Part I

Chapter - II


2.1 The Constitution of India expressly confers upon the Courts the power of judicial review and for the fundamental rights, the Court has been given the role of a sentinel. In determining the constitutionality of a provision of law, it must look into the substance, the real effect and impact thereof on the fundamental right - Re. Kerala Education Bill, 10 and mere possibility of abuse of a statute does not impart to it any element of invalidity. On the other hand, an unconstitutional statute can not be administered even if it does not conflict with the constitutional requirements, - Collector of Customs -Vs- Sampathu 11 Article 13(2) provides that the State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of the clause shall, to the extent of the contravention be void.

2.2 Apart from above unconstitutional legislative provisions there are administrative actions of the

10. 1958 SC 956
11. 1962 SC 316
executives of the Government, the public authorities and
the officials tainted with wrong or illegality or
unconstitutionality which may not find redress at the
hands of the superior authorities of the administration.
The administration may suffer from bias which it often
has in sustaining its own action. The bias may operate
unconsciously or in good faith. As the Courts are external
to the administration proper, it can only interfere when
the claims are placed before it in the form of litigation
and correct the unconstitutionality or illegality of an
impugned administrative action. Lord Justice Farewell
observed in *Byson v. Attorney General*[^12^] The
convenience in the public interest is all in favour of
providing a speedy and easy access to the Courts for any
of His Majesty's subjects who have any real cause of
complaint against the exercise of statutory power by the
Government departments and Government officials . . .
If ministerial responsibility were more than the mere
shadow of a name, the matter would be less important, but
as it is, the Courts are the only defence of the liberty
of the subject against departmental aggression'.

2.3 Constitutionality and/or justiciability of the
claims may very well find redress by the executive power

[^12^]: (1911) 1 KB 410
of the State in India as it functions within the provisions of the Constitution or of any law. It comprises both the determination of the policy as well as carrying into execution, the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy besides general administration of the State. In India, apart from the extent of executive power provided in Articles 73 and 162 for the Union and the State there are three other specified matters for such extension in carrying of any trade or business (Article 298), acquisition, holding and disposal of property (Article 298) and making contracts for any purposes (Article 299). The welfare state like India may utilise the vast expanse of administrative powers to settle the grievances of the public according to law without allowing them to move the Courts for redress. It is for that the political scientist Chester Bernard has discouraged intrusion of the judiciary into administration by saying 'not to make decision that others should make, is to preserve morale, to develop competence, to fix responsibility and to preserve authority'. The Court will best serve its purpose when it limits itself to the question of illegality or arbitrariness. There is always a large area of legitimate doubt and dispute produced by

13 The Function of The Executive, 194 (1938)
friction of the individuals and the public interests. The validity of the administrative action is properly judged by the judiciary in this area leaving the policy of it to the administration. In effect, it happens that by the separation of two powers, the executive covers the merits of the administrative act and the judiciary examines the legality of it. Political questions in America are outside judicial review. Chief Justice Marshall recognised in Marbury, Vs. Madison that in the U.S., the President is invested with certain important political powers for which he is only accountable to his country in his political character and to his own conscience.

2.4 Normally a person cannot assail the validity of a legislative or executive act on the grounds of its alleged inconsistency with a constitutional right unless he can show that alleged constitutional right is infringed. It is a fact that the question of constitutionality involves the determination of the limits of power of the other organs of the Government. The Courts are found hesitant to invalidate the acts of other organs unless a clear case of violation of the constitution is made out. The Courts, therefore, insist that a person who assails the constitutionality of a State action must show that his own interest

14 1 Gough 137, 2 L.Ed 60
is affected. This brings the question of *locus standi* i.e., the person who comes to court for relief must have standing in asking such relief i.e., his cause of action must be direct and he must show that he has sustained or is immediately threatened with some injury. Secondly, the person may have a standing to assert the constitutional right, the alleged violation of which stand to support his claim towards constitutionality even in respect of third party on the ground of alleged inconsistency with a constitutional right. In the former case the injury complained of must be justiciable *Dwarka Das v Sholapur Spinning Co.*15 This does not mean that there may not be cases where the mere operation of an enactment is prejudicial to the exercise of a fundamental right of a person. Where an enactment may immediately on its coming into force takes away or abridge the fundamental rights of a person by its very terms, the aggrieved person may at once come to the court without waiting for the State to take some overt action threatening to infringe the fundamental right - *Kochuni v State of Madras* 1959 SC 725 (731)16.

