In a democratic country, the growth of a nation depends on the cooperation of the citizens. Unless the citizens feel secured and consider themselves as a part and parcel of the society, they cannot contribute towards the growth of the country. The citizens must feel secured under the administrative set up of their elected government. In modern civilized societies there is a tendency to regard certain rights as fundamental so that the citizens may feel oneness with the state and contribute towards the country's growth and prosperity.¹

Fundamental rights are regarded as the cornerstone of a democratic nation. In a country where fundamental rights are clearly defined in the constitution, the citizens feel well protected. The clearly defined rights in the constitution, act as a unifying factor among the citizens and the possibility of conflict between the citizens and the government becomes remote. Such an atmosphere is congenial towards building up a strong nation and integration of the diverse elements, leading to prosperity and growth.

The constitution of India is considered as the foremost social document. The constitution has been framed with a view to achieve the goals of social revolution and to foster the same by establishing the conditions necessary for attaining such a goal. The constitutional documents have given a dynamism towards political, economic and social growth of the country. The major thrust in this direction has been given by the introduction of parts III and IV related to Fundamental Rights and Directive Principles of State Policy. The democratic set up as framed in the constitution of India is based on equality, fraternity, justice and liberty.²

With the partition of the country, when the Congress leaders were seized with manifold problems, Sardar was busy in organising the administrative machinery to fight out the evils of partition. Side by side, the leaders were also busy in framing a constitution for free India. Sardar realised that only reorganisation of civil servants, making strong base for the Congress party and rehabilitation of the refugees were not enough for the development and growth of the country. He had a clear conviction that the citizens of the country should be protected by certain guarantee in the constitution regarding their fundamental rights. Sardar had a tremendous faith in the intrinsic value of human beings. He had gained

considerable experience in political field as a close disciple of Gandhiji who could shape the destiny of the country by turning a dead nation into a fighting machine against the Britisher. In fact, he himself had turned the people of Borsad and Bardoli into a sort of fighting race against the atrocities of the British government. The people of the country fought for the establishment of human rights. Congress demand also was directed towards attaining right for the masses. Sardar, therefore, could realise that a set of fundamental rights would be congenial towards developing confidence in the mind of the people who would strive to make them worthy citizens of a developing nation. Going through the debate of the Constituent Assembly, one could find Sardar Patel, full of confidence and energy and keenly interested in guaranteeing such fundamental rights to the people of the country. In fact Sardar's attitude and comments he made at various stages of debate on fundamental rights in the Constituent Assembly had clearly indicated his liberal approach on fundamental rights for the citizens.

Concept of Fundamental Rights

The idea of fundamental rights is derived from human rights, the origin of which can be traced back to the development of human society. The existence of state and society demands a safeguard to those rights, Harold Laski has observed:

"Rights, in fact, are those conditions of social life without which no man can seek, in general, to be himself at his best. For, since the state exists to make
possible that achievement; it is only by maintaining rights that its end may be secured. Rights, therefore, are prior to the state in the sense that, recognised or not, they are that from which its validity derives.3

Human rights are the basic conditions which enable man to have his most fundamental needs and desires satisfied. These rights are the conditions necessary for the development of an individual's personality, thus making him suitable for the society and ultimately enabling him to contribute his mite to nation's prosperity.

The concept of rights is inseparably connected with the evolution of human society and the state system. Rights are part and parcel of a man as a social being and can, therefore, be defined as a necessity for man and a power which is socially accepted. The philosophy of rights thus gives human society a sense of awareness for common good and works as a guideline for the welfare of the society as a whole where individual gain becomes secondary. These rights, known as human rights, have served to bring about unity and harmony between man and man, ultimately led to a healthy growth of State system through which various nations have emerged. Certain rights have been fundamentally accepted in the human society throughout the world. This has led to the concept of fundamental rights in international level. Among the rights which are spontaneous and which are accepted as the basic rights of a human being in a society may be termed as

fundamental rights. These rights are social in nature and contribute towards social welfare in addition to the necessity for self-development of an individual. Or, in other words, those rights which have developed from the very nature of human society and are common throughout the world may be termed as fundamental rights. The state confers certain rights on the citizens and contributes to the happiness and welfare of the citizens. The state has to provide an atmosphere congenial to the development of each individual, then the building up of the society and leading it to growth become automatic.

Development of Fundamental Rights:

The origin of human rights can be traced back as early as the ancient period of Mahabharata in India and Greek civilisation in Europe. The growth of state system in ancient Europe resulted in the acceptance of human rights of the citizens in spite of the supremacy of the King. The quantum of rights had undergone a series of changes with the evolution of society and the social structure. The first positive step towards protecting human rights in England was the acceptance of "Magna Carta" by King John in 1215. Through a series of developments in subsequent years, the Bill of Rights of 1689 was recognised officially as the rights of British citizens. The establishment of human rights thus was through a series of evolution in human society in Europe. Similar process of evolution followed in America and France for establishment
of human rights. The human rights, in course of time, were well defined and the concept of fundamental rights developed with the evolution of modern social concept.

