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CONSTITUTION STUDY MATERIAL

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The Constitution of India is perhaps the most comprehensive of all constitutions. It contains 395 original articles that are divided into 22 Parts and has 12 Schedules. Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, 393 and 394 came into force on 26 November, 1949 and other articles came into force from 26 January, 1950.

The Preamble The Preamble embodies the ideals which the founding fathers of the Constitution desired to achieve by the citizen, in their best interest. The Preamble spells out its source of authority, i.e., "People of India". It also expresses the social and political philosophy of the country and contains the nation's concept of social justice in its widest promptings.

Preamble

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

Justice, social, economic and political;Liberty, of thought, expression, belief, faith and worship; Equality of status and of opportunity; And to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

In Our Constituent Assembly this twenty-sixth day of November, 1949, do Hereby Adopt, Enact and Give to Ourselves This Constitution.

The Preamble when analysed may be divided into three parts by reference to its qualitative characteristics. The First part is declaratory, whereby the people of India in their Constituent Assembly adopted, enacted and gave to Ourselves this Constitution, that is the Constitution of India. The second part is resolutionary, whereby the people of India solemnly resolved 'to constitute India into a sovereign democratic republic. The third part is promissory, a commitment by the people of India to secure to all its citizens, namely, justice, liberty, equality and fraternity, accompanied by an assurance of the dignity of the individual and the unity of the nation

Is Preamble a part of the Constitution It has been a very interesting question that whether the Preamble is a part o the Constitution or not It has been discussed in two leading cases:

1. Berubari case

2. Kesavananda Bharti case

In Berubari Union (I), (1960) 3 SCR 250: AIR 1960 SC 845: 1961 (1) SCA 22, the Supreme Court held that no doubt the Preamble is a key to open the mind of makers, which may show the general purposes for which they made the several provisions in the Constitution but nevertheless the Preamble is not a part of the Constitution.

But in the case of Kesavananda Bharti y State of Kerala, (1973) 4 SCC 225: AIR 1973 SC 1461, the Supreme Court laid down following prepositions-

(i) that the Preamble to the Constitution of India is a part of the Constitution; (ii) that the

Preamble is not a source of power nor a source of limitations or prohibitions; and

(iii) the Preamble has a significant role to play in the interpretation of statutes, also in the interpretation of provisions of the Constitution.

The words we the people indicate that India is a republican polity which means it shall have no hereditary ruler and the people shall elect their government. The legislatures will be elected bodies and the President of the Republic will also be elected.

Sovereign

According to Cooley: "A state is sovereign when there resides within itself a supreme and absolute power, acknowledging no superior.

In N. Nagendra Rao & Co. 0 State of Andhra Pradesh, ALR 1994 SC 2563: 199,4 ALR SCW 3753; (1994) 6 SCC-205, the Supreme Court observed that "sovereign" as used in the Constitution is different from the old and archaic concept of sovereignty which has ceased to survive. Sovereignty now vests in the people of India and the United states, and both recognized that people are the basis of all sovereignty. The legislature, the executive and the judiciary have been created and constituted to serve the people.

Socialist

The word socialist was not in the Preamble as enacted by the Constituent Assembly but was inserted by the 42nd Amendment Act.
In the Constituent Assembly Nehru had stated:

I stand for socialism and, I hope, India will stand for socialism and that India will go towards the

Constitution of a socialist state...

In D.S. Nakara 2 LOI, (1983) 1 SCC 305: AIR 1983 SC 130: 1983 (1) SC] 188, D.A. Desai, J. observed that-

""Socialism is a much misunderstood word. Values determine contemporary socialism pure and simple.

But it is not necessary at this stage to go into all its ramifications. The principal aim of a socialist state is to eliminate inequality in income and status and standards of life."

Secular

Secular is another word which was inserted in 1977 alongwith socialism. The word 'secular' is commonly

understood in contradiction to the word 'religious'. The 'secular state' in its political context can

and has assumed different meanings in different countries, depending broadly on historical and social circumstances, the political philosophy and the felt needs of a particular country. Broadly speaking, in one country, secularism may mean an actively negative attitude to all religions and religious institutions, in another country, it may mean a strict" wall of separation" between the state and religion and religious institutions. If we talk about Indian perspective, there is no official religion. India is not a theocratic state.

J. Ruma Pal has very clearly explained the philosophy behind secularism in T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481: 2002 AIR SCW 4957: AIR 2003 SC 355 that although the idea of secularism may have been borrowed in the Indian Constitution from the West, it has adopted its own unique brand of secularism based on its particular history and exigencies which are far removed in many ways from secularism as it is defined and followed in European Countries, the United States of America and Australia.The Supreme Court in Valsamma Paul v Cochin University, (1996) 3 SCC 545: AIR 1996 SC 1011: 1996 AIR SCW 492, said:

"Pluralism is the keynote of Indian culture and religious tolerance is the bedrock of Indian secularism. It is based on the belief that all religions are equally good and efficacious pathways to perfection or God- realisation. It stands for a complex interpretive process in which there is a transcendence of religion and get there is a unification of multiple religions. It is a bridge between religions in a multi-religious society to cross over the barriers of their diversity... And the hallmark of the humanist and the secularist in regard to the ideals he will pursue and the means by which he will pursue them is not 'I will be secular, I will be a

humanist, only when all the "others" also conduct themselves as secularists and humanists'. Our conduct must be principles, whatever the conduct of others. 'For,' as Jesus said, 'if you love those who love you what reward have you'.

Democratic

Democracy is a method of government by discussion and persuasion. The core of democracy is choice. There may be a number of ideas or lines of action proposed by different individuals or groups. These groups come together with a view to find some conclusion agreeable to all or most of the groups. Abraham Lincoln in his famous speech at gettysberg described Democracy as government of the people, by the people, for the people.

The Supreme Court in Kesavananda Bharti v State of Kerala,(1973) 4 SCC 225: AIR 1973 SC 1461, he is very rightly described the concept of democracy as visualised by the Constitution presupposes the representation of the people in Parliament and state legislature is by the method of election… It is obvious that a power must be lodged somewhere To judge the validity of the election, for, otherwise, there would be no certainty as to who were legitimately chosen as members, And any intruder or usurper Might claim a seat and thus trample upon the Privileges and liberties of the people indeed elections would be come under such circumstances a mockery.”

Republic

Prostate, in which executive head of the state is not hereditary monarch but elected representative, is called Republic. In other words, in a republic all offices including the highest, that is, that of the head of the state are open to all citizens not there is no what were citizen being elected to any public office.

Citizenship

A citizen of a given state is one who enjoy full membership of the political community of the State. Aliens, unlike citizens, do not enjoy all the fundamental rights secured to the citizens. Citizens alone have a right to vote to the Union or State Legislature and only they can become a member thereof.

Citizenship can be of following 3 types:

1. Citizenship by domicile (Art. 5)

2. Citizenship by migration (Art. 6)

3. Citizenship by registration (Art. 8)

The law relating to citizenship is now contained in the Citizenship Act, 1955. The Citizenship Act, 1955,

prescribes the following ways for acquisition of citizenship:

(i) By birth;

(ii) By descent;

(iii) By registration;

(iv) By naturalisation; and

(V) By incorporation of territory.

There is single citizenship for the whole of India. There is no State citizenship. A person residing in any sue of the Indian States has the same rights and privileges as his compatriot residing in another state. There is in India only one citizenship and one domicile. In U.S.A, there is deal citizenship wiz. National Citizenship and State Citizenship.

A citizen of India, who by naturalisation, registration or otherwise, voluntarily acquires a citizenship of another Country, shall cease to be an Indian citizen. A citizen may renounce his citizenship and in such case he ceases to be a citizen of India after such renunciation.

"State" (Article 12)

Astride 12 gives a wide meaning to the term "State". According to the Art 12, State means:
1. The Government and Parliament of India,

2. The Government and Legislature of a State,

3. Local Authorities, and

4. Other authorities;

(i) within the territories of India, or

(ii) under the control of the Government of India.

