CHAPTER – IV

HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA AND
THE RELEVANCE OF INTERNATIONAL HUMAN RIGHTS
LAW TO INDIA

4.1 Introduction and brief historical background:

There is a general impression that the concept of ‘Human Rights’ is of western origin. Western scholars maintain with a great sense of pride that the concept of human rights is the product of western culture and civilization. It is submitted that, such an understanding is incorrect. In fact we find, the concept of human rights in all societies and at all times in Europe, Asia and Africa, in Hinduism, Buddhism, Christianity, Islam & Chinese philosophy.1

The concept of human rights and natural rights was very much known to the ancient Indian thinkers. Reference of such concepts appears as early as in Rig-Veda to the three civil liberties of every individual – Tana (body), Skridhi (dwelling house) and Jibazi (life).2 The concept of ‘dharma’ (righteousness) which has always governed the Indian Societies is much more comprehensive than the modern concept of Human Rights.3 In India, the Vedic culture (1500-1600 BC) laid a solid foundation for dharma.4 Unlike modern theories, which stress only on the rights of an individual, the concept of ‘dharma’ laid more emphasis both on ‘duty’ as well as right. The emphasis on duty on every individual be it a king or a common man was unique one in the sense it ensured enjoyment of rights by all. The Indian thinkers were aware of the fact that unless there is a duty, rights of men cannot be realized. What modern thinkers on concept of ‘Right’ say, that rights and duties are co-relative was very much in practice in ancient India. Thus the concept of ‘dharma’ that governed the

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sovereign and its subject covered the basic principles involved in theory of rights, duties and freedoms.\textsuperscript{5}

The ‘rule of law’ which Dicey has propounded, was very much in practice in ancient India. Kautilya, the author of ‘Arthashastra’ not only affirmed and elaborated the civil and legal rights first formulated by Manu but also added a number of economic rights.\textsuperscript{6} Kautilya’s Arthashastra states that “the king shall provide the orphan, the aged, the infirm, the afflicted and the helpless the maintenance. He shall also provide subsistence to the helpless expectant mothers and also to the children they gave birth to.” \textsuperscript{7} The Manusmriti, Mahabharatha and Arthashastra also focus on the conduct of war as to when a war should and should not be fought, as it was one major cause of human rights violations in ancient India. Furthermore, the underlying principle of \textit{vasudaiva kutumbakam} propounded the concept of universal equality (a concept that believes all human beings are one family and that we are part of each other).\textsuperscript{8}

The 19\textsuperscript{th} Century was the beginning of social reforms. Some legislations benefiting slaves, women and workers demonstrated the inevitable link between social justice and human rights. For example in 1843 law was passed to abolish slavery and punish its practice.\textsuperscript{9} It conferred in the same breath, the right to equality, personal liberty and economic freedom and right against exploitation. In 1829 a Regulation was made to abolish the evil practice of \textit{Sati}. Raja Ram Mohan Roy\textsuperscript{10} and William Bentinck deserve praise for such Regulation, which minimized the evil

\textsuperscript{5} Subhash C. Kashyap, Supra note 2.

\textsuperscript{6} Dr. Banaji, “Slavery in British India”, 1933, pp 18, 24-26, 33-38, 298-301 cited in P. Ishwar Bhat, Supra note 4, p. 70.

\textsuperscript{7} Subhash C. Kashyap, Supra note 2.


\textsuperscript{9} R.C. Majumdar et al., “An Advanced History of India”, 4\textsuperscript{th} ed, p 818, cited in P. Ishwar Bhat, Supra note 4, p. 70.

\textsuperscript{10} In modern history he can be considered as the father of human rights movement in India. He fought relentlessly and raised voice against all kinds of discriminations and evil practices against women. He pursued his efforts against polygamy and \textit{sati} at two levels: first, he approached the British rulers directly to legally ban such practices; second, he mobilized masses in favour of such a ban. He published \textit{Modern Encroachment on the Ancient Rights of Females according to the Hindu Law of Inheritance} in 1822 and established \textit{Brahmo Samaj} in 1828. The \textit{Brahmo Samaj} deplored \textit{sati} and emphasized love of mankind, irrespective of color, race, caste. As a result of Raja Rama Mohan Roy’s efforts, Lord William Bentinck, then Governor General, passed Regulation XVII in December 1829, which declared \textit{sati} illegal and punishable. See D.R. Kaarthikeyan, “Human Rights in India”, p.364, in Shale Asher Horowitz, Albrecht Schnabel (ed.), “Human Rights and Societies in Transition: Causes, Consequences, Responses”, available at: books.google.co.in. Last visited on 29-10-2012 at 10.10 pm.
practice of wife sacrificing her life upon the death of her husband by jumping in to the fire. The Regulation abolishing *Sati* system is seen as reinforcing the values of life, human dignity and gender justice simultaneously.\textsuperscript{11}

The British introduced judicial system in India and as a result Common Law Principles sown into the Indian soil. The higher judiciary was vested with power to issue writs of *Habeas corpus*, Certiorari and Mandamus. The Rule of Law principles gradually crept into the system and the adjudicating bodies were forced to apply the common law principles and Rule of Law. The legal Prohibition of female feticide, child marriage and the legal recognition of widow remarriage, are instances of aiming gender justice during British Raj. The laws relating to factories trade unions, Industrial disputes protected basic human rights of workers by application of modest social justice norms.\textsuperscript{12}

In modern Indian history, it was during India’s struggle for freedom from British Rule and against inhuman repressive measures that the demand for human rights was raised. The concept of “Right to Self Determination” was encouraged during India’s Freedom Movement. Balagangadhar Tilak propounded that ‘Swaraj (Self Determination) is birth right’ which shook the entire country in the struggle for Independence.\textsuperscript{13}

As early as 1895, the Constitution of India Bill envisaged for India a Constitution guaranteeing to everyone of its citizens, freedom of expression, inviolability of one’s house, right of property, equality before law and in regard to admission to public offices, right to present claims, petitions and complaints and right to personal liberty.\textsuperscript{14}

\textsuperscript{11} P. Ishwar Bhat, Supra note 4, p.70. Further, the Formation of *Brahmo Samaj* gave impetus to an organised social movement in India. Keshav Chandra Sen following the foot steps of Raja Ram Mohan Roy, took up issues such as women education, child marriage and inter caste marriage. He started a fortnightly journal called *Indian Mirror*, which later became the first Indian Daily in India, to propagate these issues. Another equally important persona who fought for lower caste people was Jyotiba Phule. He took up the issue of *untouchability* and formed *Satya Shodak Samaj* in 1873 to liberate oppressed caste and to create awareness among them. See D.R. Kaarthikeyan, “Human Rights in India”, p.364, Shale Asher Horowitz, Albrecht Schnabel (ed.), “Human Rights and Societies in Transition: Causes, Consequences, Responses”, available at: books.google.co.in. Last visited on 29-10-2012 at 10.10 pm..\textsuperscript{12} P. Ishwar Bhat, Supra note 4, p.70.\textsuperscript{13} P. Ishwar Bhat, Supra note 4, p 575.\textsuperscript{14} Subhash C. Kashyap, “The Constitution of India and International Law”, in Bimal N. Patel (ed), “India and International Law”, 2005, Martinus Nijhoff Publishers, Leiden, p.10
The Indian National Congress at its special session in Bombay in August 1918 demanded a declaration guaranteeing ‘equality before law, protection in respect of liberty, life and property, freedom of speech and press and right of association’. In 1925, the National Convention finalized the Commonwealth of India Bill, embodying a specific “declaration of rights” visualizing certain fundamental rights for every person. In 1927, the Madras session of Indian National Congress passed a resolution, relating that the basis of any future constitution for the country must be a declaration of fundamental rights. In 1928, the Motilal Nehru Committee composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, fundamental rights, representation for religious and ethnic minorities, and limit the powers of the government. The 1931 Karachi Resolution on “Fundamental Rights and Social Change” further clarified the goal and added another dimension to the demand for constitutional rights as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom.15

However, the Simon Commission and the Joint Parliamentary Committee which were responsible for the Government of India Act, 1935, had rejected the idea of enacting declarations of fundamental rights on the ground that “abstract declarations are useless, unless there exist the will and the means to make them effective”. But the Nationalist opinion, since the time of Motilal Nehru Report, 1928, was definitely in favour of a Bill of Rights, because the experience gathered from the British regime was that a subservient Legislature might serve as a handmaid to the Executive in committing inroads upon individual liberty.16

When India secured independence on 15 August 1947, task of developing a Constitution for the nation was undertaken by the Constituent Assembly under the presidency of Rajendra Prasad. B.R. Ambedkar became the Chairperson of the Drafting Committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became Chairpersons of Committees and Sub-Committees on different subjects.17 A notable

15 Ibid.
17 Justice B.P. Jeevan Reddy in Indra Sawhney v. Union of India, AIR 1993 SC 477, observed that – “The Constituent Assembly, though elected on the basis of a limited franchise, was yet representative of all sections of society. Above all, it was composed of men of vision, conscious of the historic but difficult task of carving an egalitarian society from out of a bewildering mass of religions, communities, castes, races, languages, beliefs and practices. They knew their country well. They
development during that period having significant effect on the Indian Constitution took place on 10 December 1948 when the UN General Assembly adopted the UDHR and called upon all Member States to adopt these rights in their respective Constitutions. Further, the framers of Constitution had recourse to U.N. Charter, Constitution of U.S.A., Ireland, France, Canada, etc., while shaping the Constitution. The fundamental rights were included in the First Draft Constitution (February 1948), the Second Draft Constitution (17 October 1948) and the final- Third Draft Constitution (26 November 1949) prepared by the Drafting Committee. The Constitution of India came into force on 26th January 1950 (herein after as-Constitution).\[18\]

4.2 Significance and Characteristics of Fundamental Rights:

Regardless of the British opinion, the makers of the Constitution included the fundamental rights in the Constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The writers of the Constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognized and protected by the State. According to them, “democracy” is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the Constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights.\[19\]

Part III of the Constitution which contains perhaps one of the most elaborate charters on human rights yet framed by any State, consistent with the aim of the Unity of the Nation and the interest of the Public at large, has been described by Justice Gajendragadkar as the “very foundation and cornerstone of the democratic way of life ushered in this country by the Constitution”.\[20\]

understood their society perfectly. They were aware of the historic injustices and inequities afflicting the society. They realized the imperative of redressing them by constitutional means, as early as possible - for the alternative was frightening…”

18 Dr. Durga Das Basu, Supra note, 16, p.18-19.
19 Dr. Durga Das Basu, Supra note, 16, p.80-81.
These fundamental rights substantially cover all the traditional civil and political rights enumerated in Articles 2 to 21 of the Universal Declaration of Human Rights, 1948 (UDHR). According to Justice Bhagwati:

“These fundamental rights represent the basic values cherished by the people of this country since the vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a ‘pattern of guarantee’ on the basic structure of human rights and impose negative obligations on the state not to encroach on individual liberty in its various dimensions.”

These fundamental rights help not only in protection but also the prevention of gross violations of human rights. They emphasize on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background.

Some fundamental rights apply for persons of any nationality whereas others are available only to the citizens of India. Articles 15, 16, 19, 29 and 30 are available to citizens only and all other rights are available to persons including non-citizens. Fundamental rights primarily protect individuals from any arbitrary State actions, but some rights are enforceable against individuals. Article 15 (2) - equality in regard to access to and use of places of public interest, Article 17 – prohibition of untouchability, Article 18 (3) & (4) – prohibition of acceptance of foreign title, Article 23 – prohibition of traffic in human beings, forced labour and Article 24 – prohibition of employment of children in hazardous employment, are available against individuals also, however these are not self executory i.e., these Articles are not directly enforceable.