Economic and social rights were also found to be absolutely necessary and became a part of human rights. With the development of human society through ages not only civil and political rights constituted the human rights but economic social, cultural rights also were considered as an inseparable part of modern human rights.

As on today, development of fundamental rights is linked up with the evolution of constitution and political consciousness. The development of welfare state and democracy in the modern political scene, has demanded for more and more emphasis on human liberty. Democracy, by its very nature, guarantees personal liberty and security of human rights. Thus fundamental rights are included as a written chapter in the modern constitution as a safeguard against any executive and legislative interference.

Though there is no written chapter in British Constitution on fundamental rights, the rule of law is supreme and rights of citizens have been taken as granted. Individual liberty in England is much more than in any other country. In American constitution, fundamental rights are guaranteed against executive and legislature with the help of independent judiciary.
The political consciousness in India can be regarded as the starting point of freedom movement and establishment of Indian National Congress in 1885. The leaders demanded rights and privileges to the Indians, in line with those enjoyed by the people in England. The first demand was voiced in "The Constitution of Indian Bill 1895 (Art. 16). Thereafter the Indian National Congress expressed their demand for fundamental rights from time to time. Inclusion of fundamental rights in Indian constitution is the result of the untiring efforts of the leaders of Indian National Congress.

The major attempt by Indian National Congress for fundamental rights was in Mrs. Besant's Commonwealth of India Bill, 1925 in which article 8 listed fundamental rights. Thereafter in Dec., 1927 in Madras the resolution on Swaraj Constitution was on the basis of the Declaration of Rights. The Nehru report of 1928 in line with previous resolution speaks:

"It is obvious that our first care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances... Another reason, why great importance was attained to a Declaration of Rights, is the unfortunate existence of communal differences in the country. Certain safeguards are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment
of religious and Communal rights to all communities, thereby including them among the basic principles of the Constitution".4

It is worth noting that ten of the nineteen clauses of the Nehru report have been kept unchanged in the Constitution and part of the rights have been included in the chapter of Directive Principles.

The landmark in Congress attitude towards fundamental rights is the Karachi Session of 1931 in which Sardar Patel was the President. There was declaration of rights and humanitarian and socialist manifesto. The resolution stated:

"......In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declares that any constitution, which may be agreed to on its behalf, should provide, or enable the Swaraj Government to provide for the following fundamental rights and duties"5.

This resolution, a modified version of Nehru report, reflects Sardar's views and approach towards fundamental rights.

The Sapru Committee report of 1945 has again attempted towards establishment of fundamental rights. The Cabinet Mission


Note: The proceedings and reports of the round table conference and the pronouncements of minority groups during 1920 are important and can be found from Indian Annual Register.

Plan, 1935 did not include fundamental rights after transfer of power. The Sapru Committee report said:

"The fundamental rights of the new constitution will be a standing warning that what the constitution demands and expects is perfect quality between one section of community and another in the matter of political and civil rights, equality of liberty and security in the enjoyment of freedom of religious worship and the pursuit of the ordinary application of life".

As a result of this the British Government agreed to form an Advisory Committee to draft details of fundamental rights to be included in the constitution. Sardar Patel was the head of the Advisory Committee and it goes to the credit of this Committee that it managed the task in most efficient manner.

Sardar's Contribution

Sardar had deep regard on the humanitarian value of the citizens of the country. In course of his deliberations at various political forum, he did not forget to give a human and personal touch to the problem and get the citizens deeply involved in it. The uplift of the human society and cultivating the basic value of humanity could be possible only through fundamental rights. Sardar was, therefore, keen to see that the people of India could get guarantee on certain fundamental rights in the constitution.

Sardar's involvement into the formulation of fundamental rights for the citizens was from the time when Congress demanded for the same. India's fight for freedom turned into a mass movement under the leadership of Gandhiji and demand for fundamental rights was voiced by Congress in subsequent years. From the time of the Presidentship of Sardar Patel in Karachi Congress of 1931 fundamental rights became a part and parcel of Congress manifesto.

From the thirties, the leadership of the Congress remained with Nehru-Patel-Azad and it strived for the cause of fundamental rights. Sardar had a clear idea of the nature of the constitution the country needed and he guided the freedom struggle along the correct path, keeping a close watch on constitution, so as to benefit the country and consolidate for a growing nationality. During the personal interview with Sri. Hitendra Desai, ex-Chief Minister of Gujarat, he confirmed that after the success of Bardoli in 1928, the idea of Congress crystallised towards demand for full freedom and fundamental rights for the people of India and Sardar's role in establishing fundamental right for the Indians was unique. With continued effort for personal rights for the Indians, the Congress leaders could achieve success and ultimately two chapters were included in the Indian Constitution of Fundamental rights and Directive Principles of State

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8. When interviewed, Sri. Hitendra Desai, ex-Chief Minister of Gujarat, gave a few important points on Sardar's role in shaping country's fate along with his father who was a friend and a colleague of Sardar.
Policy. The rights are safeguarded from interference by a provision of judicial review.

