CHAPTER 2

COMPREHENSIVENESS OF OCCUPATION.

COMPREHENSIVE STUDY OF FUNDAMENTAL RIGHT TO OCCUPATION.

I. Right to Occupation under Article 19 (1) (g) With Reasonable Restriction under Article 19 (6)

Article 19 (1) (g) of Constitution of India provides Right to practice any profession or to carry on any occupation, trade or business to all citizens subject to Art.19 (6) which enumerates the nature of restriction that can be imposed by the state upon the above right of the citizens.\(^1\) Sub clause (g) of Article 19 (1) confers a general and vast right available to all persons to do any particular type of business of their choice. But this does not confer the right to do anything consider illegal in eyes of law or to hold a particular job or to occupy a particular post of the choice of any particular person.\(^2\) Further Art 19(1) (g) does not mean that conditions be created by the state or any statutory body to make any trade lucrative or to procure customers to the business/businessman\(^3\). Moreover a citizen whose occupation of a place is unlawful cannot claim fundamental right to carry on business in such place since the fundamental rights cannot be availed in the justification of an unlawful act or in preventing a statutory authority from lawfully discharging its statutory functions.\(^4\)

Keeping in view of controlled and planned economy the Supreme Court in a series of cases upheld the socially controlled legislation in the light of directive principles and the activities of the private enterprises have been restricted to a great extent. However under Article 19(6)\(^5\), the state is not prevented from making a law imposing reasonable restrictions on the exercise of the fundamental right\(^6\) in the interest of the general public or,

(i) A law relating to professional or technical qualifications is necessary for practicing a profession. A law laying down professional qualification will be protected under Article 19(6). No person can claim as of right to possess a certificate for the profession of acting as guide, and the certificate once granted can be cancelled without hearing the person concerned.\(^7\)

(ii) A law relating to the carrying on by the state, or by any corporation owned or controlled by it, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Under article 19(6)(ii) nothing contained in Sub-clause(g) of Clause (1) of Article 19 shall affect carrying on by the State any trade, business, industry or service, whether to the exclusion, complete or partial of citizens or otherwise if it is not in the
interest of general public.\(^8\) Article 19 (6)(ii) will have no application if the State is not carrying on any trade.\(^9\)

II. **TRADE/BUSINESS/PROFESSION: DIFFERENTIATES BETWEEN THEM AND HOW?**

II.1 **Trade:**

(i) The word ‘trade’ means exchange of goods for goods or goods for money or any business carried on with a view for profit, whether manual or mercantile distinguished from liberal arts or learned professions and from agriculture (Industrial Disputes Act, 1947).\(^10\)

(ii) Trade in its primary meaning is the exchanging of goods for goods or goods for money, in its secondary meaning for goods, it is repeated activity in the nature of business carried on with a profit motive, the activity manual or mercantile, as distinguished from the liberal arts or learned professions or agriculture.\(^11\)

(iii) Exchange of goods for goods or for money with the object of making profits in the widest sense, it includes any business carried on with a view to earn profit.\(^12\)

II.2 **Business:**

The expression ‘business’ occurring in Section 10(3) (a) (iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 is used in a wide sense so as to include the practice of the profession of an advocate. It is clear that having regard to this decision the practice of law must be regarded as business also for the purpose of Tamil Nadu Building (Lease and Rent Control) Act 18 of 1960, the appellant must be held entitle to recover possession for the purpose of carrying on the profession of the law. The word ‘businesses must be interpreted in the context of the statue in which it occurs and not in the context of the other statutes or in a manner alien to the context of the statute concerned.\(^13\)

(i) ‘Business’ includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture, or any profession or vocation, calling an immediate task or objective; a commercial or industrial enterprise; and means practically anything which is an occupation as distinguished from pleasure. The profits of which are chargeable according to the provisions of Section 10 of Indian Income-Tax, 1922. Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of investments or
property shall be deemed for the purpose of this definition to be a business carried on by such company or society; Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purpose of this Act.\textsuperscript{14}

(ii) ‘Business’ includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if though profits of the profession consists wholly or mainly on his or their personal qualifications, unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or giving other persons advice of a commercial nature in connection with the making of contracts, provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society; provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act.\textsuperscript{15}

(iii) ‘Business’ include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. Income Tax Act, 1961, Sec, 2 (13). The term includes every trade, occupation or profession.\textsuperscript{16}

(iv) The expression ‘business’ is a word of indefinite import. In taxing statutes it is used in the sense of an occupation or profession which occupies the time, attention and labour of a person normally with the object of making profit.\textsuperscript{17}

(v) Business refers to employment, occupation, profession, or commercial activity for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood.\textsuperscript{18}

II.3 Occupations:

(i) The principal business of one’s life; vocation, means of livelihood. An employment by which a person earns his living is his occupation.\textsuperscript{19} The trade or calling by which one ordinarily seeks to get his livelihood.\textsuperscript{20}

(ii) The word ‘occupation’ particularly refers to the vocation, profession, trade or calling in which a person is engaged for hire or for profit, and it has been repeatedly held that a person’s principal business and chief means of obtaining livelihood constitutes his occupation. The term expresses an idea of continuity,
continuous series of transactions and implies regularity in a specific line of activity. Furthermore, time is a necessary ingredient, and although it need not be protracted, it must not be momentary. It does not include an isolated or semi-occasional and temporary adventure in another line of adventure. No universal test can however be laid down for determining when an activity amounts to an occupation and when it does not.  

(iii) That which principally takes up one’s time, thought, and energies, especially, one’s regular business or employment; also whatever one follows as the means of making a livelihood. Particular business, profession, trade or calling which engages individual’s time and efforts; employment in which one regularly engages or vocation of his life.  

II.4 Profession  
(i) The meanings of the word profess have been given in Webster’s New Word Dictionary as “to avow publicly, to make an open declaration of “, to declare one’s behalf in, as to profess religion. To accept into a religious order. The meanings given in the Shorter Oxford Dictionary are more or less the same.  

(ii) ‘Profession’ defined in Concise Oxford Dictionary means, among other things, vocation and calling, especially one that involves some branch of learning or science, as the learned profession (divinity, law, and medicine). A profession is normally associated with the exercise of intellectual or technical equipment resulting from learning or science.  

(iii) The term ‘profession’ involves the idea of an occupation requiring either purely intellectual skill or manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale of arrangements for the production or sale of commodities. The term originally contemplate only theology, law and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill.

The words ‘trade’, ‘business’, ‘profession’ in Article 19 (1) (g) have been interpreted varyingly. The word ‘trade’ as used in Article 19 (1) (g), has been held in Safdarjung Hospital case is of the widest scope. It includes the occupation of men in buying and selling, barter or commerce, work, especially skilled e.g. the trade of gold
smiths. It even includes persons in a line of business in which persons are employed as workmen.

The word ‘business’ it is said, is ordinarily more comprehensive than the word ‘trade’ but one is used as synonymous with other. In Safdarjung Hospital case again the Court said that the word ‘business’ too is a word of wide importance. In one sense it includes all occupations and professions. But in the collocation of the terms and their definitions these terms have a definite economic content of a particular type and have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services. In Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax 27 the Supreme Court observed that the word business connotes some real, substantial and systematic or organized center of activity or conduct with a set purpose but no general principle could be laid down which would be applicable to all cases and that each case must be decided on its own circumstances according to ordinary common sense principles as to what business is. A profession on the other hand, has been held ordinarily as an occupation requiring intellectual skill, often coupled with manual skill. 28

In the case of T.M.A. Pai 29, it is held that Article 19 (1) (g) employs four expressions viz. profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. They cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19 (6). Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression ‘occupation’. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1) (g). ‘Occupation’ would be an activity of a person undertaken as a means of livelihood or a mission in life.

III. SCOPE OF ARTICLE 19 (1) (g)

III.1 Freedom to Carry on Any Occupation.
Article 19 (1) (g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of one’s choice. The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in any particular post under a contract of employment. In Fertilizer Corporation v. Union of India the workmen challenged the validity of sale of certain plants and equipments on the ground that they will be deprived of their employment and their constitutional right under Article 19 (1) (g) will be violated. The court held that Article 19 (1) (g) does not protect the right to work in a particular post under a contract or employment as such Article 19 (1) (g) can not be invoked against the loss of a job or removal from service. But this does not confer the right to do anything considered illegal in the eyes of law or to hold a particular job or to occupy a particular post of the choice of any particular person. Further Article 19 (1) (g) does not mean that conditions be created by the State or any statutory body to make any trade lucrative or to procure customers to the business/ businessman. Moreover Eviction of a person in unauthorized occupation or premises belonging to Municipality or Panchayat is not illegal as a citizen whose occupation at a place is unlawful cannot claim fundamental right to carry on business in such place since the fundamental rights can not be availed in the justification of an unlawful act or in preventing a statutory authority from lawful discharging its statutory functions.

III.2 Article 19 (1) (g) is Available against the State and Not Against the Private Individuals:

For a considerable period, the approach of the Judiciary had been that the rights which are given to the citizens by way of fundamental rights as included in Part III of the Constitution are the guarantee to the citizens against State. But actions as distinguished from violation of such rights from private parties is the private action and is sufficiently protected by the ordinary law. Article 19 (1) (g) does not abrogate the law under torts relating to private business between individuals and individuals, and in case of individual disputes between individuals, inter se, involving trade or business, the subject matter of disputes can be made liable to an injunction from the Civil Court.

A dispute between individuals concerning their civil rights has nothing to do with infringement of fundamental right. The principle which follows is that in case of infringement of any fundamental right on the part of the State, the aggrieved party
has three remedies; one at the ordinary law Courts; the second at the High Court under Article 226, and the third at the Supreme Court under Article 32. It has been accepted in Maneka Gandhi case that the rights, which though not named in Article 19, are yet such as would form an integral part of any of the rights specifically named in Article 19, will be protected from infringement in the same ways as a fundamental right.

III.3  Locus Standi:

In A.B.S.K. Sangh (Rely) v. Union of India it has been held that even an unregistered association can maintain a petition for relief under Article 32 of the Constitution if there is a common grievance i.e. Article 32 is not to protect only individual’s fundamental rights but is capable of doing justice wherever it is found and the society has an interest in it. In the historic judgment in Judges’ Transfer case the seven judges Constitution Bench of the Supreme Court has set at rest the controversy whether a person not directly involved can move the court for the redressal of grievances. The court held that any member of the public having ‘sufficient interest’ can approach the court for enforcing constitutional or legal rights of such persons or group of persons even through a letter. In the same case the Hon’ble Court has held that it can not be said that lawyers only have the right of locus standi to file a petition in respect of every matter concerning judges, courts and administration of justice. Again in Rice and Flour Mills v. N.T. Gowda the Supreme Court held that a rice mill owner has no locus standi to challenge under Article 226 for setting up of a new rice mill even if the setting up of such rice mill is in contravention of the rule because no right vested in the applicant has been infringed.

III.3a. The Freedom under Article19 (1) (g) is available only to the Citizens of India and it Can not be Claimed by Non-citizens.

The fundamental rights guaranteed under Article 19 are available to citizens, i.e., living natural persons having Indian citizenship. A non-citizen cannot challenge validity of laws under Article 19. For the purpose of Article 19 (1) (g), the following entities have been held to be non-citizens. A company incorporated under the company Act However, the fundamental rights of the shareholders of a company are not lost when they associate to form a company A religious denomination or a section thereof. Municipal committee, a juristic person like a Union, a deity an association registered under the Societies Registration Act
Doubts were raised as to whether a corporation doing business can claim protection of Article 19 (1) (g) of the Constitution. Corporations and companies, not being citizens, can make a petition under Article 32. It was held though a company has no fundamental right under Article 19, a shareholder and the managing director have the right under the Article 19 (1) (g). Court pronounced following in this case:

(i) The scope of Article 19 (1) (g) is restricted merely to those natural human beings who are Indian citizens and that

(ii) The state can regulate private business corporations in a major way without caring for limits prescribed by the Article 19 (1) (g) of the Constitution. This affords greater leeway to the government to regulate private enterprises to promote national interests.

It has been held though Article 19 grants rights to citizens as such associations of citizens, corporations can lay claim to the fundamental right guaranteed under Article 19 solely on the basis of their being aggregations of citizens. As the stream can rise no longer than the source, associations of citizens/corporations cannot lay claim to right not open to citizens or claim freedom from restrictions to which the citizens composing them are subject. Conversely, a restriction on the activities of the association is not a restriction on the activities of the individual citizens forming membership of the association.

III.3.b. When Fundamental Rights Extended To Foreigners.

Non-citizens cannot claim fundamental right under Article 19, though the rights under Articles 20, 21, 22 are available even to non-citizens. A foreigner national, though not entitled to the rights under Article 19, however he is entitled to equality before law and equal protection of the laws, guaranteed under Article 14. Under Article 19 (1) (g) a foreigner company has no fundamental right to carry on any trade business or profession in this country. However, a foreigner though having no fundamental right has locus standi to claim legal rights so as to be competent to make a petition under Article 226. Rights under Article 14 and 21 are available to foreigners and except in cases of rights available to citizens and non-citizens alike, a foreigner cannot challenge the constitutionally of an enactment. In Indo-China Steam Navigation Co. v. Jasjit Singh the Supreme Court held that a foreign company is entitled to the benefit of Article 19 of the Constitution. The plea can not merely be rejected under Article 14 by a foreigner company for the simple reason that the appellant has to fall back upon the fundamental rights guaranteed under Article 19.
(1) (g) of the Constitution.

In Thomson CSF v. National Airport Authority the claim of the foreigner company was based on Article 14 without falling back upon Article 19 (1) (g). The foreigner company by invoking the writ jurisdiction prayed for injunction restraining the Airport Authority from granting the contract of modernization of Air Traffic Services to another foreigner company. The court held that a foreign company can ask the Court to see whether the action of the State measure up to the various dimensions of Article 14 and demolish it if it fall short of the same. Since the rights and duties are all comprehended in Article 14 of the Constitution and there is no need to fall upon Article 19 (1) (g) and the court will not tolerate a less exacting standard of judicial review in case of a contract where a foreigner is a competing party.

**IV. Article 19 (1) (g) Read with Clause (6) of Article 19 of India Constitution’s Provisions Analogous with Other Countries**

**IV.1. Costa Rica:**

Article 56 postulate: Work is the right of the individual and an obligation towards society. The state must ensure that all have an honest and useful occupation which is properly paid and must prevent such occupation from giving rise to conditions, which in any way impair the liberty or dignity of the individual or reduce labour to the level of mere commodity. The state guarantees the right to a choice of employment.

**IV.2. Czechoslovakia:** Article 26 states:

1. All citizens have the right to work.
2. His right to work in particular is secured by organization of work and the state is directed in accordance with the planned economy.

