CHAPTER IV

CONSTITUTION SOCIAL & ECONOMIC OFFENCES

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CHAPTER IV

THE CONSTITUTION AND SOCIAL & ECONOMIC OFFENCES.

The primary function of a State under the Doctrine of Laissez Faire was considered as the maintenance of law and order. Under this Doctrine a State was merely a Police State. But such a concept no longer survives anywhere in the world. A State in the modern state of things is not merely a Police State but also a welfare state. Almost all the States in the world subscribe to the view that besides maintaining law and order they should engage themselves in welfare activities. They consider it their bounden duty to advance the safety, happiness and prosperity of their people, and to provide for their general welfare by any and every act of legislation which they deem to be conducive to these ends. These are the functions which are expected to be discharged by the State under our Constitution too. When we look to the Preamble of the Constitution and the provisions of Part III and Part IV of the Constitution, we find that this is the primary idea with which the Constitutional Government has been set-up in our country.

I. SOCIO-ECONOMIC PHILOSOPHY OF THE INDIAN CONSTITUTION:

The socio-economic philosophy of the Indian Constitution is enshrined in its Preamble and Part IV of the Constitution which deals with the Directive Principles of State Policy.
Let us first take up the Preamble of the Constitution.

(i) Socio-economic Philosophy of the Constitution as embodied in its Preamble.

The Preamble of the Indian Constitution serves two purposes. Firstly, it indicates the sources from which the Constitution derives its authority, and, secondly, it sets out the objects which are sought to be achieved by the State.

The Constitution professes to secure to all its citizens justice-social, economic, and political; liberty of thought expression, faith and worship; equality of status and opportunity, and to promote among the people of India fraternity, assuring dignity of the individual and the unity of the nation. The expressions justice, liberty equality and fraternity are not merely platitudes for they are given content by the enacting provisions of the Constitution particularly by Part III dealing with the Fundamental Rights and Part IV dealing with the Directive Principles of State Policy.

Social justice requires the abolition of inequalities which result from inequalities of the wealth and opportunities, race, caste, religion and title.
The ideal of economic justice means that there will be no distinction between man and man from the stand point of economic value. It means equality of reward for equal work and every man should get his just dues for his labour irrespective of his caste, creed, sex or social position. It also means abolition of those economic conditions which ultimately result in the inequality of economic value between man and man, viz., concentration of wealth and means of production in the hands of a few.

Political justice means the absence of any arbitrary distinction between man and man in the political sphere. This is secured under our Constitution by the adoption of universal adult suffrage and the abolition of communal reservation, and by throwing open employment under the State to all citizens without distinction of race, caste, sex, descent, place of birth and religion.

Right from the time the Constitution came into force, steps were taken to achieve the high ideals contained in the Preamble, but many problems were faced by the Government in achieving the socio-economic revolution. It was felt that the institutions provided in the Constitution had been subjected to considerable stresses and strains and that the vested interests had been trying to protect their selfish
Government retained the right to Property under Article 19 and further added a new Provision (Article 301) with regard to Private Property. So long as there is this Right, and the Right under Article 19 allowing the citizens to carry on business, Socialism in India is not the same as it is understood in other socialist countries. But it does signify the right of the State to nationalise the industries and to own the means of production in the way the Constitution authorises it.

(ii) **Legal importance of the Preamble.**

The Preamble of the Constitution outlines the objectives of the Constitution. In the beginning the Court had taken the view that the Preamble is not a part of the Constitution. It was of the opinion that the Preamble cannot prohibit or control in any way or impose any implied prohibition or limitation on the power to amend the Constitution. In Keshavanand Bharathi’s case, Chief Justice Sikri took the view that the Court was wrong in holding that the Preamble is not a part of the Constitution. Referring to the statement made by Sir Alladi Krishnaswamy on the floor of the Constituent Assembly, Justice Sikri held that though in an ordinary statute no importance is attached to the

1. In Re Berubari Union and Exchange of Enclave, AIR-1960-SC-845.
Preamble all importance has to be attached to a Constitutional Statute. The Keshavanand Bharathi's case primarily dealt with the question of amending power of Parliament under Article 368 of the Constitution. The question that arose for consideration in this case was whether the Preamble can be looked at for the purpose of understanding the language of the Constitution. Justice Sikri observed that though the Preamble cannot be used to modify the language of the Statute, if it is clear and plain, it may have the effect of extending or restricting the language used in the body of the enactment if the language of the Statute is not plain and clear.