Sardar's concept on the inclusion of Fundamental Rights in the constitution was based on his far fetched thinking for the future of the country. He knew that to build a nation for free India, the support of the masses was absolutely necessary and to get their support, their interests should be protected. The way to protect the citizens was to provide safeguard in the Constitution.

After the Karachi Congress, a Committee for finalising details on Fundamental Rights was formed under the Presidentship of Shree Prakasha who was performing his duties in consultation with Sardar; his correspondence with Sardar in this regard bears the proof. Sardar was, thus, indirectly formulating the clauses of fundamental rights for future constitution of the country. Sardar was very clear in his mind about the requirement of fundamental rights in the constitution. His letter from Bombay dated 14th August, 1931 is indicative of his approach. At the various stages of freedom struggle, we find Sardar as a strong advocate of such fundamental rights for the masses.

9. Sardar's letter dt. 14.8.31 to V. Mahadev Iyer stated, I am in receipt of your two letters continuing suggestion for inclusion in the Fundamental Rights,..... It will be the function of the Swaraj Govt. to legislate in more details with a view to secure rights of the power of agricultural list - Courtesy Miss Maniben Patel.
Whether it was at Kheda, Borsad, Bardoli or any other place where Sardar actively guided the freedom struggle, the movement was aimed at establishment of human rights and civic liberties. Coming from the family of a cultivator having an humble origin, Sardar was constantly concerned with the betterment of the common people and establishment of their human rights. When he fought for the farmers for their right to have land of their own, he pleaded for the Right to Property, which at a later date was included as a clause of fundamental rights in the constitution. Sardar, thus, as a votary of property right wanted that land was to be properly distributed among the citizens. A series of discussions took place in the Constituent Assembly on this clause and Sardar's role in formulating the Right to Property as a clause in the constitution has been identified in the subsequent pages.

When the Constituent Assembly was formed to frame a constitution for India by the Indians, Sardar was given the important role of the Chairmanship of the Advisory Committee of Fundamental Rights and Minorities. He had shown keen interest and played a vital role in shaping the various clauses on fundamental rights. The draft constitution underwent a number of changes as per his suggestion, which were later adopted by the Constituent Assembly. By virtue of his past experience

10. Sardar suggested major changes like some clauses to be applied uniformly for the centre as well as provinces with regard to fundamental right. The most important was that fundamental rights should not be absolute. Various clauses of the constitution were also amended as detailed in subsequent pages.
and unquestionable leadership, he could influence the overall structure of the constitution. Thus Sardar's influence on the constitution, direct or indirect, was quite considerable. It was his active part and support, which gave a balanced and healthy constitution on the subject he dealt with, thus putting the country's future on a strong foothold. Regarding Sardar's role in the constitution, following observation by Michael Edwards is worth noting:

"Neither Nehru nor Patel played a continuously active role in the discussions of the Constituent Assembly, their primary concern was with ensuring the stability of the state. Both Nehru and Patel, however, often addressed the Assembly and spent much time in privately persuading those who disagreed with their fundamental views. It is not claiming too much to say that the constitution represents the individual character of the two men and the differences between them." 11

When the draft constitution as prepared by the Constitutional Adviser, B.N. Rau was put for discussions in the Constituent Assembly for debate, alteration and adoption, Sardar's role in scrutinising and finalising the various clauses on fundamental rights was evident from the sequence of debates as found from the proceedings of the Constituent Assembly Debates. Sardar's involvement was clearly demonstrated through the discussions in the Advisory Committee on Fundamental Rights held between April 21 and 22, 1947, when certain vital comments were made on the draft clauses of fundamental rights.

In his opening speech, Sardar clarified to the members the background and the political conditions of the country under which the new constitution was drafted. The political condition of the country was in a fluid state due to problems created by the Muslim League at every stage of the working of the interim government. It was not very clear whether the country would remain united or would be divided into India and Pakistan. Participation of the Muslim League in the Constituent Assembly was also uncertain. The members had, therefore, to proceed very cautiously. Sardar made it clear that the discussion should be held in the perspective that Muslim League would join the Constituent Assembly. But he pointed out that members should consider the fundamental rights from the practical viewpoint rather than theoretical considerations. Sardar said:

"But, I feel that it would be better if we confine ourselves to the rights which are actually considered necessary, more or less according to law and not go into detailed description of theoretical rights which are not enforceable at all." 12