The Supreme Court has laid down it extends to any action whether administrative, judicial or quasi-judicial

which can be termed as state action. In Ajay Hasia v Khalid Mujib Sehravardi, AIR 1981 SC 487: (1981) I SCC (1981) 2 SCR 79 the Supreme Court summarized the criterion for judging whether a body is a state. But in Pradeep Kumar Biswas v Indian Institute of Chemical Biology, (2002) 5 SC 111, the Supreme Court formulated the whole law regarding 'state', and laid down following principles:

(a) Principles laid down in Ajay Hasia v Khalid Mujib case are not a rigid set of principles;

(b) The question in each case will have to be considered on the basis of facts available- the body is financially, functionally or administratively dominated by or under the control of the government.

(c) Such control must be particular to the body in question;

(d) Mere regulatory control under a statute or otherwise would not sure to make a body a Part of the state.

The following have been held to be state in different cases:

1. Regional Engineering College established by a Society registered under a State Act

2. Indian Council of Agricultural Research;

3. Indian Statistical Institute;

4. Steel Authority of India Limited;

5. Food Corporation of India;

6. Nationalised Banks;

7. International Airport Authority;
8. Rajasthan Electricity Board;

9. Oil and Natural Gas Commission;

10. Council for Indian School Certificate Examinations;

11. Council of Scientific and Industrial Research;

12. Uttar Pradesh Raja Karmachari Kalyan Nigam;

13. Export Credit Guarantee Corporation of India Ltd;

14. All the Nationalised Banks;

15. Bombay Port Trust;

16. United India Insurance Co.

But in Zee Telefilms Ltd. o UOI, (2005) 4 SCC 649: AIR 2005 SC 2677: 2005 AIR SCW 2985, the court held that the Board of Control for Cricket in India (BCCI) is not State.

In Lieutenant Governor of Delhi o V.K. Sodhi, (2007) 15 SCC 136: AIR 2007 SC 2885: 2007 AIR SCW 5268, it was held that the State Council of Education, Research and Training (SCERT) is not "State" or "other authority" within the meaning of Article 12 of the Constitution.

FUNDAMENTAL RIGHTS

Part Ill of the Constitution enshrines the back-bone of our democratic system which is the Fundamental Rights. In case of encroachment by the State on any of the rights embodied in Part If the Supreme Court and the High Courts are competent to declare the law unconstitutional and accordingly void (Art. 13). Article 13 establishes the supremacy of the fundamental rights by declaring that all laws which are inconsistent with or in derogation of any of the fundamental rights shall be void to the extent of inconsistency. This article imposes an obligation on the state to respect and implement the fundamental rights and at the same time confers a power on the courts to declare a law or an act void if it infringes a fundamental right. This power is called the power of judicial review.
The Fundamental Rights can be classified as follows:
(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) (repealed by the 44th Amendment Act, 1978) (7) Right to Constitutional Remedies (Articles 32-35)

1. Right to Equality (Articles 14-18)
Right to Equality includes-
(a) Equality before law (Article 14)
(b) Prohibition of discrimination (Article 15)
(c) Equality of opportunity (Article 16)
(d) Right against untouchability (Article 17)
(e) Abolition of titles (Article 18)

Equality before Law (Article 14)

Article 14 of the Constitution reads as, "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 article has two limbs-(a) 'equality before law', and (b) 'equal protection of law'. The first limb i.e. 'equality before law' is of English origin and it is a negative concept which implies the absence of any special privilege in favour of any individual and the equal subjection of all classes to law. In an explanatory note Sir B.N. Rau, who was the Constitutional adviser of the Constituent Assembly, pointed out that "equality before the law" was adopted from the Weimar Constitution. There are only certain exceptions to this rule as per the Constitution.
In State of West Bengal v Anwar Ali Sarkar, AIR 1952 SC 75: 1952 SCR 284: 1952 SCA 148, it was held that Article 14 is designed to prevent any person or class of persons for being singled out as a special subject for discriminatory and hostile legislation. Democracy implies respect for the elementary rights of man, however suspect or unworthy.

Equality of right is a principle of republicanism and Article 14 enunciates this equality principle in the administration of justice. In its application to legal proceedings the article assures to everyone the same rules of evidence and modes of procedure. In other words, the same rule must exist for all in similar circumstances. This principle, however, does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position.

The second limb, which provides for 'equal protection of law', has been taken from the a fourteenth Amendment to the U.S. Constitution. It is a positive concept and implies that the equals should be treated equally. Article 14, by virtue of this limb does not permit that unequals should be treated alike.

In Fuljit Kaur u State of Punjab, (2010) 11 SC 455, the Court held that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner.

Article 14 is designed to prevent any person or class of persons for being singled out as a special subject for discriminatory and hostile legislation. Democracy implies respect for the elementary rights of man, however suspect or unworthy. Equality of right is principle of republicanism and Article 14 enunciates this equality principle in the administration of justice.

The concept of equality before law does not involve the idea of absolute equality amongst all, which may be a physical impossibility. All that Article 14 guarantees is the similarity of treatment and not identical treatment.

But there are some exceptions to the equality clause, Which are to be found in the constitution itself.
1. The President or the Governor or Rajpramukh of a State, shall not be answerable to any court for the
exercise and performance of the powers and duties of his office or for any act done or purporting

to be
done by him in the exercise and performance of those powers and duties [Article 361(1)] 2. No criminal proceedings whatsoever shall be instituted or continued against the President or the Governor of a State, in any court during his term of office (Article 361(2)]; 3. No civil proceedings in which relief is claimed against the President or the Governor shall be instituted during his term of office in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office until expiration of two months next after notice in writing has been duly served on the President or the Governor, as the case may be [Article 361(3)l;
4. No person shall be liable to any civil or criminal proceedings in respect of the publication in a newspaper or by radio or television etc., of substantially true report of any proceedings of the Lok Sabha, Rajya Sabha or any Legislative Assembly or Council;
5. Rulers of foreign countries, their ambassadors etc, enjoy immunity from criminal and civil proceedings;
6. The United Nations and its agencies are entitled to diplomatic immunity; 7. Members of Parliament and of State Legislatures are not liable in respect of anything done or said within the House [Articles 105 and 194].

Article 14 does not lay down that all laws must be of universal application. The State can treat different persons differently if circumstances justify such treatment. The state has the power to classify persons for legitimate purposes. The legislature has to deal with diverse problems.
Human relations have infinite variety. The legislature must possess power to group persons, objects and transactions with a view to attain specific aims.

Differential treatment in itself does not violate Article 14. It guarantees equal protection only when there is no reasonable basis of the differentiation. If a law deals equally with members of a well-defined class, it is not open to the charge of denial of equal protection. If the legislature takes care to classify persons reasonably for legislative purposes, and if it deals equally with all persons belonging to a well-defined class, it does not amount to denial of
equal protection.
The Karnataka High Court in K. Veeresh Babu o UOI, AIR 1994 Kar 56: IL 1993 Kant 2939, held that a provision exempting Sikhs from compulsorily wearing a helmet, when riding a motor cycle, is not violative of Article 14 of the Constitution of India.
Thus, Article 14 prohibits is class legislation and not classification for the purpose of legislation. A classification to be reasonable must fulfill two conditions:

Condition
1. The classification must be based on intelligible differentia which distinguishes those who are grouped together from those left out of the group;
2. The differentia must have a rational relation to the object sought to be achieved by the Act.
But in State v V.C. Shukla, AIR 1980 SC 1382: (1980) 2 SCC 665: 1980 Cr LJ 965, the Supreme Court formulated third criterion, thus:
There must be a nexus between the differentiation which is the basis of the classification and the object of the Act.
In Charanjit Lal Chowdhry v UOI, AIR 1951 SC 41: 1951 SC] 29: 1950 SCR 869, the Supreme Court observed that the guarantee of the equal protection of laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction.