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22 The term “State” is defined under Article 12 of the Constitution which reads as: Definition- In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.
23 The Civil Rights Act, 1955 is enacted to punish the preaching and practice of untouchability. Civil Rights means, any rights accruing to a person by reason of the abolition of untouchability by Article 17 of Constitution.
These provisions act as a check both on State action as well as the action of private individuals. However, these rights are not absolute, but are subject to reasonable restrictions as necessary in the larger interest of the society. They can also be selectively curtailed through an amendment by the Parliament. However, since the fundamental rights can only be altered by an amendment, their inclusion is a check not only on the executive branch, but also on the Parliament and State Legislatures. Thus, these rights are fundamental only to the extent that they can be enforced through Supreme Court and High Courts under Article 32 and 226 respectively.

4.3 Human Rights content under the Constitution:

The basic provisions of the Constitution touching upon the issue of Human Rights are: 1) Preamble 2) Fundamental Rights (Part III), 3) Directive Principles of State Policy (Part IV) and 4) Fundamental Duties (Part IV A).

4.3.1 The Preamble:

The Preamble to the Constitution begins with “We the People of India” making a solemn resolution to constitute India into a ‘Sovereign Socialist Secular Democratic Republic’ securing for all its citizens justice, liberty and equality and promoting among them all fraternity. Justice is further defined as social, economic and political. Liberty includes liberty of thought, expression, belief faith and worship and equality of status and opportunity.24

The words used in the Preamble are some of the noblest and embody the highest values that human ingenuity and experience have been able to devise thus far.25

4.3.2 Fundamental Rights:

The fundamental rights in Part III of the Constitution have been guaranteed under the seven broad categories, namely; Right to Equality (Articles 14 to 18), Right to Freedoms (Articles 19 to 22), Right to Education (Article 21A), Right against Exploitation (Articles 23 & 24), Right to Freedom of Religion (Articles 25 to 28), Cultural and Educational Rights (Articles 29 & 30), Right to Constitutional Remedies (Article 32).

4.3.2(i) Right To Equality (Articles 14 to 18):

Article 14 of the Constitution reads as under:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 14 is in two parts – in the first part it mandates the State not to deny to any person ‘equality before law’, in the second part it mandates the State not to deny the ‘equal protection of the laws’. Equality before law prohibits discrimination which is a negative concept. The concept of ‘equal protection of the laws’ requires the State to give special treatment to persons in different situations in order to establish equality amongst all and is a positive concept. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally.

Equality before the law is an aspect of what Dicey called Rule of Law. It means that no man is above the law and that every person whatever be his rank or status, is subject to the ordinary law and amenable to the jurisdiction of the ordinary courts. Again, every person from the Prime Minister down to the humblest peasant is under the same responsibility for every act done by him without lawful justification and in this respect there is no distinction between officials and private persons.26

Equal protection of the laws, on the other hand, would mean that among equals, the law should be equal and equally administered, that like should be treated alike. In other words, it means the right to equal treatment in similar circumstances both in the privileges conferred and in the liabilities imposed by the laws. None should be favoured and none should be placed under any disadvantage, in circumstances that do not admit of any reasonable justification for a different treatment. Thus, the guarantee of equal protection is a guarantee of equal treatment of persons in equal circumstances, permitting differentiation in different circumstances. The result is that Article 14 permits classification but prohibits class legislation. However, the classification must be reasonable. To be reasonable, the classification must withstand the two tests: 1) the classification must be founded on an intelligible differentia which

26 However, Article 361 provides certain exceptions to this rule. One such exception is that the President or the Governor of a State is not answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties (Article 361 (1)).
distinguishes from those that are grouped together from others, and 2) that differentia
must have a rational relation to the object sought to be achieved by the law.27

New Concept of Equality: Right against arbitrariness.

In E.P.Royappa v. State of Tamil Nadu,28 the Supreme Court gave a new
dimension to Article 14 by propounding a new concept of equality. Justice Bhagwati
held:

“Equality is a dynamic concept of equality with many aspects and
dimensions and it cannot be ‘cribbed, cabined and confined’ within
traditional and doctrinaire limits. From a positive point of view,
equality is antithetic to arbitrariness. In fact equality and arbitrariness
are sworn enemies; one belong to the rule of law in a republic wile the
other, to the whim and caprice of an absolute monarch. Where an act is
arbitrary, it is implicit in it that it is unequal both according to political
logic and constitutional law and is therefore violative of Article 14.”

Again, in Maneka Gandhi v. Union of India,29 Justice Bhagwati quoted with
approval the new concept of equality propounded by him in E.P. Royappa and held:

“Equality is a dynamic concept with many aspects and dimensions and
it cannot be imprisoned within traditional and doctrinaire limits.
Article 14 strikes at arbitrariness in State action and ensures fairness
and equality of treatment. The principle of reasonableness, which
legally as well as philosophically, is an essential element of equality or
non-arbitrariness, pervaes Article 14 like a brooding omnipresence.”

Article 15 secures the citizens from every sort of discrimination by the State,
on the grounds of religion, race, caste, sex or place of birth or any of them.30 The

27 State of West Bengal v. Anwar Ali, AIR 1950 SC 75. Further, the basis of classification could be
geographical, difference in time, nature of trade or occupation, etc. Krishna Singh v. State of
28 AIR 1974 SC 555. The Bench consisted of P. N. Bhagwati, Y.V. Chandrachud and Krishna Iyer JJ.
29 AIR 1978 SC 597. In R.D. Shetty v. Airport Authority of India, AIR 1979 SC 1628, wherein, yet
again Justice Bhagwati reiterated the same principle.
30 Article 15 reads as- Prohibition of discrimination on grounds of religion, race, caste, sex or place
of birth.- (1) The State shall not discriminate against any citizen on grounds only of religion, race,
caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste,
sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with
regard to (a) access to shops, public restaurants, hotels and palaces of public entertainment; or (b) the
use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of
State funds or dedicated to the use of the general public (3) Nothing in this Article shall prevent the
The scope of this Article is very wide. Article 15 (1) imposes prohibition on the State, where as Article 15 (2) proscribes both State and private individuals. However, Article 15 (3) and (4) permits the State from making any special provisions for women or children for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes (SC) and Scheduled Tribes (ST) respectively. Hence, any legislation that provides for special protection for these exceptional classes of citizens is cannot be held to be unconstitutional. Similarly, though discrimination on the ground of caste only is prohibited under Article 15 (1), it would be permissible under clause (4) for the State to reserve seats or grant fee concessions for the members of the backward classes or of the SC or ST.

The Constitution 93rd Amendment, 2005 (93rd Amendment in short) added clause (5) in Article 15 providing for making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the SC or ST in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions.

In pursuance of Article 15(5), the Parliament enacted the Central Educational Institutions (Reservation in Admission) Act, 2006 (Act 2006 in short) providing for 15, 7.5 and 27 per cent reservation in Central institutions of higher education and research for members of SCs and STs and Other Backward Classes (OBCs).

The 93rd Amendment as well as the Act 2006 was challenged in Ashoka Kumar Thakur v. Union of India. The matter was referred to Constitutional Bench. The Five Judges Constitutional Bench upheld the Constitutional validity of the
It rejected the contention that Article 15(5) was contradictory to Article 15(4) and upheld the exclusion of minority educational institutions from the purview of Article 15(5). The Bench did not find the absence of time limit for reservation fatal to legislation but suggested periodic review after every ten years.

As a corollary from the general assurance of absence of discrimination by the State on grounds mentioned under Article 15, the Constitution guarantees equality of opportunity in matters of public employment. **Article 16** assures equality of opportunity in matters of public employment and prohibits the State from making any sort of discrimination on the grounds of religion, race, caste, sex, **descent**, place of birth, residence or any of them. **Descent** as a ground is an addition to the list of grounds which is absent under Article 15. None of these terms are defined under the Constitution.

Article 16 also empowers the State to make special provisions for the backward classes, SC & ST which are not adequately represented in the services of the State. Local candidates may also be given preference is certain posts. Further, a law providing for reservation of posts for people of a certain religion or denomination in a religious or denominational institution does not offend this Article.36

Articles 14, 15 and 16 form part of a scheme of the Right to Equality. Article 15 and 16 are incidents of guarantees of Equality, and give effect to Article 14. However, initially, Articles 15(4) and 16(4) were considered *exceptions* to Articles 15(1) and 16(1).

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36 Article 16 reads as- **Equality of opportunity in matters of public employment.**- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.
The Supreme Court in *General Manager, Southern Railways v. Rangachari*,\(^\text{37}\) held that Article 15(4) of the Constitution is an exception to Article 15(1). The five judge Constitutional Bench held:

“Article 15(4) which provides, inter alia, for an exception to the prohibition of discrimination on grounds specified in Article 15(1) lays down that nothing contained in the said Article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”

It was further held that Article 16(4) is an exception to Article 16(1):

“I have already said that it is implicit in the Article that reservation cannot be of all appointments or even of a majority of them, for that would completely destroy the fundamental right enshrined in Article 16(1) to which Article 16(4) is in the nature of a proviso or an exception or at any rate make it practically illusory.”

In *M.R. Balaji v. State of Mysore*,\(^\text{38}\) the Supreme Court followed *Rangachari* and held that: “Thus, there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2).”

This view, that Articles 15(4) and 16(4) were exceptions to Articles 15(1) and 16(1), was again reiterated in *Triloki Nath v. State of Jammu and Kashmir*,\(^\text{39}\) and in *State of A.P. v. U.S.V. Balram*.\(^\text{40}\)

However, the majority of seven judge Constitutional Bench of the Supreme Court in *State of Kerala and Anr. v. N.M. Thomas and Ors.*,\(^\text{41}\) (herein after as

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\(^{38}\) AIR 1963 SC 649.

\(^{39}\) AIR 1969 SC 1.

\(^{40}\) AIR 1972 SC 1375.

\(^{41}\) AIR 1976 SC 490. The Bench consisted of A.N. Ray CJ., A.C. Gupta, H.R. Khanna, K.K. Mathew, M. Hameedullah Beg, S. Murthaza Fhazal Ali and V.R. Krishna Ayyer JJ. In this case, the Government of Kerala amended the Kerala State Subordinate Service Rules which empowered the Government to exempt, by order, for a specified period, any member or members belonging to Scheduled Castes or Scheduled Tribes and already in service, from passing the test which an employee had to pass as a precondition for promotion to next higher post. Exercising the said power, the Government of Kerala issued a notification granting “temporary exemption to members already in service belonging to any of the Scheduled Castes or Scheduled Tribes from passing all tests (unified, special or departmental test) for a period of two years”. On the basis of the said exemption, a large number of employees belonging
Thomas introduced a change in the concept of equality. Thomas marks the beginning of a new thinking on Article 16, though the seed of this thought is to be found in the dissenting opinion of Justice Subba Rao in Devadasan v. Union of India. In Thomas, it was held that Articles 14, 15, and 16 are all equality rights, and that the scheme of equality sought to achieve real equality and that Articles 15(4) and Article 16(4) are not exceptions to Articles 15(1) and 16(1) respectively.