2.5. a) Unfolding different aspects of constitutionality

15. (1954) SCR 674 (712)
16. (1959) SC 725 (731)
of claims, it is found that a Corporation has a legal entity separate from that of its shareholders, where a statute infringes fundamental rights of a company, it indirectly affects the right of its shareholders, in such a case, the shareholders can also infringe the constitutionality of a statute - Copper Vs Union of India (1970), SCC 248 (273-75)\textsuperscript{17} and so also the possibility of financial loss to taking over of management of the company by the Government is sufficient to give locus standi to a shareholder.

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(Bennett Coleman Vs Union of India)
1973 SC 106 (115)\textsuperscript{18}
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b) Under Article 141 of the Constitution, Law - declared by the Supreme Court shall be binding on all courts, the decision operates as a judgement in rem. The court is bound to ignore the law which has been declared invalid by the Supreme Court, as it never existed (Deep Chand Vs. - State of U.P. -

\textsuperscript{19}

c) Article 245(1) of the Constitution provides the extent of laws made by Parliament and by the legislature of the States and lack of legislative competence may invalidate the provisions as being unconstitutional.

\textsuperscript{17} (1970) SCC 248 (273-75)
\textsuperscript{18} (1973) SC 106 (115)
\textsuperscript{19} (1959) SC 648 (663)
2.6. a) The requirement of justiciability can throw out a petition even after it is admitted and heard. If an issue is predominantly justiciable, the requirement of standing will be construed liberally and the petitioner will be regarded as having a locus standi with the minimum interest or grievance. The usurpation of public office is a wrong against the public and any member of the public may call upon such usurper to show the authority for the occupation of the public office. The injury to public interest, as opposed to private interest, is the concern of the State and accordingly political and administrative controls are required to take care of such interest before the matter reached the court for redress. Prof. H.W.R. Wade observed that a prayer for certiorari contains an element of the 'actio popularis' as it looks beyond the personal rights of an applicant and it is designed to keep the machinery of justice in proper working order by preventing inferior tribunals and public authorities from abusing their powers.

b) An aggrieved person, who is not a citizen, can not come to the court for enforcement of fundamental right guaranteed under Article 15(1) (Yusuf Abdul Azis - Vs - The State 20 to citizens and so also the right under Article 19(1)(f) conferred on citizens.

20. AIR 1951 Bom 470
2.7. Article 246 of the Constitution provides that the 'Parliament has exclusive power to make law, with respect to any of the matter enumerated in List 1 in the Seventh Schedule'. It means no other body can legislate on those matters. Accordingly, imposition of any restriction made by any State Legislature on matters enumerated in List 1, becomes ultra vires by being unenforceable. Article 13(2) of the Constitution provides that 'any law made in contravention of this clause, shall to the extent of contravention be void'. Here comes the application of the doctrine of severality and if the impugned portion of any statute declared ultravires can be severable from the rest of the clauses of provisions, the impugned portion may be deleted and if not severable from the rest then the whole statute be held unconstitutional. In Chiranjit Choudhuri -Vs.- Union of India \(^{21}\) an ordinance was challenged for restarting a mill by State appointed Managing Director on two grounds that it violated Article 14 of the constitution which guaranteed equality before law in so far as it gave differential treatment to the shareholders of the company and that it deprived the company of the payment of compensation under Article 31(2) at the relevant time. In R.C.Cooper-Vs.- Union of India - \textit{AIR} 1970 SC 564.\(^{22}\) the Banking Companies

\(^{21}\) (1950) SCR 869

\(^{22}\) AIR 1970 SC 564
(Acquisition and Transfer of Undertakings) Act 1969 was held unconstitutional because of the violation of the rights guaranteed by Articles 14 and 31(3) of the constitution. In Behram Khursid - Vs. - State of Bombay - AIR 1955 SC 123\textsuperscript{23} - it was held that once a law has been struck down as unconstitutional by a court, no notice can be taken of that law by any court. The constitution guarantees equality before the law and equal protection of the law. Equal protection, however, does not mean that identically the same rules should apply to all persons. The State has power to classify persons for the purpose of legislation but the classification must be rational and not arbitrary. It must be founded on intelligible differentia which distinguishes those persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved by the Statute in question and where these tests of classification is not met a statute is unconstitutional. In Chintamon Rao - Vs. - State of Madhya Pradesh\textsuperscript{24} An M.P. statute empowered the Deputy Commissioner to prohibit the manufacture of bidis during agricultural season to provide measures for the supply of

\textsuperscript{23} AIR (1955) SC 123  
\textsuperscript{24} AIR 1951 SC 118
adequate labour in the agricultural purposes in the bidi manufacturing areas. But the order in fact forbade all persons residing in certain villages from engaging in the manufacture of bidis which was found unconstitutional as it violated the guarantee of freedom of occupation given by Article 19(1)(g).