The above clearly indicates what a realistic approach Sardar had in his role in the committee on fundamental rights. His approach was much more realistic when he suggested that fundamental rights should be classified into two categories namely justiciable and non-justiciable. Fundamental rights

were aimed at creating an egalitarian society whose citizens are free from coercion by the state and social revolution has been depicted in the nonjusticiable clauses of fundamental rights which are fundamental in governance of the country and spelt out the obligation of the state to the citizens. By establishing such positive obligations of the state, the future Indian governments were made responsible to find a middle way between individual liberty and public good.13

The embodiment of justiciable and non-justiciable rights indicate the dynamism of Indian Constitution. While the Constitution guarantees rights to the citizens, the citizens on the other hand can resort to constitutional remedies in case of an infringement. As A.C. Kapur in his book 'The Indian Political System' has observed that a citizen can move Supreme Court by appropriate proceedings for the enforcement of his rights under art - 32 and the court is empowered to issue directions or orders including writ in the nature of Habeas Corpus, Mandamus and the State High Courts have also the power of issuing writs under art - 226 and enforce rights in the same manner within the limits of their jurisdiction.

The various clauses on Fundamental Rights as incorporated in Indian Constitution, are embodiment of the secular character of the constitution. The framers of the constitution tried to project a secular character and inclusion of the Fundamental Rights was a step in the right direction. Sardar Patel as one of the politicians, pleading for secularism, also tried to see that the clauses on Fundamental Rights were properly drafted so as to protect the interest of the citizens irrespective of caste, creed and religion. The clauses of draft constitution related to Fundamental Rights were reviewed in the subcommittee on Fundamental Rights, discussed in the Advisory Committee of Fundamental Rights and Minorities where Sardar was the Chairman and finally debated in the constituent Assembly and amended as per the amendments agreed upon and then adopted in its present form in the Constitution. In this process Sardar had a vital part to play. When we study the sequence of events on various clauses where Sardar interacted, the part played by him will be clearly understood.

The Right to Equality which is contained in art. 14 to art. 18 of the constitution had to pass through a series of diverse opinion before adoption. Where the clause stipulates that all Indians should be equal before the law and its interpretation should be left to the court in case of any misunderstanding, it maintains a dynamism of the Fundamental Rights. Heated discussion was held regarding the clause related to
prohibition of discrimination. Sardar expressing his opinion said:

"It was an absurd idea to provide for non discrimination as regards a political creed. There might be some political creeds actually deserving of suppression altogether." 14

Thus he made his ideas clear regarding social and political discrimination.

As regards colour and dress, Sardar was of the opinion that there were different colours and dresses among Indians and discrimination due to dress was a matter of past only. Thus art. 15 related to the Fundamental Rights regarding prohibition of discrimination was amended from the original text as per the initiative of Sardar. As regards equal opportunity of employment included in clause 16 of the constitution, there was considerable debate both in the sub-committee meetings and also in the Constituent Assembly debate when some members even demanded that there should be a provision for preference in employment to its residents by a state. Sardar, however, strongly objected to such a provision and pleaded that equal opportunity should be given to all in general without any specific preference and his suggestions were accepted. Sardar in the Constituent Assembly on April 30, 1947, said:

"Mr. Tyagi raised... that preference should be given to the residents of the provinces and provinces should have opportunity to give preference by legislation to the residents of the provinces. This clause does not deprive the provinces of its right to legislate. This simply removes ineligibility of a citizen." 15

Sardar's above observation indicates his realistic approach on equality before law and his approach towards integration of the citizens of the country by inculcating a feeling of homogenisation. With his above observations he clarified about the intention regarding opportunity in employment as regards Union of India was concerned. When the question of abolition of untouchability came for debate, Sardar was all out in retaining the clause. Though certain amendments were suggested by H.V. Kamath, S. Nagappa and P. Kunhiraman, Sardar, the mover of the clause in Constituent Assembly, pleaded that as per the policy of the government, the country could not afford to continue discrimination through untouchability. The Constitution contained,

"Untouchability in any form is abolished and the imposition of any disability on that account shall be an offence." 16

With the passage of this clause in the Constitution, Sardar proved himself as a true follower of Gandhiji and his

desire to unite the people by removing the barriers of caste and creed. Removing disparity between harijans and other community has been made very clear, Sardar further reiterated:

"We believe in self purification. If we are eager to be free from bondage, we should first see to it that all our countrymen are free from bondage of untouchability. Untouchability is a blot on Hinduism. It was a travesty of religion".17

The next clause of the constitution was related to acceptance of titles. This was stipulated as an offence and was included in the Fundamental Rights. There were considerable debates in the Constituent Assembly and some members felt that such a provision in the constitution would discourage people from doing hard work, some members raised the questions about the titles already conferred on the Indians by the Britishers. Sardar made it clear that those titles would not be disturbed.

Sardar clarified 2:

"What we are liquidating really is for future and not for the past. ... Some of the people who have got titles may even carry them after their death. They have spent so much and worked hard for it".18

The above statement clearly indicated Sardar's realistic approach to the problem and his compromising attitude. He wanted to build up a United India with the help of all people of the country.