Article 27 Further states:-

1. All working members of the population possess the right to just remuneration for the work done.
2. This right is secured by the state wages policy, which is administered with the united trade Union Organization and directed towards the constant raising of the standards of the working population.
3. Remuneration shall be governed by the quality and quantity of work and by the benefit, which it brings to the community.
4. In equal conditions, men and women are entitled to equal remuneration for equal work.
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IV.3. Germany:

Article 12 declares that all Germans have the rights of free choice of occupation, place of employment and place of training. Pursuit of occupation may be regulated by legislation. No one shall be forced to do a particular job except in virtue of an established general obligation to perform a public service lying equally upon all.

IV.4. Hungary:  Article 9:

1. In the Hungarian People’s Republic, labour is the foundation of the social order.
2. Every able bodied citizen has the right and duty to work to the best of his ability and is bound in order to do so.
3. By their labour, by participation in work competitions, by strengthening labour discipline and improving work methods, the workers serve the cause of building up socialism.
4. The Hungarian People’s Republic strives to apply the socialist principle in practice for work according to the ability of each one.

IV.5. MYANMAR (BURMA):

Article 17 (iv) states: the citizens have right to work for any occupation, trade, business or profession subject to public order and morality.

IV.6. Nicaragua:

Article 82 of the constitution of 1948 extends to citizens the right to freely adopt any profession or trade which is not contrary to morality, public health and security.

IV.7. Romania:

Article 19 declares that all citizens have right to work and the State shall gradually secures this right by planned organization for the development of national economy

IV.8. South Africa:

Section 136 provides that there shall be free trade throughout the union. And the parliament shall frame the law to provides the custom duties and levy the excise duties on productions so as to enable every citizen to secure the rightful work.

IV.9. USA:

There is no specific provision in the constitution of the USA guaranteeing the right to freedom of profession, trade or occupation etc. but right to freedom of trade, business and profession has been held by judicial interpretation, which follow from
the right and property. In the case of Munn v. Illinois restriction is imposed by the state in the interests of the common good, and right to work follow from a chosen profession and free from unreasonable interference.

IV. 10. Sri Lankan:

In a case the Sri Lankan Supreme Court recognized the right to anticipatory protection of individual right in the contexts of collective environmental concerns. Landowners and farmers within their relevant area of exploration they sought relief in relation to proposed phosphate mining. They invoked the rights to equal protection of the law, freedom of movement and freedom to engage in any lawful occupation or business. State submitted ‘inter alia’ that in the places of an archaeological, historical and cultural value an agricultural area mineral deposit can not be developed. The court declared that an imminent infringement of fundamental rights had been established and directed the state to desist from making any contract before completing a comprehensive study and gaining approval from the national environmental authority. The court emphasized the paramount importance of access to information on environmental issues, fairness and transparency is also essential to achieve the goal of sustainable development and state should frame law to ensuring the right to work for its citizens.

IV.11. SWITZERLAND:

Article 31 guarantees freedom of trade and industry throughout the confederation, ‘but reserves the following to the states, viz. salt and gunpowder monopolies, federal duties, import duties of wine and other alcoholic beverages.

V. RESTRICTIONS.

Clause 19(6) of the Constitution authorizes the state-

i) To impose reasonable restrictions on the freedom of trade, business, occupation and profession, in the interest of the general public.

ii) Professional and technical qualifications.

iii) To carry on any trade or business.

A proper understanding of the following areas is essential:

1) Reasonable restrictions.

2) In the interest of general public

3) Professional/Technical Qualifications under Article 19(6) (i)

4) Trading by the state under Article 19(6) (ii)

V.1. What Constitutes a Restriction?
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(a) Restriction means – to put a limit.\textsuperscript{58} A restriction is a rule or order that limits what you can do or that limits the amount or size of something; a fact or situation that limits you or prevents you from doing what you want to do.\textsuperscript{59}

(b) Meaning of implied restriction – A power to impose restriction upon the right guaranteed under Article 19 (1) (g) must be plainly expressed in a statute. A power which is not given expressly to impose restrictions cannot be implied.\textsuperscript{60}

V.2. Grounds on which a Restriction can be challenged:

Any restriction imposed by the state by any law on the right guaranteed under Article 19(1) (g) can be challenged on the ground either that the restriction is unreasonable, or that the restriction is in excess of the right, or that even activities which are not pernicious or that the procedure laid down for curbing any activity is unjust, arbitrary or unreasonable.\textsuperscript{61}

V.2.a. Reasonableness of Restrictions

Reasonable’ means that which is in accordance with reason, and which is associated with logic and not arbitrariness. It implies intelligent care and deliberation that which reason dictates,

\begin{itemize}
  \item The expression “reasonable restriction” signifies that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public.\textsuperscript{62}
  \item There has to be a nexus between the restriction and the object sought to be achieved and the object must not, itself, be repugnant to the letter or the spirit of the Constitution.\textsuperscript{63}
  \item In order to be reasonable the restriction must have a reasonable relation with the object which the legislation seeks to achieve, and must not go in excess of that object.\textsuperscript{64}
\end{itemize}

The reasonableness of a restriction has to be determined in an objective manner and the standpoint of the interest of the general public and not from the point of view of the person upon whom the restrictions are imposed. In other words, a law cannot be said to be unreasonable merely because, in a given case, it operate harshly, even of the persons affected by petty traders.\textsuperscript{65}

Reasonable’ means that which stems from reason. Which is not arbitrary or capricious? A restriction, in order to be ‘reasonable’ must be one that has a reason to be imposed. There has to be, thus, a nexus between the restriction and the object sought to be achieved and the object must not, itself, be repugnant of the letter or the
spirit of the Constitution. The expression ‘reasonable restriction’ signifies that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public.

The expression ‘reasonable restriction’ seeks to strike a balance between the Freedom guaranteed by sub-clause (1)(g) of the Article 19 and the social control permitted by the Clause (6). It cannot be said that the limitation imposed on a person in the enjoyment of a right should not be public. In order to be reasonable the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object.

The twin requirements of clause (6) of Article 19 are:

1. The reasonableness of the restriction upon the fundamental right to trade and
2. The measure to the reasonableness being the compelling need to promote the interests of general public.

V.2.b Test of Reasonability

A series of decision have been made in relation to the judging of the reasonableness of certain restrictions and the following inferences can be drawn safely out of them. Thus,

* No hard and fast rule can be prescribed for the test of reasonability of a restriction imposed under a rule and each case has to be decided on its own merit.
* Basically it involves the exercise of balancing the interest of the individual with that of the public interest i.e. individualism v. collectivism.
* Where the restriction does not directly or remotely interfere with the exercise of the freedom of trade, the allegation of violation of Fundamental rights under Article 19 (1) (g) cannot be sustained.
* Whether a restriction is reasonable or not shall depend on many factors, viz,
  a) The nature of the right infringed,
  b) The purpose of the restriction,
  c) The extent and the nature of the mischief required to be suppressed d) and the prevailing social and other conditions at the time.
* Legislation which is arbitrary or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance.
between the freedoms guaranteed in Article 19 (1) (g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality.  
* An enactment be reasonable must satisfy the test of reasonableness also with regard to its procedural aspects.  
* Though generally, the tests of reasonableness under Article 19 are far removed from test of reasonable classification under Article 14, yet when the powers under a statute are arbitrary or unguided such power may itself amount to unreasonable restriction.  
* It has to be seen, firstly, whether there is any proximate connection or nexus between the restrictions imposed and the evil sought to be remedied and secondly, that assuming the first whether the restrictions are within the limit.  
* No universal standard of reasonableness being possible to be laid down,  
* Infringement of any right can only be excused on certain grounds mentioned in clauses (6) of Article 19 as far as Article 19 (1)(g) is concerned.  
* Restriction is reasonable when it is not more than what is necessary to meet a given situation or to avert a given mischief, and is imposed with intelligent care and deliberation with choice of a course that reason dictates.  
* Reasonable restrictions mean restrictions in the public interest, and cannot be determined from point of view of individual persons.  
* The test of reasonableness has to be applied to each enactment individually  
* The law under examination must strike a balance between fundamental rights and social demands. This is popularly known as the Social Test Control.  
* While determining the reasonableness of a restriction imposed on any fundamental right, the Courts have, to decide the point for themselves, and any opinion expressed by the Legislature thereon is hardly relevant.  
* The Court should approach an impugned statute from the point of view that Article 19 (1) guarantees the rights as of vital necessity for the democratic processes. If the principle underlying the legislation and its objects are constitutional, it is not for the Courts to question the policy underlying the legislation.  
* Reasonableness of a restriction imposed upon a fundamental right has to be judged in the context of the scheme of an Act and not territorially.
* Possibility of abuse of any enactment is no ground to strike it down.\textsuperscript{82}
* For the purpose of determining the reasonableness of the restriction, the legislative purpose has to be gathered from what the Legislature has enacted, and not from the title and the preamble except to the extent that they throw some light therein.
* If the restriction imposed on a fundamental right is not reasonable and is yet in the interest of the general public, the Court will not go further into an investigation whether the manner in which the restriction is likely to be imposed by an officer charged with the enforcement of a statute may act unreasonably by abusing his power.
* There is no general pattern or extract standard of reasonableness, which can be laid down as applicable in all cases and each case, has to be decided on its own merit. Where the restriction imposed strikes a proper balance between the freedoms guaranteed under Article 19(1)(g) and the limitation of social control permissible under Article 19(6), the restriction must be held to be reasonable.\textsuperscript{83}
* The retrospective operation of a law is a relevant circumstance in judging its reasonableness.\textsuperscript{84}
* Unless an order imposing restriction is, on its face, absurd or mala fide, the Court would not interfere.\textsuperscript{85}

V.2.c. Requirement as To License

Protection of Part III of the Constitution is not available to a lease or license. The condition to obtain a license, though a restriction, from authorities of State for engaging in any business, profession or occupation, or the power to refuse license or impose restriction, cannot be held to be unreasonable.\textsuperscript{86}

V.2.d Permit and License—-Distinction.

A license is intended to regulate a business while a permit would be done without which a business can never be started. Therefore, a permit may amount to prohibition of the business in regard to persons who are unable to obtain same. While a permit system would be unconstitutional so far as it related to exercise of fundamental right, it was well settled that a system of licensing having for its object the regulation of trades, would not be repugnant to Article 19(1)(g).\textsuperscript{87} The granting of permit at a lower rate, that is, in case of permit to ply motor vehicle, the condition to charge lesser fare from public with more facilities to them is not an unreasonable restriction.\textsuperscript{88}
V.2.e. Freedom of business: license for eating houses--condition whether valid

The law authorized the Commissioner of police to grant license to the keepers of eating houses and places of public resort and entertainment and the Commissioner was further authorized to impose such conditions for securing good behavior of the keeper with the object of securing prevention of drunkenness and disorder among the visitors to the same place. The condition imposed was challenged as unseasonable in Kishan Chand v Commissioner of police on the ground that the Act did not provide any procedural safeguard against the order of the Commissioner and the right of hearing is not ingrained in the scheme of the Act. The Supreme Court held that the object of the Act does not suffer from any vices of uncertainty as the condition was imposed in consonance with the object of the Act viz maintenance of law and order, prevention of drunkenness and disorders etc. The Act provided the guidelines for imposing such condition that was held reasonable. Circular prohibiting manufacture of copper utensils on machine and threatening the manufacturer of, which action of canceling license without showing public interest is violative of Art 19(1)(g).

V.2.f. Restriction on freedom of contract.

In an industrially developing country, the restriction on freedom of contracts by enforcing a contract between employers and employees by fixation of a minimum wage payable to the employees under the Minimum Wages Act, 1948, is a reasonable restriction protected by Article 19 (g). In terms of Sec. 23 (3) of the Electricity Act, 1910, a licensee may charge for energy supplied by him and charges the levies. Consequently when the consumer is ready to consume, but the licensee is unable to supply, it would not be correct to say that the consumer is liable to pay for energy not consumed by him. That would be arbitrary, unfair and unreasonable. Therefore the tariff in respect of the minimum charge has to be construed, and a pro-rata reduction should be given in case where, for no fault of the consumer, energy is not supplied as stipulated in the contract.

A contract cannot be enforced by a process meant for enforcement of fundamental rights. The question of fundamental right involved in the field of contracts is that of equality, that is to say that in granting contracts, the State shall not discriminate one person from another but will fairly consider the offer of one along with those of others. Refusing to award a certain contract to a person does not effect his civil rights, nor such action is violative of Articles 14 and 19 (1).
The method of advance purchase of contracts by private negotiation in preference to open competition adopted by Government is violative of Articles 14 and 19. The right to choose the person with whom the Government would enter into contract vests in the Government but in making the choice the Government cannot act arbitrarily and if it does so its action can be challenged under Article 226 of the Constitution.

A person has no fundamental right to carry on any trade in intoxicants. Again, sub-clause (g) does not force on the State an unwilling business relationship with any particular person. Doing any particular business does involve an exercise of free will of more than one person liable to concur into an agreement and sub-clause (g) merely enables the free exercise of that will released from the letters of the restrictive state action but not from restriction of an unwilling party. Thus, under sub-clause (g), a tenderers is entitled for consideration of his tender fairly and honestly, and so long as the state’s refusal to enter into a contract is based on reasonable grounds and is not discriminatory, the state must enjoy the right to choose its own suppliers.  

V.2.g. Instances of Restrictions Imposed in the Interest of General Public

The expression “in the interest of the general public” in clause (6) of article 19 means nothing more than ‘In public interest’. It is, thus, not necessary for any legislation to fall within the protection of clause (6) that it must be in the interest of the whole public. Thus, a restriction imposed in the interest of only some solidified stratum, for example in case of any caste in India, cannot be held to be in the interest of the general public. Interests of the general public embrace public security, public order and public morality.

1) Under the old Motor Vehicle Act, Section 71 (1) and Section. 80(2) provided the existing transport operators either to submit their representation to the RTA or to a right hearing. This restrictions not been deliberately removed by the new act of 1988 and the Parliament intended to negative any right to the existing operators either to submit representation or to a right of hearing. While finding the new provisions constitutionally valid it was held that it is not open to the court to imply principle of natural justice and further restrictions than what parliament considered sufficient, according to the new legislative policy. It was held that the existing operator cannot claim any legal right to file representation or right of being heard. check and balance should be precise and not couched in ambiguous language and left to course for decisions. “Interest of General Public” should be defined lest it should
take centuries for the Supreme Court to exactly say what really these words mean. By incorporating such words in the sub-clauses, wide powers have been given to the central and provincial legislature to frame laws by which they can restrict the freedom which has been given to the people under sub-clause (1) of this article.  