Chief Justice A.N. Ray (majority view) held that: “Article 16(4) clarifies and explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the purposes of Article 16(1). If preference shall be given to a particular under-represented community other than a backward class or under-represented State in an all-India service such a rule will contravene Article 16(2). A similar rule giving preference to an under-represented backward community is valid and will not contravene Articles 14, 16(1) and 16(2). Article 16(4) removes any doubt in this respect.”

Further, Justice Mathew (majority view) held that: “I agree that Article 16(4) is capable of being interpreted as an exception to Article 16(1) if the equality of opportunity visualized in Article 16(1) is a sterile one, geared to the concept of numerical equality which takes no account of the social, economic, educational background of the members of Scheduled Castes and scheduled tribes. If equality of opportunity guaranteed under Article 16(1) means effective material equality, then Article 16(4) is not an exception to Article 16(1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried viz., even up to the point of making reservation.”

to Scheduled Castes and Scheduled Tribes, who had been stagnating in their respective posts for want of passing the departmental tests, were promoted. They were now required to pass the tests within the period of exemption. Out of 51 vacancies which arose in the category of Upper Division Clerks in the year 1972, 34 were filled up by members of Scheduled Castes leaving only 17 for others. This was questioned by Thomas, a member belonging to non-reserved category. His grievance was: had not there been the said concession/exemption to members of Scheduled Castes/Scheduled Tribes he would have been promoted to one of those posts in view of his passing the relevant tests. He contended that Article 16(4) permits only reservations in favour of backward classes but not such an exemption. This argument was accepted by the Kerala High Court. It also upheld the further contention that inasmuch as more than 50% vacancies in the year had gone to the members of Scheduled Castes as a result of the said exemption, it is in violation of the 50% rule in Balaji case. The State of Kerala appealed against the Order of the Kerala High Court to the Supreme Court.

42 AIR 1964 SC 179. Justice Subba Rao in his dissenting opinion observed that: "The expression, "nothing in this article" is a legislative device to express its intention in a most emphatic way that the power conferred there under is not limited in any way by the main provision but falls outside it. It has not really carved out an exception, but has preserved a power untrammelled by the other provisions of the Article."
Justice Krishna Iyer (majority view) held that: “The next hurdle in the appellant’s path relates to Article 16(4). To my mind, this sub-article serves not as an exception but as an emphatic statement, one mode of reconciling the claims of backward people and the opportunity for free competition the forward sections are ordinarily entitled to… True, it may be loosely said that Article 16 (4) is an exception, but closely examined it is an illustration of Constitutionally sanctified classification.”

Justice Fazal Ali (majority view) held that: “Clause (4) of Article 16 of the Constitution cannot be read in isolation but has to be read as part and parcel of Article 16(1) and (2). …That is to say clause (4) of Article 16 is not an exception to Article 14 in the sense that whatever classification can be made can be done only through clause (4) of Article 16. Clause (4) of Article 16, however, is an explanation containing an exhaustive and exclusive provision regarding reservation which is one of the forms of classification. …It is true that there are some authorities of this Court that clause (4) is an exception to Article 16(1) but with due respect I am not in a position to subscribe to this view for the reasons that I shall give hereafter.”

Justice M. Hameedullah Beg adopted a different reasoning altogether and held that, the rule and the orders issued thereunder was “a kind of reservation” falling under Article 16(4) itself.

Among the minority Justice Khanna preferred the view taken in Balaji and other cases to the effect that Article 16(4) is an exception to Article 16(1) and opined that no preference can be provided in favour of backward classes outside Clause (4). Justice A.C. Gupta concurred with this view.

In 1993, a nine judge Constitutional Bench of Supreme Court settled this issue in Indra Sawhney v. Union of India, where the majority upheld the principle laid down in Thomas’ case that Articles 15(4) and 16(4) were not exceptions to Articles 15(1) and 16(1), but were an emphatic statement of equality. Delivering the majority judgment Justice B.P. Jeevan Reddy observed that:

“Accordingly, we hold that Clause (4) of Article 16 is not exception to Clause (1) of Article 16. It is an instance of classification implicit in

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and permitted by Clause (1). The speech of Dr. Ambedkar during the debate on draft Article 10(3) [corresponding to Article 16(4)] in the Constituent Assembly shows that a substantial number of members of the Constituent Assembly insisted upon a "provision (being) made for the entry of certain communities which have so far been outside the administration", and that draft Clause (3) was put in recognition and acceptance of the said demand. It is a provision which must be read along with and in harmony with Clause (1). Indeed, even without Clause (4), it would have been permissible for the State to have evolved such a classification and made a provision for reservation of appointments/posts in their favour. Clause (4) merely puts the matter beyond any doubt in specific terms.”

Therefore, equality, as guaranteed in the Constitution, not only conceives of providing formal equality but also to provide for real and absolute equality. Articles 14 and 15(1) enable and contemplate classification to achieve the Constitutional Objective of real equality. Articles 15(4) and 16(4) flow out of Articles 15(1) and 16(1) respectively, and can never be considered as exceptions to Article 15(1) and Article 16(1).

Once this is established, that Article 15(4) and 16(4) are not exceptions to the mandate of equality but are concrete measures to bring about the mandate of equality enshrined in Article 14, the effect of this is that the State is obliged to remove inequalities and backwardness. This obligation of the State has its source in the mandate of equality itself under Article 14.

In Thomas’ case, it was held that Government has an affirmative duty to eliminate inequalities and to provide opportunities for the exercise of human rights and claims. Fundamental rights as enacted in Part III of the Constitution are, by and large, essentially negative in character.44 In Indira Sawhney’s case, Justice Sawant concurring with the majority observed that to bring about equality between the unequals, it was necessary to adopt positive measures to abolish inequality. The equalising measures would have to use the same tools by which inequality was introduced and perpetuated. Otherwise, equalisation will not be of the unequals.

44 AIR 1976 SC 490.
These equalising measures would be validated by Article 14 which guarantees equality before law.\textsuperscript{45}

Therefore, the equality contemplated by Article 14 and other cognate Articles like 15(1), 16(1), 29(2), and 38(2)\textsuperscript{46} are secured not only by treating equals equally, but also by treating un-equals unequally. This empowers positive discrimination in favour of the disadvantaged, particularly the Scheduled Castes (SC) and Scheduled Tribes (ST).

In \textbf{E.V. Chinnaiah v. State of A.P.},\textsuperscript{47} the Supreme Court held that, a legislation may not be amenable to challenge on the ground of violation of Article 14 if its intention is to give effect to Articles 15 and 16 or when the differentiation is not unreasonable or arbitrary. Articles 15 and 16 prohibit discriminatory treatment, but not preferential treatment of women, which is a positive measure in their favour. Affirmative action including by way of reservation is enabled by the equality clause in the Constitution.

In \textbf{Dr. Preeti Srivastava v. State of M.P.},\textsuperscript{48} the Five Judge Constitution Bench observed as under:

“Article 15(4), which was added by the Constitution First Amendment of 1951, enables the State to make special provisions for the advancement, inter alia, of Scheduled Castes and Scheduled Tribes, notwithstanding Articles 15(1) and 29(2). The wording of Article 15(4) is similar to that of Article 15(3). Article 15(3) was there from the inception. It enables special provisions being made for women and children notwithstanding Article 15(1) which imposes the mandate of non-discrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) Scheduled Castes and Scheduled Tribes. As a result of the

\textsuperscript{45} AIR 1993 SC 477.
\textsuperscript{46} Article 38 reads as: State to secure a social order for the promotion of welfare of the people. (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.
\textsuperscript{47} AIR 2005 SC 162.
\textsuperscript{48} AIR 1999 SC 2894.
combined operation of these articles, an array of programmes of compensatory or protective discrimination have been pursued by the various States and the Union Government…”

Since every such policy makes a departure from the equality norm, though in a permissible manner, for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society. That is its final constitutional justification. Therefore, programmes and policies of compensatory discrimination under Article 15(4) have to be designed and pursued to achieve this ultimate national interest. At the same time, the programmes and policies cannot be unreasonable or arbitrary, nor can they be executed in a manner which undermines other vital public interests or the general good of all. All public policies, therefore, in this area have to be tested on the anvil of reasonableness and ultimate public good. In the case of Article 16(4) the Constitution-makers explicitly spelt out in Article 335 one such public good which cannot be sacrificed, namely, the necessity of maintaining efficiency in administration.49 Article 15(4) also must be used and policies under it framed in a reasonable manner consistently with the ultimate public interests.

Article 17 of the Constitution abolishes the practice of untouchability.50 Practice of untouchability is an offence and anyone doing so is punishable by law. The Untouchability Offences Act of 1955 (renamed as the Protection of Civil Rights Act in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well. This Article is intended more against private conduct, than against conduct of the State, because, the chances of the State promoting or supporting untouchability is rare.

Article 18 deals with “abolition of titles”.51 Title is something that hangs to one’s name, as an appendage. During the British rule, there was a complaint from the

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49 Article 335 reads as: Claims of Scheduled Castes and Scheduled Tribes to services and posts.- The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

50 Article 17 reads as: Abolition of Untouchability.- “Untouchability” is abolished and its practice in any form is forbidden The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

51 Article 18 reads as: Abolition of titles.- No title, not being a military or academic distinction, shall be conferred by the State No citizen of India shall accept any title from any foreign State No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State No person holding any office of
nationalists that the power to confer titles was being misused by the Government for imperialistic purposes and for corrupting public life. The Constitution seeks to prevent such abuse by prohibiting the State from conferring any title at all. It is to be noted that (a) the ban operates only against the State, (b) the State is not debarred from awarding military or academic distinctions, even though they may be used as titles, (c) the State is not prevented from conferring any distinction or award, say, for social service, which cannot be used as a title, that is, as an appendage to one’s name. Thus the award of Bharat Ratna, Padma Vibhushan, Padma Bhushan or Padma Shri cannot be used by the recipient as a title and does not, accordingly, come within the constitutional prohibition.

4.3.2(ii) Right To Freedoms (Articles 19 to 22):

Article 19(1) of the Constitution reads as under:

**Protection of certain rights regarding freedom of speech etc.-** (1) All citizens shall have the right (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (g) to practise any profession, or to carry on any occupation, trade or business.

Articles 19(2) to 19(6) contain reasonable restrictions on the rights enshrined under Article 19(1).
The inter-relationship between Articles 14, 19, and 21 was examined in *Maneka Gandhi v. Union of India*. Discussing this relationship, it was observed that:

“The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of “personal liberty” and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in R.C. Cooper case, Shambhu Nath Sarkar case and Haradhan Saha case. Now, if a law depriving a person of “personal liberty” and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex-hypothesi it must also be liable to be tested with reference to Article 14.”

In *Minerva Mills Ltd. v. Union of India*, Chandrachud, C.J., observed:

“Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21.”

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This was the first mention of what was later to be termed as the *Golden Triangle*, i.e. Articles 14, 19, and 21. As observed in *Bachan Singh v. State of Punjab*: 58

“There are three Fundamental Rights in the Constitution which are of prime importance and which breathe vitality in the concept of the rule of law. They are Articles 14, 19 and 21 which, in the words of Chandrachud, C.J. in *Minerva Mills case* constitute a golden triangle.”

Justice Hansaria very aptly observed in *T.R. Kothandaraman v. T.N. Water Supply & Drainage Board* 59 that:

“The golden triangle of our Constitution is composed of Articles 14, 19 and 21. Incorporation of such a trinity in our paramount parchment is for the purpose of paving such a path for the people of India which may see them close to the trinity of liberty, equality and fraternity.”