The Directive Principles of State Policy in Part IV of our Constitution enjoin upon the various States to initiate policies calculated to raise the standard of living and to create a favourable climate for the pursuit of happiness and for the development of human personality. The States are under an obligation to pass laws conceived in the interest of the people as a whole. These steps have to be taken by the State with the reservation that the

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laws passed by it should not be unreasonable, arbitrary, or be in conflict with the Fundamental Rights guaranteed to the citizens. The directive principles of State Policy embody the philosophy of the Indian Constitution. The first and paramount principle enjoined upon the State is to secure a social order in which social economic and political justice shall inform all the institutions of national life. Some of the other principles require that the wealth and the material resources of the country shall be so distributed as to subserve the common good and that there shall be adequate means of livelihood for all and equal pay for equal work. According to these principles the State is called upon to secure the health and strength of workers, the right to work and to education and a living wage for the workers a uniform civil code and compulsory education for children. The Directive Principles are in the nature of duties which the Constitution imposes upon the State to perform. The basic idea underlying all these principles is to strive to achieve a Welfare State. The Directive Principles impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an agalitarian social order with social and economic justice to all.
(iv) Legal Importance of the Directive Principles of State Policy.

One of the most controversial problems of our Constitutional Law is regarding the importance of the Directive Principles of State policy as embodied in Part IV of the Constitution. While this part of the Constitution calls upon the State to strive to build a social order in which there is justice, social, economic and political, Part III of the Constitution confers upon the citizens certain Fundamental Rights. The questions raised before the Courts pertained to the theory of priority of directive principles over fundamental rights. There has been some divergence of opinion about the legal efficacy of these principles. When the Constitution was being framed the members of the Constituent Assembly had expressed the view that the Directive Principles are no more mere pious hopes, pious expressions and pious superstitions that they are to be equated to resolutions made on new year's day which are broken at the end of January and that they are vague. The Constitution itself says that these principles are not enforceable in a Court of Law. Since these principles have been placed in the Constitution, questions do arise whether they have to be read along with the other parts of the Constitution, and whether they have any relevance to the
interpretation of the Constitution, whether they have a bearing on the judicial approach to the resolution of the socio-economic problems. The main question which has arisen about the directive principles of State policy is whether they contravene Fundamental Rights. It has been agitated before the legal forums on a number of occasions. For the first time, this question was examined by the Supreme Court in Champakam’s case\(^1\) in which the Supreme Court had observed that the directive principles of State policy have to conform to and run as subsidiary to the Fundamental Rights. This decision naturally raised the value of Fundamental Rights. The result of this decision was that the State could hardly implement a Directive Principle of State policy if it came in conflict with the Fundamental Rights. This factor was more discernible from the decision of the Supreme Court in a subsequent case. In Haneef Qureshi vs. State of Bihar\(^2\) the Supreme Court had observed that the State should certainly implement a directive principle of State Policy, but it must do so in such a way as not to take away or abridge the Fundamental Rights. The Court stuck to its policy of striking down legislation which was not in accord with the scheme of Chapter III of the

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Constitution dealing with the Fundamental Rights. It maintained its view that the Fundamental Rights were paramount, sacrocent and the rights reserved by the people, inalienable & inviolable. The Court struck down some of the legislations passed by the Union Parliament, such as, the Bank Nationalisation Laws and the Privy Purses Abolition Laws. To overcome the difficulty created by the decisions of the Court, the Constitution was amended to give priority to certain Directive Principles of State policy. The Constitution Twenty Fifth Amendment Act provided that a legislation shall not be void which is passed by the State to give effect to the Directive Principles of State policy as contained in Article 39 of the Constitution. A little later there was a change in the approach of the Supreme Court to the interpretation of the Constitution. The Court started feeling that the Directive Principles cannot be completely ignored in determining the scope of Fundamental Rights. In Kerala Education Bill¹ the Court observed that in determining the scope of Fundamental Rights, the Court must not completely ignore the Directive Principles but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible. This approach of the Court forged a new progress when Justice Hegde in Chandra Bhan Boarding vs. State of Mysore,² went to the extent of observing that