Unlimited discretion and arbitrariness violates Article 14

In State of Andra Pradesh v Nalla Raja Reddy, AIR 1967 SC 1458: 1967 (2) SCA 335: (1967) 3 SCAR 28, the Supreme Court remarked that official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. But in EP. Royappa v State of Tamil Nadu, AIR 1974 SC 555: (1974) 4 SCC, 3: (1974) 2 SCR 348, the Supreme Court gave a new content to Article 14 by stating that article 14 embodies a guarantee against arbitrariness and that it had a highly activist magnitude. The court observed that equality was a dynamic concept which was antithetic to arbitrariness.

Particular applications of right to equality

Article 14 states the principle of equality in a general form. While Articles 15 to 18 deal with certain specific problems relating to right to equality among citizens, Article 14 protects all persons whether they be citizens or aliens. Articles 15 and 16 confer a right only on the citizens.

Article 15(1) prohibits discrimination by the State on any of the specific grounds, namely,

religion, race, caste, sex, place of birth or any of them. The prohibition is against the State but not against private persons. Article 15(2) prohibits both the State and private persons from making discrimination in regard to access to shops, hotels and places of public entertainment or to the use of wells, tanks, and other places of public resort. Article 15(3) is a enabling clause. It empowers the State to make special provisions for the protection of women and children. It is interesting to note that clause (3) of Article 15 was inserted after Sir B.. Rau had discussion in Washington with Justice Frankfurter who emphasized that legal

provision might occasionally have to be made for women, for example, to prohibit their employment for certain periods before and after childbirth. Article 15(4) enables the State to make special provisions for the advancement of socially and educationally backward classes of citizens or for the SC and STs. It provides reservation of seats in public educational institutions.

Clause (5) of Article 15 was added by Constitution (93rd Amendment) Act, 2005. It empowers the State to make laws containing special provisions for the advancement of any socially and educationally backward classes of citizens or for the SCs or ST for the purpose of admissions to educational institutions including private educational institutional institutions, whether aided or unaided by the State, other than the minority educational

As per The Constitution (One Hundred and Third Amendment) Act, 2019 Clause (6) was inserted in Article 15.

Equal opportunities in matters of public employment

Article 16 guarantees equality of opportunity in matters of employment under the State. This right is available to citizens only. It is mentionable that in the matters of employment also it is impossible to treat all persons alike.

Equality only means equal treatment to equals. A reasonable classification of employees and differential treatment on the basis of such classification is not prohibited by Article 16. As per The Constitution (One Hundred and Third Amendment) Act, 2019 Clause (6) was inserted in Article 16.

It is well-settled that what Article 14 strikes at, is arbitrariness because an action that is arbitrary necessarily involves negation of equality.

Article 14 strikes at arbitrariness in State action, whether it be of the legislature or of the executive or of an 'authority' under Article 12, because any action that is arbitrary must be necessarily involve the negation of equality and if it affects any matter relating to public employment, it is also violative of Article 16. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal protection by law [AL. Kalra o Project & Equipment Corpn, (1984) 3 SCC 316].

Untouchability (Article 17)

Article 17 deals with a peculiar problem of our country. Article 17 abolishes untouchability. The discussion in the Constituent Assembly on Article 17 relating to abolition of untouchability evoked a suggestion that in addition to the word 'untouchability,' the word 'unapproachability' should also be added in the article. The suggestion was not accepted. Article 17 in its present form was accepted amidst shouts of Mahatma Gandhi Ki Jai. The Constitution (Article 17) declares:

Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arsing out of 'untouchability' shall be an offence punishable in accordance with law. Article 35 read with Article 17 confers on the Parliament power to make laws prescribing punishment for practicing untouchability. The Parliament enacted the Untouchability (Offences) Act, 1955. But, in 1976, it was made more stringent and was renamed the Protection of Civil Rights Act, 1955. In P.U.D.R. V UOI, AIR 1982 SC 1473: (1982) 2 SCC 494: 1982 (I) LL] 454, the Supreme Court has held that the right given by Article 17 can be enforced against private individuals and it is the duty of the State to ensure that this right is not infringed. The Act prescribes fine and punishment for:

(i) preventing a person, on the ground of untouchability, from entering any place of public worship, which is open to other persons of the same religion;

(il) preventing any person, on the ground of untouchability, from worshipping or performing any religious services in any place of religious worship or bathing in any sacred tank, well, spring etc.; (in) insulting a member of Scheduled Caste on the ground of untouchability; (iv) denying to any person, on the ground of untouchability, access to any shop, public restaurant, hotel, or place of public entertainment;

(v) denying any person, on the ground of untouchability, the use of any public conveyance or the use of any Dharamshala or musafirkhana which is open to the general public; (vi) refusing admission to any person in any hospital, dispensary, educational institution etc., established or maintained for the benefit of the general public.

Abolition of Titles (Article 18)

Conferment of titles by the state has been abolished, except in the case of military or academic distinctions. A citizen cannot accept any title from a foreign State. Even non-citizens, who holds any office of profit or trust under the State, cannot accept any title from any foreign without consent of the President.

In 1954 the Government of India introduced four classes of awards. They are; (1) Bharat Ratna, (2) Padma Vibhushana, Padma Bhushan and Padma Shri.

In Balaji Raghavan v UOI, (1996) 1 SCC 361: AIR 1996 SC 770: 1996 AIR SW 86, the Supreme Court upheld the validity of these titles. The Supreme Court held that what are prohibited by Article 18 are hereditary tiles of nobility and use of titles as prefixes or suffixes to the names of the holders. Bharat Ratna and Padma awards, which are not to be used as prefixes or suffixes to the name of awardees do not amount to titles and are not against of Article 18 of the Constitution of India.

2. Right to Freedom (Article 19-22)

Right to Freedom includes-

(a) Protection of certain rights (Article 19)

(b) Protection in respect of conviction (Article 20)

(c) Protection of life and personal liberty (Article 21)

(d) Right to education (Article 21A)
(e) Protection against arrest & detention (Article 22)
Protection of certain rights (Article 19)
Freedom of profession, occupation, trade, or business [Articles 19(1) (g) and 19(6)] Article 19(1) (g) guarantees right to practice any profession or to carry on any occupation, trade or business. It uses four expressions which have similar connotations - not identical. However, this right is not unqualified. It can be restricted and regulated by authority of law. A restriction must satisfy the following conditions:-
(a) in the interest of general public;
(b) prescribing professional and technical qualifications necessary for practicing any profession or carrying on
any occupation, trade or business;
(a) enabling the State to carry on any trade or business to the exclusion of citizens wholly or partially.

The Supreme Court held that in a democratic form of government photos have right to know antecedents of candidates for election to Parliament or state legislature.

Freedom of Assembly (Articles 19(1) (b) and 19(3)]
Article 19(1) (b) is the repository of the Right to Assemble. Article 19(1)(b) guarantees to all citizens of India right 'to assemble peaceably and without arms. It also includes holding meetings, demonstrations and take out processions. The right is subject to reasonable restrictions in the interest of_
(i) the sovereignty and integrity of India; and
(i) public order.

Freedom to form Association [Articles 19(1) (c) and 19(4)]
Article 19(1) (c) confers on the citizens the right to form associations or unions or co-operative societies which may include all sorts of associations - political parties, clubs, societies, companies, partnership, trade unions or any other organisation of citizens. The right to form association may be regulated, as provided in Article 19(4), by imposing reasonable restrictions in the interest of
1. sovereignty and integrity of India;
2. public order; and
3. morality.

Freedom of movement [Articles 19(1)(d) and 19 (5)]
Article 19(1) (d) guarantees to all citizens of India the right to-
(i) move inside the country;
(ii) move outside the country; and
(in) come back to the country.

The State may under Article 19(5) impose reasonable restrictions on the freedom of movement on two grounds
i) in the interest of general public;
ii) for the protection of the interest of any Scheduled Tribes.

Freedom of Residence [Articles 19(1)(e) and 19(5)]
Article 19(1) (e) confers on the citizens the right to reside and settle in any part of the territory of India. This freedom can be subjected to the same restrictions as the freedom of movement because the grounds of restrictions are contained in article 19(5) for both the freedoms. All the

above mentioned rights are subject to the test of reasonability, as laid down in clauses (2) -(6) of article 19. None of these freedoms is absolute as each is liable to be curtailed by laws made or to be made by the State to the extent mentioned in clauses (2) to (6) of Article 19.