The next clause on Fundamental Rights was Right to Freedom and was contained in art. 19 to art. 22. Through a series of discussions and debates these rights were adopted in the Constitution and may be regarded as a landmark towards the progress of the country. The democratic character of the Indian Constitution has been established through guarantees of various freedoms. Sardar was convinced that when India was looking forward to come up as a socialist, democratic country of the world, right to freedom had to be guaranteed to the citizens to develop their confidence and personality. The article on freedom of speech had his overall support and when an amendment regarding 'The right of every citizen to keep and bear arms in accordance with law' was moved by S. P. Mukherjee, Sardar promptly replied that in the existing State of India's Society, it would not be advisable to incorporate such a clause in the constitution. Sardar was fully aware about the disturbed situation throughout the country and he did not allow to give any opportunity for the citizens to start armed revolution. Even from the point of long term security of the country and maintenance of peace and stability, such clause would have proved dangerous. Through his farsightedness, Sardar could take a positive step towards national integration. In order to have a control on arms, Sardar suggested that Arms Act should be central subject. The other clauses on right to freedom are protection in respect of Conviction.

for offences, protection of life and personal liberty and protection against arrest and detention. All those clauses had to undergo through the scrutiny in the Advisory Committee on Fundamental Rights and Minorities headed by Sardar Patel and were ultimately adopted through a series of debates in the Constituent Assembly. Regarding the clause on the protection of life for conviction for offences, Sardar wanted a foolproof clause to protect the citizens against the sweet will of the court, Sardar expressed:

"Here it is suggested that if the clause is left to be interpreted by the judges, it would create a lot of mischief. Therefore, we should guard against it."20

The clauses on personal liberty and preventive detention had to undergo a major change from its original draft and finally two clauses (art. 22 and 22) were included in the constitution. It was noted that in case of detention of a person, he is to be produced before the court and every detention should be according to the procedure of law, Sardar was a votery of such clauses, as he knew that for better administration of the country and also for the benefit of the society such clauses were absolutely necessary. Thus, through the adoption of clauses on Fundamental Rights, Sardar was aiming at building of a strong Indian Nation.

The clauses of constitution related to rights against exploitation, had to undergo a minor change before adoption. The clauses refer to prohibition of traffic in human beings, forced labour and prohibition of employment of children in factories. The draft of the clauses after minor amendment by the subcommittee on Fundamental Rights had Sardar's support. Sardar was aware about the menace in the society through employment of Devdasis and like others. In order to uplift the society and make passage for its coming out of social evils, he found necessity of such a clause. Moreover, for the future of the society, the children were to be properly educated and should be prohibited from taking employment at a minor age. Sardar thus wanted to develop a healthy and prosperous society in free India, which would act as a catalyst for national integration.

The clauses related to Rights to Freedom of Religion contained in art 25 to art 28 of the Constitution are remarkable footprints in India's approach to secularism. Sardar, the chairman of the Advisory Committee on Fundamental Rights and Minorities had a big part to play. He was fully aware about the heterogenous character of the Indian Society with regard to religion and tried to create confidence in the mind of the religious minorities, so that even after maintaining their religious identity, they converge into Indian nation with a single integrated identity. Sardar clearly indicated that
members of the Constituent Assembly should remember that the clauses of Constitution would give a broad outline on fundamental rights and details were not to be formulated in the constitution. He tried to provide a broad base for the overall structure of the society and attempted at making the various clauses flexible, so that future legislature could reconstruct the clauses, depending upon the situation prevailing in the country in the changed social and economic conditions. Sardar thus realised the necessity of the dynamism of the constitution of a country. He clearly stated that it was not possible to provide every conceivable thing in Fundamental Right. Sardar had a very broad outlook and he did not consider India as the home place of Hindus only. He believed that an environment had to be created to make the country congenial to various religions groups. Otherwise, he feared that the country's progress would be halted. In his efforts to build a strong nation in free India, he could surpass the barriers of all religious fanaticism. Sardar clearly stated:

"There is no question of Central Government attacking any religion or placing any religion in danger. We have not done so even in case of those who separated from us".

Even in the supplementary report of the Advisory Committee on Fundamental Rights, Sardar stated that no discrimination should


be made due to religion or language and the clauses on freedom of religion were carefully drafted and submitted to Constituent Assembly. 23

Cultural and Educational Rights constitute the other clauses of Fundamental Rights in the constitutions. Sardar realised that as India is a country, populated by various cultural groups, safeguards for all those communities were necessary for the solidarity of the country. He was a champion for the causes of various minority groups in Indian Society and on May 1, 1947, he himself moved the clause for the acceptance by the Constituent Assembly. He clearly pointed out that the clause regarding the admission of minorities in State Educational Institutions was "a simple non-discriminatory clause against the minorities" and the matter of extending the principle to the state-aided institutions should be left to the future legislature, at the appropriate time. 24 Adoption of these two clauses in the constitution gave opportunity to the minorities to develop their own script language and culture which was essential in the interest of maintaining communal and religious harmony among the various groups, so as to build a strong nation. With such provisions, the country which was shaken by subversive activities of divergent groups, could see a possibility for integration and take a step forward for consolidation of resources.