2] If a citizen has a fundamental right to engage in an occupation on his land (e.g. holding of a Cattle market) then it has to be ensured that it does not infringe any law imposing reasonable restriction” that right in the interest of General Public.

3] The American Supreme Court had taken the stand that the state in the exercise of the public power had the power control a business where the public had interest. But the Supreme Court of India did not follow the American precedent in the light of the specific provision in the Constitution.

The expression in clause (1)(g) and (6) of article 19 authorizes the state to impose restriction not only on the ground of public order but also on ground of social and economic policy, or on the common, e.g. securing the objects mentioned in part IV of the Constitution.

4] A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected by petty traders. In determining the infringement of the right guaranteed under article 19(1), the nature of rights alleged to have been infringed, the underlying purpose of restriction imposed, and the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the time, enter into judicial verdict.

5] The State can create in itself the monopoly of the production and supply of the liquor. When the state does so, it is in the interest of general public under Article 19(6) and thus it does not carry on business in illegal products. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people.

6] T. H. Green in his lectures on the Principles of Political Obligation traders to the “common good “ in analyzing the right and duties of the state and the citizen brief reference is made to the public interest in the following context:

“If the injured individual were likely to fall in the institution of proceeding for his own redress of defense, the public interest would require that the matter should be taken out of his hand.”
The Constitution of India allows reasonable restriction on the exercise of the right in the interest of the general public, is vague and probably advisedly. However, the Court have pointed out that restriction are in the interest of general public, even if they are meant for the people of a particular or a state. It does not mean that the interest must be of the public of the whole India. It may be even with reference to the interest of particular individual also. Things in the interest of public order will naturally be in the interest of the general public, but a Restriction can be said to be in the Interest of the public order only when the nexus between the restriction and the public order is direct and proximate.

Restriction Imposed by Municipal law on owners to remove carcass or cause, the same to be removed to a place appointed by corporation involving expenses to him and preventing him from selling. It, Is reasonable in the interest of removal of nuisance. Resolution of Municipal Council restricting trade in dry fish to a particular area is reasonable and a license to such trade outside the specified market can be validly refused.

Regulatory measures to prevent price rice in wheat and its outflow have been held to be in the interest of general public.

The Delhi Administration by order dated 12th July 1989 imposed Restriction on sale of free sugar by one wholesaler to another and reduced the period of turning over of Article 19(l)(g) of the Constitution putting unreasonable restriction on their right of trade. The court held that the intention of the restriction imposed was to keep continuous flow of sugar through retail outlets so that the consumers may not suffer. The court held that the regulatory measures are not prohibitive but passed as a regulatory measure in the supreme public interest with a view to put an embargo on the dealers in keeping sugar in the excess quantity and the period specified with a view of preventing hoarding and black marketing and to ensure equitable distribution and availability of sugar at fair prices in the open market. The restriction being regulative and reasonable cannot be termed as violative of Article 19(l) (g) of the Constitution. It does not put unfettered restriction in any form whatsoever on the right of a person in carry on any occupation, trade or business.

VI. THEORIES OF REASONABLENESS OF RESTRICTIONS:

The social dimensions of judicial process in the area of reasonableness can be studied with reference to the theory of pragmatism and that of socialism. Indian Court
applies these two sociological theories in determining the reasonableness of the restriction imposed upon the fundamental right.

VI.1. The Theory of Pragmatism:

Human existence, or rather any existence, itself implies existence within limitation. Any actual existence can mean only a limited unit. It is a well recognized Principal, affirmed even by a confirmed individualist like Hothouse that “an organized society is something more than the individuals that compose it.”\(^{103}\) this carries a corollary that individuals composing a community have also a social facet to their personalities. An individual’s personality has both private and public aspects, and this is in addition to the public personality of the community concerned. It is in the interest of a community to foster the private and public elements of an individual’s personality of the community and these should be protected. There has got to be personal liberties, but as Denning observes,\(^{104}\) they must be matched with social Security by which he means, “The peace and good order of the community.” Seervai suggests these restrictions may be looked upon as social rights, although negatively phrased, provided it be recognized that the concept of social rights, does not merely note the rights of the community as a whole, or public rights, but also includes certain rights pertaining to the social, or public, aspect of the personality of any individual in the community.\(^{105}\)

The theory of pragmatism is applied by the Courts in sense of ‘balancing of social claims’ with the view of strike a balance between individual and social interest, the interest of the individual are subsumed into social interests for the sake of comparison. In doing so, the courts weight the conflicting interest with reference to the standard of reasonableness derived from the values of life in the society and seek to strike such a balance as it will reduce friction and will be most useful for the public Good.\(^{106}\)

In formulating the standard of reasonableness the Supreme Court of India has taken into account the preamble to the Constitution and the Direct Principle of State policy, which aim at creation of an ideal social order. The judicial philosophy in this regard is that law which impose restriction upon a fundamental right for carrying out the objectives of the Direct Principles of State policy cannot be challenged as imposing unreasonable restriction because what the state is required to do by the Constitution itself cannot be regarded unreasonable.\(^{107}\)
Standard of reasonableness are relative and not absolute. They are related with time and place. The reason for this is that the Sociological theory of reasonableness is relativist and absolutist according to natural law. The natural law theory believed in absolute values. According to modern relative theories of law there are no absolute values but there are only relative values.

VI.2. Theory of Socialism:

The scheme of socialization which is introduced for social welfare and Social development can be justified as reasonable under pragmatism as well as under Socialism. But there is difference in the application of the two. Nationalization or State ownership can be upheld as reasonable under the pragmatic theory if there are social interest for its support that is national expediency, economic efficiency and increased output of production. Whereas nationalization and state ownership are justified under socialism as a matter of principal Clause (6) of Article 19 clearly indicates that State Monopoly in respect of any trade or business must be presumed to be reasonable and in the interest of general public so far as Article 19(l) (g) is concerned. Socialism may, however, be explained not only from the point of view of principle but from the point of view of individual also. According to this view, socialism aims at realization of individual’s ideal in social and economic reality.

Read Bruch, a great German philosopher, has also offered individualistic interpretation of socialism. According to him, socialism is a call for justice and a system designed to ensure free development of the individual.108

Pt. J.L. Nehru also has interpreted socialism from individualistic point of view. He said, socialism to some people means two things distribution which mean cutting of the pockets of the people who have too much money and nationalize though both these are desirable objectives but neither is by itself socialism. Nationalization is dangerous merely to nationalize something without being prepared to work properly. To nationalize we have to select things for socialism in such a manner that every individual in the state should have equal opportunity to progress.

VII ASPECTS OF REASONABLENESS:

It was observed half a century ago that in considering the reasonableness of a restrictive policy of legislation, Court should consider both the substantive and the Procedural aspects of the impugned law.109

VII.1. Substantive Aspect of Reasonableness
In determining the substantive reasonableness, the Court has to take into consideration various factors, such as the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of evil sought to be remedied, the prevailing conditions, including the social values whose needs are sought to be satisfied. The Court will have to be satisfied on the points in order to judge the restrictions to be reasonable.

The restriction imposed must have a rational connection with the object sought to be achieved by the law. In other words the Court has to see whether by virtue of the restriction imposed on the right of the citizen, the object of the statute is really fulfilled or frustrated. The restriction imposed must not be in excess of the mischief sought to be prevented or the object sought to be achieved by the law. Restriction which are imposed for securing the object which are enjoined by the directive principles of state policy included in Part IV of the Constitution, may be regarded as, ‘reasonable’ restrictions within the meaning Clause (6) of Article 19.\textsuperscript{110}

So far as the substantive aspect of reasonableness is concerned, the Supreme Court has not taken any fixed line of approach. It has varied from case to case. If the legislation which excessively invaded the right, the Supreme Court held that it could not be said the quality of reasonableness\textsuperscript{111} whereas other line of cases the Court concentrated on the nature of business. If the trade was illegal, immoral or injurious to the public health then excessive restriction would not be called unreasonable restriction.\textsuperscript{112} The Court has further diluted this condition and said that in case of emergency drastic restriction is justified.

In Cooper’s Case\textsuperscript{113} the Supreme Court took the stand that where restrictions were so stringent that the business could not in practice be carried on such imposition is unreasonable. In Nazeria Motor’s Case\textsuperscript{114} the Court took the stand that merely reduction of profit was no ground of attack under Article 19 (l) (g).

\textbf{VII.2. Procedural Aspect of Reasonableness}

Where a restriction upon the exercise of fundamental right is to be imposed on hearing the person affected or on the subjective satisfaction of the authority constitutes the procedural test. Thus a law which empowers the executive:

(A) to impose a collective fine, or

(b) to suppress on associations, or

(c) to restrict the enjoyment of the proprietary right of ‘an individual,\textsuperscript{115} on subjective Satisfaction is, prima facie, unreasonable from the procedural stand point.
In general, natural justice is condition of procedural reasonableness and the procedure should be reasonably implied and prescribed with regard to the circumstances of the case.

**VII.3 Reasonable restriction- burden of proof**

It is for the State to justify the reasonability of a restriction, which can be tested from both procedural and substantive aspects, and the burden of proving the reasonability of a restriction lies on those who seek the protection under the Law justifying the restriction as reasonable in the public interest. It is not for the person who challenges the restriction as unreasonable to prove but state must establish that the restriction imposed does not interfere with the exercise of the freedom of citizens. On 5 Aug. 2002 Mallu Sen aged 70 years expired in Patna Tamoli village in Panna district and his wife Smt. Kutti Bai jumped in the pyre of her husband and died. It got wide publicity as Satti. On recommendation of inquiry committee report State Government suspended all financial aids for 2 years to village Patna Tamoli and requested Central Government. to do so. Court held committing Satti by a villager can not be a ground for suspending all aids. Such action by state Government is ultra vires and infringement of fundamental rights.  

**VIII. ILLUSTRATIONS OF REASONABLE AND UNREASONABLE RESTRICTIONS**

**VIII.1. Reasonable Restriction.**

(i) Working hours for shops and establishments: The constitutional validity of the Punjab Shop and Establishment Act was upheld by the Supreme Court in Ramdhan Das v State of Punjab against the challenge that the Act imposes unreasonable restriction on the right to carry trade or business. The Act provided for hours of employment of the employees and the opening and closing hours of the shops and establishments.

(ii) If the Municipal Commissioner declares certain days as holidays for the slaughter house in order to facilities to the Municipal Staff working in the municipal slaughter House, no body could have any objection to such a Standing order.

(iii) Ban on movement by heavy vehicular traffic during stated hours does not infringe Article 19(1)(g) because such restrictions can be imposed on right to carry on trade or business.
(iv) The imposition of liability on every commission agent to keep in safe custody agricultural produce of his principal is nor unreasonable.\textsuperscript{120}

(v) The Prohibition of slaughter of cows, bulls and their calves, in general, is valid but at the same time, a general ban on the slaughter of cattle other than cows, etc., has been held to offend Article (19)(l)(g), therefore, a ban on the slaughter of cattle, in general, without prescribing any condition as regards their age or usefulness, is not constitutional.\textsuperscript{121} Any legislation prohibiting slaughter of cows and calves would be considered to be reasonable by Courts so far as challenge on ground of Article 19(l)(g) of constitution is concerned.\textsuperscript{122}

(vi) Article 291 and 362 of the Constitution which was omitted by the Constitution 26\textsuperscript{th} Amendment Act was challenged before the Supreme Court in Sri Raghunathrao v. Union of India\textsuperscript{123} on the ground that the basic structure or the essential features of the Constitution was affected due to the amendments and the rules deprived of the payment of privy purse were denied the guarantee of Article 14 of Article 19(l)(g) of the Constitution. The Supreme Court upheld the validity of the Constitutional Amendment Act in its entirety. The court reasoned that the assurances given to the rulers were not sacrosanct as such the abolition of privy purses did not amount to violation of any constitutional provisions.

(vii) In Hati Singh Manufacturing Co. v. Union of India\textsuperscript{124} the Supreme Court held that right to close down a business is not an integral part of the right to carry on. The Court reasoned that it is not quite correct to say that a right to close down a business can be equated or placed at par as high as the right not to start and carry n a business at all. The court held that employer has right to close down a business once he starts it and such right cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Article 19(l)(g) of the Constitution.\textsuperscript{125} It was further held in D.C.M ’s case\textsuperscript{126} that the discretion of the Government as provided under section 25D of the Industrial Disputes Act as amended in 1986 to refuse to grant permission to close Industrial undertaking does not infringe fundamental rights guaranteed under Article14 and Article19(l)(g) of the Constitution being saved by article 19(6.)

(viii) With a view to promote the production of sugar and to make it available to the consumers at a fair price the Government directed that production and crushing of Khandsari be stopped for two months. The restriction was challenged as placing unreasonable restriction in the freedom of trade and business as provided
under Article 19(l)(g) of the Constitution. The Supreme Court held that the restriction is reasonable in public interest and there was reasonable nexus between the object of the regulation and the subjective restriction. The object was clearly to reduce the immediate shortage of sugar and to increase production of sugar for public distribution at a fair price.

(ix) Section 3 of the Cotton Textiles (Control) Order 1948 provided the power to Textile Commissioner regulate the production, supply and distribution of textile clothes and also empowered the Commissioner for a direction to be given to producer to pack a particular quantity of controlled cloth. The legality and validity of the said provision was challenged in Commercial and Ahmedabad Mill Co. Ltd. v Union of India as unreasonable restrictions of the right to trade. The court held that the provisions of Section 3 is not ultra virus Arts, 14, 19 and 31 of the Constitution regarding regulation of production, supply and distribution of controlled cloth and the direction to be given to The producer to pack a particular quantity of controlled cloth.

The Court reasoned that the direction to compel a person in the name of penalty or imprisonment to undertake the packing of controlled cloth if such a person does not desire, wish or cannot afford to produce or manufacture or pack these goods, cannot be said to be right to carry on business, trade and to hold and dispose of the property. The interest of the producers of manufacturers of an essential commodity is no doubt a factor to be taken into consideration, but surely it is of much lesser importance and must yield to the interest of the general public who are consumers. It is the duty of the Government to strike a balance between the need of the demand for the essential commodities and the interest of the industry, but in no circumstances the interest of the industry should be given preference to the public interest. In each case one has to strike a proper balance between the freedom guaranteed under Article 19(l)(g) and the social control permitted by clause 6 of Article 19. The legislative measures have left the question of resolving the economic problem of increasing supplies, equitable distribution and the availability of essential commodity at fair prices to the judgment of the statutory authorities.