¹. In Re Kerala Education Bill, AIR, 1958, SC.956.
². AIR, 1970, SC.2040.
the Fundamental Rights and the Directive Principles of State policy are complementary to each other. The Directive Principles of State Policy were considered by the Supreme Court as relevant in determining the validity of any legislation. It was felt that the Directive Principles of State policy are fairly important in the context of the Indian conditions that they furnish guidance to the court in understanding the economic objectives of the Constitution and that these principles lend support to the content of legislation. This change in the trend of the Court was set in Keshavananda Bharathi's case which was decided by the Court in 1973. In this case the Court observed that the Constitution makers did not contemplate any disharmony between the fundamental rights and the Directive Principles. These two Chapters were meant to supplement one another. The Directive Principles prescribe the goal to be achieved and the Fundamental Rights lay down the means by which that goal has to be achieved. The Supreme Court expressed a view that our Constitution aims at bringing about a synethesis between Fundamental Rights and Directive Principles of State Policy. By giving to the former a place of pride and to the latter a place of permanance together not individually they form the core of the Constitution,

together not individually, they constitute the conscience of the Constitution, but in the famous Minerva Mills Case\(^1\) the Supreme Court repeated what it said earlier that Fundamental Rights are transidental inalienable and primordial. During the emergency period an amendment was made to Article 31(C) of the Constitution by which the State could make a law giving effect to all or any of the Directive Principles laid down in Part IV of the Constitution which shall not be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 and 31 of the Constitution. This amendment was challenged in the Minerva Mills Case and the Supreme Court by a majority judgement held the amendment invalid since it damages the basic or essential feature of the Constitution. The Court held that the nature and quality of the amendment was such that it virtually takes away the heart of the basic freedom. The Court expressed the view that the Indian Constitution is founded on the bedrock of the balance of Parts III and IV. To give absolute primacy to one over other is to disturb the harmonious construction of the Constitution.

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II. AUTHORITY TO IMPLEMENT THE CONCEPT OF WELFARE STATE.

As already stated in the context of the Directive Principles of State Policy the State has been directed to promote the welfare of the people by effectively securing a social order in which social, economic and political justice shall inform all the institutions of the national life. Further, the State has been directed to formulate its policy towards securing that the citizens, men and women, have the right to an adequate means of livelihood, that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The State has been put under an obligation to endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise work, a living wage, condition of work, ensuring a descent standard of life. The underlying ideas in these as well as in several other provisions of Part IV of the Constitution is to establish a Welfare State.

While Article 19 guarantees freedom to carry on any trade, business or profession, the freedom is subject to
reasonable social control, and the State has the power to nationalise any trade, business or industry either wholly or partially.

Over and above this theme is Article 31 which authorises the State to acquire private property for a public purpose.

From the above provisions it is clear that the Constitution envisages a welfare and egalitarian society.

Further, Entry 20, in the concurrent list, authorises the Central as well as the State Government to undertake "Economic and social planning". Thus the idea of Welfare State has to be achieved by the State through the mechanism of social and economic planning.

Efforts have been made by the State to concretise the above concept. This may be illustrated by referring to the Statutes passed and the executive measures adopted at different times, thus;

In order to promote effectively the policy contained in the Directive Principle, Article 39(b) the Union and Government has passed the Monopolies/Restrictive Trade Practices Act, 1969. The Act is the result of a feeling that in spite of many laws enacted since Independence concentration of economic power was increasing instead of being reduced.
Entry
Under 52 of the Union List of the Seventh Schedule the Union Parliament can declare by law that the control over a certain industry shall be that of the Central Government. The Industries (Development Regulation) Act, 1951 is the measure adopted by the Union Government, by which 37 industries have been brought under the control of the Central Government. This is one single important piece of economic legislation which is designed to regulate a planned economy under a democratic process. The power under Entry 52, referred to above, has been utilised by the Centre to take under its control a number of other industries, such as coffee, tea, coir, rubber, rice-milling, by passing the necessary legislation.