The Right to Property as formulated in the Constitution was another landmark towards social reform and consolidation of the country. The Advisory Committee, headed by Sardar, was of the opinion that no property should be acquired except for the public use and in case of any acquisition, due compensation should be paid. Some members of the Constituent Assembly was considering the aspect of abolition of Zamindari but Sardar pointed out:

"Land will be acquired for many public purposes not only but so many other things may have to be acquired. And the State will acquire them after paying compensation and not expropriate them. That is the real meaning of the clause. But the Zamindars or their representatives thought that their interests must be safeguarded by moving an amendment or by making a speech here. But they are not going to safeguard their interests in this way"25.

Sardar was against the idea of absolute right to property. He realised that unlimited freedom regarding the possession of property would lead to great inequality and would widen already existing gap between the haves and have nots. In an atmosphere, where such wide disparities existed between one class and the other, there would not be prosperity in the true sense. While the prosperity of a country should be measured in terms of overall growth of the society, the building up of an welfare state would not be possible with disparities between different classes of population. Where economically the society could not show a homogenous growth, political growth would not be achieved.

Sardar's progressive outlook was thus demonstrated in his attitude towards distribution of property. Regarding Sardar's attitude about private property:

"He (Patel) wanted that no scene be created and the propertied class should not be frightened with unsettling notions of social revolutions or talks of socialism. He was clearly of the view that private property has to stay and that property could not be expropriated or confiscated by the State."26

Sardar realised that unrestricted right to property would lead to grave inequalities and would convert political, legal and other aspects of freedom and justice into a fiasco. Sardar's stand regarding the Right to Property was thus directed towards future growth of country's economy and social development and was in keeping with his practical wisdom and democratic conviction. Analysing Sardar's view in this regard, K.M. Munshi observed:

"Sardar had a clear view on the right to property. He was against state acquiring property without paying compensation. He was prepared to eliminate Zamindaris but wanted that reasonable compensation should be paid to the Zamindars. He was against any violent expropriation; he described it as theft and dacoity."27

Sardar thus wanted a fair deal for all sections of the society. With the inclusion of property right in the constitution, the citizens could feel more secured under the new

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government of free India and psychologically the landowners could feel oneness with the common mass. This atmosphere was, thus, congenial to nation building.

Sardar was of the opinion that unless constitutional remedies were incorporated in the Constitution, it would be difficult to put into practice all the fundamental rights. In the Constituent Assembly when the clause regarding constitutional remedies came up for discussions on April 30, 1947, Sardar said:

"This is a clause which provides a judicial remedy. If we provide for fundamental rights, it is necessary that we must provide also for remedy. But it does not mean that this excludes or appropriates the jurisdictions of other courts or High Courts. It has nothing to do with that. When the whole judicial set up will be considered everything will be considered in proper order and in appropriate manner."28

This shows his practical approach and long term planning for upholding the fundamental rights of the citizens.

Citizenship:

The Constitution of India has not made elaborate studies on citizenship, but the details have been included in art. 5-8 of the constitution. While the eligibility of a person for citizenship as drafted in clause 3 of fundamental rights was discussed, there were different opinions as some members wanted

that citizenship should be common throughout the country uniformly. But Sardar said:

"We cannot prevent units. Here we are talking of rights, which wherever a citizen goes, he can enforce in a court of law. It does not necessarily include all the rights of the units." 29

Sardar also said:

"As a member of unit, he may have any right. As a member of union he has got same rights all over India." 30

This type of thinking was quite natural at that time, since the framers of the constitution were contemplating the participation of the Muslim League in the Constituent Assembly and a federal set up for the whole of India having a number of units, but bound by the common centre, that is the Union in a federal form. Sardar's idea of citizenship has to be appreciated. He could foresee the difficulties in enforcing common privileges of citizenship on the people of different federating units, since in British India, people were enjoying different privileges in different native states. In the Constituent Assembly, the representatives of the native states were also participating for becoming members of federation. Thus, Sardar could feel that it would not be wise to curtail the privileges of the citizens of different federating units by defining a common citizenship throughout the country. Sardar was categorical in his statement


when he clearly indicated that the citizenship of a person should not be decided on the basis of race or religion but on the ground of birth only. He pointed out:

"It is important to remember that provision about citizenship will be scrutinized all over the world." 31

B. Shiva Rao says that Vallabhbhai referred to the struggle against racial discrimination in South Africa and in some other states and to the demand for nationality by the Indians settled there on the ground of their birth; he cautioned the members not to take a narrow view on the subject and introduce racial phraseology to the constitution, merely for the sake of covering the few cases which could otherwise be controlled by law.