Order directing producers to deliver yarn only to the five channels of distribution mentioned in the Cotton Textile Control Order, 1948, being intended to ensure availability of yarn at reasonable or fair price and to eliminate evils of profiteering of hoarding has been held to be a reasonable restriction in the interest of the general public. However, the true construction in of the power to fix fair price is
that the fair price has to be determined in respect of the entire product, ensuring to the
industry a reasonable return on the capital employed in the concerned industry.\textsuperscript{129} The
fact that no hearing is required to be given by an authority exercising power of
granting or refusing a license, or the fact that reasons for refusal thereof have been
communicated to the applicant, ‘Would not make the relevant provision an
unreasonable restriction on the fundamental right of carrying on a trade.’\textsuperscript{130}

(x) Restriction on right to ply hackney rickshaws on superheated asphalt
roads, in tropical sun and shower for a miserable pittance, is ‘reasonable.’\textsuperscript{131}

(xi) Reasonable restriction are words used in Article 19(6) in widest
sense so as to include total stoppage of the use of highway,\textsuperscript{132} or restricting use of bus
stand, when found in the public interest.

(xii) No person can claim the right of trade or business in a public place
which is being used by the other members of the public. It was held in Bombay
Hawkers ‘Union v Bombay Municipal Corporation’\textsuperscript{133} that the hawkers cannot claim
fundamental right to trade or business in Public Street. The Apex Court in its’
judgment has laid down that squatters have a fundamental right to hawking under
Article 19(l)(g) subject to restrictions\textsuperscript{134}

(xiii) An order issued by the Senior Superintendent Police prohibiting the
transporters from parking heavy vehicles at any time during day or night in certain
localities, except under a permit from him, has been held to be a reasonable restriction
in the interest of public safety and convenience on the right to carry on business under
Article 19(l) (g).\textsuperscript{135}

(xiv) A price fixation order made by Government is reasonable.\textsuperscript{136}

(xv) Restriction on the movement of traffic and on plying of heavy vehicles
above laden weight of 4000 Kgs. in particular area during the day time was imposed
by the Police Commissioner, Delhi as per the regulation 30 was held reasonable being
in larger public interest and not violative of Article 14 and Article 19(l)(g) of the
Constitution.\textsuperscript{137}

(xvi) Condition imposed upon drivers and conductors serving on Bus
Services to wear uniforms and badges are not unreasonable\textsuperscript{138}

(xvii) Restriction imposed by Municipal law on owners to remove carcass or
cause it to be removed to a place appointed by corporation involving expenses to him
and preventing him from selling it, is reasonable in the interest of removal of
nuisance.\textsuperscript{139}
(xviii) Where the State authority had refused to renew license for sale of firework (firecrackers) on the ground of public safety and the danger to the public Property at large, such refusal is not arbitrary or unreasonable.\(^{140}\)

(xix) Constitutional Bench of the Supreme Court consisting of Five Learned Judge unanimously upheld the constitutional validity of the restriction imposed by Section. 25N of the Industrial Disputes Act (as it stood prior to 1984 amendment) and held that the restriction imposed is not unreasonable. Since the provision (S. 25N) provided protection to workmen from arbitrary retrenchment it was not violative of Article 19(l)(g) of the Constitution and saved by Article 19(6) of the Constitution.\(^{141}\)

(xx) It was the contention of the petitioner in Pankaj Jain v Union of India\(^{142}\) that sudden and sharp increase of the customs duty on the shipping consignments constituted an unreasonable restriction on the petitioner’s fundamental rights under Article 19(l) (g) of the Constitution. The Supreme Court by referring to earlier decisions in J. Farnandez and Co. v Deputy Chief Controller\(^{143}\) held that there is no absolute right much less a fundamental right to import. Mere excessiveness of tax is not by itself, violative of Article 19(l)(g) of the Constitution.

(xxi) The Central Government Notification dated 3\(^{rd}\) November 1988 under Section 26A of the Drugs and Cosmetics Act 1940 which so far bans the manufacture and sale of the fixed dose of combination steroids was challenged being arbitrary and violative of Article 14 and Article 19(l)(g) of the Constitution in the case of S.R. Pvt.Ltd. v. Dr. Prem Gupta\(^{144}\) and the court held that the ban imposed the sale and manufacturing of fixed dose combination of steroids was based on the notification of the Government is not violative of Article 14 or Article 19(l)(g) of the Constitution.

(xxii) Where various bodies constituted under the Drug and Cosmetics Act 1940 have come to the conclusion that the fixed dose combinations do not have the therapeutic value and the Government has formed the opinion that it is not in public interest to allow the manufacture sale or distribution of the said drugs which resulted in the ban on manufacture of certain fixed combination drugs, the action falls within Section 26A is not ultra vires of the provision of the said Act. The action of the Government, it was held in Franklin Laboratories v Drugs Controller\(^{145}\) was not violative of the principle of natural justice or for that matter Article 14 and 19 of the constitution.

VIII.2. Unreasonable Restrictions:
The Supreme Court in Communist Party of India (M)\textsuperscript{146} held that there cannot be any right to call or enforce a bandh which interferes with the exercise of fundamental freedom of other citizens, in addition to causing national loss in many ways. Bandh is unconstitutional and no political party or person has any right to call and organize such bandh. The bandh interferes with the fundamental rights of the people relating to their movement, carrying on business, profession or vocation. No political party or organization is entitled to paralyze the industry and commerce in the entire State or Nation and is entitled to prevent the citizen their fundamental rights or to perform their duties for their own benefits or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be exercised as a legitimate exercise of a fundamental right by a political party or those comprising it.

The Chakka jamas (Bandh) organized by the political parties shall not paralyze life of civilian society. The Bandh\textsuperscript{147} shall not impede movements of citizens or traffic and not to force trade bandh, the court can issue the direction which is not violative of articles 19 and 21. The view of the Kerala High Court was affirmed by the Supreme Court.\textsuperscript{148} The Supreme Court approved the distinction between a bandh on the one hand and a call for a general strike or “Hartal” on the other. It was held that there cannot be any right to call or enforce a “bandh” which interferes with the exercise of the fundamental rights of other citizens, in addition to causing national loss in many ways. Thus, no person, or a group of persons, party or organization has any right under the Constitution to hold bandh, agitation, demonstration and rally in a manner causing compelling the people by force or show of force to stop from carrying on their business, profession and other lawful activities. The Court also suggested that financial compensation should be accrued from the State for individual losses during bandh.

(ii) Collection of customs duty on exports and Imports, being a restriction upon the right under Article 19(l)(g), can be justified only under the authority of Law.\textsuperscript{149}

(iii) It was held in Hrudananda v. Revenue Divisional Comer\textsuperscript{150}, that the Constitution disfavors monopoly in trade because of the provisions in Article 19(l)(g) and Article 14 of the Constitution. Under the Constitution a citizen has the right to engage in any lawful business or trade or occupation as of right and at his pleasure, subject of course to the power of the State to regulate or restrict any occupation, trade or business on the ground specified in Clause (6) of Article 19.
(iv) In Rashbihari v. State of Orissa\textsuperscript{151} instead of inviting tenders the Government offered to certain old contractors the option to purchase tendu leaves for the years 1968 and the Government reasoned that the offers were made because the purchase had carried out their obligations in the previous year to the satisfaction of the Government. The court held that the right to make offers being open to a limited class of persons effectively shut out all others carrying on the trade in tendu leaves and impose unreasonable restriction upon the right of person other than existing contractors to carry on business and the scheme evolved by the Government was held violative of fundamental right of the petitioners under Article 19(1)(g) and Article 14 because the scheme give rise to a monopoly in the Tendu leaves to certain limited traders, and single out other for discriminatory treatment.

(v) The M.P(foodstuffs) Civil Supplies Distribution Scheme 1981, formulating by the Government introducing a new scheme for running of government fair price shops by agent to be appointed under the government scheme giving preference to the cooperative societies, in replacement of the earlier scheme of running such fair price shops through retail dealers was held not violative of article 14 and19 (1)(g) of the Constitution.\textsuperscript{152} The court reasoned that the scheme in no way infringes the petitioner’s right to carry on their trade of food grains. They are free to carry on business as wholesale or retail dealers in food grains. There is no fundamental right in any one to be appointed as an agent of a fair price shop under a Government scheme.

(vi) Similarly, exclusive purchase of milk by the military farms from the state or central government milk schemes and co-operative federations was held not violative of article 14 and19 (1)(g) of the Constitution. The court held that the policy does not in any way create monopoly in favour of all the milk schemes and it does not restrict the citizens or other agencies from selling milk to any other establishment. The policy decision of the ministry of defense was held to be reasonable and in the public interest and It dose not impose any unreasonable restriction on the trade or business of the petitioners infringing article 19(1)(g) of the Constitution\textsuperscript{153}.

(vii) Under article 30 the minorities have some special right in matter of establishing and administering educational institutions, it is also recognized under Section.14 (g) Kerala education act, under this Act the school manager has the freedom to close down the school subject to reasonable restriction so the manager of a
private school intends to close down the school, is required to give one year’s notice for closing the school to the department.154

(viii) Section 3 of Lushai hills district (trading by non-tribal) regulation of 1953 provided for prohibition against anyone carrying trade without a license except in accordance with the terms of the said license. The constitutional Validity of the said provision was challenged in Hari Chand Sadra v. Mizo District council.155 The court observed that the effect of the section if a non-tribal wishes to carry on any trade or business in the state is refused the license, Such refusal would result in total prohibition against him for carrying on a trade. Even if the license is issued it is only for a temporary period of one year and the executive committee can refuse to renew the license which means that the trader has to stop the business and the non–tribal has no remedy whatsoever against such an order. There is no safeguard against arbitrary refusal of the license or renewal of license and the regulation did not provide any standard or principle on which the executive committee has to act in granting or refusing to grant a license. Thus the power of refusal or renewal is left entirely unguided which cannot in sense be characterized as reasonable and Section.3 of the said regulation is being liable to be struck down as it violative the Article 19(1)(g) of the constitution.

(ix) The Municipal board granted monopoly to a contractor deal in wholesale transaction in vegetable in the market while refusing the same to another trader on the ground that there was no bye law authorizing the board to grant License The trader being refused license by the municipality moved before the supreme court in Rashid Ahmed v. Municipal Board.156 The court held that granting of monopoly by the board in favour of the contractor and prohibition imposed by the board in respect of the other trader was unconstitutional being violative of article 19(1)(g) of the constitution. The Supreme court in another case Dwarakadas v. state of UP157 held that when the authority refused to grant or cancel license without giving any reason, such refusal or cancellation of license is unreasonable. In Lalbabu Prasad v. State of Bihar158 the government of Bihar cancelled the coal trading license of the petitioner on the ground that his father was carrying the same business. The court found the order of cancellation of license void. Debarring a member of the same family to carry on the same trade cannot be a reasonable restriction.
(x) The government of Uttar Pradesh prohibited grant of license to a trader within a radius of 5 kms of a regular diesel outlet. The constitutional validity of the said order was challenged in Daulat Ram Gupta v. State of UP the court held that the order is liable to be quashed being violative of Article 19(1)(g) of the constitution and the said order is arbitrary based on unwarranted assumption. The control order does not prohibit either expressly or by necessary implication the grant of retail dealer license to a person within 5 kms of the radius of the regular diesel outlet. Imposing ban against grant of license or carrying on business on the general assumption is not justified.

(xi) The general manager, Haryana Roadways who is directly responsible for issuing a license for running motor vehicles in state A deputy superintendent of police imposes restriction on the licensed private motor vehicles operation in the state is unreasonable and it is infringement of the fundamental right violative of Article 19(1)(g) of the Constitution.

(xii) Cancellation of license to exhibit films under the M.P cinemas (exhibition of VCR) Rules, 1981, was hit by Article 19(1)(g) as unconstitutional.

IX. IF RESTRICTION INCLUDES PROHIBITION.

The expression “reasonable restriction “may in some circumstances mean complete prohibition. Though the constitution of India provide for complete freedom under the fundamental right. It has drawn upon the political, social and legal system that for the maintenance of public order, to prevent corruption in the public morale, incitement to crime and like, there must some limitation be imposed upon the liberty of these individuals and the” public power” of the state, under which the state has to inherent power to impose such restriction upon the fundamental right as are necessary to protect the common good, e.g. public health, safety and morals. These restriction come in the form of complete prohibition on the exercise of certain right in the interest of public order and the like. The supreme court of America has given a very wide meaning of the term Public power as to include everything that tends to promote the public welfare e.g. increase the industries of the state, develop its resources and add to its wealth and prosperity. It is held by the supreme court that restriction can include prohibition and, in that sense, “restriction“ is not synonymous with regulation. The decision as to what is reasonable restriction in public interest, under Article 19(1)(g) will depend upon:
CHAPTER 2  COMPREHENSIVENESS OF OCCUPATION.

# the nature of the business,
# the place and time where it is intended to be carried on,
# its effect on others
# the stage of development and
# many other factors which might change with the passage of time
and development of society.¹⁶⁵

These factor can differ from to trade to trade and there is no hard and
fast rules concerning all trades.¹⁶⁶ But depends upon the prevailing condition
at the time.¹⁶⁷ The court in India however have generally taken the view that
following prohibition are reasonable
* Prohibition of immoral or dangerous occupation such as
  gambling sale of so-called wonder drugs etc,
* Imposing of restriction upon business such as import or export of
  Goods or plying vehicles on public roads,
* Imposing regulation on public carries, etc. and other all interest of
  general public.¹⁶⁸ For the sake of convenience the important judicial verdicts are
  being discussed as

  1) Ramappa Bhimappa Kulgod vs. UOI.¹⁶⁹ Notification issued under
     clause 20 of the Cotton Textile Control Order, 1948, imposing prohibition on owners
     of power looms from manufacturing colored sarees was held to be in the Public
     interest.

  2) Bhagwandas v. Municipal Corp. Delhi¹⁷⁰: the Municipal Corporation
     Delhi imposed prohibition on sale of sugar-cane juice in Municipal Area. The
     constitutionality of the prohibition imposed was challenged on the plane of
     fundamental right of Article 19(1) (g). while dismissing the order of the
     corporation as unconstitutional , the court reasoned that there should be
     sufficient material enabling the formation of the opinion by the authority that
     an outbreak of dangerous disease is impending or had already taken place..

  3) Narendra Kumar v. Union of India¹⁷¹ held that the Non-ferrous
     metal Control order was reasonable in the interest of general public. Total
     prohibition is antithesis of the principal of fundamental right and reasonable
     restriction would not normally means total elimination or extinction of right. In
     case of dangerous trades, such as that of liquor or cultivation of narcotic plants,
it would be reasonable restriction prohibiting such trade or business altogether. The Supreme Court reviewed all the earlier cases and held  

“.There can be no doubt that the constitution makers intended the word restriction to include prohibition also. The contention that a law prohibiting the exercise of a Fundamental right is in case saved and cannot therefore be accepted. It is however for the court to decide whether in a given case, having regard to the nature of the subject matter and the circumstances of the case restriction may reasonably include total prohibition or ban “. However, the court laid a word of caution that when restriction amounts to prohibition, the court is required to strictly scrutinize and apply the test of reasonableness.