2.8. A court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the Statute, charter or commission under which the court is constituted and may be restricted or extended by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited - Halsbury Art 1176 - Hriday Nath - Vs. Ramchandra. The limitations may be as to the subject matter, person, pecuniary value of the suits or as to place or it may partake of two or more of these characteristics. Section 9 of the Civil Procedure Code gives jurisdiction to the court, "to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred". Article 226 of the constitution gives every High court the

25. (1921) 48 Cal 138
power to issue orders or writs for the enforcement of fundamental rights and for any other purposes. Article 227 gives the High Courts the power of superintendence including the power of judicial review over all courts and tribunals and Article 32 gives the Supreme Court the extraordinary original jurisdiction to issue orders, writs or directives for the enforcement of fundamental rights and Article 136 gives power to grant special leave to appeal.

2.9. The provisions contained in the Directive Principles (Arts, 36 - 51) of the constitution shall not be enforceable by any court although they are fundamental in the governance of the country and in making laws for the welfare State. Accordingly, these principles do not create any justiciable rights in favour of individuals since judicial process constitutes 'State action' under Article 36, the Courts have a responsibility to ensure implementation of the directives and to harmonise the social objective underlying the Directives with the individual rights and the courts are bound by the mandate in Article 37. As the Directives do not create any justiciable rights, Courts cannot direct the Government to carry out any directive or to make any law for the purpose. The power to implement Directives is subject to the different provisions of the Constitution.

26 (1973) 4 SCC 225
Thus Article 13(2) prohibits the State from making laws which takes away or abridges the fundamental rights conferred by part III of the constitution. The courts have no power to confer upon any particular legislature a legislative power which it does not possess under the federal distribution of powers made by the Constitution. The Directives can not override the Fundamental Rights in determining the scope and ambit of the Fundamental Rights but at the same time it should adopt the principle of harmonious construction so as to give effect to both as much possible. In the matter of interpreting statutes the Courts should adopt that construction which is in conformity with the directives under Arts. 39 or 43. Similarly, a beneficial construction of Sec. 127 (3) (b) of the Cr.P.C. 1973 has been made out in terms of Art. 41 and Sec. 13B of the Industrial Employment (Standing Orders) Act 1946 has its applicability in respect of employees under the Statutory Corporations in terms of Art. 42 and 43 of the Constitution—U.P.S.E.Bd. v Harishanker. 27 Restrictions imposed in terms of Art. 19 Cls. (2) to (6) of the Fundamental rights would be reasonable if they are in conformity with the directives 28 and so also the classifications are reasonable if they intend to promote in terms of the Directives of the Constitution 1963 SC 29.

27. (1979) SC 65
In the matter of agrarian reform, the Courts have to strike a reasonable balance between the competing interests under Art.26(c) to (d) and Art.31A - Narendra Vs - State of Guzarat, 1974 SC 2098. In giving exemptions in complying with requirements of the Service Rule by the Scheduled Caste or Tribes and in enforcing prohibition in the manufacture and sale of intoxicating liquor by the State, Articles 46 and 47 of the Directives have been relied upon respectively - in 1976 SC 2098 and 1976 SC 360.