It is apparent that the right to information was not spelt out as a separate right under Article 19. However, it is now well-settled in a catena of decisions that the right to freedom of speech and expression enshrined in Article 19(1) (a) includes the right to information.

In *State of U.P. v. Raj Narain*, 60 it was observed that the right to know is derived from the concept of freedom of speech. It was held that:

“In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.”

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59 (1994) 6 SCC 282.
60 (1975) 4 SCC 428. Emphasis supplied.
This was further confirmed in **S.P. Gupta v. Union of India**,\(^6\) where it was held that:

“The concept of an open Government is the *direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a).* Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands.”

In consonance with its duty, Parliament enacted the **Right to Information Act** in 2005. The Preamble of the Act reads as under:

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.”

Further there is no specific provision in the Constitution guaranteeing *freedom of press*. However, freedom of press is part of freedom of expression under Article 19 (1) (a).\(^6\) Freedom of expression means the freedom to express not only one’s own views but also the views of others and, by any means, including print. This freedom like other freedoms under Article 19 (1) is subject to certain restrictions stated under clause 2 of Article 19.

**Article 20** of the Constitution\(^\^\) is with respect to protection in respect of conviction of an offence. It imposes limitations on the powers of the State, which it otherwise possesses under Article 21, to enact and enforce criminal laws.

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\(^6\) AIR 1981 SC. Emphasis supplied. The law in this regard has been developed over the years, in **Union of India v. Association for Democratic Reforms**, *(2002)* 5 SCC 294 and in **PUCL v. Union of India**, *(2003)* 4 SCC 399.


\(^6\) Article 20 reads as: **Protection in respect of conviction for offences**.- (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected 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. (2) No person shall be
The scope of Article 20 (1) came up for consideration before the Supreme Court in *Kalpnath Rai v. State*64 in connection with the Terrorist and Disruptive Activities Prevention Act, 1987 (TADA), which was amended in 1993. By the said amendment, all ingredients would have to be satisfied against the accused for being convicted as a terrorist under Section 3(5) of the Act. It was held that:

“Sub-section 3(5) was inserted in TADA by Act 43 of 1993 which came into force on 23-5-1993. Under Article 20(1) of the Constitution “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence”. So it is not enough that one was member of a terrorists’ gang before 23-5-1993.”

Article 20(2) is aimed at protecting an individual from being subjected to prosecution and conviction for the same offence more than once.65

Article 20(3), which protects an individual against self-incrimination, has been termed a ‘humane’ provision. It gives protection to a person accused of an offence against compulsion to be a witness against himself. This is in consonance with the expression ‘according to procedure established by law’, enshrined in Article 21, within the ambit of which just and fair trials lie.66

**Article 21** of the Constitution reads as under:

“Protection of life and personal liberty.- No person shall be deprived of his life or personal liberty except according to procedure established by law.”

From the wording of the Article 21, it is obvious that the language is negative. However, it confers on every person the fundamental right to life and personal liberty. It is the most fundamental of human rights, and recognizes the sanctity of human life.

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64 (1997) 8 SCC 732.
Initially, the Supreme Court adopted a circumscribed approach to Article 21. In *A.K. Gopalan v. State of Madras,* the majority held that Article 22 was a self-contained code, and that the law of preventive detention did not have to satisfy the requirements of Articles 14, 19, and 21. A narrow interpretation was placed on the words “personal liberty”, to confine the protection of Article 21 to freedom of the person against unlawful detention. This judgment led to a theory wherein the freedoms under Articles 19, 21, 22, and 31 were considered to be exclusive. The basis for this was the thought process that certain Articles in the Constitution exclusively deal with specific matters and in determining if an infringement of fundamental rights had occurred, the object and form of State action alone needed to be considered, and the effect of the law on the fundamental rights of the individuals in general would be ignored.

This was overruled in, *R.C. Cooper v. Union of India,* (1970), where it was held that even where a person is detained in accordance with the procedure prescribed by law, as mandated be Article 21, the protection conferred by the various clauses of Article 19(1) does not cease to be available to him and the law authorising such detention has to satisfy the test of the applicable freedoms under Article 19(1).

The concept of “personal liberty” gradually began to be liberally interpreted by the judiciary. The Supreme Court of India in *Kharak Singh v. State of UP* held that, with respect to ‘personal liberty’, that “We feel unable to hold that the term was intended to bear only this narrow interpretation but on the other hand consider that “personal liberty” is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the “personal liberties” of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, “personal liberty” in Article 21 takes in and comprises the residue.”

In the case of *Maneka Gandhi v. Union of India,* the Supreme Court examined the judgments in *A.K. Gopalan*’s case, *R.C. Cooper*’s case, and *Kharak Singh*’s case in detail and observed that:

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67 AIR 1950 SC 27. The Bench consisted of H.J. Kania CJ., B.K. Mukherji, Mehr Chand Mahajan, M. Patanjali Sastry, Sudhi Ranjan Das and S. Murtaza Fazal Ali JJ.
69 AIR 1978 SC 597.
“The expression “personal liberty” in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.”

It was further observed that any law interfering with personal liberty of a person must satisfy a triple test:

a) it must prescribe a procedure;

b) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and

c) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorising interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.

The Supreme Court in a catena of decisions has expanded the scope of Article 21 and held that the following rights fall within the ambit of Article 21. They are:

1) Right to privacy;

2) Right to education up to 14 years of age;

3) Right to pollution free environment;

4) Right to live with human dignity;

5) Right to health;

6) Right to emergency medical aid;

7) Right to free legal aid;

8) Right to fair trial;

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72 M.C. Mehta v. Union of India, AIR 1987 SC 1086.
73 Francis Coralie Mullin v. Administrator Union Territory of India, AIR 1981 SC 746.
75 Paramanand Katara v. Union of India, AIR 1989 SC 2039.
9) Right to shelter;\textsuperscript{78}  
10) Right against solitary confinement;\textsuperscript{79}  
11) Right to speedy trial;\textsuperscript{80}  
12) Right to go abroad;\textsuperscript{81}  
13) Right to compensation against unlawful detention/violation of fundamental rights.\textsuperscript{82}

Article 22 provides for protection against arrest and detention in certain cases.\textsuperscript{83} It is not a complete code of constitutional safeguards with respect to preventive detention.\textsuperscript{84}

The reasoning behind the inclusion of Article 22 in Part III of the Constitution was discussed in \textit{Pankaj Kumar Chakrabarty v. State of W.B.},\textsuperscript{85} wherein it was held that:

\begin{itemize}
  \item [\textsuperscript{77}] Police Commissioner, Delhi v. Registrar Delhi High Court, \textit{AIR} 1997 SC 95
  \item [\textsuperscript{78}] U.P. Avas Avam Vikas Parishad v. Friends Co-operative Housing Society Ltd., \textit{AIR} 1996 SC 114
  \item [\textsuperscript{79}] Sunil Batra v Delhi Administration, \textit{AIR} 1978 SC 167.
  \item [\textsuperscript{80}] Common Cause laws v. Union of India, \textit{AIR} 1996 SC 1619.
  \item [\textsuperscript{81}] Satwant Singh Sawhney v. D. Ramaratnam, \textit{AIR} 1961 SC 1836
  \item [\textsuperscript{83}] Article 22 reads as: Protection against arrest and detention in certain cases.- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate. (3) Nothing in clauses ( 1 ) and ( 2 ) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention. (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are 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: (5) 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. (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose. (7) Parliament may by law prescribe- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause ( 4 ); (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and (c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4). Preventive detention means detention of a person without trial. Its object is to prevent a person from doing something wrong which comes within any of the grounds specified by the Constitution, like, acts prejudicial to the security of the State, public order, maintenance of security of India.
“Article 21 guarantees protection against deprivation of personal liberty save that in accordance with the procedure established by law. At first sight it would appear somewhat strange that the Constitution should make provisions relating to preventive detention immediately next after Article 21. That appears to have been done because the Constitution recognises the necessity of preventive detention on extraordinary occasions when control over public order, security of the country etc. are in danger of a breakdown. But while recognising the need of preventive detention without recourse to the normal procedure according to law, it provides at the same time certain restrictions on the power of detention both legislative and executive which it considers as minimum safeguards to ensure that the power of such detention is not illegitimately or arbitrarily used. The power of preventive detention is thus acquiesced in by the Constitution as a necessary evil and is, therefore, hedged in by diverse procedural safeguards to minimise as much as possible the danger of its misuse. It is for this reason that Article 22 has been given a place in the Chapter on guaranteed rights.”

Justice Sawant in Addl. Secy. to the Govt. of India v. Alka Subhash Gadia made it clear that Article 22 had to be tested on the anvil of Articles 14, 19, and 21. It was stated as under:

“After the decision of this Court in Rustom Cavasjee Cooper v. Union of India which is otherwise known as the Bank Nationalisation case and in Maneka Gandhi v. Union of India, it is now well settled (if ever there was any doubt) that the fundamental rights under Chapter III of the Constitution are to be read as a part of an integrated scheme. They are not exclusive of each other but operate, and are, subject to each other. The action complained of must satisfy the tests of all the said rights so far as they are applicable to individual cases. It is not enough, that it satisfies the requirements of any one of them. In particular, it is well settled that Article 22(5) is not the sole repository of the detenu's rights. His rights are also governed by the other fundamental rights

85 (1969) 3 SCC 400.
86 1992 Supp (1) SCC 496
particularly those enshrined in Articles 14, 19 and 21. Article 14 guarantees to all persons equality before the law and equal protection of the laws. Articles 19, 20, 21 and 22 are grouped under the broad heading “Right to Freedom”. Article 19 is breached if any citizen is deprived whether, temporarily or permanently, of any of the rights which are mentioned therein. Although Article 19 confers freedoms mentioned therein only on citizens, neither Article 14 nor Articles 20, 21 and 22 are confined to the protection of freedoms of citizens only. They extend the relevant freedoms even to non-citizens. The freedoms given to the citizen by Article 19 are, as if, further sought to be guaranteed by Articles 20, 21 and 22 in particular. Hence while examining action resulting in the deprivation of the liberty of any person, the limitations on such action imposed by the other fundamental rights where and to the extent applicable have to be borne in mind.”

It was further observed that:

“The provisions of Articles 21 and 22 read together, therefore, make it clear that a person can be deprived of his life or personal liberty according to procedure established by law, and if the law made for the purpose is valid, the person who is deprived of his life or liberty has to challenge his arrest or detention, as the case may be, according to the provisions of the law under which he is arrested or detained. This proposition is valid both for punitive and preventive detention. The difference between them is made by the limitations placed by sub-clauses (1) and (2) on the one hand and sub-clauses (4) to (7) on the other of Article 22, to which we have already referred above. What is necessary to remember for our purpose is that the Constitution permits both punitive and preventive detention provided it is according to procedure established by law made for the purpose and if both the law and the procedure laid down by it are valid.”87

87 Ibid.
4.3.2(iii) Right to Education:

Article 21-A, which reads as under:

“Right to Education.- The State shall provide free and compulsory education to all children of 6 to 14 years in such manner as the State, may by law determine.”

This right being non self executory, the Government of India enacted The Right of Children to Free and Compulsory Education Act, 2009 which came into force on 1st April 2010. The guarantee of the right to education to children of 6 to 14 years of age free of cost coupled with fundamental duty on parents to provide opportunities for education to their child will have impact on the menace of child labour.