4) S.K.K weave Co-operative v State of Tamil nadu: the government or its executive officers cannot interfere with the fundamental right guaranteed under article 19(1)(g) of the constitution, unless they can point some specific rule of law which authorized their act. The government order prohibiting flaming of co-operative society after a living person, including political leader or minister was held invalid and destructive to the basic principals of rule of law.

5) Cochin Trawl Net Board v State of Kerala where the Government of kerala issued Notification dated 12th July 1991 temporarily suspending trawling operation in the territorial water for a month during monsoon season based on the recommendation of the expert committee to protect the interest of traditional fishermen engaged in fishing and to regulate fishing and further to control clandestine fishing activities, it was held that the order is not arbitrary.

X. IF DIRECTIVE PRINCIPAL OF STATE POLICY CAN BE TREATED AS REASONABLE RESTRICTIONS.

Restriction which promotes any objective embodied in the directive Principal is usually considered reasonable by court of law. Thus in the state of Bombay v. Balsara the supreme court gave weight to article 47 which directs the state to bring about prohibition of consumption of intoxicating drink except for medical purpose - to support its decision that the restriction imposed by the Bombay Prohibition act was a reasonable restriction on the right to engage in any profession or carry on any trade.

Restrictions imposed under the Minimum Wages Act,1948, amount to reasonable restriction even though they amount to restraint freedom of trade,
yet, such restriction are protected by article 19(6), and even the governor’s power to fix minimum wages is not in-contravention of Article 19(1)(g). however, mandamus to compel authority to start legal proceedings for enforcement of the act is in discretion of the court. It is a settled law that the establishments which have no capacity to give to their workmen the minimum condition of the service prescribed by the statute have no right to exist. In Bijay Cotton Mills v. State of Ajmer\textsuperscript{176} the supreme court observed that it can scarcely be disputed that securing of living wages to laborers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public\textsuperscript{177} The Supreme court upheld the Minimum Wages Act against the attack of violation of fundamental Right under Article 19(10(g) of the constitution. In another case, employer is compelled to pay minimum wages to their laborers even though the laborers, on account of their poverty and helplessness are willing to work on lesser wages.\textsuperscript{178}

**XI. LAW**

The word (law) occurring in Article 19(6) has to be understood as define in Article 13(3) (a), that is, including any ordinance, order, bye – law , rule, regulation, notification, custom or usage having in the territory of India the force of law . Even a rule made by the government which is valid will constitute a law for the purpose of Article 19(6)\textsuperscript{179}

Clauses (2) to (6) of Article 19 make no distinction between the law made by the legislature and the subordinate legislation for the purpose of placing the restriction on the exercise of the respective fundamental rights mentioned in Article 19(1)(a) to (g). It is apparent from clause (6) of Article 19 that it only speaks of “operation of any exiting law in so far as it imposes reasonable restriction on the exercise of the rights conferred by Article 19(1)(g) .There is nothing in this provision which makes it imperative to impose the restriction in question only by a law enacted by the legislature. Hence the restriction in question can also be imposed by any subordinate legislation so long as such legislation is not violative of any provision of the constitution. This is apart from the fact that the trade or business in potable liquor is a trade or business in res extra commercium and hence can be regulated and restricted even by executive order provided it is issued by the Governor of the state.
The expression law does not encompass merely administrative or executive orders/instruction. Section.\textsuperscript{180} Section 144 of the coed of criminal procedure,1973 is within meaning of Article 19(2)to (6).\textsuperscript{181} article 19(2)to (6) saves not only existing laws but also future laws that the state might make\textsuperscript{182} when an ordinance is saved existing law or order made there under is also saved.\textsuperscript{183} But when at the relevant time, an existing law had no application to a particular territory the same would not be existing law, with regard to that territory.\textsuperscript{184} The definition of law in Article 13(3) (a) includes custom. Therefore, a Custom is not immune from challenge under article 19(1)(g). A custom giving exclusive right to underprivileged class to take carcasses of animals dying in the village will, thus be violative of Article 19(1)(g).\textsuperscript{185}

**XI. Monopoly Laws**:

A monopoly over trade, business, service or industry as contemplated under clause (6) (ii), in favor of state (as defined under article 12) to the exclusion of citizen is protected only when there is a specific provision of law to that effect.\textsuperscript{186} Monopoly by specific legislation can be created in favour of even a state owned or state controlled corporation.\textsuperscript{187}

The right to carry on any business or trade, after coming into force of the Constitution has to be founded on Article 19(1)(g) and not on any theory of common Law\textsuperscript{188} and the right is subject to restrictions contemplated under clause (6) of Article 19, and a law can restrict these rights in the interests of general public.\textsuperscript{189} Where the U.P. Town Areas Act, 1914 or the U.P. Municipalities Act, 1916 did not authorize the framing of bye-laws creating monopoly in favour of the Town Area, to the total exclusion of individuals within the limits of the Town Area, it was held that such monopoly was without authority of law and, therefore, violated Article 19(I)(g)\textsuperscript{190} The Constitution forbids the grant, on the part of state, in favour of a citizen, of monopoly rights to carry on the business of playing busses; such a pre-Constitution agreement becomes illegal as a result of the Constitution.\textsuperscript{191}

If the state without creating a trade monopoly in liquor has simply passed it on to chosen individuals who are the highest bidders in public auction in particular areas, the monopoly cannot though be sustained under Article 19(6)(ii)\textsuperscript{192} In a case of trade in fruits under the bye-law of a Municipality confining sale of fruits and vegetables in particular area to the highest bidder would amount to an unreasonable restriction.\textsuperscript{193}
XII PROFESSIONAL AND TECHNICAL QUALIFICATIONS:
UNDER ARTICLE 19(6) (i)

Freedom of Profession does not mean the freedom to carry on any trade or profession without having requisite qualification or fitness, or the carrying on of the trade or profession in a manner prejudicial to public interest. Like India in many countries there are statutory professional counsels or boards having disciplinary power over its members and the power to make rules, etc. for the control of the profession laying down qualifications, defining acts of misconduct, etc. In England; Medical Council has such powers over practitioners and professionals, Thus it has control over:

1] Medical practitioners, under the Medical Acts, 1858 to 1886;
   Dentists Act, 1921,
   Solicitors Act, 1932 to 1936

2] Professionals of law dentistry, medicine and other like employments which involve the safety and health of the general public also obtain in the U.S.A.

3] In the case of a trade or business, the state, in requiring technical qualifications, may lay down regulations necessary to secure the confidence of the public in public utility business e.g. the business of bankers, common carriers and the like but in imposing these qualifications or restrictions, the State cannot make any discrimination between citizens of the same class. Thus a stature which exempted ex-military personal from the intellectual and moral requirements of the Bar examination, was held bad. In India various Acts are enacted for regulating professions

XIII. TRADING BY THE STATE:

Since Article 19(I) (g) declares that every citizen has the right to carry on any trade or business, the right would obviously for the state itself to impaired who seeks to carry on a trade or business ousting private traders from that trade, wholly or partially, hence, under the original Clause (6), such action on the part of the state could be justified only it is reasonable. But as already pointed out clause (6) as amended by the Constitution (First Amendment) Act, 1951, exempts the state from that condition of reasonableness by laying down that the carrying on of any trade, business, industry or service by the state would not be questionable on the ground that it is an infringement of the right guaranteed by Article 19(I)(g). The state is free
either to compete with any private traders or to create a monopoly in favour of itself without being called upon to justify its action in court as reasonable.

The State may enter into a trade or industry not only for reasons of administrative policy e.g. manufacture of salt or alcohol; or for mitigating the evils arising from the competitive system e.g. for the better control of prices or quality of products; or for better administration of public utility services but also simply for the making of profit just as a private trader would do, e.g. carrying on the business of motor transport\textsuperscript{199}

In T.B. Ibrahim v. Regional Transport Authority\textsuperscript{200} the Supreme Court held that there is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience. In this case, for the convenience of the traveling public, the Transport Authority resolved to alter the starting and terminus places of all public service vehicles (other than motor cabs) at Tanjore from the existing bus-stand owned by the appellant to the Municipal bus-stand in another area of the town. What was prohibited was that the bus-stand owned by the appellant being unsuitable from the point of view of public convenience it would not be used for picking up or setting down passengers from that stand for out-stations journeys. But there was no prohibition for the bus-stand being used otherwise for carrying passengers form the stand into the town, and vice versa. It was held that the order of the Transport Authority was not repugnant to Article 19(I) (g).

Though the State can operate transport business even without obtaining any permit and so far as monopoly over this business is concerned, there are no limitations on power of state to make any laws in respect of covering any area and persons to be excluded, but such exclusion, which infringe the fundamental right under article 19(1) (g),\textsuperscript{201} can be done by an appropriate legislation and not merely by issuing executive order to the transport authority not to issue permits to private operators. It must be noted that the regional transport authority is not empowered even to change or very any route in defiance of conditions of permits\textsuperscript{202}

The regional transport authority, Indore while granting permission for tempos as public service vehicle imposed the condition that the vehicle purchased from Indore division shall be granted permit. The petitioner who purchased the vehicle at Nagpur and brought at Indore was denied permit by the RTA, the petitioner
challenged the order in Mohammad Hanan v RTA, Indore, 203. Such condition imposed by the RTA was held unconstitutional.

The grant of a permit to one to ply motor Vehicle, on particular route is not a monopoly because it is open to the authority to grant another permit to others also 204 therefore, mere issue of license in favour of one to ply motor vehicle does not give him right to object to its being issued to another 205

In Sadal v. State 206 Bye law no, 1 of bye- laws of District Board, Rai Bareli under Section 174 of the U.P. District Boards Act, 1922 was held valid. “The bye-laws were framed under section 174, district Boards Act which authorizes a Board by special Resolution to make bye-laws applicable to the whole or any part of the rural area of the district for the purpose of promoting or maintaining the health, safety or convenience of the inhabitants of such area and for the furtherance of the administration of the district under the Act. In particular and without prejudice to the generality of these powers, a Board is authorized to make bye-laws for the purpose of regulating slaughter house and offensive, dangerous, and obnoxious trades, calling or practices and prescribing fees to defray the expenditure incurred by a Board. The power to regulate offensive and obnoxious trades and practices must be deemed to include the power to prohibit such trades or practices being carried out in particular place or areas and since the bye-law attempts to do this, it is not prima facie ultra vires the powers conferred on the Board by S.174.”

In a case Sundara v. State 207 It was observed: Explosives should not be manufactured and explosive substances should not be stocked except under conditions which would not be detrimental to the public safety, health and convenience. Therefore, the restrictions imposed on the acquisition, holding and disposal of explosive substances the right to practice one’s profession, trade etc., in manufacturing explosives” under the Explosives Act, 1884, was held not ultra vires and restrictions are permissible under clause (6) of Art 19 of the Constitution. The Explosives act does not constitute a violation of the freedom guaranteed under clause (f) and (g) of article 19(1) of the Constitution, in Burra Bazar Fireworks Dealers Assn 208 the relation of Article 19(1)(a) and 19(1)(g) were highlighted in this case and it was held that in the name of Article 19(1)(g) a citizen cannot violate the rights vested in people under Article 19(1)(a), i.e. a citizen has no fundamental right to create or deal in fireworks which will create noise pollution endangering public health
and public order. Where occupation involves lien on public property, it is subject to reasonable restrictions.

A municipality divesting private ownership or carcasses and vesting the hides in an ijardar, or restricting sale of fruits and vegetables to particular area auctioned in lease to the highest bidder, is held to create a monopoly not sustainable under Article 19(6). Monopoly in favour of one person is unconstitutional because it amounts to discrimination. An order sanctioning sale of entire resin in Government stock to a Cooperative Society is virtual monopoly violative of Article 19(1) (g). The Constitution does not favour a monopoly contract executed even on a pre-Constitution date.

**XIV. ARTICLES 19(1)(a) & 18(1)(g)-FREEDOM OF EXPRESSION IS AN INTEGRAL PART OF THE WORK OF AN ARTIST.**

A citizen cannot enjoy freedom of speech and expression if he is not permitted to express his views freely through mass media even when he is invited to use this media while there can be no tax on the right to exercise freedom of expression, tax is livable on profession, occupation, trade, business and industry. But when such tax transgresses into the field of freedom of expression and stifles that freedom, it becomes unconstitutional. The delicate task of determining when it crosses into the area of freedom of expression and interferes with that freedom is entrusted to the Court.

Right to information Act 2005 is useful for the right to expression and occupation. The Right to information Act is a revolutionary step into Indian Democracy set-up This Act provide for setting out the Practical regime of the right to information of citizen 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 Central Information commission and state information Commission for matters connected to the providing information on the requisition is also a mile stone, because democracy requires an informed citizens and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. If the authorities concerned refuses to provide information will personally incur the pecuniary penalty as well as other liabilities. Brief highlights of the Right to information Act:-
All citizens shall have right to information, information includes any mode of information in any form of record, document, e-mail, circular, press release, contract, sample or electronic data etc. And Rights to information covers inspection of work, document, record and its certified copies and information in form of diskettes, floppies, tapes and video cassettes in any electronic mode or stored information in computers etc. Information can be obtained within 30 days from the date of request in a normal case but if the information is a matter of life or liberty of a person, it can be obligation to provide information on written request or request by electronic means. Disciplinary action can be taken under service rules. Certain in formations are prohibited and restrictions are also made for third party information. Certain information which cannot be obtained: - information affecting Sovereignty of India, Security, Strategic, Scientific and Economic interest of state, forbidden information secret information and cabinet information cannot be obtained.

