so on.

Directives Outside Part IV

Apart from the Directives included in Part IV, there are some other Directives contained in other Parts of the Constitution. They are:

1. *Claims of SCs and STs to Services:* The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of

efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State (Article 335 in Part XVI).

2. *Instruction in mother tongue:* It shall be the endeavour of every state and every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups (Article 350-A in Part XVII).
3. *Development of the Hindi Language:* It shall be the duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India (Article 351 in Part XVII).

The above Directives are also non-justiciable in nature. However, they are also given equal importance and attention by the judiciary on the ground that all parts of the constitution must be read together.

Table 8.2 *Articles Related to Directive Principles of State Policy at a Glance*

Article No.	***Subject-matter***
36.	Definition of State
37.	Application of the principles contained in this part
38.	State to secure a social order for the promotion of welfare of the people
39.	Certain principles of policy to be followed by the State
39A.	Equal justice and free legal aid
40.	Organisation of village panchayats
41.	Right to work, to education and to public assistance in certain cases
42.	Provision for just and humane conditions of work and maternity relief
43.	Living wage, etc., for workers
43A.	Participation of workers in management of industries
43B.	Promotion of co-operative societies
44.	Uniform civil code for the citizens
45.	Provision for early childhood care and education to children below the age of six years
46.	Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections
47.	Duty of the State to raise the level of nutrition and the standard of living and to improve public health
48.	Organisation of agriculture and animal husbandry
48A.	Protection and improvement of environment and safeguarding of forests and wildlife
49.	Protection of monuments and places and objects of national importance
50.	Separation of judiciary from executive
51.	Promotion of international peace and security

Notes and References

1. Actually, Directive Principles are mentioned in Articles 38 to 51. Article 36 deals with the definition of State while Article 37 deals with the nature and significance of Directive Principles.
2. Granville Austin, *The Indian Constitution— Cornerstone of a Nation*, Oxford, 1966, P. 75.
3. A 'Police State' is mainly concerned with the maintenance of law and order and defence of the country against external aggression. Such a restrictive concept of state is based on the nineteenth century theory of individualism or laissez-faire.
4. This second provision was added by the 44th Constitutional Amendment Act of 1978.
5. The last point (f) was modified by the 42nd Constitutional Amendment Act of 1976.
6. This Directive was added by the 42nd Constitutional Amendment Act of 1976.
7. 'Living wage' is different from 'minimum wage', which includes the bare needs of life like food, shelter and clothing. In addition to these bare needs, a 'living wage' includes education, health , insurance, etc. A 'fair wage' is a mean between 'living wage' and 'minimum wage'.
8. This Directive was added by the 42nd Constitutional Amendment Act of 1976.

8a. This Directive was added by the 97th Constitutional Amendment Act of 2011.

9. This Directive was changed by the 86th Constitutional Amendment Act of 2002. Originally, it made a provision for free and compulsory education for all children until they complete the age of 14 years.
10. This Directive was added by the 42nd Constitutional Amendment Act of 1976.
11. *Constituent Assembly Debates*, volume VII, P. 476.
12. M P Jain, *Indian Constitutional Law,* Wadhwa, Third Edition (1978), P. 595.
13. *Constituent Assembly Debates,* volume VII, P. 470.
14. N. Srinivasan, *Democratic Government in India,* P. 182.
15. Sir Ivor Jennings, *Some Characteristics of the Indian Constitution*, 1953, P. 31–33.
16. *Journal of Constitutional and Parliamentary Studies,* June 1975.
17. M.C. Chagla, *An Ambassador Speaks,* P. 35.
18. Granville Austin, *The Indian Constitution—Cornerstone of a Nation*, Oxford, 1966, P. 50–52.
19. P B Gajendragadker, *The Constitution of India (Its Philosophy and Postulates),* P. 11.
20. *State of Madras* v. *Champakam Dorairajan,* (1951).
21. *Golak Nath* v. *State of Punjab,* (1967).
22. Article 39 (b) says: The State shall direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
23. Article 39 (c) says: The state shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

24. *Kesavananda Bharati* v. *State of Kerala,* (1973).
25. *Minerva Mills* v. *Union of India,* (1980).