2.10. The sole object of Art.32 is the enforcement of the fundamental rights guaranteed by the constitution whereas Article 226 has a wider scope in that it relates to the enforcement of fundamental rights as well as ordinary legal rights. An application under Art.32 will not be maintainable on the same facts and on the same grounds for similar Writs and Orders where petition under Art.226 has been dismissed on merits as that under Art.32. The exercise of the powers for the purposes i.e. purposes other than the enforcement of fundamental rights under Art.226 is discretionary - Ashok Vs Collector 1980 SC 112 and accordingly, the Courts may

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30 1974 SC 2098
31 1976 SC 360 and 2098
32 1980 SC 112
refuse the application irrespective of the claims being based on legal right, where there is an alternative remedy or that the applicant is guilty of laches or acquiescence or that he has misled the Courts by suppressing material facts or that the facts have to be investigated or that the petition is premature - Trilok -Vs- D.M. 1976 SC 1988. Here the legal right means legally enforceable right and includes contractual rights supported by Statutory Force but do not include political rights or vindication of sentimental injury or administrative instructions having no statutory force. These rights under Art.226 cannot be curtailed without amending the Constitution. The power conferred on a High Court by this Article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Art.32. Right to Constitutional remedies under Art.32 shall not be suspended except as otherwise provided for by the Constitution. Parliament may be law empower any other Court to exercise power that can be exercised by the Supreme Court under clause (2) of Art.32. Although a mere apprehension for deprivation of fundamental right would not be enough sometimes a very coming into operation of an enactment infringes fundamental right and the citizen is not required to wait for an overt act to be done by the State under the enactment in

33. 1976 SC 1988
question by issuing notifications - Koehuni Vs State of Madras 1959 SC 725. On the other hand, the enforcement of fundamental right under Art. 32 would not lie unless the opposite party is a 'State' or an 'authority' within the definition of Art. 12 of the Constitution.

The concept of 'State' in Art. 12 relates to the sovereign functions of the State and it includes statutory Corporation. The Judiciary is included within the definition of the 'State'.

2.11. The Preamble of the Constitution by the words 'We, the People of India.........to constitute India into a............Socialist.......to all its Citizens: Justice, social, economic and political............." shows the general purpose behind the object and policy of the provisions of the Constitution as being the basic structure of the Constitution which cannot be amended in exercise of the power under Art. 368 of the Constitution- 1973 SC 1461 and 1975 SC 2299 - Indira Vs-Raj Narain although it was held that the law in Art. 21 referred to the 'positive or state made law' and not natural justice.--(1950) SCR 88 36 but post-Gopalan decisions were tending towards larger cognizance of the Preamble involving determination of the area of Fundamental Rights and the Directives

34. 1959 SC 725
35. 1973 SC 1461 and 1975 SC 2299
36. (1950) SCR 88

2.12. The majority Court in Minerva Mills Ltd., -Vs- Union of India - A.I.R. 1980 SC 1789, per Chandra Chand C.J. (for himself and on behalf of Gupta, Untwalla and Kalsam, J.J., Bhagwati J. dissenting) observed that the Indian Constitution is founded on the bedrock of the balance between Parts III and IV and that to give absolute priority to one over the other is to disturb the harmony of the Constitution. Palkhivala also argued by stating that Constitution makers contemplated harmony and balance between Parts III and IV. Both parts are meant to supplement each other. Mandatory ends of the Government in Part IV could be worthwhile only though the permissible means set out in Part III. It was viewed that the 42nd Amendment destroyed this harmony between Parts III and IV by making Fundamental Rights subservient to Directive Principles. Accordingly, the majority decision of the Minerva Mills case held that the extension of the shield of Art 31C to all directives was beyond the amending

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37. (1970) SC 2042 and 1979 SC 25
38. (1980) SC 1789
power of Parliament under Art. 368 because it gave primacy to the Directives over the Fundamental rights and also because it destroyed the basic structure of the Constitution, namely, judicial review because the said 42nd Amendment totally excluded judicial review of a law implementing a directive on the ground that it offended against Art. 14 or 19. It was in effect to restore Art. 310 to Pre-1976 position, namely, to protect only laws which seeks to implement Art. 39(b)-C, subject, of course to judicial review as held in Keshavananda. On the other hand the 42nd Amendment turned to be 'authoritarian' or 'totalitarian' giving an unrestricted licence on the legislature and the executive both at the Centre and the States to destroy democracy by establishing an authoritarian regime. Where the Governmental action may tend to materialise the Directive Principle as being State policies and thereby the right to equality guaranteed by Art. 14 which is the very foundation of a republican form of Government being a basic feature of the Constitution becomes insecure and robbed of its supremacy.