XV. ARTICLE 19(i) (g) AND 300-A

Article 31 (1) re-appears as new Article 300-A saying that no person shall be deprived of his property save by authority of law. The most dramatic reiteration of this Principle can be seen in Youngstown Steel and Tube Co. v. Sawyer where the U.S. Supreme Court held the seizure of steel mills by a presidential decree unconstitutional as there was no law to support it. Article 300 A. ensures that a person cannot be deprived of his property merely by an executive flat. The rights in property can be curtailed, abridged or modified by the state only be exercising its legislative power. An executive order depriving a person of his property, without being backed by law, is not constitutionally valid. Article 300A thus constitutes a protection against the executive organ of the state. Explaining the import of Article 300A, the Supreme Court has observed that the state cannot deprive a person of his property by taking recourse to executive power. A person can be deprived of his property only by authority of law and not by a mere executive flat or order. This pronouncement lays down several significant propositions one the dual requirements of public purpose and compensation inherent in the concept of eminent domain are to be read in Article 300A itself Two instead of compensation, the Court has used several times the word amount indicating that compensation payable for property acquired need not be an exact equivalent and may be less than that. Three, Article 300A envisages a just fair and reasonable law and not any law four even if a law is protected from challenge because of Article 31 C. it can still be invalidated because it is not being just fair and
reasonable. These qualities are derivable not only from Articles 14 and 300A but also from the Maneka Gandhi\textsuperscript{222} case

\textbf{XVI. POUND'S CLASSIFICATION OF JURAL POSTULATES ARE DIRECTIVE PRINCIPLES OF STATE POLICY OF CONSTITUTION OF INDIA}

Just as an engineer- architect constructs a beautiful and strong building with his tools and skill, Roscoe Dean pound also attempts to use law as the best tool for constructing a maximum welfare society with maximum satisfaction of ‘wants’, and realizes the skill and the important role played by the judges in dealing with laws. To him, the judges are the social engineers with whom the whole important role of constructing maximum welfare society is entrusted. The main responsibility of maintaining balance between and among these interests rests with the efficiency and mental volitions of the judges sitting in the chairs of justice, in the legal system. The more, the balance is efficaciously maintained by the judges, the more, the welfare of the society is attained. In explaining his theory, Pound strikes at the existence of the conflicting interests which shall be found in every legal system, and sets them under the heads namely:

\textbf{XVI. 1. Public Interests:}

Public interests are defined by Pound as those which possess the characteristics of public importance; state is existing for the people as a whole. As such it is supposed to set up certain things to which the attainment of maximum public benefit or, welfare owes

\textbf{XVI. 2. Social interests:}

Social interests are similar to public interests, but social interest has its direct originality in the society. In other words, whereas public interests are those interests emerging out of political organization i.e. a politically organized State, Social interests are those necessarily embedded in the social life of the society not in relation with the political organization? Such a classification between the public interests and the social interests is unintelligible. When we analyze these two into minute details, they equate to be the same. These are the interests in common with public importance.

\textbf{XVI. 3. Private interests or, Individual Interests:}

Individuals have their own private interests contradictory in some manner or otherwise to the public interests which the state bears as the strong representative of the whole people. By nature, individuals extend their own interests in property,
person, liberty, and in all sorts of freedom, etc. In the legal system, these two private and public interests stand conflicting with each other in their operation. Whereas state should go ahead with public interests, individuals should also behave to save their own private interests. Many times, even if these two are existing prominently, either of the two is bound to sacrifice for the other. No doubt, there may arise some construction of harmonious circumstances or, preservation of these two at the same time becomes indispensable. In this sense, Pounds’ theory may be nicely termed as “The Value judgment Theory” welfare state has to endeavour to serve maximum public interests to the possible cost of the individual’s interests.

The Supreme Court, in many constitutional cases, has many times confronted with the greatest trouble of deciding which interests will prevail. Is it Fundamental rights prevailing over Directive principles of state policy or public interests given supremacy over individual rights i.e. Fundamental rights. Since the judges are the social engineers in his eyes, they must bear two qualities viz:-

i) The judges must be relativistic to know the values surrounding them before deliberation of their value judgments.

ii) The judges must be at the same time pragmatic to foresee the consequences of their judgments, in order to avoid bad consequences due to their misconceived judgments.

**XVII. RIGHT TO WORK AS FUNDAMENTAL RIGHT-ILLUSION OR REALITY?**

The duty of providing work to all able-bodied persons is cast upon the state unfortunately no remarkable progress seems to have been achieved despite the government’s awareness to the alarming problem of growing unemployment in the country. It is needless to state that unemployment among the educated and uneducated masses is constantly in the rise at an alarming rate. The French Constitution of 1973 vide Article 21, recognized that the society owed subsistence to a citizens in distress, to be discharged either through procurement of work, or assuring the means of existence to those unable to work. In pursuance of these provisions, a series of legislative and administrative measures were undertaken. However, the provisions were not enforceable in a court of law, but were dependent on administrative measures.

A similar constitutional development is traceable in Germany. The Prussian General Code of 1794 laid down as a “principle”, the obligation of the state to take
care of citizens who cannot take care of themselves and to provide suitable work, in accordance with their faculties and abilities, to those lacking the means of earning a livelihood. This was not enforceable by the courts of law. The German constitution of 1849 did not enunciate any right to subsistence or work or social security, but was nevertheless backed up by a very effective scheme of social insurance which made a constitutional right appear dispensable. The Weimar constitution of 1918 contained the right to work as a distinct fundamental right, though the social insurance scheme had practically become defunct in the war-shattered economy. Since no proper mechanism for enforcement was created and since the courts of the Reich, in respect of constitutional matters, had only advisory jurisdiction and no capacity for enforcement. The constitutional of the communist countries, following section 118 of the constitution of the USSR, confer the right to work on all citizens. The guarantee thereof stems from the economic organization in the country.

The declarations of the United Nations Organization have recognized a wide variety of positive human rights to individuals. Article 239(1) of Universal Declaration of Human rights and article 6(1) of the international covenant on Economic, social and Cultural Rights, expressly recognize the right to work of every person. It is also interesting to note the shifting perspective of the International Labour Organization (ILO) regarding the right to work from the initial assumption that emphasis on growth would automatically create higher levels of employment, the ILO recognized at the Employment policy Convention No. 122 of 1965, the need for affirmative action by member states to generate employment and finally at the world Employment conference of 1976, articulated a basic approach, as the bulwark of human rights.

The draft Articles prepared by Mr. K.M. Munshi however provided for the right to work and protection against unemployment as enforceable fundamental rights. But in the present constitution of India, right to work cannot be guaranteed except that the policy of the state is to direct for the better life and liberty of the person. The directive principles are guidelines to the parliament, the state legislatures, the union and the state executives and also to local bodies and other authorities, to formulate their legislative and administrative policies in such a way that social and economic interests of the Indian people are well protected. Article 41 enjoying the state to make provisions for providing the right to work, of course, to the capacity and development of the country and within the limits of its economic capacity. Most of
the constitutional directives are in the matter of protection and welfare of workers has been followed up through central and state legislatures except for the right to work. No doubt that the egalitarian principle of democracy envisages not only the concept of one man vote, but also the equal and effective right of each and every man to live and to develop his personality in accordance with the levels of freedom, equality and justice.\(^{228}\)

The most striking implication of right to work\(^ {229} \) as a fundamental right will be on worker’s right to strike. If the right to work becomes a fundamental right, it may be construed, “right not to work’ as a negative aspect of the concept of “Right to work”. The negative construction of the phrase “Right to work” enables the workers to assert right to go on strike, as a fundamental right, which is contrary to the principle established by the courts.\(^ {230} \) It only enables the workers to invoke the jurisdiction of the courts under Article 226 of the constitution which is so far deprived to them.\(^ {230a} \) The workers should not be left in a state of confusion in case of the extension of constitutional status to right to work. Government of India has given works guarantee to rural unemployed and has passed The National Rural employment Guarantee Act 2005(NREGA.). The (NREGA.) is renamed mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) in year 2009 The Government of India has passed this historic MGNREGA, which promises wages employment to every rural household, to adult members volunteer to do unskilled manual work, it also provide allowances of the jobs under the scheme if they are not provided the work in the rural household. The aim of MG NREGA is to remove poverty by assuring at least 100 days employment in a year to the target groups. MGNREGA will be implemented through state Governments Panchayat Raj institutions as well NGOs. The concept of MG NREGA is a major initiative of government of India towards poverty reduction and income generation among rural poor families. This step assumes special significance when view in the context of World Bank statement that more than 30 percent of India earns an income of less than $1(Rs.45) a day. However, those familiar with the socioeconomic structure of Indian economy believe that this percentage is likely to be higher among the rural poor.

Significance of MGNREGA; Rural India’s one major problem is of seasonal employment i.e. a large number of people have to face lack of employment during certain times of the year. Because of this, many communities in the dry and drought prone areas have to migrate seasonally to another part of the country in search of
work. This annual migration is painful and disruptive process. Those who are left behind also do not have enough to eat or the barest money for other basic necessities and though there may be no famine, there is surely a slow malnutrition and starvation. Even when communities do not migrate they suffer a great amount of distress at such times. Their food intake is reduced, the children are withdrawn from schools, they go into debt and they are unable to attend to their health problems. At such times the need for a safety net is left and MGNREGA is a very good protection for this problem. Another question is whether a law is necessary or a scheme can work as well. The advantage of having a law is that it gives a right to the people. Under the scheme, the Government has the sole right of decision-making and the need for employment cannot be directly expressed by people. MGNREGA overcomes this problem and relates supply of employment directly to demand. It is most necessary to promote organization so that people can have a formal framework of accessing resources and scheme. And also they have a voice to decide where and how resources are allocated. MGNREGA gives right to help people to come together to organize themselves to represent their view for right to work. However Government of India needs to pass yet MGNREGA type Act which can guarantee the works to all unemployed citizens that includes urban unemployed also, so there are two options open to Government.

(i) Creation of a bare right to work in the place of a constitutionally guaranteed right; and

(ii) Public assistance to the unemployed persons.

The first can effectively be dealt with by bringing “Right to work Statute” consisting of programmers and policies of the Government to tackle the unemployment problem and in particular the unemployment issue in the unorganized sector. The second aspect involves the financial commitment on the part of the Government and it includes the scheme of insurance against unemployment. The other programme is to grant unemployment allowance by way of loan subject to repayment after attaining employment. The concept of “Right to work” need not be like an ornament in the pages of our Constitution to fulfill the dreams of the Government but requires only a relative changes in the policies and programmers of the government to yield more results than what we can expect from “Right to work” as a fundamental right. It is rightly expressed “the demand for right to work is not
merely a technical demand for jobs. It is a demand for complete change in the planning policies and priorities and indeed a change in the economic structure itself.

XVIII. EMBODIMENT OF FAITH AND RIGHT TO OCCUPATION.

XVIII.1. Historical Perspective of Faith and Religion.

It is impossible to believe that one can forget to deal with issues of rights neglecting religion, because religion concerns in the most of human life beings in existence. In every case when rights get argued and defended on religious grounds, they secure maximum attention of mass and their rationale is restricted to the pseudo secular rationalism and enlightenment. There is no difference on the comprehensibility of the all religions according to Indian constitution, but reflective difference, based on the religion are always ambiguous and problematic. To neglect such a misreading is potentially problematic. Though for the resource-rich religion traditions can become an instrument for enlarging and assuring human rights. Every citizen irrespective of his/her religion is entitled to the same fundamental rights and is subject to the same fundamental duties and obligation.

The ancient law in view of being the birthplace of republics, (ancient law did not know about absolute monarchy, or tyranny) gave us local self government to every class, artisans, business persons or professionals in organizing and prescribing norms of their own trade or profession. This connected with ‘individual freedoms’. The civilizations of Middle East and Europe and socialist theory believed in the inevitable conflict between demands of the society and ‘individual freedoms’. Hence the ideas of curbing individual freedom and imposition of mental slavery for the sake of religion, faith or creed must have come in existence. Any thoughtful person who surveys the human rights scene around the globe, he notices that how the religion has become the central dimension. Since the 18th century enlightenment in Europe and the America, through the course of the modern experience, it became almost a matter of reflex for the observers from the academic, literary and diplomatic worlds to expect religion to diminish in significance; it has not disappeared altogether from many public spheres. It is also assumed in most academic circles that whatever or religion survived would be of a genial, tolerant, philosophical enlightened sort. However faith should not be a motor for dissent against other religions and a bond should be there between other religions’ people and there must be the assurance of the rights.
The realistic scenes of a very different character the world has witnessed the monstrous totalitarian systems of the 20th century, i.e., Fascist, Nazi, Communist, Maoist or whatever They have set out to suppress rights, beginning with those of religious nature. These inventions have outlasted the suppression of the religions’ voice. After 2nd World war and formation of United Nations Organization it was general perception worldwide that religion cannot be ignored. Hence United Nations gathered sufficient consensus or sufficient assertion of persuasive power that there could even be a UN Charter and through such a charter an approach is made possible for the nations to speak of “faith in fundamental human rights” and to produce a Universal Declaration of Human Rights. On its grounds, the UN could produce contentions like these: “Everyone has the right to education.” and education should promote “understanding, tolerance and friendship among all nations, racial or religious groups. Freedom of religion is the basic human right of every individual. Article 18 of the UDHR proclaims, “Everyone has a right to freedom of thought, conscience and religion. In 1962 the General Assembly requested the Human Rights Commission to draw up a draft declaration on the elimination of all forms of intolerance based on Religion or Belief. The content of the right to freedom of thought conscience and religion has also been examined in various forums. In the Convention of 1981 on the Declaration of the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the resolution was adopted that religious interest of individual to be protected and whoever infringe the right to religious freedom of an individual shall be persecuted.231 “Again, why bring up the religion”?

The realist answers that the world community deals with religion because it is there and will not go away. If some forms of faith and institutions have dwindled, cooled, or even disappeared in the northern spiritual ice belt, there are temperature at tropical zones of spirituality where religion prospers. There it is the main motivator in the discussion of rights or their limits. The scholar or the adjudicator deals with religion because its professor claims that its impulses have been derived from the vertical dimensions of experience. They issue from God or the heavens before the respondents connect them with the horizontal elements. On that secondary plane, humans interact with each other both within and beyond the boundaries of religious communities. Because of their transcendent and absolute source, the religion is seen as non-negotiable. In some passages of Rig-Veda, the Mahabharata and Pali Canon
there are references to a casteless millennium of equality, plenty and piety—This was supposed to have existed in some remote unrecorded antiquity. It was Golden Age of Trreta or Satyayuge when there was only one caste of Deva or Brahamana, then people had no claim of private property, women were not regarded as mere chattel, and everyone was pious and happy.

During the 4th Century B.C., Megasthenese observed the existence of seven castes—Brahmans, cultivators of land, herdsmen, hunters, artisans and traders, soldiers, spies and counselors to the King. Apart from the first, other was vocational groups only and castes were not based on heredity. Megasthenese remarks that vocations were not fixed on parentage only and the divisions of vocations had become more apparent than those of birth. But in 4th Century A.D. from the Gupta’s period, the caste rigidly has become one of the main characteristic of the village community which was almost with the inexorable force of a natural law and caste determined the occupation of its members. Since castes were based on the principle of hereditary, occupation also became hereditary. Industrial mobility hardly existed due to the social rigidity system, a carpenter could never think of learning the art of making cloth or gold and silver works, a cobbler could not leave his professions and make metallic utensils. Since the techniques of production were generally backward, the division of labor was not very complex. Although artisans had specialized in their skill which required for their particular industry, but the specialization of this kind existed in the narrow sense only.