4.3.2(iv) Rights Against Exploitation (Articles 23–24):

Article 23 enacts a very important fundamental right in the following terms:

Prohibition of traffic in human beings and forced labour:

1. Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

2. Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

This provision has been clearly designed to protect the individual not only against the State, but also against private individuals. It prohibits not only forced labour, but also ‘traffic in human beings’, which includes trafficking women for immoral or other purposes. The reasoning behind the inclusion of this Article in Part III is examined in People's Union for Democratic Rights v. Union of India. The Supreme Court observed that: “The reason for enacting this provision in the Chapter on Fundamental Rights is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted. The Constitution-makers, when

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88 Inserted by the Constitution 86th Amendment Act, 2002.
they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to the common man. Large masses of people, bled white by wellnigh two centuries of foreign rule, were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status-oriented hierarchical society with little respect for the dignity of the individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing freedom to the country but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher levels of achievement and bringing about their total advancement and welfare. Political freedom had no meaning unless it was accompanied by social and economic freedom and it was therefore necessary to carry forward the social and economic revolution with a view to creating socio-economic conditions in which every one would be able to enjoy basic human rights and participate in the fruits of freedom and liberty in an egalitarian social and economic framework. It was with this end in view that the Constitution-makers enacted the directive principles of state policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order. Now there was one feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large parts of the country. This evil was the relic of a feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order which “we the people of India” were determined to build and constituted a gross and most revolting denial of basic human dignity. It was therefore necessary to eradicate this pernicious practice and wipe it out altogether from the national scene and this had to be done immediately because with the advent of freedom, such practice could not be allowed to continue to blight the national life any longer. Obviously, it would not have been enough merely to include abolition of forced labour in the directive principles of state policy, because then the outlawing of this practice would not have been legally enforceable and it would have continued to plague our national life in violation of the basic constitutional norms and values until some appropriate legislation could be brought by the legislature forbidding such practice. The Constitution-makers therefore decided to give teeth to their resolve to obliterate and
wipe out this evil practice by enacting constitutional prohibition against it in the Chapter on Fundamental Rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force. 

_This is the reason why the provision enacted in Article 23 was included in the Chapter on Fundamental Rights._

The prohibition against “traffic in human beings and begar and other similar forms of forced labour” is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice.” The Court further went on to elaborate on ‘forced labour’, and stated that: “Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as “force” and if labour or service is compelled as a result of such “force”, it would be “forced labour.”

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The rights of the ‘fallen women and their children’ were very succinctly traced in _Gaurav Jain v. Union of India_ 91 as under: “Let us, therefore, first consider the rights of the fallen women and their children given by the Constitution and the Directive Principles, the Human Rights and the Convention on the Right of Child, before considering the social ignominy attached to them and before looking for the remedy to relieve them from the agony and make them equal participants in a normal social order. Article 14 provides for equality in general. Article 21 guarantees right to life and liberty. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, or of any of them. Article 15(3) provides for special protective discrimination in favour of women and child relieving them from the moribund of formal equality. It states that “nothing in this article shall prevent the State from making any special provision for women and children”. Article 16(1) covers equality of opportunity in matters of public employment. Article 23 prohibits traffic in human beings and forced labour and makes it punishable under Suppression of Immoral Traffic in Women and Girls Act, 1956 which was renamed in 1990 as the Immoral Traffic (Prevention) Act (for short the “ITP Act”). Article 24 prohibits employment of children in any hazardous employment or in any factory or mine unsuited to their age. Article 38 enjoins the State to secure and protect, as effectively as it may, a social order in which justice — social, economic and political, shall

90 Emphasis supplied.

91 (1997) 8 SCC 114.
inform all the institutions of national life. It enjoins, by appropriate statutory or
administrative actions, that the State should minimise the inequalities in status and
provide facilities and opportunities to make equal results. Article 39(f) provides that
children should be given opportunities and facilities to develop in a healthy manner
and in conditions of freedom and dignity; and that childhood and youth are protected
against exploitation and against moral and material abandonment. Article 46 directs
the State to promote the educational and economic interests of the women and weaker
sections of the people and to protect them from social injustice and all forms of
exploitation. Article 45 makes provision for free and compulsory education for
children, which is now well settled as a fundamental right to children up to the age of
14 years; it also mandates that facilities and opportunities for higher educational
avenues be provided to them. Social justice and economic empowerment are firmly
held as fundamental rights of every citizen.”

**Article 24** prohibits the employment of children in factories, etc., and reads as
follows:

“No child below the age of fourteen years shall be employed to work
in any factory or mine or engaged in any other hazardous employment”

In *M.C. Mehta v. State of Tamil Nadu*, the Supreme Court took judicial
notice of widespread child labour in Sivakasi town in Tamil Nadu State, where the
provisions of Article 24 were being violated. It was held that abolition of child labour
is definitely a matter of great public concern and importance. Poverty was held to be
the driving force behind the evil of child labour.

This was affirmed in *Bandhua Mukti Morcha v. Union of India*. Certain
directions were given in this case to ameliorate the problems faced by children, and to
eradicat child labour: “We are of the view that a direction needs to be given that the
Government of India should convene a meeting of the Ministers concerned of the
respective State Governments and their Principal Secretaries holding Departments
concerned, to evolve the principles of policies for progressive elimination of
employment of the children below the age of 14 years in all employments governed
by the respective enactments mentioned in M.C. Mehta case; to evolve such steps
consistent with the scheme laid down in M.C. Mehta case, to provide (1) compulsory

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93 (1997) 10 SCC 549.
education to all children either by the industries themselves or in coordination with it by the State Government to the children employed in the factories, mine or any other industry, organised or unorganised labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of this Court. The Central Government is directed to convene the meeting within two months from the date of receipt of the order. After evolving the principles, a copy thereof is directed to be forwarded to the Registry of this Court.”

4.3.2(v) Freedom of Religion (Articles 25 to 28):

Right to freedom of religion, covered in Articles 25, 26, 27, and 28, provides religious freedom to all citizens of India. The objective of this right is to sustain the principle of secularism in India. All religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.

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94 Article 25 reads as: **Freedom of conscience and free profession, practice and propagation of religion.** - (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the opening of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I - The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II - In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

95 Article 26 reads as: **Freedom to manage religious affairs.** - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.

96 Article 27 reads as: **Freedom as to payment of taxes for promotion of any particular religion.** - No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religions denomination.

97 Article 28 reads as: **Freedom as to attendance at religious instruction or religious worship in certain educational institutions.** - (1) No religion instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto Cultural and Educational Rights.
The reason behind the enactment of Articles 25 to 30 of the Constitution was discussed at length in the case of **Bal Patil v. Union of India**. Justice Dharmadhikari observed that: “It is against this background of partition that at the time of giving final shape to the Constitution, it was felt necessary to allay the apprehensions and fears in the minds of Muslims and other religious communities by providing to them a special guarantee and protection of their religious, cultural and educational rights. Such protection was found necessary to maintain the unity and integrity of free India because even after partition of India communities like Muslims and Christians in greater numbers living in different parts of India opted to continue to live in India as children of its soil…It is with the above aim in view that the framers of the Constitution engrafted group of Articles 25 to 30 in the Constitution. The minorities initially recognised were based on religion and on a national level e.g. Muslims, Christians, Anglo-Indians and Parsis. Muslims constituted the largest religious minority because the Mughal period of rule in India was the longest followed by the British Rule during which many Indians had adopted Muslim and Christian religions. … India is a world in miniature. The group of Articles 25 to 30 of the Constitution, as the historical background of partition of India shows, was only to give a guarantee of security to the identified minorities and thus to maintain the integrity of the country. It was not in the contemplation of the framers of the Constitution to add to the list of religious minorities. The Constitution through all its organs is committed to protect religious, cultural and educational rights of all. Articles 25 to 30 guarantee cultural and religious freedoms to both majority and minority groups. Ideal of a democratic society, which has adopted right to equality as its fundamental creed, should be elimination of majority and minority and so-called forward and backward classes.”

In **T.M.A. Pai Foundation v. State of Karnataka**, an eleven judge Bench of the Supreme Court considered the entire scope of Articles 25 to 30 of the Constitution. On Article 25, 26, 27 and 28 it was observed that:

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98 (2005) 6 SCC 690.
“Article 25 gives to all persons the freedom of conscience and the right to freely profess, practise and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions of Part III of the Constitution. This would mean that the right given to a person under Article 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is not in consonance with public order, morality and health…. Article 25(2) gives specific power to the State to make any law regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice as provided by sub-clause (a) of Article 25(2). This is a further curtailment of the right to profess, practise and propagate religion conferred on the persons under Article 25(1). Article 25 (2) (a) covers only a limited area associated with religious practice, in respect of which a law can be made…The freedom to manage religious affairs is provided by Article 26. This article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality and health. ….. Therefore, while Article 25(1) grants the freedom of conscience and the right to profess, practise and propagate religion, Article 26 can be said to be complementary to it, and provides for every religious denomination, or any section thereof, to exercise the rights mentioned therein. This is because Article 26 does not deal with the right of an individual, but is confined to a religious denomination. Article 26 refers to a denomination of any religion, whether it is a majority or a minority religion, just as Article 25 refers to all persons, whether they belong to the majority or a minority religion. Article 26 gives the right to majority religious denominations, as well as to minority religious denominations, to exercise the rights contained therein. Secularism being one of the important basic features of our Constitution, Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the payment of expenses for the promotion and maintenance of any particular religion or religious denomination. The manner in which the article has been framed does not prohibit the State from enacting a law to incur expenses for the promotion or maintenance of any particular religion or religious denomination, but specifies that by that law, no person can be compelled to pay any tax, the proceeds of which are to be so utilized. In other words, if there is a tax for the promotion or
maintenance of any particular religion or religious denomination, no person can be compelled to pay any such tax. Article 28(1) prohibits any educational institution, which is wholly maintained out of State funds, to provide for religious instruction. Moral education dissociated from any denominational doctrine is not prohibited; but, as the State is intended to be secular, an educational institution wholly maintained out of State funds cannot impart or provide for any religious instruction. The exception to Article 28(1) is contained in Article 28(2). Article 28(2) deals with cases where, by an endowment or trust, an institution is established, and the terms of the endowment or the trust require the imparting of religious instruction, and where that institution is administered by the State. In such a case, the prohibition contained in Article 28(1) does not apply. If the administration of such an institution is voluntarily given to the Government, or the Government, for a good reason and in accordance with law, assumes or takes over the management of that institution, say on account of maladministration, then the Government, on assuming the administration of the institution, would be obliged to continue with the imparting of religious instruction as provided by the endowment or the trust. While Article 28(1) and Article 28(2) relate to institutions that are wholly maintained out of State funds, Article 28(3) deals with an educational institution that is recognized by the State or receives aid out of State funds. Article 28(3) gives the person attending any educational institution the right not to take part in any religious instruction, which may be imparted by an institution recognized by the State, or receiving aid from the State. Such a person also has the right not to attend any religious worship that may be conducted in such an institution, or in any premises attached thereto, unless such a person, or if he/she is a minor, his/her guardian, has given his/her consent. The reading of Article 28(3) clearly shows that no person attending an educational institution can be required to take part in any religious instruction or any religious worship, unless the person or his/her guardian has given his/her consent thereto, in a case where the educational institution has been recognized by the State or receives aid out of its funds."