Protection in respect of conviction (Article 20)

Articles 20 and 22 provide safeguards to the persons accused of crimes. Article 20 provides for the following protections:

(1) No one can be punished by ex post facto laws: Article 20(1) embodies the principle that no one can be punished and convicted for any offence except for violation of law in force at the time of commission of the act nor can he be subjected to a penalty greater than which might have been inflicted under the law in force at the time of commission of the offence.

(2) No one can be punished more than once for the same offence: Clause (2) of article 20 provides the protection against double jeopardy. The English doctrine of double jeopardy lays down that no one can be tried and punished more than once for the same offence and the Constitution of India has adopted a narrow form of this doctrine.

(3) Protection against testimonial compulsion: It is a general principle of English and American criminal

jurisprudence that no person accused of an offence can be compelled to be a witness against himself.

Article 20(3) of the Indian Constitution incorporates the same philosophy.

Life and Personal Liberty (Article 21)

Article 21 lays down that "no person shall be deprived of his life and liberty except by procedure established by law". Thus, the Constitution protects any person from the deprivation of his life and liberty without proper procedure and in case of such deprivation, the courts can order his release. The protection under this article is enjoyed by both citizens and non citizens. The expression except according to procedure established by law were borrowed from article 31 of the Japanese Constitution.

In A.K. Gopalan v State of Madras, AIR 1950 SC 27: 1950 SC] 174: 1950 SCR 88, the majority of the Supreme Court held that the expression 'personal liberty' in article 21 was used in the restricted sense of freedom from arrest, imprisonment or other physical coercion, i.e., liberty concerning the body. In this case the Supreme Court had interpreted the term 'personal liberty' in a very narrow sense.

But in Maneka Gandhi v UOI, AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621, the Supreme Court has not only overruled Gopalan's case but has widened the scope of the words 'personal liberty' considerably, the court observed:

"The expression 'personal liberty' in article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under article 19". The courts are inclined to give the widest amplitude to the expression. On account of the liberal interpretation article 21 has now come to be invoked almost as a residuary right, even to the extent which the founding fathers never dreamt of.

In A.D.M, Jabalpur v Shivakant Shukla, AIR 1976 SC 1207: (1976) 2 SCC 521: (1976) 3 SCR 929, it was held that article 21 was the sole repository of the right to life and personal liberty. Although, in his dissenting opinion Khanna, J, was explained that article 21 cannot be considered to be the sole repository of the right to life and personal liberty. The right to life and personal liberty is the most precious right of human beings in civilised societies governed by the rule of

law.

In State of West Bengal o Committee for Protection of Democratic Rights, West Bengal, (2010) 3 SCC 571, it was held that the words "life" and "personal liberty" are used in article 21 as compendious terms to include within themselves all the varieties of life which go to make up the personal liberties of a man and not merely the right in the continuance of a person's animal existence. All those aspects of life, which make a person live with human dignity are included within the meaning of the "life".

In Francis Coralie Mullin v Administrator, Union Territory of Delhi, (1981) 1 SCC 608, the Supreme Court held thay article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful.

The doctrine of classification which is evolved by the courts is not paraphrase of article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions mentioned to above, the legislative or executive action would plainly be arbitrary and the guarantee of equality under article 14 would be breached [Ajay Hasia o Khalid Mujib Sehravardi, (1981) 1 SCC 722].

Since the latter case, the Supreme Court has consistently been widening the scope of article 21 by including almost all the rights which go to make up the personality of a human being. The right to life means not merely right to live, but right to live with all limbs and faculties through which life is enjoyed and lived and without which life has no meaning.

Right to Education

By the Constitution (Eighty-sixth Amendment) Act, 2002, a new fundamental right has been provided by inserting Article 21A. It states that the State shall provide free and compulsory education to all children of age of six to fourteen years in such manner as the state may, by law, determine. Education being a concurrent subject laws may be enacted either by the Union or the States. By the same Amendment, Article 45 has been replaced. Now this new Article 45 directs the State to provide childhood care and education to children below the age of 6 years.

Arbitrary Arrest and Detention (Article 22)

Article 22 provides to a person arrested and detained by police, the following rights:- (1) Right to be produced before magistrate within 24 hours of his arrest.
(2) Right to consult and to be defended by a counsel of his own choice.
13) Richt to be informed of the arounds of his detention as soon as possible. (4) Right not to be detained beyond 24 hours without order of a magistrate. Clause (3) of the Article, however, provides two exceptions to the rules in clauses (1) and (2). According to clause (8), an alien enemy and a person arrested and detained under a Preventive Detention Law does not have the the rights available under clauses (1) and (2).

Whether article 22 is a complete code

At one time it was thought that Article 22 was a complete Code in regard to laws providing for preventive detention and that the validity of an order of detention should be determined strictly according to the terms within the four corners of Article 22. The Supreme Court held in A.K.

Gopalan's case that Articles 21 and 22 or atleast Articles 20 to 22 form a complete code and therefore Article 19 is not attracted in matters under article 22. Thus, a law relating to preventive detention could not be challenged under Article 19 for being unreasonable restriction. But, this view has now finally rejected. In Maneka Gandhi v UO1, AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2.SCR 621, the court held that Part Ill weaves a pattern of guarantees on the texture of basic human rights. The court held that the procedure prescribed under the preventive detention law must be reasonable and just and fair under Articles 14, 19 and 21 of the Constitution.

3. Right Against Exploitation (Articles 23, 24)

Articles 23 and 24 constitute a group under the head Right against Exploitation. Exploitation is opposed to the dignity of the individual proclaimed in the Preamble of the Constitution and to the provisions of Article 39(e) and(f). Two of the remnants of an oppressive feudal order which are blots on our social life are begar and bonded labour. Article 23 forbids traffic in human beings begar and similar forms of forced labour such as bonded labour.

Further, Article 24 lays down that no children below the age of 14 years can be employed to work in any factory or mine or to engage in any other hazardous employment. In pursuance of this article the Parliament enacted, the Immoral Traffic (Prevention) Act, 1956 and the Bonded Labour System (Abolition) Act, 1976.

4. Right to Freedom of Religion (Articles 25-28)

India is a secular nation and the State does not owe allegiance to any religion, but that is not to say that Indian Republic is anti-religion. Secularism is a basic feature of the Constitution. It does not require the State to be hostile to religion. The Supreme Court in Pannalal Bansilal Patil v State of Andhra Pradesh, AIR 1996 SC 1023: 1996 AIR SCW 507: (1996) 2 SCC 498 has stated that while Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity etc., they do not intend to deny the same guarantee to the Hindus. What is Religion

It may not be possible, therefore, to devise a precise definition of universal application as to what is religion and what are matters of religious belief or religious practice. Religion is not susceptible to a precise definition. It is a matter of faith and belief. Religion is not identical to Dharma. In A.S. Narayan Deekshitulu v State of Andhra Pradesh, (1994) 9 SCC 548, the Supreme Court has observed:

"Very often the words 'religion' and 'dharma' are used to signify one and the same concept or notion; to put it differently, they are used interchangeably the word 'religion' in the two articles has really been used, not as is colloquially understood by the religion, but in the sense of it comprehending our concept of dharma. The English language having had no parallel word of 'dharma', the word religion was used in these two articles.…Our dharma is said to be 'Santana' i.e., one which has eternal values; one which is neither time bound nor space bound. It is because of this that Rig Veda has referred to the existence of "Santana Dharmana". The concept of "dharma', therefore has been with us for time immemorial. The word is derived from the root Dh.r'

- which denotes: 'upholding', 'supporting', 'nourishing', and 'sustaining'. The word 'religion', as used in articles 25 and 26 of the Constitution cannot be confined, cabined and crabbed, to what is generally thought to be religion.