Under Entry 54 of the Union List the Union Parliament may by law take over the control over a mine in public interest. The Mines and Minerals (Development and Regulation) Act, 1957 was passed to regulate the mines and the development of minerals. The Act seeks to promote a planned mineral development of the country.

The Imports and Exports (Control) Act, 1947, which is a Central Act, provides a mechanism for regulation of imports and exports of commodities to or from India. Import Control is necessitated by the harsh realities of the availability of
foreign exchange as well as to promote and give protection to the newly developed industries within the country. Exports control is undertaken with a view to maximising exports so that the country's vast needs may be met.

The Foreign Exchange Regulation Act, 1973 which supersedes the 1947 Act provides a machinery for the regulation, conservation and direction to the best uses of the limited supplies of foreign exchange available. The Act empowers the Central Government and the Reserve Bank of India to control and regulate all dealings and transactions involving Foreign Exchange, foreign securities and gold.

The Capital Issues (Control) Act, 1947 prohibits the companies from issuing capital and offering public securities except with the consent of the Central Government. The Capital Issues Act and the rules made under it seek to encourage national and healthy growth of the corporate sector in the country by ensuring sound capital structure.

The Securities Contracts (Regulation) Act, 1956 provides a close suspension and control over the activities of stock exchange and dealings in securities. It seeks to prevent undesirable transactions in securities and regulates business and dealings therein by prohibiting options and by providing for certain other matters connected therewith.
The Forward Contracts (Regulation) Act, 1956 creates a permanent Forward Markets Committee whose functions are to advise the Central Government regarding recognition of, or withdrawal of recognition from, any commodity association, to keep forward markets under suspension and drawing the attention of the Central Government to any development taking place in such markets, which is of sufficient importance to deserve the attention of the Central Government.

The Essential Commodities Act, 1955, is an instrument which the Government uses on an extremely broad scale for the Central and Regulation of the price, supply and distribution of a number of commodities which are characterised as essential commodities.

III. AUTHORITY TO DEAL WITH THE SOCIAL AND ECONOMIC OFFENCES.

After studying the high ideals which the Constitution wants the State to pursue and the several measures which have been adopted in this behalf, let us see how the Constitution clothes the various institutions with authority to deal with the problems which arise before them and how it endows the various authorities of the State to punish the wrongs which strike at the social and economic interest of the people.
(a) **Provisions in Part III of the Constitution regarding Social and Economic Offences.**

While there is distribution of legislative power between the Union and the States under Article 246 of the Constitution, the Union Parliament alone enjoys the authority under the provisions of Part III of the Constitution to make laws on the social and economic offences. A brief description in regard to these provisions is necessary.

1) Article 35 of the Constitution confers power on the Parliament to make a law for prescribing punishment for the acts which are prohibited by the provisions of Part III of the Constitution. This Article clearly lays down that notwithstanding anything in the Constitution the Parliament shall have and the legislature of a State shall not have the power to make laws for prescribing punishment for those acts which are declared to be offences in Part III of the Constitution and the Parliament, as soon as may be, after the commencement of the Constitution shall make laws for prescribing punishment for those acts.

ii) Article 23 of the Constitution in terms prohibits traffic in human-beings and regards it as an offence punishable under the law. So, the competent authority to
pass a law prescribing punishment for traffic in human-beings is the Union Parliament and not the State Legislature.

Article 23 of the Constitution is not self-executing but requires legislation to implement it. The sanction to implement the provision is found in Article 35 of the Constitution which empowers the Parliament and not the State Legislature to make a law. The Parliament has enacted a comprehensive Bonded Labour System (Abolition) Act, 1976.

iii) Article 24 of the Constitution prohibits employment of children below the age of 14 years in any Factory or Mine or engaged in any hazardous work.

A child in India has a fundamental right not to be employed in such hazardous work and in anything which may require such employment would be void.