It has repeatedly been held that the constitutional scheme guarantees equality in the matter of religion. The majority of a 5-Judge Bench in the case of Dr. M. Ismail Faruqui v. Union of India,100 held that:

100 (1994) 6 SCC 360.
“It is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasising that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 to 28 emphasises this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touchstone of the Constitution. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.”

The Supreme Court in Commissioner of Police v. Acharya Jagadishwarananda Avadhuta,¹⁰¹ has extensively examined the scope and ambit of Articles 25 and 26. The Supreme Court also touched upon the freedom of religion with respect to Article 14, and held that: “If one religious denomination is allowed to carry on its religious practice but another religious denomination is restrained from carrying on religious practice and almost similar religious practices, the same makes out a clear case of discrimination in violation of the principles of Article 14 of the Constitution.”

A very interesting question of law arose in Sri Venkataramana Devaru v. State of Mysore,¹⁰² as to whether the right of a religious denomination to manage its own affairs in matters of religion guaranteed under Article 26(b) is subject to, and can be controlled by, a law protected by Article 25(2) (b), by throwing open a Hindu public temple to all classes and sections of Hindus. The Supreme Court observed that the two provisions were of equal authority. Following the rule of harmonious construction, it was held that Article 26(b) must be read subject to Article 25(2)(b). The relevant portion of the judgment reads as under: “The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible,

¹⁰² AIR 1958 SC 255.
effect could be given to both. This is what is known as the rule of harmonious
construction. Applying this rule, if the contention of the appellants is to be accepted,
then Article 25(2) (b) will become wholly nugatory in its application to
denominational temples, though, as stated above, the language of that Article includes
them. On the other hand, if the contention of the respondents is accepted, then full
effect can be given to Article 26(b) in all matters of religion, subject only to this that
as regards one aspect of them, entry into a temple for worship, the rights declared
under Article 25(2)(b) will prevail. While, in the former case, Article 25(2) (b) will be
put wholly out of operation, in the latter, effect can be given to both that provision and
Article 26(b). We must accordingly hold that Article 26(b) must be read subject to
Article 25 (2) (b).”

4.3.2(vi) Cultural Rights (Articles 29 and 30):

Article 29 reads as: “Protection of interests of minorities:

1) Any section of the citizens residing in the territory of India or any part thereof
having a distinct language, script or culture of its own shall have the right to
conserve the same.

2) No citizen shall be denied admission into any educational institution
maintained by the State or receiving aid out of State funds on grounds only of
religion, race, caste, language or any of them.

Article 30 reads as: “Right of minorities to establish and administer educational
institutions:

1) All minorities, whether based on religion or language, shall have the right to
establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property
of an educational institution established and administered by a minority, referred
to in clause (1), the State shall ensure that the amount fixed by or determined
under such law for the acquisition of such property is such as would not restrict or
abrogate the right guaranteed under that clause.

2) The State shall not, in granting aid to educational institutions, discriminate
against any educational institution on the ground that it is under the management
of a minority, whether based on religion or language.
Article 30 (1) recognizes only two classes of minorities—one based on religion and the other on the basis of language. It is a positive right that guarantees right to establish and administer educational institution of their choice. Article 30 (2) is a prohibition against discrimination by the State. In granting aid to educational institutions, the State shall not discriminate against institutions managed by any minority. Hence, minority institutions will be entitled to State aid in the same way as other institutions. Where aid is denied on the ground that the educational institution is under the management of a minority, then such a denial would be invalid. Also, the receipt of aid cannot be a reason for altering the nature or character of the recipient institution. Article 30(2) recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid.

The Supreme Court, in Ahmedabad St. Xavier’s College Society v. State of Gujarat,\(^\text{103}\) considered the scope and ambit of the rights of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice under Article 30(1) of the Constitution. In dealing with this aspect, A.N. Ray, C.J., observed as follows: “Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality.”

Elaborating on the meaning and intent of Article 30, the learned Chief Justice further observed as follows:

“The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to

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develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.”

While advocating that provisions of the Constitution should be construed according to the liberal, generous and sympathetic approach, and after considering the principles which could be discerned by him from the earlier decisions of the Court, Justice H.R. Khanna observed as follows:

“The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution. The same generous, liberal and sympathetic approach should weigh with the courts in construing Articles 29 and 30 as marked the deliberations of the Constitution-makers in drafting those articles and making them part of the fundamental rights. The safeguarding of the interest of the minorities amongst sections of population is as important as the protection of the interest amongst individuals of persons who are below the age of majority or are otherwise suffering from some kind of infirmity. The Constitution and the laws made by civilized nations, therefore, generally contain provisions for the protection of those interests. It can, indeed, be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression.”

In *T.M.A. Pai Foundation v. State of Karnataka*, an eleven judge Bench of the Supreme Court considered the entire scope of Articles 25 to 30 of the Constitution. On Articles 29 and 30, it observed that:

“Articles 29 and 30 are a group of Articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens residing in India or any part thereof, and having a distinct language, script or culture of its own, to conserve the same. Article 29(1) does not refer to any religion, even though the marginal note of the article mentions the interests of minorities. Article 29(1) essentially refers to sections of citizens who have a distinct language, script or culture, even though their religion may not be the same. The common thread that runs through Article 29(1) is language, script or culture, and not religion. For example, if in any part of the country, there is a section of society that has a distinct language, they are entitled to conserve the same, even though the persons having that language may profess different religions. Article 29(1) gives the right to all sections of citizens, whether they are in a minority or the majority religion, to conserve their language, script or culture. In the exercise of this right to conserve the language, script or culture, that section of the society can set up educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant to the right conferred by Article 30. The right under Article 30 is not absolute. Article 29(2) provides that, where any educational institution is maintained by the State or receives aid out of State funds, no citizen shall be denied admission on the grounds only of religion, race, caste, language or any of them. The use of the expression “any educational institution” in Article 29(2) would (*sic* not) refer to any educational institution established by anyone, but which is maintained by the State or receives aid out of State funds. In other words, on a plain reading, State-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot

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deny admission to a citizen on the grounds only of religion, race, caste or language. The right of the minorities to establish and administer educational institutions is provided for by Article 30(1). To some extent, Article 26(1)(a) and Article 30(1) overlap, insofar as they relate to the establishment of educational institutions; but whereas Article 26 gives the right both to the majority as well as minority communities to establish and maintain institutions for charitable purposes, which would, *inter alia*, include educational institutions, Article 30(1) refers to the right of minorities to establish and maintain educational institutions of their choice. Another difference between Article 26 and Article 30 is that whereas Article 26 refers only to religious denominations, Article 30 contains the right of religious as well as linguistic minorities to establish and administer educational institutions of their choice.

After tracing the evolution of Articles 25 to 30, and after considering the entire case-law on the subject, an Eleven Judge Bench observed that:

“As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. **Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country.** Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. Both Articles 29 and 30 form a part of the fundamental rights chapter in Part III of the Constitution. Article 30 is confined to minorities, be it religious or linguistic, and unlike Article 29(1), the
right available under the said article cannot be availed by any section of citizens. The main distinction between Article 29(1) and Article 30(1) is that in the former, the right is confined to conservation of language, script or culture. As was observed in Father W. Proost case the right given by Article 29(1) is fortified by Article 30(1), insofar as minorities are concerned. In St. Xavier's College case it was held that the right to establish an educational institution is not confined to conservation of language, script or culture. When constitutional provisions are interpreted, it has to be borne in mind that the interpretation should be such as to further the object of their incorporation. They cannot be read in isolation and have to be read harmoniously to provide meaning and purpose. They cannot be interpreted in a manner that renders another provision redundant. If necessary, a purposive and harmonious interpretation should be given.106

In Islamic Academy of Education v. State of Karnataka,107 the Supreme Court held that the right of the minorities is not absolute and is subject to regulation. Thus reasonable restrictions can be imposed for protecting the larger interest of the State. While imposing the restrictions, the State shall be cautious not to destroy the minority character of the institution.108

The Supreme Court, in P.A. Inamdar v. State of Maharashtra,109 considered the inter-relationship between Articles 19 (1) (g), 29 (2) and 30 (1) of the Constitution. It was observed that the right to establish an educational institution, for charity or for profit, being an occupation, was protected by Article 19 (1) (g). Notwithstanding the fact that the right of a minority to establish and administer an educational institution would be protected by Article 19 (1) (g) yet the founding fathers of the Constitution felt the need of enacting Article 30, which was intended to instill confidence in minorities against executive/legislative encroachment.

107 AIR 2003 SC 3724. The bench consisted of V.N. Khare CJ., S.N. Variawa, K.G. Balakrishnan, Dr. Arijit Pasayat and S.B. Sinha JJ.
An important distinction was drawn between elementary and higher education, and the Court in *Inamdar* observed that: “Educational institutions imparting higher education i.e. graduate level and above and in particular specialised education such as technical or professional, constitute a separate class. While embarking upon resolving issues of constitutional significance, where the letter of the Constitution is not clear, we have to keep in view the spirit of the Constitution, as spelt out by its entire scheme. Education aimed at imparting professional or technical qualifications stands on a different footing from other educational instruction. Apart from other provisions, Article 19(6) is a clear indicator and so are clauses (h) and (j) of Article 51-A. Education up to the undergraduate level aims at imparting knowledge just to enrich the mind and shape the personality of a student. Graduate-level study is a doorway to admissions in educational institutions imparting professional or technical or other higher education and, therefore, at that level, the considerations akin to those relevant for professional or technical educational institutions step in and become relevant. This is in the national interest and strengthening the national wealth, education included. This Court recognized that Articles 29 and 30 confer absolutely unfettered rights to minorities to determine the manner of instruction and administration in their educational institutions. A minority educational institution may choose not to take any aid from the State and may also not seek any recognition or affiliation. It may be imparting such instructions and may have students learning such knowledge that do not stand in need of any recognition. Such institutions would be those where instructions are imparted for the sake of instructions and learning is only for the sake of learning and acquiring knowledge. Obviously, such institutions would fall in the category of those who would exercise their right under the protection and privilege conferred by Article 30(1) “to their hearts’ content” unhampered by any restrictions excepting those which are in national interest based on considerations such as public safety, national security and national integrity or are aimed at preventing exploitation of students or the teaching community. Such institutions cannot indulge in any activity which is violative of any law of the land.”
4.3.2(vii) Right to Constitutional Remedies (Articles 32):

Article 32 reads as: “Remedies for enforcement of rights conferred by this Part:

1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Article 32 is described by the Constitution as a Right to Constitutional Remedies for the enforcement of fundamental rights enshrined under Part III and the right to bring such proceeding before the Supreme Court is itself a fundamental right in Part III. Article 32 is thus the cornerstone of the entire edifice set up by the Constitution. Commenting on this Article, in the Constituent Assembly, Dr.B.R. Ambedkar said-

“If I was asked to name any particular article of the Constitution as the most important- an article without which this Constitution would be a

\[110\] Article 226 of the Constitution also empowers the High Courts to issue certain writs.- (1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III (Fundamental Rights)and for any other purpose. (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
nullity- I would not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it."\textsuperscript{111}

The Supreme Court is thus constituted as the protector and guarantor of fundamental rights and accordingly it cannot refuse to entertain an application for the enforcement of fundamental right on technical grounds, like, applicant has alternative remedy under Article 226 or other ordinary laws. Further, any law that renders Supreme Court’s power to enforce fundamental right under Article 32 is void.\textsuperscript{112}

4.4 Limitations on the Enforcement of Fundamental Rights:

1. **Parliament’s Power to Modify Fundamental Rights:**\textsuperscript{113} Parliament shall have the power to modify the application of fundamental rights to the members of Armed Forces, Police Forces or intelligence organizations so as to ensure proper discharge of their duties and maintenance of discipline amongst them.