The distinction between 'religion' and 'dharma' has also been explained by saying that religion is enriched by visionary, methodology and theology, whereas dharma blooms in the realm of direct experience..... The signs and symptoms of dharma are that it has no room for narrow mindedness, sectarianism, blind faith, and dogma. The purity of dharma therefore cannot be compromised with sectarianism A sectarian religion Is open to a limited group of people where is Dharma embraces all and exclude is done this is the core of our Dharma our psyche.

Article 25(1) provides that every person has the freedom of conscience and the right to profess, practice and propagate religion.

Article 26 guarantees to every religious denomination or a section of it, right to establish and maintain institutions for religious and charitable purposes and to manage in its own way all affairs or matters of religion.

Such denomination or sections thereof also have rights to acquire and own movable and immovable properties and to administer such properties in accordance with law. Article 27 lays down that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28 lays down that:
(1) In the State-run educational institutions, religious instructions are totally banned. (2) In State-aided denominational institutions, religious instructions may be imparted but the students have freedom to attend or not to attend such instructions.
(3) There is no prohibition on imparting religious instructions even if the institution is administered by the State, provided such institution has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. But person attending such institution have right to attend or not attend such institution. Articles 25 and 26 are not absolute. These rights are subject to public order, morality and health.

5. Cultural and Educational Rights (Articles 29, 30)
Articles 29 And 30 are intended to protect the minorities so as to enable them to conserve their own language, script and culture and prevent discrimination against minorities on grounds only of religion, race, language or any of them in educational institutions. Article 29(1) guarantees, every section of the citizens having a distinct language, script or culture, their right to conserve the same. Unlike Article 19(1), Article 29(1) is not subject to any reasonable restrictions. Article 29(2) is general and applies to all citizens whether they belong to minority or majority groups and relates to admission into educational institution which are aided or maintained by State funds. It guarantees that no citizen shall be denied admission in such institutions on grounds only of religion, race, caste, language or any of them.

Article 30(1) gives all minorities whether based on religion or language, the right to establish and to administer educational institutions of their choice.
Article 30(2) provides that the State shall not, in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

In St. Xaviers College v State of Gujarat, the Supreme Court observed that Article 29(1) is a general protection given to sections of citizens to conserve their language, script or culture, whereas Article 30 is a special right to minorities to establish educational institutions of their choice.

In English Medium Parents Association v State of Karnataka, (1994) 1 SCC 550: AIR 1994 SC 1702: 1994 AIR SCW 1537, the Court held that there is no violation of articles 29 or 30, where a State makes the mother-tongue the held that Aligarh Muslim University was not established by Muslim Minority but by the Central Legislature in 1920 by passing Aligarh Muslim University Act, 1920. So, an educational institution which has not been established by a religious minority

cannot claim the right to administer it.

In a landmark judgment in T.M.A. Pai Foundation v State of Karnatako, AIR 2003 SC 355: 2002 AIR SCW 4957: (2002) 8 SCC 481, the Supreme Court held that a State will be regarded as the unit for determining both linguistic minority' as well as 'religious minority'. The court held that State Governments and Universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities, but State Governments and Universities can specify academic qualifications for students and make rules and regulations for maintaining academic standards. The court also held that the rights of minorities under Article 30 cover professional institutions.

The court made it clear that the right to establish and administer an educational institutions is guaranteed to all citizens under articles 19(1)(g) and 26 and to minorities specifically under article 30.

6. Right to Constitutional Remedies (Articles 32-35)

A right without remedy is a meaningless formality. It is the remedy which makes a right real. Referring to Provisions of article 32,Dr Ambedkar said:

"If I was asked to name any particular article in this Constitution as the most important - an article without which this Constitution would be a nullity - I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the house has realized its importance.

It guarantees the right to move the Supreme Court, by appropriate proceedings, for the enforcement of fundamental rights; and for this purpose, the court has been empowered to issue appropriate directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, certiorari, and quo warranto. This right cannot be suspended except as otherwise provided for by the Constitution.

It provides an expeditious and inexpensive remedy for the protection of fundamental rights from legislative and executive interference. The provision envisages the role of a "sentinel on the qui vive" for the Supreme Court.

In Minerva Mills v UOI, AIR 1980 SC 1789: (1980) 3 SCC 625: 1980 Ker LT 573, Bhagwati, J., has characterised the power of judicial review conferred by articles 32 and 226 as "part of the basic structure of the Constitution" He added, "..judicial review is a vital principal of our Constitution and it cannot be abrogated without affecting the basic structure of the basis of the Constitution."

Article 32 has been said to be the "cornerstone of the democratic edifice", "the protector and guarantor of fundamental rights". Without making the right to enforce fundamental rights also a fundamental right, all the other fundamental rights would have been meaningless and hence

Article 32 is also called the backbone of the fundamental rights. For the enforcement of any of the fundamental rights under Article 32-

(i) a petition can be made directly to the Supreme Court; and

(ii) the Supreme Court has power to issue directions, orders, writs including writs in the nature of habeas

corpus, mandamus, prohibitions, quo-warranto and certiorari for the enforcement of the Fundamental Rights.

Article 32(3) provides that without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may be law empower any other court to exercise within the local

limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

Right under Article 32 is available not only to the citizen but also to any person (natural or artificial) or non-citizen, whose fundamental right has been violated. Also, under "public interest litigation", it is an established view that any member of the public or any public organisation may move the Supreme Court on behalf of a person or class of persons whose Fundamental Right has been violated. In such cases, the court may be moved by any public spirited person, not merely by filing a writ petition but also by addressing a letter drawing the attention of the Court to such legal injury or wrong. An order under Article 32 can be issued against the State within the definition of Article 12.

In State of West Bengal v Committee for Protection of Democratic Rights, West Bengal, (2010) 3 SCC 571: AIR 2010 SC 1476: 2010 AIR SCW 1829, it was held that the power of judicial review, of the Supreme Court and the High Courts under Articles 32 and 226 respectively, is an integral part and essential feature of the Constitution, constituting
part of its basic structure. It is pertinent to note that Article 32 of the Constitution is also contained in Part Ill of the Constitution, which enumerates the fundamental rights and not alongside other articles of the Constitution which define the general jurisdiction of the Supreme Court.

In Nilabati Behra v State of Orissa, (1993) 2 SCC 746: AIR 1993 SC 1960: 1993 AIR SCW 2366, the court observed that the Supreme Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the
Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings.

In N. Masthan Sahib v Chief Commissioner, Pondicherry, AIR 1962 SC 797: 1962 (2) SCA 401, the Supreme Court has observed that a right to obtain a writ when the petition establishes a case for it, must equally be a fundamental right. For, it would be idle to give a fundamental right to move the Supreme Court and not a similar right to the writ the issue of which the petition might clearly justify. If then a fundamental right to a writ is established, the
party who establishes such right must be entitled ex debtio justitine to the issue of the necessary writ. There would then be no power in the court to refuse in its discretion to issue it.

Article 32 empower the Supreme Court to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, certiorari and quo warranto for the enforcement of the fundamental rights.

Habeas Corpus

Habeas corpus literally means have the corpus or bring the body. By issuing this writ the court orders the person detaining another person to produce the detainee before the court to enable it to examine the legality of the detention. Writ of habens corpus is issued against any person or authority, who has illegally detained any person.

Mandamus

Mandamus literally means a command or an order. It is used principally for public purposes and to compel the performance of public duties. It is in the nature of command requiring any specific act to be done or not to be done by any person holding office, permanent or temporary or by a

corporation or inferior court. The writ of mandamus: also known as a wakening call. It tells the sleeping authority to wake up and perform its public duty. The person
whose legal right is directly affected by the non performance of the public duty, may apply for writ of mandamus.

Prohibition

The writ of prohibition is issued by a superior court to an inferior court or tribunal to prevent it from assuming jurisdiction which is not vested in it. A writ can be issued against a judge of an inferior court if that judge interested in the case, or is otherwise biased. A writ of Prohibition lies only against judicial or quasi-judicial functions. It cannot be issued against legislative, executive, private persons or associations.