Even before the Constitution came into force there existed in India the Employment of Children Act, 1938, which prohibited employment of children below 15 years of age in any occupation connected with the transport of passengers, goods or mails by railways or any part. The Factories Act, (1945), similarly prohibited the employment of children below 14 years in Factories, Pre-Constitution Statutes are
saved by the Constitution, Article 23 protects the children below the age of 14 years, and makes an advance over the existing law by prohibiting employment of children in other spheres. But this Article of the Constitution like the earlier two Articles is not a self-executory provision. Parliament has been authorised to enforce the prohibition against employment of children. So after the advent of the Constitution, the Parliament passed in the year 1952, the Indian Mines Act. Section 15 of this Act has prohibited the employment of children below 14 years or where Mining Operations are being carried on or in any mine below the ground.

The Apprentices Act, 1961, which permits the employment of the apprentices in a trade for practical and basic training in such trade prohibits the employment of children below 14 years as apprentices. While Article 23 of the Constitution expressly prohibits traffics in human being and begar and other similar forms of forced labour, Section 370 of the Indian Penal Code penalises the exportation, buying, selling, use and detention of a person against his will as a slave and kidnapping a person for the purposes of slavery as an offence under Section 367 of the Indian Penal Code.

Section 374 of the Indian Penal Code makes it an offence to unlawfully compel any person to labour against
the will of that person. It is no offence punishable under this Section where the rendering of service is apparently voluntary and the agreement for this purpose is entered into by a debtor with his creditor in liquidation of his debt.

Forced labour under Article 23 of the Constitution is wider than that of Section 374 of the Indian Penal Code, because forced labour under Article 23 has to be understood in the context of begar and other similar forms of labour under that clause. Hence, if a person enters into a contract to serve another person for a nominal remuneration or without remuneration that may not be unlawful under Section 374 of the Indian Penal Code but may yet contravene Article 23.

iv) Article 17 of the Constitution abolishes untouchability. The practice of untouchability in any form is forbidden by this provision and is declared an offence punishable in accordance with law. The Article is addressed not only to the State but also to individuals. Although the Constitution does not define the word 'untouchability', the word "in any form" keeps the ambit of prohibition as wide as possible. But the width of the provision is slightly curtailed by the second part of it which instead of making the provision self-executory leaves the sanction to enforce it to the legislature. The law to enforce the
prohibition may be enacted not by the State Legislature, but only by the Parliament. Article 35 of the Constitution empowers the Parliament to pass a law prescribing punishment for things prohibited by Part III of the Constitution. The Parliament for the first time enacted in the year 1955 the Untouchability Offences Act.

IV. COMPETENCE OF THE UNION AND STATES LEGISLATURES TO LEGISLATE ON SOCIAL & ECONOMIC OFFENCES.

A federal Constitution by its very nature contains provisions with regard to the distribution of legislative power between the Union and the States. This characteristic is found to be in full force in the Indian Constitution. There is distribution of legislative and executive powers between the Union and the States with regard to several matters including those affecting the social and economic conditions of the people. The Seventh Schedule of the Constitution contains entries about the subject matter in regard to which there is such a distribution of power. In matters of national importance for which a uniform policy is desirable authority is entrusted to the Union and matters of local concern remain with the State. Article 246 of the Constitution deals with distribution of legislative power between the Union and the States.
Let us take up one subject after the other with a view to find out which of the legislatures is competent to make law on socio-economic offences.

1) Competence of the Union Legislature to create offences.

The Union Legislature has power to make laws in respect of matters in List I, Entry 93 of the List I has the following subjects:

"93. Offences against laws with respect to any of the matters in this List".

Entry 36 of List I, for example, deals with Currency, Coins, and Legal Tender, Foreign Exchange, etc., Offences relating to Coins such as counterfeding are punishable by the Central Law which at present is covered by the Indian Penal Code, 1860. Entry 49 of List I deals with Patents, Inventions, Designs, Copyrights, Trade marks, Merchandise marks, etc., Offences relating to trade and property marks are, therefore, punishable by the Union Laws which at present are covered by the Indian Penal Code, 1860, which is a Central Law.

ii) Competence of State Legislatures to create offences.

Though Criminal Law is a concurrent subject, each State has the exclusive power to pass punitive laws for
violation of the laws which its legislature is competent to enact. Entry 64 of List II has the following subjects.