The caste system was conceived with recognition of variations in human nature and as a plan to fit these variations in a graded structure according to the needs of the society. This was a scheme of cooperation and synthesis to ensure progress. Given sufficient flexibility was an excellent solution of the dichotomy of the individual and the community. In course of time, four castes ramified and were interwoven into a baffling maze of sub castes and mixed castes. Inter caste marriage in defiance of canonical laws went side by side with the rise of new crafts and vocations. It is an intriguing question whether the caste system, changing and ramifying, was the determining factor in society and superseded the force of wealth. Three upper castes represented the class of property and privilege while the rest were the destitute proletariat? The varnas system was based for economic strata under the gloss of priestly idealism? Undoubtedly, differences in wealth sometimes superseded the differences of birth. But economic changes did not efface caste distinctions and
free the individual from the dispensation of his blood and birth. Division of wealth was hardly coincident with the hierarchy of Brahmana, Ksatriya, Vaishya, and Sudra. In the economic pyramid the layers from the top downwards were high officials, merchants and bankers and landowners; small freeholders, artisans and ordinary officials, labour were without right and property, despised and segregated from the society. The third and fourth layer of society would correspond to the Sudra and the Mleccha but the first and the second would not fit in the caste hierarchy. Those Brahmans and Ksatriyas who remained faithful to their profession were above want and commanded esteem and influence to their caste. The caste system was devised to solve the differences in society, top reduce competition and to maintain a balance of interests. It was from time to time adjusted to new developments. However it will be seen that the caste is not as rigid as sometimes been believed: individuals and groups can rise in the Varna scale, and they can also fall. Sometimes, it was found difficult to classify the new castes in the Varna.

The integrity to the chief social institution, as was existed was not individualist but collectivist. The unit was not the individual but the family which regulated the relations of its members inter se. the inter relations of different families were governed by the village community and the caste, the former of which was a collection of families organized for the purpose of communal self government, while the latter was an aggregation of families united by rules as to marriage, diet, occupation, intercourse with the rest of the community, but not localized like the village community, maintained ideological control over the individual who was bound to conform to their standards. The individual scarcely existed except as a member of a group. Self determination was only possible within the limits which the latter imposed. The village community was only partially a social institution. It was more an economic and administrative organization over which the state had right of control though this was sparingly exercised. The affairs of the caste and the family, however, were matters with which the state had no direct concern. The relations of their members were governed not by secular law but by Hindu law and customary regulations.”

Pre British Indian society was almost completely subordinate not to the individual but to the caste, the family and the village Panchayat, throughout its centuries old existence. Till the advent of East India Company, occupations, profession, business and trade of people were governed by the caste system both
among the Hindus and Muslims; Among Hindus in addition to caste, sub caste also played a role in determining the occupation as four varnas, the untouchables and the Tribal/aboriginal population.

Muslim rulers held sway over most of the territory of India and Hindu Kings/Zamindares accepted the Muslim suzerainty. But within their own domain the occupations were still caste based. Brahmans still practiced religious duties as per their caste’s and family traditions. For example, among Nambudiris of Kerala only the eldest brother had the office of Pujari while all the younger brothers only attended subsidiary duties. All the income accrued the eldest, who only had the right to marry (that to any number of wives). The other brothers had boarding & lodging with him, with no separate income and wife or wives. These brothers had access to the wife or wives of eldest brother, but all children belonged to the eldest one.

The Kshatriyas were rulers of the villages and whenever the local Rajah or Nawab went to battle with others, the Kshatriyas would join him and fight the enemy. Many Hindu Kingdoms started employing Muslim commanders and also Wazirs (Prime Ministers) and Muslim Nawabs did the same. Vysyas conducted the business; shudras had many castes which looked after agriculture, handicrafts, blacksmiths, goldsmiths, nakkash, weavers etc.

The untouchables did all the manual and menial labour. The wages for all work was in terms of measuring grain at the time of harvest. Land was allotted to farmers as per the wishes of the Rajah or Nawab and their Zamindars and Jagirdars. One noticeable feature of the Muslim period is that land started devolving to non-kshatriya communities as a strategy of Muslim rulers to weaken the kshatriyas after the conquest of the latter by the former. In this way many shudra sub-castes and even untouchables began to own land.

The Mohammedan Community also had caste/profession break up of their community on almost all on Hindu like social structure though untouchability was barred as a principle. Every Mohammedan ruler brought their own skilled work force of craftsmen like, carpet, weavers, and jewelers, blacksmiths trained in weapon making, architects, hakims, weavers, and dye makers. There was no major difference between Mohammedan and Hindu Rulers in regard to payment of wages.

With the advent of East India Company, things began to change in the field of occupation i.e. employments, trade business and commerce. Let us examine the development under separate heads:
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1. Employment: The Company needed local writers and translators for this purposes, started recruiting literate persons mostly Brahmins but also started encouraging others and trained them as dubhashis who were able to read and write in the local language and English. These people were appointed in the administration and courts also. They were regularly paid salaries. As per the Company rules or as per the individual British businessman, the contract governed the terms of employment wages, tenure and pension also. These were key factors in attracting Hindu upper castes to opt for English education and employment which offered total security during and after service which was unheard and unthought-of before coming of the Company.

2. The Company as it began to acquire Indian territories, it needed Army, and therefore the company raised Armies in the Presidencies of Madras, Calcutta and Bombay. These armies were not only had infantry, but also cavalry. Artillery and Naval forces also were trained and pressed into many wars in South East Asia and won glorious battles. The point here is the huge enhancement of employment potential with regular salaries, periodic leave, promotions and recognition of service through medals etc. and pension after retirement. But mostly castes Brahmins had hesitation in crossing the sea for going to wars for British and subsequently, on their return; they would be ostracized by their community.

3. The Company’s policy in recruitment was that generally it accommodated the wishes of the local ruler and employs his people, but it also recruited people from all castes and communities including schedules castes. The company had its own priorities of spreading its economic activity supported a trained Army and administrative/legal system generally satisfying the local rulers but giving opportunity to all the sections of the community as far as possible.

When the power shifted in the hands of the British Government, the same policies were followed and the earlier Armed forces and Administration including Judiciary became part of Government. Thus East India Company became the founder of modern Government in India, with a positive outlook of egalitarianism. During the British regime, the balance of economic life in the villages was upset. The gradual destruction of the rural crafts broke up the union between the agriculture and the domestic industry in the country side and thus contributed to the destruction of the self sufficient rural economy. On the one hand, millions of peasants, who had supplemented their income by part time spinning and weaving, now had to rely
overwhelmingly on cultivation, and the other, millions of rural artisans lost their traditional livelihood and became agricultural labourers or petty tenants holding tiny plots. They added to the general pressure on the land. Thus the British conquest led to deindustrialization of the country and increased dependence of the Indian handicrafts was reflected in the ruin of the towns and the cities which were famous for the manufacturing of various products.

The British initially maintained neutrality in the matters of caste as they regarded caste as the steel frame of Hinduism. But in the Charter of 1833 it was provided that none of the subject of the crown resident of India should be by reason only of the religion, place of birth, descent, colour, or any of them, be disqualified for any place of office or employment under the company.” The object of this provision was not to ascertain qualification but to remove a disqualification. In practice, very little, was done to give effect to this pious provision. The high civil and military services remained shut to the Indians. They could hold minor insignificant posts only. The other legislative enactment which had a direct bearing on the caste frame was the Caste Disabilities Removal Act [XXI of 1850]. It laid down that any law or usage which inflicted forfeiture the rights of property or which might be held to affect any right of inheritance by reason of anyone being deprived of caste should not be enforceable in the courts of law in British India.

The Hindutva forces have for long been shouting out loud about Muslim appeasement, and secular forces have been countering this false propaganda through figures of employment, ownership of corporate houses, educational data etc, all of which point towards the backwardness of Muslims in relation to Hindus and also other religious minorities. But there has been no systematic study of religion as a factor in economy, unlike in the case of dalits.

It is argued that religious codes and beliefs have impinged on economy and in many ways determined differential accumulation of economic assets among religious communities and also effected employment patterns. Religious and caste networks and patronage patterns have a greater determining role in the intermediate economy and the small town India, which exists and functions as an economy within the framework of corporate capitalism concentrated in metropolitan India where just 12 per cent of the India people live.

In post independence India the domain in which obstructive religious ideas prevailed has not been reduced, through the way economy has been managed.
Religious has not got pushed back into the ‘private sphere’, and in fact state policies have in fact reinforced religious inequalities, in terms of asset distribution and creation among the different religious communities, primarily because of the manner in which religion is treated in the Constitution itself, and because of the manner in which secularism has been defined and taken to be equal accommodation and competitive patronage of social groups and cultural communities, increasing in terms of religious communities. A failure to desacrilege the economy has also meant that competition, particularly in the intermediate economy in small towns, takes the form of rivalries that easily erupt into communal conflicts, as studies of anti minority pogroms would show.

Further there exists unequal economic power. Although minorities constituted 17 per cent of the Indian population, the non-parsi and non-jain component, which forms the major chunk of this minority population, controlled only 2 per cent of the assets of the top business houses while the Jains and Parsis controlled as much as 40 per cent. The economic significance of the Jains is of course much greater than their share in population. Muslims have the big share as their population is concerned but they have no economic significance though mostly Muslims live in rural areas but disproportionately urban, Muslims are also under-represented in the country’s capitalist elite. Out of 1365 member companies constituting the Indian Merchants’ Chamber of Bombay in the 1980s no Muslim owned company figured in the top 100, and only some 4 per cent were owned by Muslims. Only 1 per cent of the corporate executives are Muslims, and in the IAS they constitute 3 per cent, in the police 2.8 per cent, the Railways 2.65 per cent, in the nationalized banks 2.5 per cent, and in parliament 5 to 8 per cent. Muslim illiteracy rate is 15 per cent higher in relation to Hindus, and the proportion of Hindus who get secondary education is three times that of Muslims. They also have a smaller percentage among those self employed. The incidence of landlessness is much higher among them. Other variations along religious lines are in terms of occupation. Many tasks considered ‘polluting’ by the norms of Hindu ritual practice are dominated by Muslims, such as those related to the leather industry (although the major trade is not in their hands today), bidi manufacture (where Muslims comprise 80 per cent of the workforce but own none of the dominant brands), and recycling of scrap etc. Muslims also predominate in many crafts that require skilled labour, such as brassware in Moradabad, glassware in Ferozabad, pottery in Khurja, stone and marble work in Rajasthan, and many other
such skilled crafts, yet the trade networks are not owned by them. Therefore it is quite common to points out that when question of surplus workers retrenchment comes the Muslim workers are appropriated by Hindu and Jain trading castes.

Among the Christians there is a great difference in the position of upper caste Hindu converted or Syrian Christians who have been Christens for a long time and benefited from educational and employment opportunities during the British rule, they only retain the status today. The dalits who are recently or 19th century converts from lower castes are treated by Christians alike their Hindu counterparts. The Dalit Christians are the agricultural labour and are mostly likely to be among those below the poverty line.

There is a similar disjunction within the lower caste Sikhs and the landowning Sikh jat families; although there is another difference based on religion in Punjab, Sikhs constituting the peasantry, and the Hindu are the traders or shopkeepers on religious and caste lines. Therefore, religious inequality has co relation with occupational status and class formation in much the same way as caste does, and has been a factor in much of the communal violence as well when it becomes an incidence of protecting or taking over of access to assets and surplus. It must also be considered that personal laws of all religious communities in regulating and determining rights to property, inheritance etc also create imbalance in terms of appropriation of surplus and access to economic assets earned/owned by families in terms of gender.

XIX. COW SLAUGHTER

Meat business has become a large scale occupation generating trade today. But cow slaughtering is informally banned in India." The veneration of the cow dated back to biblical times, when the fortunes of the pastoral Indo-European people migrating on to the subcontinent depended on the vitality of their herds. As the rabbis of ancient Judea had forbidden pigs’ flesh to their people to save them from the ravages of trichinosis. So the sadhus of ancient India proclaimed the cow sacred so as to save them from slaughtering as people’s existence depended on their herds"^{236}

A.P Jayanthram a historian remarks that cow worship started in the Gupta era when it was believed that the ‘dirt’ produced by taking food and drink from the lower castes could be cleansed by consuming cow dung and urine. The Taitreya Brahman, in fact talks of yagnas using bulls and cows. The Apastambhadharmasutra^{237} mentions that the cow is a holy animal and therefore must not to be eaten. In a case of
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Hinsa Virodhi Sangh v. Mirzapur Moti Kuresh Jamat and Others. Court held that in the force of Article 21 to be vegetarian or non-vegetarian is one’s personal affairs and it is part of individual’s right of privacy.

The attitude of Mahatma Gandhi towards cow protection is clear in his letter to Pt. Jawaharlal Nehru in 1925: “The cow is merely a type for all that lives. Cow protection means protection of the weak, the helpless, the dumb and the deaf” Where as Nathuram Godse quoted one another speech of Mahatma Gandhi delivered on cow slaughter, in that he appealed his disciple/follower that no law prohibiting cow slaughter in India can be enacted. How Can I impose my will on a person who does not wish voluntarily to abandon cow slaughter? India does not belong exclusively to Hindus. Muslims, Parsees, Christians all live here. The claim of the Hindus that India has become the land of the Hindus is totally incorrect. This land belongs to all those who live here.

Most States have long ago enacted laws prohibiting Cow slaughter. It is believed to be a part of Hindu political agenda since independence and even finds a mention in the Constitution though under the Directive Principles of state policy. In Buddha v. Allahabad Municipality it was held that the clause 3 of Bye law I of Allahabad Municipality Act prohibiting the slaughter of cow, bull, bullock and calf, framed in pursuance of the Directive Principles of the State Policy laid down in Article 48 of the constitution, and upon the directions by the State, is not unreasonable and as such is not hit by Article 19 (1) (g).

In Mohd. Hanif Quareshi v. State of Bihar, the court had the occasion to consider the validity of the ban on slaughter of certain animals including cows. It was held:

(i) Fundamental Rights of the Muslims in respect of their religious beliefs and practices were not infringed by the Acts in question and did not violate Article 25 (1)

(ii) The classification adopted in prohibition of the slaughter of cattle was based on sound and intelligible basis and there was no denial of equal protection of the laws to ‘slaughterers of cattle’ as opposed to the ‘the slaughterers of sheep and goat.’

(iii) The total prohibition on the slaughter of cows of all ages and calves of cows and buffaloes is reasonable and valid.

(iv) It however held that a total ban on the slaughter of she-buffaloes, bulls and bullocks without prescribing any test or requirement as to their age or usefulness offended Article 19(1) (g) as the prohibition of their slaughter after they cease to be
capable of yielding, milk or breeding purposes or working as draught animals could not be supported as ‘reasonable in the interest of general public.’