Certiorari

The writ of certiorari is issued by the High Court or the Supreme Court to an inferior court or a body exercising judicial or quasi-judicial functions to remove the proceedings from such court or body for investigating the legality of the proceedings. It may be used before the trial to prevent an excess or abuse of jurisdiction to remove the case for trial to higher court.
Before Certiorari is issued the following conditions must be satisfied:

1. Having legal authority;
2. To determine questions affecting the rights of the subject;
3. Having the duty to act judicially; and
4. Acts in excess of its authority.

The Superior Court in issuing writ of certiorari acts in exercise of its supervisory jurisdiction and not appellate jurisdiction. Certiorari is directed against an inferior court or tribunal or other body exercising judicial or quasi-judicial functions.

Quo Warranto

Quo warranto literally is a question what is your authority? By this writ a holder of an office is called upon to show to the court under what authority he holds the office. If the court finds that the holder of the office has no valid title it will oust the person by issuing writ of quo warranto.

Conditions for issue of quo warranto

A writ of quo warranto may be issued if the fundamental rights can also be enforced by a writ petition in a High Court under Article 226. It is not, however, necessary to first approach the High Court, before going to the Apex Court. One can directly move the Supreme Court under Article 32.

Public Interest Litigation

The expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of community has pecuniary interest or some interest by which their Legal rights or liabilities are affected.

In State of Uttaranchal v Balwant Singh Chaufal, (2010) 3 SCC 402: AIR 2010 SC 2550: 2010 AIR SCW 1029, it was observed that the Public Interest Litigation is a product of realisation of constitutional obligation of the court. It is an extremely important jurisdiction exercised by the Supreme Court and the High Courts. In order to provide access to justice to poor, deprived, vulnerable, discriminated and marginalised sections of society, the Supreme Court has initiated, encouraged and Propelled Public Interest Litigation, It is an upshot and product of the Supreme Court's deep and intense urge to fulfill its bounden duty and constitutional obligation.

The origin and evolution of public interest litigation in India emanated from realization of constitutional obligation by the judiciary towards vast section of society - the poor and the marginalised sections of society. This jurisdiction has been created and carved out by judicial creativity and craftsmanship. The court realized that because of extreme poverty, a large number of sections of society cannot approach the court. Fundamental rights have no meaning for them and in order to preserve and protect fundamental rights of marginalised section of society, the courts by judicial innovation and creativity started giving necessary directions and passing orders in public interest.

The court further observed that the Public Interest Litigation is not in the nature of adversarial litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome Public Interest Litigation because it would provide them an occasion to examine whether the poor and the downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker section their rights and entitlements.

In Fertilizer Corporation Kamagar Union v UOI, (1981) 1 SCC 568: AIR 1981 SC 344: (1981) 2 SCR 52, the court held that the public litigation is part of the process of participative justice and 'standing' in civil litigation of that pattern must have liberal reception at the judicial doorsteps. In M.C. Mehta v UOI, (1987) 1 SCC 395: AIR 1987 SC 1086: 1987 (1) Supreme 65, the court observed that Article 32 does not merely confer power on the Supreme Court to issue direction, order or writ for the enforcement of fundamental rights Instead, it also lays a constitutionalobligation on the court to protect the fundamental rights of the people. The court asserted that in realization of this constitutional obligation, "it has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights.

In Mumbai Kamgar Sabha v Abdulbhai Faizullabhai, (1976) 3 SCC 832: AIR 1976 SC 2283: (1976) 3 SCR 832, the Supreme Court made conscious efforts to improve the judicial access for the masses by relaxing the traditional rule of locus standi. The court said that procedural prescriptions are handmaids, not mistresses, of justice and failure of fair play is the spirit in which courts must view (procession) deviances.

In People's Union for Democratic Rights v UOI, (1982) 3 SCC 235: AIR 1982 SC 1473: 1982 LIC 1646, the Supreme Court observed that the PIL which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the law visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other Opposing such claim or resisting such relief. Public Interest Litigation is brought before the court not for purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public

interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unaddressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government. The rule of law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted M by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on paper and not in reality. In State of Uttaranchal v Balwant Singh Chaufal, (2010) 3 SCC 402: AIR 2010 SC 2550: 2010 AIR SCW 1029, the court has issued following directions in order to preserve the purity and sanctity of the PIL, which are as under:

1. The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations;
2. Instead of every individual Judge devising his own procedure for dealing with the Public Interest

Litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives; 3. The courts should prima facie verity the credentials of the petitioner before entertaining a PIL; 4. The courts should be prima face satisfied regarding the correctness of the contents of the petition before entertaining a PIL;

5. The courts should be fully satisfied that substantial public interest is involved before entertaining the petition;
6. The courts should ensure that the petition which involves larger public interest by, gravity and urgency must be given priority over other petitions;
7. The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the Public Interest Litigation;
8. The courts should also ensure that the petitions filed by busy bodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

Directive Principles of State Policy (Articles 37-51)

In my judginene the directive principles have a great value, for they lay down that our ideal is exonume

democracy."

- Dr. BR. Ambedkar

Part IV of the Consfitution set out what may be seen as active obligations of the state, and what are termed, the Directive Principles Or Stale Policy. If should be remember that the Sapru Report of 1as, by which had gin), very precious Constitutional Proposals for India, had suggested to divide fundamental rights into two category.

justiciable and non justiciable. After thoroughly discussion on this concept Sir B. N. Rau, Constitutional Adviser the constituent Assembly, suggested to accept the approach of justiciable and non justiciable fundamental rights and the same was excepted by the Drafting Committee. As a result we have Fundamental Rights which at justiciable in Part I and the Directive Principles of State Policy which are non-justiciable in Part IV. These Directives are not

enforceable in any court, nevertheless they are fundamental in the governance of the county and it shall be the duty of the State to apply these principles in making laws.

Our Constitution makers followed the model of the Irish Constitution which for the first time mentione directive principles in a clear perspective from the fundamental rights.

Directive principles and Fundamental Rights: Their inter-relation.-Directive principles are not enforceable in the courts and unlike Fundamental Rights, they do not create any justifiable rights in favour of the individual.

These directives, however, are instrument of instructions to the Government and they contain positive comment to the State to promote a welfare State. But it is now settled that Directive Principle cannot override a Fundamental Right. In case of a conflict between the Fundamental Rights and Directive Principles, the latter will give way to the former. This question was settled in State of Madras o Champakam Dorairajan, AIR 1951 SC 226. But in Minerva MIS Lid. V UOI, AIR 1980 SC 1789, the Court almost settled the controversy, holding that harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution. It is now agreed by one and all, that the Fundamental Rights are primarily aimed at assuring political freedom to the individuals by protecting them against excessive State action while the Directive Principles seek to secure social and economic freedom by appropriate action.

1. State to secure a social order for the promotion of welfare of the people (Article 38)

The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

It is further provided that in paricular, the state shall Strive to minimise the inequalities in income and endeavour to eliminate inequalities in status facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

2. Certain principles of policy to be followed by the State (Article 39)

The state shall direct its policy towards securing

(a) that the citizens, men and women, equally have the right to an adequate means of livelihood,

(b) what the ownership and control of the material resources of the community are so distributed as best subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and the means, production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abuse and the pen ens are nor forced by economic necessity to enter avocations unsuited to their age or strength

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against mora and material abandonment.

3. Equal justice and free legal aid (Article 39A)
The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

4. Organisation of village Panchayats (Article 40)
The state shall take steps to organise Village panchayats and endow Them with such powers and authority as may be necessary to enable them to function as units of self-government.

5. Right to work, to education and to public assistance in certain cases (Article 41)
The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

6. Provision for just and human conditions of work and maternity relief (Article 42)
The state shall make provision for securing just and human conditions of work and for maternity relief.

7. Uniform Civil Code for the Citizens (Article 44)
The state shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India. Once Justice M.C. Chagla, in a Motilal Nehru Lecture on Plea for a Uniform Civil Code, was very rightly observed that:
That (Article 44) is a mandatory provision binding on the government. The Constitution was enacted for the whole country, it is binding on the whole country and every section and community must accept its provisions and directives.