"64. Offences against laws with respect to any of the matters in this list".

By reason of this entry, the State Legislature may while making a law provide for punishment for non-compliance with the provisions of its laws. The power to create offences is ancillary to that of legislation relating to different subjects.

iii) Competence of the State and the Central Legislatures with regard to Criminal Law.

Criminal Law in India is a concurrent subject. The Union as well as the State Legislature can pass punitive law. According to entry 1 of list 3 of the 7th Schedule, the legislative power of the Union and the States extends to all matters included in the Indian Penal Code at the commencement of the Constitution but exclude offences against laws with respect to any of the matters specified in List I or List 2 and also excludes the use of naval, military, or airforce or any other armed force of the Union in aid of the civil power. The words of exclusion make it clear that while the above entry is a general legislative head relating to offences, it excludes from its ambit special offences created by laws relating to matters included in List I and II, under entry 93 of List I, and entry 64 of List II.
iv) **Residuary Power.**

Residuary Power in the Indian Constitution with regard to socio-economic offences as well as other matters is vested with the Centre. Entry 97 of List I contains the following terms:

"Any other matter not enumerated in List 2 of List 3 including any text not mentioned in either of these lists".

which means that if a subject of legislation is not narrated it must belong to the Parliament, but this entry can be relied upon only as a matter of last resort, and also subject to the doctrine of ancillary power.

(a) **The Rule regarding predominance of the Central Law.**

Clause 1 of Article 254 of the Constitution says, if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact or to any provision of any existing law with respect to any of the matters enumerated in the concurrent list, then subject to the provisions of clause 2, the Law made by the Parliament, whether passed before or after the law made by the Legislature of such State or as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy be void.
The above Article enunciates the normal rule that in the event of conflict between the Union and the State law in the concurrent field the former prevails over the latter.

(b) The Rule regarding predominance of the State Law.

To the general rule laid down in clause I of the above Article, clause 2 engrafts an exception. It says, where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to the matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent prevail in that State.

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

The result of obtaining the assent of the President to a State Act, which is inconsistent with a previous Union Law relating to a concurrent subject would be that the State Law will prevail in that State and over-ride the provisions
of the Central Act in their applicability to that State only. The predominance of the State Law may, however, be taken away if Parliament legislates under the proviso to the clause 2 of Article 254 of the Constitution.

v) Limitations upon the Legislative Power of the State Legislatures.

Part III of the Constitution imposes certain limitations upon the legislative authority of the State to enact and enforce the criminal law. Some of the provisions of this Part are Article 14, 20 and 21 which deal with the right to equality and certain safeguards against arbitrary legislative action and the right to life and liberty.

(a) The Rule of Equality.

The Constitution aims at establishing a social order in which there is equality before the law and equal protection of the laws. Article 14 of the Constitution says, the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. This provision of the Constitution reproduces verbatim the equal protection of the 14th amendment of the American Constitution. To it is added the equality before the law, a concept borrowed from the Irish Constitution. Equality before the law postulates that law does not treat one person in a way different from how it treats the other person.
Equal protection of law further requires that in the administration of the laws eventhough it satisfies the test of equality before the law, the executive should add no arbitrary decision that can furnish a handle for covert discrimination. Equality before law is thus included in equal protection of law.

Article 14 of the Constitution is aimed against discriminatory legislation. A Statute which confers the privileges upon one class or which exposes one class to special disabilities falls within the ban of Article 14. The principles of the quality are applicable not only to substantive but to procedural laws as well. But equality before the law does not imply that the same law applies to all persons in the State. What it seeks to ensure is that the right to sue and be sued, the right to prosecute and be prosecuted for the same kind of action shall be the same for all citizens and the distinctions of race, religion, wealth, social status, etc., shall not make any difference. Equal protection of law means that both in the matter of the law applicable and the mode in which they are administered all persons in like circumstances and conditions should possess the same privileges and be subject to the same liabilities.
(a) **Safeguards against arbitrary actions.**

Article 20 of the Constitution contains certain safeguards against arbitrary action of the State against the individual.

