

Fundamental Rights

There is one aspect of the proposed fundamental rights for citizens of the new India, discussed by the Constituent Assembly at its last session, which deserves special attention. Sardar Vallabhbhai Patel's Committee rightly attached great importance to making these rights justiciable, and noted the necessity of providing for their enforcement by legal process. They have no practical value unless they are capable of being enforced by legal action against individuals, groups of individuals, and the government itself. Due provision for implementing them will also have to be made in defining the jurisdiction and powers of a Supreme Court of India charged with the protection of the people's rights and the preservation of civil liberties. The Court has got to be both the guardian and the interpreter of the constitution and its fundamentals, and much will depend upon the status, the powers, and the independence accorded to the Court. The establishment of an independent tribunal of the highest possible status is by itself an indispensable constitutional safeguard.

The report of the Committee provides that all existing laws, regulations, notifications, customs and usages having the force of law, inconsistent with the fundamental rights, shall stand abrogated to the extent of such inconsistency. This, of course, is inevitable; the fundamental rights to the extent that they are justiciable must prevail over other legal rights. But the laws operating in India today are so numerous and so complex that these rights may come into conflict with existing laws at innumerable points. It would be impossible to abrogate the existing laws altogether, and to start with clean slate, without creating chaos in the land. The effect of this clause upon the great body of existing laws, statutory and others, has got to be most carefully examined. The problems are urgent and intricate, and the time is short. But it is to be hoped that the Constituent Assembly in dealing with these will have at least as much regard to the practical as to the ideal aspects of the mat-