2. **Parliament’s Power to Restrict Fundamental Rights:**\textsuperscript{114} When martial law has been in force in any area, Parliament may, by law, indemnify any person in the service of the Union or a State for any act done by him in connection with the maintenance or restoration of order in such area or validate any sentence passed or act done while martial law was in force.

3. **Suspension of Fundamental Rights during Proclamation of Emergency:** The fundamental rights guaranteed by the Constitution will remain suspended, while a Proclamation of Emergency is made by the President under Article 352. The effect of such proclamation in this behalf is twofold, (a) as soon as the Proclamation is made, the State shall be freed from the limitations


\textsuperscript{113} Article 33 reads as: \textit{Power of Parliament to modify the rights conferred by this Part in their application etc.-} Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, (a) the members of the Armed Forces; or (b) the members of the Forces charged with the maintenance of public order; or (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

\textsuperscript{114} Article 34 reads as: \textit{Restriction on rights conferred by this Part while martial law is in force in any area.} - Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.
imposed by Article 19. This means that the legislature shall be competent to make any law and the Executive shall be at liberty to take any action, even though it contravenes or restricts the right of freedom of speech and expression, assembly, association, movement, residence, profession or occupation. The citizens will have no remedy for violation of rights guaranteed under Article 19 as long as the Proclamation is in operation.\(^{115}\) (b) the other consequence depends on the issue of a further Order by the President. Where the proclamation of emergency is in operation, the President may by Order declare that the right to move a court for the enforcement of any of the fundamental rights shall remain suspended for the period during which the proclamation remains in force except Articles 20 and 21.\(^{116}\)

\(^{115}\) Article 358 reads as: Suspension of provisions of Article 19 during emergencies.- (1) While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the in competency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect: Provided that where such Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation. (2) Nothing in clause (1) shall apply (a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or (b) to any executive action taken otherwise than under a law containing such a recital.

\(^{116}\) Article 359 reads as: Suspension of the enforcement of the rights conferred by Part III during emergencies.- (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III (except Article 20 and 21) as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order. (1A) While an order made under clause (1) mentioning any of the rights conferred by Part III (except Article 20 and 21) is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions containing in that Part be competent to make or to take, but any law so made shall, to the extent of the in competency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect: Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation. (1B) Nothing in clause (1A) shall apply, (a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or (b) to any executive action taken otherwise than under a law containing such a recital. (2) An order made as aforesaid may extend to the whole or any part of the territory of India: Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the
4.5 Exceptions to Fundamental Rights:

Articles 31A to 31C, introduced by successive amendments, constitute exceptions to the application of the fundamental rights, wholly or partially. Laws providing for acquisition of estates, take over of corporation, etc., have been saved by Article 31A against the challenge on the ground of alleged infringement of Article 14 or 19. By Article 31B, Acts Regulations specified in the Ninth Schedule have been saved against challenge on the ground of inconsistency with, taking away or abridging any fundamental right. However, after the decision in Keshavanand Bharati v. State of Kerala, inclusion in the Ninth Schedule of any law is open to challenge on the ground of damage to the “Basic Structure” of the Constitution. The nine judge Bench in I.R. Coelho (dead) by L.Rs. v. State of Tamil Nadu and others, delivered a unanimous verdict upholding the “Basic Structure Doctrine”, and the authority of the judiciary to review any such laws, which destroy or damage the basic structure as indicated in Article 21 read with Articles 14 and 19 and the principles underlying there under, even if they have been put in Ninth Schedule after 14th April, 1973. Article 31C inserted by the The Constitution (Twenty-Fifth Amendment) Act, 1971, protected laws giving effect to the Directive Principles in Article 39(b) and 31(c) from unconstitutionality on the ground of violation of Articles 14, 19 and 21. By The Constitution (Forty-Second) Amendment Act, 1976, the protection was extended to legislation for implementation of any directive principle. However, the Supreme Court in Minerva Mills Ltd. v. Union of India, held this extension of the protection to be unconstitutional on the ground that such an omnibus withdrawal of legislation from judicial review would undermine the “Basic Structure” of the constitution.

security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation, considers such extension to be necessary. (3) Every order made under clause (1) shall, as soon may be after it is made, be laid before each House of Parliament.

117 AIR 1973 SC 1461.
119 AIR 1980 SC 1789 at para 30, 64, 70 and 80. The Bench consisted of Y.V. Chandrachud CJ., N.L. Unlwalia, P.N. Bhagwati, A.C. Gupta and P.S. Kailasam JJ.
120 However, in Minerva Mills Ltd. v. Union of India, AIR 1986 SC 2030, the Supreme Court declared the above observation in its 1980 judgment to be obiter. The Bench consisted of M.M. Dutt and O. Chinnappa Reddy JJ.
4.6 Fundamental Duties:

The Constitution (Forty-Second) Amendment Act, 1976, inserted new Article 51A (Part IVA) providing for Fundamental Duties of every citizen. This is in consonance with Article 29(1) of UDHR which says “everyone has duties to the community in which alone the free and full development of his personality is possible”. It is indeed surprising to note that until 1976 no provision was made for duties though the traditions and temper of Indian thought through the ages laid much emphasis on duties. Mahatma Gandhi while expressing his opinion on UDHR said:

“The source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed run after rights, they will escape us like will-o-the-whisp, the more we pursue them, the further they will fly. I learned from my illiterate but wise mother that all rights to be deserved and preserved come from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define duties of man and woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be usurpation hardly worth fighting for.”121

Article 51A of the Constitution reads as: It shall be the duty of every citizens of India-

a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

121 B.C. Nirmal, Supra note 1, at 445.
(f) to value and preserve the rich heritage of our composite culture;
(g) to protect and improve the natural environment including forests, lakes, rivers and
wild life, and to have compassion for living creatures;
(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
(i) to safeguard public property and to abjure violence;
(j) to strive towards excellence in all spheres of individual and collective activity so
that the nation constantly rises to higher levels of endeavour and achievement;
k) who is a parent or guardian to provide opportunities for education to his child or
as the case may be, ward between the age of six and fourteen years.

Though Article 51A enlists eleven duties, there is no provision in the
Constitution for direct enforcement of any of these duties and also no sanction to
prevent their violation.

4.7 Other Constitutional Rights:

Apart from fundamental rights in Part III, there are other provisions in the
Constitution that confer rights to the individual. The limitations imposed on the State
by the provisions of the Constitution and these limitations give rise to corresponding
rights to the individual to enforce them in a court of law if the Executive or the
Legislature violates any of them. For example, Article 265 provides that “No tax shall
be levied or collected except by authority of law”. This provision confers a right upon
an individual not to be subjected to arbitrary taxation by the Executive, and if the
Executive seeks to levy a tax without legislative sanction, the aggrieved party may
seek appropriate remedy from the courts. Similarly, Article 300A that provides “No
person shall be deprived of his property save by authority of law” and Article 301
that provides “Subject to the provisions of this Part, trade, commerce and intercourse
throughout the territory of India shall be free”. The breach of limitation imposed will
give rise to an individual a right to seek appropriate relief. Further Article 325
provides that “no person shall be ineligible for inclusion in any such (electoral) roll
for any such (territorial) on grounds only of religion, race, sex or any of them” and
Article 326 provides that every citizen who is not less than eighteen years and is not
disqualified under any law is entitled to be registered as a voter in election.

122 Inserted by The Constitution (Eighty-Sixth) Amendment Act, 2002.
4.8 Non-justiciable Rights under the Constitution: Directive Principles of State Policy:

The Directive Principles of State Policy embodied in Part IV (Articles 36 to 51) is a unique feature of India’s Constitution. They are called as socio-economic rights. Article 37 declares that, though provisions of Part IV are non-justiciable (not enforceable by Court) but are fundamental in the governance of the country and that it shall be the duty of the State to apply these principles in making laws. Thus indicating that these principles are to be used and applied as positive mandate and part and parcel of the human rights provisions of the Constitution.

The Directive Principles in Part IV may be classified as containing:

1. Certain ideals, particularly economic, which according to the farmers of the Constitution, the State should strive for,
2. Certain directions to the Legislature and the Executive intended to show in what manner the State should exercise their legislative and executive powers, and
3. Certain rights of the citizens which shall not be enforceable by the Courts like the “Fundamental Rights”, but which the State shall nevertheless aim at securing, by regulation of its legislative and administrative policy.

The following are the important rights of the citizens engrafted under Part IV of the Constitution:

1) Right to adequate means of livelihood- Article 39(a);
2) Right to equal pay for equal work- Article 39(d);
3) Right against economic exploitation- Article 39(e)-(f);
4) Right of children and young to be protected against exploitation and to opportunities for healthy development, consonant with freedom and dignity- Article 39(f);\(^{123}\)
5) Right to equal opportunity for justice and free legal aid- Article 39A;\(^{124}\)
6) Right to work- Article 41;
7) Right to public assistance in case of unemployment, old age, sickness and other cases of undeserved want- Article 41;
8) Right to humane conditions of work and maternity relief- Article 42;

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\(^{123}\) Substituted by the Constitution (Forty-Fourth) Amendment Act, 1976.
\(^{124}\) Substituted by the Constitution (Forty-Fourth) Amendment Act, 1976.
9) Right to living wage and conditions of work ensuring decent standard of life for workers- Article 43;

10) Right of workers to participate in management of industries- Article 43A;

11) Right of children to free and compulsory education- Article 45;

The philosophy of Part IV is that the State shall strive to direct its policy towards securing these rights. The debate over primacy of civil and political rights v/s economic and social rights took a back seat when the decisions of Supreme Court emphasized the positive aspects of the Directive Principles and have been held to supplement Fundamental Rights for achieving the objective of welfare state. Further, no law that gives effect to the policy of the State in securing any of the Directive Principles can be questioned before any Court though offends Part III of the Constitution, and such legislation is valid unless it offends the basic features of Constitution.

Part IV of the Constitution is unique in the sense that it attempts to balance between Part III rights (civil and political) on the one hand and Part IV rights (socio-economic) on the other, viz., individual rights and social needs. The whole scheme was based on a philosophy postulating a dialogue between individualism and social control.

4.9 The Relevance of International Human Rights Law to India:

International human rights law often provides greater protections to individuals and minority groups than domestic law. For example, the ICCPR offers more protection than the rights guaranteed under Part III of the Constitution or any other law in India. The National Commission to Review the Working of the Constitution (NCRWC) 2002 in its Report at Chapter-3 titled “Enlargement of Fundamental Rights” suggested various amendments to Part-III of the Constitution so

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125 Substituted by the Constitution (Forty-Fourth) Amendment Act, 1976.
127 Article 31C reads as: Saving of laws giving effect to certain directive principles.- Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.
128 Final Report available at www.lawmin.nic.in/ncrwc/finalreport.htm. Visited on 16-05-2012 at 05-00 p.m.
as to bring it in conformity with ICCPR. After taking note of the developments in the area of human rights jurisprudence at the international level, especially the adoption of the ICCPR and ICESCR, the NCRWC recommended the inclusion of following rights under Part-III of the Constitution.

1. In Articles 15 and 16, prohibition against discrimination should be extended to “ethnic or social origin; political or other opinion; property or birth”. (Article 26 of ICCPR and Article 1 of CEDAW)

2. That Article 19(1)(a) and (2) be amended to read as follows: “Article 19(1): All citizens shall have the right - (a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas”. (Article 19 of ICCPR).