The first part of clause (1) of Article 20 lays down that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence. This means that a person can only be convicted of an offence if the act charged against him was an offence under the law in force at the date of the commission of the act.

The second part of Article 20 guarantees that no person shall be subject to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

The third part of Article 20 declares that no person accused of an offence shall be compelled to be a witness against himself. This provision embodies the principle of protection against compulsion of self-incrimination which is one of the fundamental canons of British system of criminal jurisprudence and which has been adopted by the American system also.
Article 21 guarantees to every person protection to life and liberty. This article has to be read as supplemented by Article 22.

Article 22 specifies some of the rights available to persons arrested and detained, and lays down the manner in which the persons detained preventively must be dealt with.

In view of the importance these safeguards have in our system of government a study has been made herein of the principles and doctrines underlying Article 20 and Article 22 of the Constitution, namely, the Doctrine of Double Jeopardy, the rule against compulsory testimony and the concept of preventive detention, with particular reference to the socio-economic offences.

(i) The Doctrine of Double Jeopardy.

The safeguard available to an individual in the form of this doctrine is that any provision in any Statute whereby a person is liable to be prosecuted and punished more than once for the same offence is ultra vires the Constitution. Article 20(2) of the Constitution runs as follows:-

"No person shall be prosecuted and punished for the same offence more than once".
(ii) **Rule against Compulsory Testimony.**

Most of the Statutes on social and economic offences empower the Enforcement Officers to summon any person whose attendance they consider necessary either to give evidence or to produce the documents in any enquiry which such officer is making in connection with any offence under the Act. The summon to produce documents may be for the production of specified documents or for the production of all documents of certain description in the possession or under the control of the person summoned.

All persons so summoned are bound to attend either in person or by an authorised agent as such officer may direct and all persons so summoned are bound to state the truth upon any subject respecting which they are examined or making statements and produce such documents as may be required provided that the exemption under Section 132 of the Code of Criminal Procedure, 1908 shall be applicable to any summons for attendance under the Section.
(a) **The Concept of Preventive Detention.**

The power of preventive detention at present is resorted to for various purposes. Concerned as we are in this work, the laws relating to Social and Economic offence we shall confine our study to that aspect of the law of preventive detention which authorises such detention in the context of the social and economic offences.

Preventive Detention is mentioned in List I as well as List III in the Seventh Schedule. Entry 9 of List I that is, the Union List provides for making laws for Preventive Detention for reasons connected with the defence, foreign affairs, or the security of India, persons subject to such detention, which means that in regard to matters connected with the defence of India, or foreign affairs, or the security of India, the Union Legislature alone can make laws under entry 9 of the Seventh Schedule.

But the Union as well as the State Legislature can make a law on preventive detention for certain other purposes as is clear from the entry 3 of the List III, that is, the concurrent List.
Under Article 245(1) of the Constitution, the Legislative Power conferred by Article 246 of the Constitution is subject to the provisions of the Constitution, which of course includes part III of the Constitution. Under Article 13 of Part III it is provided that the State shall not make any law which takes away or abridges the rights conferred by this part (Part III of the Constitution) and any law made in contravention of this clause shall to the extent of the contravention be void. Therefore, in making law on preventive detention the legislature has to respect the provisions of Part III of the Constitution.

Article 22(4) of the Constitution had earlier provided that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months, unless an Advisory Board consisting of persons who are or has been or qualified to be appointed as Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention".

According to the above provision, an Advisory Board at the time the Constitution was enacted, was to consist of persons who are or have been or are qualified to be...
appointed as Judges of a High Court. This means that either a sitting Judge or a retired Judge or a person qualified to be appointed as a Judge of the High Court could be nominated to the Advisory Board.

This provision, however, underwent a change because of the amendment known as the 44th Amendment Act of 1979.

After the amendment clause (4) of Article 22 reads as follows:-

"(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the Recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention."

This amended provision brought about a change in the composition of the Advisory Board as also the maximum period for which a person could be detained under the Preventive Detention Laws without a report from the Advisory Board. Earlier, the period of detention without the opinion of the Advisory Board was that of three months, but the 44th Amendment reduced the period to two months.
Within this period of two months, the detaining Authority is supposed to obtain the opinion of the Advisory Board.