Amendment of Fundamental Rights

Though Fundamental Rights are the basic tenets of democracy and socialism, to achieve the growth and prosperity of the country the dynamic nature of the constitution should not be dispensed with. In the opinion of Sardar, Fundamental Rights should not be absolute and there should be provision in the Constitution for amendment of those rights. 32 As per the Constitution of India, President can suspend the enforcement of the fundamental rights conferred by Part III. It may be all or any of those rights. Article 359 envisages that once a proclamation of

Emergency has been issued the security of India or any part of the territory thereof may require that the President should suspend the enforcement of any of the rights vouchsafed to the people under Part III of the Constitution. Thus makers of the Constitution did keep provision for the future government of country to amend or suspend fundamental rights. The matter was reviewed by various members like K.M. Munshi, A.K. Ayyar and others and finally amendment of rights under Part III was accepted. As per A.K. Ayyar:

"The recent happening in different part of India have convinced me more than ever that all fundamental rights guaranteed under the constitution, must be subject to public order."

It is quite indicative that art. 13(2) of the constitution which states that Fundamental Rights cannot be abridged by any law, was superceded by the clauses on amendment of Constitution.

Sardar and Constitutionalism

Sardar believed in the supremacy of the constitution. Whether it was correct for Sardar to advocate the supremacy of

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34. Constituent Assembly - Advisory Committee on Fundamental Rights and Minorities file - Munshi Papers, National Archives of India, New Delhi.
35. Ayyar Papers - his letter to B.N. Rau, dt. 4.4.47 - National Archives of India, New Delhi.
parliament over Fundamental Rights, was a matter which requires careful examination. Eminent lawyers and reputed writers have in the past discussed the question over and over again. There has, however, been no unanimity regarding their views on the subject. Sardar had a point when he maintained that the Parliament must be given power to amend Fundamental Rights. After all, the Parliament represents the will of the people and so all its action can be said to have the sanction of the people. The will of the people being supreme in a democracy, there seems to be nothing wrong if the Parliament be invested with the power of amending any right. Secondly, with the passage of time and in the context of the vast changes, that are bound to take place gradually in the social and political life, the concept of fundamental rights itself could possibly undergo certain modifications. In fact, the fundamental rights guaranteed by all constitutions in the world are not the same. What makes a right fundamental depends, to some extent, on the particular circumstances in which a country and its citizens are placed. If this is true, it could very well happen that as years go by, in keeping with the demands of the time, a state finds itself compelled to curtail some of the fundamental rights of its citizens. In that event, it is only proper that the parliament is empowered to make necessary amendments. From this point of view also, Sardar's stand is justified.

Further, it does not mean that because the parliament has the power, it does not mean that because the parliament has the
power, it is necessarily going to curtail the fundamental rights. It will do so when such a step is found to be absolutely necessary, otherwise, it can be voted out of power by the people. We have an excellent example in the recent political history of India. During the emergency period, the parliament headed by Mrs. Indira Gandhi suppressed many of the fundamental rights of the people against their wishes. The people reacted sharply, defeated her at the polls and elected a new parliament through which they have regained all their lost rights. Thus, it appears that there is no real danger in involving the parliament with the power of amending the fundamental rights in so far as the power remains ultimately in the hands of the people. Seen in this perspective too, Sardar's advocacy of the supremacy of the parliament over fundamental rights is understandable. But certain points need to be noted carefully. It is true that the parliament represents the will of the people and the power ultimately resides with the people; but this is merely the theoretical side of the matter. On the practical side, it is not impossible that the people lose control over their own elected representative and the government. The parliamentary system as practised in India, undoubtedly suffers from certain serious drawbacks leading to an atmosphere conducive to the emergence of a dictator. What would have been the conditions if Mrs. Indira Gandhi had not declared election? She could very well have gone on in that fashion without seeking
It depended on her whims and fancy to hold elections. The members of the parliament had been all reduced to mere puppets and had no voice whatsoever. Many of the fundamental rights had been suppressed and people had begun to fear that they had perhaps lost them forever. In the light of this, one wonders whether it is safe to have the fate of the fundamental rights in the hands of the parliament. It never crossed the mind of Sardar that such a dangerous possibility existed, but it did exist and still does. Hence, it may perhaps be wiser not to make the fundamental rights subject to changes by the parliament. After all, these rights are fundamental and are essential for the full development of an individual's personality. No circumstances, however serious they might be, can justify their suppression. The rights are prior to the state itself as the state derives its validity from them and exists for their protection. As one author puts it:

"...there are certain rights which no majority can abrogate. These are fundamental rights of the freedom of speech, expression and so on. They rest upon universal principles which no government, no majority may violate. They are not subject to change because they are the inalienable rights of man."37

Sardar followed a nonpartisan attitude towards constitution making. He made it very clear that the draft of the clauses should not contain any communal feelings, as he was.