In Mohd. Ahmad Khan v Shah Bano, AIR 1985 SC 945: (1985) 2 SCC 556: 1985 Cr L] 875, the Supreme Court observed that a common Civil Code will help the case of national integration by removing desperate loyalties to laws which have conflicting ideologies.
In Sarla Mudgal v UOI, (1995) 3 SCC 635: AIR 1995 SC 1531: 1995 AIR SCW 2326, it was held that article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society.

Article 25 guarantees religious freedom whereas article 44 seeks to divest religion from social relations and personal law.

In another landmark judgment in John Vallamatton v UOI, AIR 2003 SC 2902: 2003 AIR SW 3536: (2003) 6 SCC 37, the Supreme Court once again forcefully reiterated the view that the common Civil Code is necessary for India to sort out matrimonial and other problems.

Fundamental Duties

The concept of duty based on (Article 51A) social and political structure is a very indigenous concept in Hindu Philosophy and hence fundamental duties as a concept or not at all foreign to India. The 42nd Amendment act Incorporated part IV A Which imposes certain duties on the citizens.

The duties laid down under article 51A however totally unenforceable duty is intended merely to create psychological consciousness among the citizens

The Union Executive--The President

Article 52 of the Constitution of India makes the declaration that there shall be a President of India. Further, Article 53 vests in the President, the executive power of the Union and such power shall be exercised by the President either directly or through officers subordinate to him in accordance with the Constitution.

In addition to the power vested in the President by Article 53, including the supreme command of the Defence forces, all the important appointments are made by the President of India. Wide powers are given to the President in Emergency including the power to suspend the enforcement of Fundamental Rights (Article 359). Every Bill to become law requires his assent. He can refuse his assent to a Bill or send it back for reconsideration (Article 111).

No money can be granted unless recommended by the President nor can Money Bills be introduced except on his recommendation (Article 117). The Constitution vests in the President the power to grant pardon and remit punishment (Article 72). The executive actions of the Central Government are expressed to be taken in the name of the President (Article 77). The President can promulgate m ordinances when both the Houses of the Parliament are not in session or when he is satisfied that circumstances exist which renders it necessary for him to take immediate action (Article 128).

Position of the President

Under the Parliamentary form of Govemment, as embodied in the Constilution, of India, the President is the Constitutional or formal head of the Union and he exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers.

Pardoning Power of the President (Article 72)

Under Article 72 president has power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit of commute the sentence of any person convicted of any

offence: (1) by Court-Martial; (2) an offence against any law relating to a matter to which the executive power of the Union extends; or (3) in all cases in which the sentence is one of death.

The philosophy underlying the pardon power is that 'every civilised country recognizes, and has therefore provided for, the pardoning power to be exercised as an act of grace and humanity in proper cases. Without such a power of clemency, to be exercised by some department or functionary of a government, a country would be most imperfect and deficient in its political morality, and in that attribute of deity whose judgments are always tempered with mercy."
In Kehar Singh v UO1, (1989) 1 SCC 204: AIR 1989 SC 653: 1989 Cr L] 941, the Supreme Court has observed that-

"It seems to us that there is sufficient indication in the terms of Article 72 and in the history of the power enshrined in that provision as well as existing case-law, and specific guidelines need not be spelled out. Indeed, it may not be possible to lay down any precise, clearly defined and sufficiently channelized guidelines, for we must remember that the power under Article 72 is of the widest amplitude, can contemplate a myriad kinds and categories of cases with facts and situations varying from case to case, in which the merits and reasons of state may be profoundly assisted by prevailing occasion and passing time And it is of great significance that the function itself enjoys high status in the constitutional scheme."

In Epurn Sudhakar v Government of Andhra Pradesh, (2006) 8 SCC 161: AIR 2006 SC 3385: 2006 AIR SCW 5059, the Supreme Court stated that the exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public considerations alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the constitution itself. The court said that granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt innocence. The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter. It can no longer be said that prerogative power is ipso facto immune from judicial review. An undue exercise of this power is to be deplored. Considerations of religion, caste of political loyalty are irrelevant and fraught with discrimination. These are prohibited grounds. The rule of law as the basis for evaluation of all decisions. The supreme quality of the Rule of Law is fairness and legal certainty. The principle of legality occupies a central plan in the Rule of Law. Every prerogative has to be subject to the Rule of Law. That rule cannot be compromised principles of the Rule of Law and it would amount to setting a dangerous precedent. The Rule of Law principle comprises a requirement of "Government according to law"The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as it may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future. The court also said that the power under Article 72 as also under

Article 161 of the Constitution is of the widest amplitude and envisages myriad kinds and categories of cases with facts and situations varying from case-to-case, The exercise of power depends upon the facts and circumstances of each case and the necessity or justification for exercise of that power has to be judged from case to case. Thus, exercise or non-exercise of the power of pardon by the President or the Governor is not immune from judicial review.

THE UNION JUDICIARY--SUPREME COURT

Article 124 makes provision for the establishment of the Supreme Court of India. The article reads as under

Establishment and Constitution of Supreme Court-(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than twenty five other judges

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.

Provided further that-

(a) a Judge may, by writing under his hand addressed to the President, resign his

office; (b) a Judge may be removed from his office in the manner provided in clause

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.]

(3) A person shall not be qualified for appointment as a Judge of a Supreme Court unless he is a citizen of India and-

(a) has been for at least five years a Judge of a High Court or of two or more such courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I.-In this clause "High Court" means a High Court which exercise, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation Il.-In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district Judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, and oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

Supremacy of Executive- Judges Transfer Case I

In S.P. Gupta v LO1, 1981 Supp SCC 87: AIR 1982 SC 149: 1982 Raj LR 389, the court stated that the reading of clause (2) of Article 124 that it is the president, which in effect and substance means the Central Government, which is empowered by the Constitution to appoint Judges of High Courts in the Central Government, but such power is exercisable only '"after consultation with the Chief Justice of India, the Governor of the State, and, the Chief Justice of the High Court." The court said that it is clear on a plain reading of these two articles that the Chief Justice of India, the Chief Justice of the High Court, and such other Judges of the High Courts and of the Supreme Court as the Central Government may deem it necessary to consult, are merely constitutional functionaries having a consultative role and the power of appointment resides solely and exclusively in the Central Government. The court also held that consultation does not mean concurrence.

Judicial Supremacy- Judges Transfer Case Il

In a historic judgment in Supreme Court Advocates-on-Record Association o UOI, (1993) 4 SC 441: AIR 1994 SC 268: 1993 AIR SCW 4101, the court held that in the matter of appointment of Judges of the Supreme Court and the High Courts, the opinion of the Chief Justice of India shall be final. No appointment can be made by the President under Articles 124(2) and 217(1) of the Constitution unless it is in conformity with the opinion of the Chief Justice of India. The court also said that the process of consultation under Article 124(2) means consultation with the Chief Justice of India as head of the judiciary. The opinion of the Chief Justice of India is not his individual but formed collectively by a body of men at the apex level of the judiciary. Such collectivity shall consist of the Chief Justice of India, two senior most Judges of the Supreme Court and the Senior Supreme Court Judge who comes from the State.

Judicial Supremacy~-Judges Transfer Case III

In Special Reference No. 1 of 1998, Re 7 (1998) 7 SCC 739: AIR 1999 SC 1: 1998 AIR SCW 3400, a nine Judges Bench of the Supreme Court has unanimously held that the recommendation made by the Chief Justice of India on the appointment of Judges of the Supreme Court and the High Courts without following the consultation process are not binding on the government. The court also widened the scope of consultation process and said that the collegium should consist of the Chief Justice of India and the four senior most puisne Judges of the Supreme Court Thus the provision for appointment of judges of the Supreme Court has been virtually re-written by the Supreme Court. The power to appoint is no more an executive function.

Disputes between the Central and Constituent units or among the Constituent units are not unknown in a Federal system. Hence it is essential that there should be a judicial body which should act impartially and independently to maintain the supremacy of the Constitution. The Constitution provides for the Supreme Court to achieve this objective. The Supreme Court is the final interpreter and guardian of the Constitution.