According to the amended provision, the Advisory Board shall consist of a Chairman and not less than two other members. A Chairman shall be a serving Judge of the Appropriate High Court and the other two members serving or retired Judges of any High Court. The word 'any' has been used in this provision, which means that he need not necessarily be judge of the High Court of the State to which the detenu belongs. This amendment in the composition of the Advisory Board was made with a view to ensuring that the Chairman and the members of the Board shall be independent and may not come under the influence of the Executive. A serving Judge can be appointed only when the Chief Justice of the Appropriate High Court consents to such an appointment. Thus indirectly the concurrence of the Chief Justice of the High Court for such an appointment is ensured.

The Advisory Board has to determine whether the detention is justified or not. The Board is not concerned with the duration of detention.

Article 22(5) says when any person is detained in pursuance of an order made under any Law providing for Preventive Detention the Authority making the order, shall as soon as may be, communicate to such person, the grounds
on which the order has been made and shall afford him
the earliest opportunity of making a representation against
the order.

However, Article 22, Clause (6) says:

"Nothing in clause 5 shall require the Authority
making any such order, as is referred to in that
clause to disclose facts, with which such authority
considers to be against the public interest to
disclose."

The above two provisions are a bit confusing. While
Clause 5 of Article 22 enjoins upon the Executive to
communicate the grounds, clause 6 of the Article 22 authorises
the Executive to refrain from disclosing facts which such
authority considers to be against the public interest to
disclose. On a reading of these two provisions, it appears
as though what is given by Clause 5 of Article 22 is taken
away by Clause 6 of Article 22. It is necessary to understand
the ambit and scope of these two provisions for a proper
understanding of the safeguards to personal liberty, where
such a liberty is affected under the Preventive Detention
Laws.

Professor T.K. Tope, former Professor of Law, Government
Law College, Bombay, has explained the implications of these
two provisions very nicely in his work: "Constitutional Law
of India\(^1\) as follows:–

"The Constitution has imposed two obligations on the Authority making the order of detention:–

(1) the Authority must communicate to the detenu, as soon as may be, the grounds on which the order has been made.

(2) the detenu must be given the earliest opportunity of making a representation against the order of detention.

Thus, though the detenu is deprived of fundamental rights conferred by clauses (1) and (2) of Article 22, the Constitution has provided these two safeguards, namely, the right of knowing the grounds of detention and the right to make a representation against the order. These rights are essential, for in the absence of a trial, the Detenu has only this opportunity of making a representation for urging his innocence. Any action that deprives the Detenu of either of these two rights is unconstitutional. Article 22 clause 6 permits the Authority making an order to withhold the disclosure of facts which such Authority considers to be against public interest. The Constitution draws a distinction between grounds and facts. Grounds are

the conclusions drawn by the authority and indicate the kind of
prejudicial act, the detainee is suspected of being engaged in.
The facts constitute the evidence or reasons for arriving at the
conclusion. Though it is not obligatory on the authority to disclose
all such facts, it would be for the judiciary to determine whether
the facts disclosed are sufficient or not sufficient, to give the
detainee, the necessary opportunity to make the representations.

PREVENTIVE DETENTION UNDER THE VARIOUS LAWS
PASSED BY THE STATE:

When the Constitution came into force, there wasn't a separate
Statute dealing exclusively with the preventive detention in socio-
economic offences. The laws which were enacted for the purpose of
maintaining Public Order, Public Safety etc. also prescribed Maintenance
of Essential Services and Supplies as one of the subjects in
regard to which the power of Preventive Detention could be exercised.
It was later on that Essential Commodities was also included in such
enactments. But it is only recently that a Statute has been passed
exclusively on the subject of Prevention of Blackmarketing, Profitier-
ing and Hoarding of Essential Commodities and it is under this Statute
that the State can exercise its power of Preventive Detention. This
is clear from a study of the Statutes on preventive detention so far
passed by the State, and this has been explained in Chapter VI,
dealing with the Offences relating to Essential Commodities, Profitier-
ing, Blackmarketing and hoarding.