expecting participation of Muslim League in the Constituent Assembly. It was known that members of Congress Party were not experts in constitution making, Sardar was aware of it and he tried to pick up experienced persons for the preparation of the Constitution. He believed in democracy over party considerations. It shows his impartiality. That he was not guided by any partisan attitude was reflected in his answer on a question regarding inclusion of Dr. Ambedkar in the constitution making. Sardar retorted:

"What do you know of the constitution making? We have chosen the best man for the job." 38

Sardar's contribution in Constituent Assembly was marked by discipline also. He was by nature a disciplined person and made it a point that strict discipline be observed in the Constituent Assembly. Through such an approach he could quickly settle the difference between the members. B. Shiva Rao observed that in case of any dispute, a meeting was usually arranged at Sardar's residence and differences were quickly resolved through his intervention. 39

Summing up

The Constitution of India incorporates the best elements of the leading constitutions of the world. The framers of the constitution took care to see that whatever was borrowed from other constitutions, ultimately suited to the Indian environment. Our constitution is regarded as the excellent synthesis of democracy and socialism. The final structure of the constitution was adopted after careful deliberations in various sub-committees and through discussions in the Constituent Assembly. Sardar played a very important role in guiding the discussions on various clauses of Fundamental Rights. He, in fact, spearheaded the proceedings of what was practically known as the most important committee on Fundamental Rights.

Sardar's contribution on Fundamental Rights was well demonstrated through the various amendments he suggested and his intervention in the various suggestions made by other members of the Constituent Assembly. From the proceedings of the sub-committee on Fundamental Rights and Constituent Assembly and the deliberations Sardar made, his contribution to Fundamental Rights as a part of the process of nation building, and his views become clear.

Sardar's attempt was primarily to ensure that the country, after attaining freedom, should be able to march towards progress and provide for better living conditions and prosperity to the citizens. The security and solidarity of the country
were his prime concern; but at the same time, he tried to ensure individual freedom to the citizens. His approach was to strike a balance between the above two aspects and achieve the best results. Whereas the government and legislature should have certain powers and authority for the security of the country, the democratic norms with regard to individual liberty should also be maintained.

Sardar was fully convinced that the situation, through which the country was passing immediately after independence, would demand strong administrative set up and the authority of the State should not be weakened. To quote a vital aspect, we find that when the right to freedom was accepted, Sardar agreed to the conditions that State should have power to deny full freedom to propagate political creed or ideology. He explained that it would not be wise to rule out the possibility of certain political creeds, deserving suspension to avoid any danger for the country's security.

Sardar was, however, in favour of maintaining individual freedom. But in his opinion, the freedom allowed to the citizens should not be unlimited and the State must have power to regulate the same, as and when necessary. He was more concerned about the security of the State and welfare of the country. Though he supported the clause related to right to property, he agreed that the property could be acquired by the State for public purpose. He did not ignore the humanitarian
considerations that in case of an acquisition by the State, due compensation should be given to the landowner. This is an excellent example of Sardar's way of reconciling two conflicting interests. Sardar's support for freedom of religion and language, right to personal liberty prove his concern for human rights and interest of the citizens. Sardar, however, made it very clear that though the State would not infringe upon the personal liberty, in case it was necessary in the interest of the country's security and stability, he would support the State's power to detention of citizens; but in such detention, the detained person should be produced before a magistrate within 24 hours. Realistic as he was, he tried to balance between the two conflicting extremes namely individual freedom and authority of the State.

Another aspect of Sardar's approach to Fundamental Rights was his interest in social integration. Sardar knew fully well that political integration without social integration would not bring result. He, therefore, supported the various clauses on right to equality. His support for removal of untouchability was unconditional, as he knew that such a step would help the country's consolidation and social synthesis. Sardar did not like to encourage separatist tendencies and therefore, he did not support any discriminative policy with regard to employment, although many states were insistant on this. Sardar also did not like the attitude of the states regarding discrimination in employment and he preferred that for employment identical policy should be followed throughout the country. Sardar's broad thinking was aimed at uniting the complete population of the
country under a common roof.

Sardar had liberal views with regard to title holders from the British government. Though he supported that no titles should be conferred, he did not see any harm if the old title holders were allowed to retain the same. As India is inhabited by people of different colour and dresses, the question of discrimination on that ground naturally did not find Sardar's support, as he always tried to bring all Indians together, irrespective of caste, colour, religion and dress. These instantances show that Sardar was consciously strengthening the democratic fabric of the society. Only such democratic society can sustain the individual freedom which Sardar highly valued and cherished.

In short, Sardar's whole approach to Fundamental Rights rested on two premises namely it should be in the interest of the country's security vis-a-vis individual freedom. If there arises any conflict between these two, his preference would be for country's security. But, being a realist, he would try to find a way out. This is how Sardar always thought of building a strong nation.