2.13. Holding contrary views against the above observation, Granville, in his Anstain - "The Indian Constitution; Cornerstone of a Nation," observed that our Constitution is aptly
described as first and foremost a social document and in this social context, fundamental right to quality is guaranteed to individuals, not merely as individuals but, more as members of Society. The capacity of all the members of the Society to enjoy like rights thus becomes relevant. Bhagwati J. (dissenting) very pertinently observed that undoubtedly the intention of the Constitution makers was that the Fundamental rights should operate within the Socio-economic structure envisaged by the Directive Principles, for then only would those rights become exercisable. His Lordship sought the co-relation between the Fundamental Rights and the Directive Principles in the light of our Freedom Struggle. Bhagwati J. combined his intellectual appreciation with 'emotional awareness' of India and the Indians and viewed the principle of equality before the law in its total magnitude and dimension in the said case. To him, the equality clause in the Constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at inequalities arising on account of vast social and economic differentials. Even on the doctrinaire, the principle of equality before the law has been made operative only by qualifying
that like should be treated alike. The principle of equality pre-supposes the existence of likes. The amendment of Article 310 was designed really to fulfil this pre-condition of procuring 'likes'. Impugned amendment was thus not destructive but positively constructive, of the principle of equality. Its purpose is not to resort to class legislation but even to obviate the necessity of classification. Millions of our poor men who are not yet free from the abject poverty and getting prevented from fulfilling their best through the enjoyment of such rights, are in predicament against countless privileged persons who are getting such rights and there arises a conflict. Mr. Justice Bhawati put it by saying that "the liberty of the few is in conflict with the liberty of the many".

2.14. The State's initiative and action to minimise this conflict through the implementation of directives, therefore, need not be taken to mean destroying the right to equality when the privileged few are made to yield to share for the benefit of many. Rightly it is pointed out that it is only through restructuring the material conditions of our poor millions that the pre-condition of fundamental liberties for all may be secured. Because
there is direct functional relation between the individual liberty and the social and economic structure of the Society and there cannot be any individual liberty at all for the people who are suffering for want and privation for the exploitative economic system.

2.15 As for Art. 19, it was initially observed that freedoms must feed social conscience. Since individual interest is not greater than social interest and in that view fundamental rights as to freedom in respect of individuals should be under constraint in the greater interest of the Society. Bhagwati J. in Minerva Mills observed that "for the purpose of determining the reasonableness of the restriction imposed on Fundamental Rights, the Court may reasonably take into account the Directive Principles and where executive action is taken or legislation enacted for the purpose of giving effect to Directive Principles, the restriction imposed by it on a fundamental right may be presumed to be reasonable. Since the end of law is justice as the means of satisfying human claims without the least friction and waste, effort should be made to do greater good and the Directive Principles have given the ample authority to make legislation by the Constitution itself and the Parliament
has implied power to enforce the Directives of the Part IV of the Constitution through enactments as being reasonable restrictions on Part III of the Constitution. Accordingly, efforts were made by the Government towards agrarian reforms by amending the Constitution and so also is the impasse of property right by a number of such amendments. The Supreme Court in the Re. Kerala Education Bill-1959 SCR 995; AIR 1958 SC 936 observed that in determining the scope and ambit of fundamental rights the Court may not entirely ignore the Directive Principles of the State Policy in Part IV of the Constitution and should attempt to give effect to both part III and Part IV of the Constitution as much as possible. In State of Bihar -Vs- Kameshwar Singh, AIR 1952 SC 252, the Supreme Court in ascertaining the public purpose in the Bihar Zamindari Abolition Legislation relied on the Directive contained in Art 39 of the Constitution. Similarly, the Supreme Court in finding out the reasonableness of restrictions and public purpose relied on the said Principles in justifying the Government decisions disputed in Patuvmar -Vs- State of Kerala -AIR 1978 SC 771 and in K.L.L. Reddy -Vs- Station of J & K. Thus the core of commitment to Social revolution lie in the deep understanding to the scheme of the Indian Constitution.