3. Article 19(2): “Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign

129 While recommending for “Enlargement of Fundamental Rights”, the NCRWC observed that “Constitutional guarantees for the human rights of our people were one of the persistent demands of our leaders throughout the freedom struggle. By the year 1949, when the Constituent Assembly had completed the drafting of the Fundamental Rights Chapter, it had before it the ‘Universal Declaration of Human Rights, 1948. The International Covenant on Civil and Political Rights, 1966 (ICCPR) broadly referred to the inherent right to life and liberty and the right against arbitrary deprivation of those rights and its various aspects (Articles 6 to 14); privacy, family, etc. (Article 17); freedom of conscience and religion (Article 18); freedom of expression and information (Article 19); Right of peaceful assembly (Article 21); freedom of association (Article 22); rights of minorities (Article 27); etc. The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) broadly referred to the “right to work” and its various aspects (Articles 6 and 7); right to form trade unions for promotion of economic or social interests and the right to strike (Article 8); right to social security and social insurance (Article 9); family, marriage, children and mothers’ rights (Article 10); adequate standard of living, right to food, clothing and housing, freedom from hunger (Article 11); physical and mental health (Article 12); education (Article 13); compulsory primary education (Article 14) and culture (Article 15). The treaty obligations under the covenant enjoined the State Parties to ensure these rights without discrimination and “to take steps” to promote them “to the maximum of its available resources”, with a view to achieving “progressively” the full realisation of these rights. The Directive Principles of State Policy in Part IV of the Constitution are indeed the precursor to economic, social and cultural rights specified in the ICESCR. During the last three decades, a vast number of human rights have found place in new constitutions and bills of rights of more than eighty countries and of supra-national entities. Countries which enacted these new constitutions have had the benefit of all the developments in the human rights jurisprudence which have taken place since 1950. Also, our Supreme Court has by judicial interpretation expanded the scope of the fundamental rights, particularly in relation to article 21, and this has included more civil and political rights which were not explicit in Part III.
States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or preventing the disclosure of information received in confidence except when required in public interest.”.

4. That the existing Article 21 may be re-numbered as clause (1) thereof, and a new clause (2) should be inserted thereafter on the following lines: - “(2) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” (Article 5 and 7 of ICCPR).

5. Right to compensation for being illegally deprived of one’s right to life or liberty- That after clause (2) in Article 21 (as proposed) a new clause (3) should be added on the following lines : “(3) Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation.” (Article 9(5) of ICCPR).

6. Right to travel abroad and return to one’s country: That after Article 21, a new Article, say Article 21-A, should be inserted on the following lines: “21-A. (1) Every person shall have the right to leave the territory of India and every citizen shall have the right to return to India. (2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions in the interests of the sovereignty and integrity of India, friendly relations of India with foreign States and interests of the general public.” (Article 12 of ICCPR).

7. Right to Privacy: That a new Article, namely, Article 21-B, should be inserted on the following lines: “21-B (1) Every person has a right to respect for his private and family life, his home and his correspondence. (2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others. (Article 17 of ICCPR).

8. Right to Work: That a new Article, say Article 21-C, may be added to make it obligatory on the State to bring suitable legislation for ensuring the right to
rural wage employment for a minimum of eighty days in a year.\textsuperscript{130} (Article 6 and 11 of ICESCR).

9. \textit{Preventive Detention:} That the first and second provisos and Explanation to article 22(4) as contained in section 3 of the Constitution (44\textsuperscript{th} Amendment) Act, 1978 should be substituted by the following provisos and the said section 3 of the 1978 Act as amended by the proposed legislation should be brought into force within a period of not exceeding three months: “Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman and the other members of the Board shall be serving judges of any High Court:

Further in clause (7) of Article 22 of the Constitution, in sub-clause (b), for the words “the maximum period”, the words “the maximum period not exceeding six months” shall be substituted.

10. \textit{Rights of Children:} That a new Article may be added as “Article 24A. “Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation.” (Articles of 3 (2) & (3), 9, 19, 39 of CRC).

11. \textit{Right to justice and legal aid:} That after Article 30, the following Article should be added as Article 30A: “Access to Courts and Tribunals and speedy justice (1) Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before an independent court or, where appropriate, another independent and impartial tribunal or forum. (2) The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object.” (Article 2 (3) (b) and 14 of ICCPR).

12. \textit{Right to legal aid:} That Article 39A in Part IV be shifted to Part III as a new Article 30B to read as under: “Equal justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for

\textsuperscript{130} The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 is enacted with the object of ensuring minimum 100 days of work for rural people and it is in force throughout India at present. See the official website http://nrega.nic.in/netnrega/home.aspx visited on 21-05-2011 at 07-30p.m.
securing justice are not denied to any citizen by reason of economic or other disabilities.” (Article 14 (2) (d) of ICCPR).

13. Right to Education: That after the proposed Article 30B as said above, the following Article may be added as Article 30C - “Every child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of the Scheduled Castes and the Scheduled Tribes, until they complete the age of eighteen years.”131 (Article 13 (2) (a) and 14 of ICESCR).

14. Right to safe drinking water, clean environment, etc.: That after the proposed Article 30-C as said above, the following Article may be added as Article 30D – “Right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development. – Every person shall have the right – (a) to safe drinking water; (b) to an environment that is not harmful to one’s health or well-being; and (c) to have the environment protected, for the benefit of present and future generations so as to – (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. (Article 12 (2) (b)).

15. Right to property: That, Article 300-A should be recast as follows: “300-A (1) Deprivation or acquisition of property shall be by authority of law and only for a public purpose. (2) There shall be no arbitrary deprivation or acquisition of property: Provided that no deprivation or acquisition of agricultural, forest and non-urban homestead land belonging to or customarily used by the Scheduled Castes and the Scheduled Tribes shall take place except by authority of law which provides for suitable rehabilitation scheme before taking possession of such land.”

131 The 86th Amendment (2002) to the Constitution added new Article 21A providing for right to education. Article 21A reads as: “Right to Education.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” Accordingly, the Central Government enacted “The Right of Children to Free and Compulsory Education Act, 2009” to realize the right guaranteed under Article 21A and is in force since 1st April 2010.
16. **Suspension of Fundamental Rights during Emergency:** That clauses (1) and (1A) of Article 359 should be amended by substituting for “except Articles 20 and 21”, the following: “except Articles 17,20,21,23,24,25 and 32”.\(^{132}\)

The above recommendations of NCRWC reveal that it has largely considered the provisions of ICCPR and to some extent ICESCR. However, at the time of making the above recommendations India was party to three other treaties of the current nine core human rights treaties of UN. They are ICERD, CRC, and CEDAW. Had the NCRWC considered these three treaties, it would have recommended for the inclusion of some more specific human rights under Part III of the Constitution.

4.10 Inter-linkage between International Human Rights Law and Municipal Law:

In this context, the inter-linkages between international human rights law and domestic human rights regime become more significant for the following reasons:

1. International human rights law influence domestic jurisprudence by providing referral points for courts in interpreting human rights of individuals and in ascertaining State responsibility.

2. It can be used as benchmark to critique and measure domestic laws and legislative amendments. For example Armed Forces Special Powers Act, 1958, The Habitual Offenders Act, 1952, are under constant scanner for violating human rights and there is a demand for immediate repeal of these laws.

3. It can be used as standard setting mechanisms for domestic law reform initiatives. For example the National Commission to Review the Working of the Constitution (NCRWC), 2002, recommended that the provisions of the Constitution in Article 21 be brought in conformity with Article 5 of UDHR and Article 9(5) of ICCPR by adding the following clauses to Article 21, namely, “no one shall be subjected to torture or to cruel, inhuman or degrading

\(^{132}\) This is to bring in conformity with Article 4 of ICCPR. Though Article 4(1) of ICCPR provides for suspension Convention rights but Article 4(2) says that "no derogation from Articles 6, 7, 8(paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision". Article 6 is with regard to Right to life. Article 7 is with reference to torture, or cruel, inhuman or degrading punishment. Article 8 deals with prohibition against slavery. Article 11 proscribes imprisonment merely on the ground of inability to fulfill a contractual obligation. Article 15 prohibits retrospective operation of criminal laws. Article 16 provides that everyone shall have the right to recognition everywhere as a person before the law. Article 18 guarantees the right to freedom of thought, conscience and religion.
treatment or punishment” and “every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation”.

4. It provides a framework for making the State accountable and liable for violating international obligations related to human rights.

It provides additional forums at the international level to discuss human rights issues when State Party submits its periodic Reports of treaty compliance. For example treaty body Committees, like, Committee on Civil and Political Rights created under ICCPR. The Committee will monitor compliance of treaty obligation by the State party on the basis of State’s Report and also on shadow reports submitted by NGOs.

4.11 Conclusion:

The category of “Fundamental Rights” under the Constitution is exhaustively enumerated in Part III of the Constitution. On the other hand, the American Constitution (9th Amendment) expressly says that the enumeration of certain rights in the Bill of Rights shall not be construed to deny or disparage others retained by the people. This rests on the theory of inalienable natural rights which can by no means be lost to the individual in a free society; the guarantee of some of them in the written Constitution cannot, therefore, render obsolete any right which inhere in the individual even before the Constitution, the right to engage in political activity. But there is no such unenumerated right under the Indian Constitution.133

Constitutional guarantees for the human rights of people of India were one of the persistent demands of our leaders throughout the freedom struggle. By the year 1949, when the Constituent Assembly had completed the drafting of the Fundamental Rights Chapter, it had before it only the UDHR. Thereafter, the ICCPR and ICESCR were adopted in 1966 and both came into force in 1976, and these three together- UDHR, ICCPR and ICESCR- form International Bill of Human Rights. India became Party to these two Covenants in 1979. The treaty obligations under these Covenants enjoined the State Parties to respect and ensure these rights without discrimination and “to take steps” to promote them “to the maximum of its available resources”, with a view to achieving “progressively” the full realization of these rights. The “Directive Principles of State Policy” in Part IV of the Constitution is indeed the precursor to

133 Dr.D.D. Basu, Supra note 16, p.83.
economic, social and cultural rights specified in the ICESCR. During the last four and half decades of ICCPR and ICESCR coming into force, a vast number of human rights have found place in New Constitutions and Bills of Rights of more than eighty countries. Countries which enacted New Constitutions, especially South Africa, have had the benefit of all the developments in the human rights jurisprudence which have taken place since 1950. The way the Supreme Court of India has by judicial interpretation expanded the scope of the fundamental rights, particularly in relation to Article 21, and this has included more civil and political rights which were not explicit in Part III. While doing so, the Supreme Court has referred to the international human rights treaties to justify the expansion of Part III.

At present the international human rights regime is mainly grounded in the UN nine core human rights treaties to which India is Party to six treaties. Apart from this, India is Party to several human rights treaties concluded under the International Labour Organisation (ILO) and other agencies/organs of the UN.134 The chief characteristic of international human rights treaties is that they usher principle of universality, inalienability and indivisibility of human rights. Further, it has been time and again emphasized that protection of human rights is a road to development. When human rights have become grammar of governance today, no State including India can ignore the protection of human rights. As far India is concerned, international human rights treaties offer greater protection than the Constitution and are very much relevant. The above list of recommendations of the NCRWC is a testimony to this fact.

134 See Appendix - Table 3 for a list of major International Human Rights Treaties to which India is Party.