Court of record

The Supreme Court is a court of record and has all the powers of such a court including the power to punish for contempt for itself (Article 129).

The Supreme Court in Binet Kumar Singh, In Re v (2001) 5 SCC 501: AIR 2001 SC 2018: 2001 AIR SCW 1950, has observed that the law of contempt of court is essentially meant for keeping the administration of justice pure and undefiled. It is difficult to rigidly define contempt. While on the one hand, the dignity of the court has to be maintained at all costs, it must also be borne in mind that the contempt jurisdiction is of a special nature and should be sparingly used. The Supreme Court is the highest court of record and it is charged with the duties and responsibilities of protecting the dignity of the court. To discharge its obligation as the custodian of the administration of justice in the country and as the highest court imbued with supervisory and appellate jurisdiction over all the lower courts and tribunals, it is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour. The sole object of the court wielding its power to punish for contempt is always for the course of administration of justice.

Jurisdiction

The Supreme Court exercises three-fold jurisdiction:

(1) Original Jurisdiction (Article 131)

(2) Appellate Jurisdiction (Articles 132, 133, 134 and 136)

(3) Advisory Jurisdiction (Article 143)

Article 131 confers original jurisdiction on the Supreme Court in certain matters Article 132 confers appellate jurisdiction on the sup fetter our against any judgment, decree or final order of the High Courts in India Article 133, 134 an 134A confer appellate jurisdiction in the Supreme Court in appeals from High Courts in regard to Civil and Criminal matters respectively on certificate issued by the High Court. Article 136 provides for special leave to appeal before the Supreme Court, notwithstanding the provisions of Articles 132, 133, 134 and 134A. Article 136 vests the Supreme Court with wide powers to grant special leave to appeal from any judgment, decree determination, sentence or order in any cause of matter passed or made by any court or tribunal in the territory of India except a court or tribunal constituted by or under any law relating to the Armed Forces.

All the judgments and the advisory opinions are required to be deliyered in the open Court (Article 145(4) The judgments and opinions of the Supreme Court are to be delivered with the concurrence of a majority of the judges present at the hearing of the case, but a judge who does not concur can deliver a dissenting judgment or opinion [Article 145(5)].

Centre-State relations

India has, to a great extent, followed the example of American federalism which establishes dual characteristics This new kind of federalism to meet India's peculiar needs, divides the power of both the Central and State Governments, both of which are independent in their own spheres.

Articles 245-255 deal with the relationship between the Centre and the State on legislatives matters. The legislative powers are distributed between the Union and the States on the grounds of territory and subject-matter.

There are three Lists which provide for distribution of Legislative powers under Schedule VI of the Constitution, namely:-
(1) List I.-This list or the Union List, contains 97 items and consists of the subjects which are of the national importance. Only the Union Parliament can legislate on such matters and such laws would be uniform for the whole of the nation.

(2) List II.-List Il or the State List consists of 66 items and consists of matters of Local or State interest. States have exclusive power to make laws on subjects mentioned in this List.

(3) List IMI.-List III or the Concurrent List consists of 47 items with respect to which both Union Parliament and State Legislatures have concurrent powers to legislate.

Emergency Provisions

Dr. Ambedkar while bringing out the unique distinction of the Constitution of India observed, "it is both unitary as well as federal according to the requirement of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war, it is so designed as to make it work as though it was a unitary system".

The Constitution of India provides for 3 kinds of extraordinary situations leading to respective 3 kinds of emergencies:

(1) National Emergency (Article 352)

(2) State Emergency (Article 356)

(3) Financial Emergency (Article 360)

National Emergency

Article 352 deals with proclamation of emergency. It provides that "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation."

Conditions for Proclamation under Article 352

A proclamation of emergency can be made when actual war takes place or an actual aggression takes place or an armed rebellion breaks out. But even before the actual occurrence of the same, if the President is satisfied that there is an imminent danger thereof, a proclamation of emergency can be made. Thus the "Existence of grave emergency" or "imminent danger" thereof is a precondition for such a proclamation, (Article 351).

Further, the President shall not issue a proclamation under clause (1) unless the decision of the Union cabinet that such a proclamation maybe issued has been communicated to him in writing. [Article 352(3)]

The proclamation of emergency must be laid before each House of Parliament and it shall cease to be in operation at the expiration of one month unless before the expiry of one month, it has been approved by resolution of both Houses of Parliament.

It is interesting to note that the Constitution was amended by the 44th Amendment Act, 1978 to substitute armed rebellion in place of internal disturbance with effect from 20th June, 1979. Thus, the internal disturbance is no more a ground.

Consequences of Proclamation

There are two major consequences of Proclamation of Emergency under Article 352. These

are- (1) Constitution loses its federal structure and assumes unitary structure.

(2) Certain Fundamental Rights are suspended.

State Emergency (Article 356)

Article 356 empowers the President to issue a proclamation imposing President's rule on receipt of a report from the Governor Or suo motu, if he is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the

Constitution. Such situation is called as 'failure of constitutional machinery'

It would be useful to recall what Dr. Ambedkar said in the Constituent Assembly: that the proper thing we ought to expect is that such article will never be called into operation and that they would remain a dead letter. If at all, they are brought into operation, I hope the President, who is endowed with all these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the constitution." (Constituent Assembly Debates, Vol. IX, p. 177)

Dr. Ambedkar's hope that in rarest of rare cases only there will be an occasion to invoke the emergency provisions was soon belied and the provision of Article 356 of the Constitution have had to be invoked over hundred times. What was, therefore, expected to be a 'dead letter' has in fact become an oft-invoked provision.

In Rameshwar Prasad (VI) v UOI, (2006) 2 SCC 1: 2006 AIR SCW 494: AIR 2006 SC 980, the court held that the power under Article 356(1) is an emergency power, but it is not an absolute power. Emergency means a situation which is not normal, a situation which calls for urgent remedial action. Article 356 confers a power to be exercised by the President in exceptional circumstances to discharge the obligation cast upon him by Article 355. It is a measure to protect and preserve the Constitution. The power under Article 356 is conditional, the condition being formation of satisfaction of the President as contemplated by Article 356(1). The satisfaction of the President is the satisfaction of the Council of Ministers. As provided in Article 74(1), the President acts on the aid and advice of the Council of Ministers.

The court said that the satisfaction of the President is justiciable. Proclamation under Article 356 is open to judicial review, but to a very limited extent. Only when the power is exercised mala fide or is based on wholly extraneous or irrelevant grounds can the power of judicial review be exercised.

Financial Emergency

Article 360 provides the President has power to proclaim financial emergency if he is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened.

Amendment of the Constitution

Constitution being a dynamic instrument of governance must adapt itself with the changing social, political and economic conditions. According to Dr. Ambedkar, .. the Indian federation will not suffer from the faults of rigidity of legalism. Its distinguishing feature is that it is a flexible federation."

The Constitution of India provides for three categories of provisions providing for amendment. These are-

(a) The amendments contemplated in Articles 4. 169. 239 A that can be affected by a simple

majority.

(b) Those amendment that can be effected by a special majority as provided in article 368

(c) Those amendment that in addition to the special majority as described above also require ratification by resolution passed by not less than one half of the state legislature these amendments a change in the provisions referred in the proviso to article 368(2)

Power of Amendment

Parliament's power of amendment of the Constitution has been an issue bogged by controversies. The constant bone or contention has been tine question as to what are the provisions of the Constitution that can be amended by the procedure as laid down in Article 368.

After a catena of conflicting decisions and dissenting opinions, today, the amending power of the Parliament stands subject to the following limitation:

(1) The Constitution does not confer an absolute power of amendment on Parliament and the limitation of Parliament's power of amendment is a basic feature of the Constitution, Thus, Parliament cannot enlarge this limited power into absolute power.

(2) The procedural limitation on the power of amendment is laid down in Article 368 itself.

(3) Legislative power cannot encroach on judicial power, judicial review being a basic feature of the Constitution.

(4) That the basic feature of the Constitution cannot be amended. It is an inherent and implied limitation on Parliament's power of constitutional amendment.