40. Vide Supra.
41. AIR 1952 SC 252
42. AIR 1978 SC 771
2.16. In the broader prospect of the sociological end of law thus elaborated above set within the ambit of Constitutional base of India as founded for "We, the People of India" . . . . . this Constitution" by its three pillars in the Preamble, the Fundamental Rights and the Direct Principles of the Constitution, our Judiciary have arms to stretch on to extend reliefs to the 'massification' problems arising from class/social/urbanisation actions in the mass-oriented 'welfare State' of ours through public interest litigations in India. Individualistic view of two-party affairs in the litigation has become inadequate to cope with the present Social problems asking for reliefs in cases of various types of violations affecting the communities in India through pollutions in the air, water and environment, loss of ecological balance, destruction of forest, wild life and natural resources, social injustice through the executive excesses, undue delay in mitigating the grievances, unlawful and illegal land development, violations of social legislations, problems affecting religion, culture and education, racial, and ethnic problems, regionalism, police and custodial torture, problems affecting right to life, industrial hazards, food and drug menace, illegal activities of private sectors and banks and public sectors...
against public interest, improper and false advertising, abusive monopolies, unfair dealings in trade practice, class conflicts, group interests, non-compliance of existing laws made in the public interest, and so on and so forth besides violations of all other constitutional and justiciable rights. Unless our purpose and actions firmly stand to thwart these menacing destructive developments by the administration and failing which by the Judiciary, 'Societal' existence is bound to face disaster. Since peoples' genuine demand goes ahead of any individual benefit, laws technicality, made before the present developments should not be a constraint to social reliefs. Extension of locus standi by the Courts should be given by way of discretionary remedy through continuous judicial process based on its philosophy, historical development with that methods of sociology for Welfare State which will forge ahead for social reliefs in furtherance of public interest when constitutional and/or justiciable rights as detailed above are infringed. Two recent decisions on the test of justiciability of the claims pladed below will make clear the position. 43. Sunil K. Mondal and other Petitioners -Vs- Union of India & Ors. Respondents.

43. AIR 1989 Cal 197
Mr. Justice Hon'ble Susanta Chatterjee presided where a Writ Petition was filed praying for a Writ of Certiorari calling upon the Central and State Governments to certify order and to transmit all the records and/or proceedings and papers relating to proposed agreement of "Darjeeling Hill Council" to High Court so that members of the public may get information of the said proposed agreement and for an interim order directing the Govt. and other Officers to take immediate steps for not to use the "Gurkha" in the proposed agreement of Darjeeling Hill Council and to take such other necessary steps which would be for interest of the public at large.

2.17. It was held that the Memorandum of Settlement per se has no legal entity. There is nothing in the memorandum of settlement itself and there is no machinery to enforce the same in any forum by any of the parties who have signed the same. There must be proper Legislation to that effect. Without an appropriate legislation the settlement or accord is nothing but an empty rhetoric. Before legislation it has no legal effect. A matter cannot be questioned in Court unless such steps are malafide indeed. Decisions cited by the Petitioners are PUDR –Vs- Union of India 44 as to the scope of the public interest

44. AIR 1982 SC 1473.
litigation and AIR 1984 SC- Bandhu Mukti Morcha -Vs-
Union of India to make "basic human rights meaningful -
AIR 1979 SC 1628 45 Ramana Dayaram Sethy -Vs- International
Air Port Authority of India AIR 1985 SC 1147 46 and
lastly AIR 1986 SC 180 47 as to the test of reasonableness
of the act complained of. Whereas the respondent submitted
that the executive power of modern State is not capable
of precise definition AIR 1982 SC 35 M/S B.D.Chandra
Mohan-AIR 1977 SC 1351- Article 74 (2) and 49 D.C.Panda
-Vs- D.C.Charan Singh - political questions and legitimate
use of political power are unjusticiable by Courts.
Against a writ petition to High Court of Calcutta before
Hon'ble Mr. Justice K.M.Yusuf, Constitution (64th Amendment)
Bill challenging Mr. K. Parasaran Afl#nS!n$6 General of India
remarked that no court had jurisdiction to interfere with
the legislative functions of Parliament in a democratic
Sovereign Republic. If a piece of legislation at the Bill
Stage was brought before a court for debate it could
affect the freedom of speech of members of Parliament
from proceeding with the Bill and as such the Hon'ble
Court would not interdict the exercise of constituent
powers of Parliament. Article 368 of the Constitution

45. AIR 1979 SC 628
46. AIR 1985 SC 1147
47. AIR 1986 SC 180
48. AIR 1982 SC 33
49. AIR 1980 Delhi 114.
provides that an amendment of the Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill. Even the President had no option and he 'shall' give his assent to such a Bill which the Parliament passed by exercising its constituent powers. In that view the court, had no power to interfere with the proceedings of the Parliament before the Bill came out as a piece of legislation affecting the cause of action of any body creating a justiciable right.