

by virtue of any agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement.

These powers of the state have two provisos:

- (i) Any such laws made by a state legislature shall have to secure the assent of the President of India.
- (ii) If the state acquires any land under personal cultivation of a person, the compensation paid against such acquisition shall not be lower than at the market rate.

According to Article 31B a ninth schedule to the constitution was created in order to exclude certain legislations from the scope of judicial review. Originally the acts put there related to land reform. Some of the later legislations, included in the ninth schedule, related to other kinds of property too. But, when The Tamil Nadu Backward Classes, Scheduled castes and Scheduled tribes (Reservation of Seats in Educational Institutions and appointments or posts in the Services under the State) Act, 1993, was added to the schedule as entry no. 257A, the inclusion was challenged and the Supreme Court, in 2007, decided to examine the entire ninth schedule.

Article 31C had a worse fate. This article, inserted by the 25th amendment in 1971, to mitigate the effect of the Supreme Court judgement in the bank nationalization case of 1970, provided that, notwithstanding anything contained in Article 13, no law giving effect to any of the directive principles of state policy would be void and no court could call in question any such law. In the *Keshavananda Bharati* case of 1973 the Supreme Court declared void that portion of the 25th amendment that precluded judicial review of such law.

✓ Right to Constitutional Remedies

We have already referred to the right to constitutional

remedies. According to Clause (2) of Article 32 the Supreme Court may issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*. This is a very wide range of powers and, as already pointed out, is also available to the High Courts. The meanings of these technical terms are as follows:

Habeas corpus: Literally, it means to 'have the body'. Contingent upon Article 21 that guarantees the right to life and personal liberty, it is an order to any authority which has detained a person without trial to bring him to the court for trial. It challenges the executive if it has detained anyone against the authority of law. It challenges a detention order if it is *ultra vires* the statute under which the detention has been made. It can also challenge a law under which a detention has been made if that law is unconstitutional. Disobedience to this writ is met with punishment for contempt of court. This is a protection against arbitrary detention by the state without trial. It may also apply against a private person who has kept someone in wrongful detention.

Mandamus: It is an order issued to an authority or a person to do the duty mandated to it/her/him by law. It can be asked for by a person who has claim to a public or quasi-public legal duty to be performed by a person or body of persons who have refused to do their duty, an inferior court or other judicial bodies that have refused to exercise their jurisdiction, or even the government.

Prohibition: It is the opposite of *mandamus*. It prohibits a judicial or quasi-judicial body to hear a case beyond jurisdiction or assuming jurisdiction under a law which itself contravenes a constitutionally guaranteed fundamental right. It may be invoked before the completion of a trial to quash the proceedings. Prohibition is not available against purely executive acts that may be controlled by *mandamus*.

Certiorari: By this writ the Supreme Court, and the High

Courts, may call for the record of a case from a lower court or a semi-judicial body on an allegation of an excess of jurisdiction. It may be invoked after the completion of a trial to reverse the decision. This is, therefore, different from prohibition which is issued before the order is made, whereas a *certiorari* writ is issued after an order is made. It is also different from the appellate jurisdiction of the courts which come normally after the completion of a trial in a subordinate court.

Quo warranto: By this writ the court asks a person or body of persons under which authority it is in a public office created by the constitution or a statute. If the office is a substantive one and not dependent on the pleasure of an employer and if the constitution or a statute is violated in the matter of the appointment the court can declare it invalid. This is the most effective instrument of challenging the appointment to a public office.

By way of consolidation, Article 35 entrusts Parliament, to the exclusion of the state legislatures, with the power and the job of making laws with respect to any matters which, under certain articles, may require it do. These are: Clause (3) of Article 16 about prescription of residential qualification for employment or appointment under the Union or a state or local authority or any other authority; Clause (3) of Article 32 empowering, without prejudice to the powers conferred on the Supreme Court, any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court, to issue writs (Article 226 of the constitution itself has granted the High Courts such power); Article 33 about modification of the fundamental rights of the forces; Article 34 about restriction of these rights during martial law; and punishing the acts that are declared to be offences in this part of the constitution.

Legal Obligations of the State

But the question arises as to how much power the citizen has against the state. The Indian state is a juristic person who may acquire property, may trade, may take loan, may enter into contract, may sue, or be sued, the 'Indian state' meaning both the governments of the Union and the states. Article 300(1) lays down that the government of India may sue or be sued by the name of the Union and the government of a state may sue and be sued by the name of the state and may, subject to any provisions that may be made by acts of Parliament or state legislature enacted by virtue of powers conferred by this constitution, sue or be sued in relation to their respective affairs in the like cases as the dominion of India and the corresponding provinces or the corresponding Indian states might have sued or been sued if the constitution had not been enacted. No legislation in this regard has been made by Parliament, and the suits are being governed by the pre-independence laws.

Both the governments may sue either individuals (or bodies of individuals) and other governments. According to Article 131 inter-governmental disputes come under the original jurisdiction of the Supreme Court. Cases against individuals (or bodies of individuals) are lodged under ordinary laws and at the lowest court. The state may be sued under the ordinary laws of contract, just as any other civil case, or under the laws of tort, i.e., actionable wrong.

But here there are some exceptions. Article 361 rules out any opportunity for the citizens to sue the President, the chief executive of the Union, and the Governor, the chief executive of a state for any act done or purporting to be done while exercising their powers and performing their functions in their official capacity. No criminal proceedings whatsoever shall be instituted against them in any court during their tenure. Neither can a process of arrest or imprisonment issue against them during their term of office. Nor will any civil proceedings