State argued that it had passed the impugned Acts to give effect to its obligation under Article 48 which inter alia directs the State to prohibit the slaughter of cows calves etc, Supreme Court observed that the directive principle of state policy cannot override the Fundamental Rights and that even though the State should implement the directive principles of state policy, it must be done in such a way that its laws do not take away or abridge the fundamental Rights. The Researcher observes that in the early years of the working of the judiciary, the attitude of the judiciary always emphasized the subordinate character of the directive principles of state policy in comparison with the Fundamental Rights. The judiciary always took the view that in case of conflict between the Fundamental Rights and directive principles of state policy, the former always prevailed.

The restrictions which are imposed for securing the objectives enjoined by the Directive Principles of State Policy may be regarded as reasonable under Articles 19(2) to (6) of the Constitution.\textsuperscript{242} But the Supreme Court in M.H. Quareshi v State of Bihar\textsuperscript{243} held that a total prohibition on cow slaughter of she-buffaloes and bullocks without prescribing any guiding test regarding the age and usefulness of the animal was unreasonable.

Thereafter the State of Bihar introduced the Directive Principles of State Policy\textsuperscript{244} by amendment imposing total prohibition on the slaughter of she-buffaloes and bullocks below the age of 25 but the Supreme Court in Abdul Hakim v State of Bihar\textsuperscript{245} held the prohibition unreasonable. The court reasoned that the animals no longer remain useful for any purpose after the age of 15 years. The court held that the procedure prescribed by the Act for obtaining a certificate for slaughtering cattle above 25 years was unreasonable and thus the Court merely followed its earlier judgment.

In considering the question of constitutionality of the enactment in question, the Supreme Court observed that the impugned legislation was enacted in pursuance of the direction under Article 48 of the Constitution\textsuperscript{246} It was further noticed that the provision of Chapter IV Enshrined those directive principles of state Policy which even though are not enforceable judicially were none the less fundamental in the governance of the country, as the Article 37 of Constitution imposes a duty on the State to apply them in the making of laws.
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The court did not go to question as to whether the last two directions on article 48 were ancillary to the first or are separate and independent items, it held: “the direction for taking steps for preventing the slaughter of animals quite explicit and positive which contemplates a ban on the slaughter of the several categories of animals specified therein, namely cows and calves and other cattle which answer the description of milch or draught cattle.”

The court referred to the sentiments of Hindus as one of the factors to be considered, went into various ramification of the economic of cattle in the country, on the basis of the statistics furnished to them. The court found that partially beef might be a matter of ‘necessity’ for the poorer section of the people. Though the presence of a large number of useless and inefficient cattle affects the agricultural economy as it was a drain on our scanty as limited resources of fodder and the results of Gosadan scheme were a encouraging.

It is pointed out that the upholding of the total ban on the cow slaughter rested on the consideration that even drastic and stringent regulations failed to protect from falling a prayer to premature slaughter at the hands of the butcher, and if the cow has to be protected, then an exception in favour of cows had to be made. The court spoke of total ban on the slaughter of cows of all ages and calves without extending it to bulls and bullocks in consonance with the Article 48 of the Constitution.

But the test of reasonableness should not degenerate from the mere whim and fancies of an individual, needs to be based on objective test. One of such test is legislative judgment as incorporated in the enactment based on certain material before the legislature. Article 48 furnishes the best test of ‘reasonableness’ in this context as ‘other’ in its second part has reference to Cows and not calves as calves could not be ‘milch and draught cattle’. However grammatically the word ‘other’ governs both ‘milch’ as well as ‘draught’ cattle, for the words are not ‘other milch cattle and draught cattle’. It follows that the Constitution while referring to ‘cow’ included both milch and draught cattle. The Constitution could not speak of ‘other draught cattle’, unless the word cow included a ‘draught cattle’. It is thus clear that the word ‘cow’ is not used in a narrow sense but in a popular sense of bovine cattle i.e. as including cow and bullocks both. In Sanskrit usage also, word ‘Go’ (cow) is used for ‘Gavansh’ i.e., as meaning the cow family covering both cows and bullocks. Under the General Clauses Act, Section 13 of the Act, words importing the masculine gender include the feminine and vice versa. This is also the maxim of “Mimansa Rule of interpretation.”
There is nothing in the Constitution to infer that ‘cow’ did not include bullocks. But there is contradiction on Article 48 in the words following that ‘cow’ included milk as well as draught cattle, i.e. the bullock.

In Mohd. Hanif Quereshi v State of Bihar, it was assumed that the word ‘cow’ did not encompass the bullock and there is no discussion on the significance of the construction and sequence of the phrase following it. Clause (g) of section 2 of the U.P. Prevention of Cow Slaughter Act (1 of 1956) defined the ‘cow’ as including ‘bull’ or ‘bullock’, in consonance with the meaning of word as used in Article 48.

In Mohd. Faruk v. State of Madhya Pradesh, the Court struck down the bye-laws prohibiting the slaughter of bulls and bullocks also, within Jabalpur Municipality. In Hasmatullah v. State of Madhya Pradesh, the Courts declared unconstitutional what is characterized as the fourth attempt by the State to impose total ban on the slaughter of bulls and bullocks. The bye-law and the amendment were invalidated as attempt to circumvent Mohd Hanif’s case. Nevertheless the law declared by the Court can always be amended or overruled, without infringing fundamental rights of citizens.

The situations and perceptions change with times. What was considered unreasonable on the material available yesterday, may not only become today reasonable and imperative in changed circumstances (as prostitution), further on the perceptions or material coming in to the light. The touchstone of reasonableness is social consciousness of the people. It manifests itself in the legislature. A section of people consider the cows and bullocks (Nandi), both as divine. The slaughter of bovine cattle is an anathema and hurts the feeling of a huge majority of citizens as a scourge for their motherland. To ignore is to forget not only history but also culture. On the other hand the occupation of a butcher and slaughter of animals have been classed as ‘obnoxious trade, occupation, and businesses in the laws relating to Panchayat and Municipalities. It pollutes the environment- choked sewerage in cities. It runs counter to the spirit behind Articles 48A and 51A clause (g). The Supreme Court has held that slaughter of cows and bullocks is not a part of religion of the Muslims. It is not necessary to carry on the profession of a butcher that he is being permitted to slaughter cows and bullocks and the prohibition does not amount to closure of his trade or occupation. If legislature bans slaughter of bovine cattle absolutely, as being a source of riots and danger to public peace, the restriction is in public interest.
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However, the test regarding reasonableness cannot rest on economics of statistics alone. The consideration of bullocks being a burden in old age, or the Scheme of ‘gosadans’ not being encouraging is irrelevant. The test must follow the ethos of the nation. Article 48 itself provides the test of reasonableness of the restriction on trade and occupation involving cow slaughter and therein rests the justification of total ban; the word ‘cow’ being understood in a generic sense as including bullocks. The decision in Mohd. Hanif Quereshi’s case and the subsequent cases, in so far as they struck down total ban on the slaughter of bulls and bullocks (without prescribing a criterion whether they were fit for breeding or for use as a draught cattle), it is submitted, incorrect.

The notification issued by the M.P. Municipal Corporation on 12th January 1967 had the effect of prohibiting the slaughter of bull or bullock within the Municipal limit of Jabalpur. The Supreme Court in Md. Faruk v State of M.P. observed that imposition of restriction on the exercise of fundamental right might be in the form of control or prohibition, but when the exercise of fundamental right is prohibited, the burden of proving that a total ban on exercise of right alone may ensure the maintenance of the general public interest lies heavily upon the State. While quashing the impugned notification the court held that the prohibition imposed on the exercise of a fundamental right may be considered as unreasonable if it is imposed not in the interest of the general public, but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief of thought is not the same as that of the claimant.

Then again in 1991 the State of Madhya Pradesh sought to ban the slaughter of bulls and bullocks by enacting Amendment Act. The Supreme Court in Hasmatullah v State of M.P. held that a absolute ban on slaughter of bulls and bullocks is not necessary for complying with Article 48 of the Constitution. The court observed that inclusion of bull and bullock in sub-clause (a) of sub-section. (1) of Section 4 of the Act has the effect of total ban on the slaughter of cow, calf of cow and calf of she buffalo while the slaughter of bull and bullock, along with other agricultural catties can be slaughtered after complying with the provision of obtaining a certificate from the competent authority. The amendment has imposed as unreasonable restriction on the fundamental right of the butchers and of that extent the Act was held ultra vires. It is pertinent to mention that in respect of State of Gujarat 16 years has been accepted as span of life and ban on slaughter below 16 years of catties has been held as valid.
While Bharatiya Janta Party highlights that the successive governments have been feigning ignorance of Assam Cattle preservation Act of 1950 to appease beef eating communities. Legal experts feel Cattle Preservation Act does not ban the slaughter of cow rather it “provides for the preservation of certain cattle by regulating and controlling the slaughter there of.”

The Judiciary has times and again come to the rescue of people employed in cow slaughter profession. Thus in Mirzapur Moti Qureshi Kassab Jamat Case\textsuperscript{257} it has been held that a law imposing total ban on slaughter of bulls and bullocks on all ages interferes with the right of their owners to sell them. The total ban imposed is unreasonable restriction on the freedom of trade and business under Article 19(1) (g). Section 1 of the Bombay Animal Preservation (Gujarat Amendment) Act 1994 imposed total ban on slaughter of bulls and bullocks. The constitutional validity of the said provision was challenged in this case. It was held that the amending Act imposing total ban on slaughter of bulls and bullocks of all ages interferes with the right of the owners of such bulls and bullocks to sell them. The total ban imposed is unreasonable restrictions on the petitioners carrying on business of buying and selling bulls and bullocks, and slaughtering them for selling meat. The Court reasoned that the State cannot claim any protection under Article 31C to prevent the slaughtering of bulls and bullocks of all ages. Bulls and bullocks above the age of its utility cannot fall within the purview of Article 48 of the Constitution.

There are people like Asadha Arul, Mugaiyur, in Tamil Nadu who are more concerned for the beef being a staple diet of Dalits and other backward castes in the south India. Beef being a staple diet of Dalits imposing a cow slaughter ban will deny these down trodden their freedom of choice to have their basic food. Further it is objected as to why those advocating cow slaughter ban do not seem to care when an old cow is turned out of its shelter and once it has outlived its usefulness, and when it is left to fend for itself on polythene bags and garbage ultimately dying of starvation. Even these anti cow slaughter fanatics would not hesitate to wield a stick to beat the poor hungry animal when it stray into their garden.\textsuperscript{258}

If the Hindutava brigade really wanted to protect cows, the VHP should clean up garbage dumps so that the abandoned, famished urban cows of India don’t wind up swallowing plastic bags which is very painful fatal to them. But it appears that it is not concerned about protecting the cows but all about ratcheting up emotions to win votes. In the northeast India, cows are killed in a ceremony before marriage. All the
legislation till now on cow slaughter have been passed in entry 15 in the State List relating to preservation, protection and improvement of stock and prevention of animal diseases, maternity research and practice. But trawling through the Constitution the Governments’ legal experts have found item 17 in the concurrent list III dealing with prevention of cruelty to animals. This section is being advocated to invoke now to legislate a country wide ban.

Protests have come from the exempted states. Kerala, Meghalaya; Nagaland, Mizoram and Arunachal Pradesh have pitched in too. In all these states beef is the commonest and cheapest form of meat available and no taboo whatsoever is attached to its consumption, Even Kerala’s substantial Hindu population does not share the abhorrence of beef exhibited by Hindus. Country’s 40% of the meat is consumed in these states. Strangely no agro economic grounds have been advanced this to oppose the nation wide ban. It is well known that India has the highest number of useless cattle in the world and this figure will rise substantially once the law comes into the effect. The Meat industry too will surely be adversely affected. But any state legislatures may pass a resolution favoring legislation to prohibit cow slaughter however the union government has also approved the prohibition of cow slaughter. Even though the subject falls under the jurisdiction of the States, the Centre can enact the law under Article 252[1] of the Constitution of India Since, the opposition parties have questioned the “legislative competence” of Parliament in enacting a Bill on cow slaughter arguing that “such a step could tamper with the federal structure of the country”. But the Central legislation can only be applied in states or union territories where the assemblies okay its promulgation. Following a major Jan Sangh led agitation in 1967 wherein even the Sadhus participated; the cow slaughter was effectively stopped country wide except in States of Kerala, West Bengal and a number of North Eastern States. Currently, cow slaughter is banned in all states and Union Territories except in Arunachal Pradesh, Kerala, Meghalaya, Mizoram, and Tripura.

The Madhya Pradesh State government has enforced a total ban on the cow slaughter in the state. Any person found guilty of cow slaughter or even selling cows or denoting cows for the purpose would be jailed for three years and fined up to Rs 10000 under the MP Cow Slaughter Ban Act. The government also proposed to take steps for the rehabilitation of the affected people. Madhya Pradesh government has quoted the scriptures to claim that the new law is “a step towards attaining of cultural
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The initiative to protect cows is dedicated to rejuvenation of the state’s farm based rural economy. Listing the benefits for 21st century modern India, the government said: “Expansion of animal husbandry activities would give boost to rural economy of a progressing state as MP”. The state is considering engaging jail inmates in the task. A Plan has been formulated for rearing cows by prisoners utilizing land available within jail premises.

The prohibition of slaughter of cows, bulls and their calves, in general, is valid but at the same time, a general ban on the slaughter of cattle other than cows, etc., has been held to offend Article (19) (1) (g) therefore, a ban on the slaughter of cattle, in general, without prescribing any condition as regards their age or usefulness, is not constitutional Any legislation prohibiting slaughter of cows and calves would be considered to be reasonable by Courts so far as challenge on ground of Article 19 (1) (g) of constitution is concerned.

Before taking a drastic step like that of complete ban on the cow slaughter, throughout the country, Centre should look into the economic implications of the ban. With a thriving cattle market in the North East, the Bill if passed would deprive a lot of people of their livelihood. The best way seems to be to open cow shelter and heavily penalizing those cow owners who leave their cows on the streets.

XX. PROHIBITING THE SELL OF LIQUOR IN THE VICINITY OF HOLY PLACE.

Excise Law Prohibits the use of liquor and its vending in the vicinities of schools, hospitals and holy places. Excise Laws which states that any liquor vend/ bar should be at a distance of 75 meter or more from a major educational institution, religious place and hospital with 50 bed and above in public interest. Such restriction is not unreasonable and it does not infringe the fundamental rights of citizens. A club located at 20, Bhai Vir Singh Marg is next to the Delhi Bible Fellowship Society. The society had appealed against granting of the license to the club, contending that the club was within 75 meters of the society’s premises and thus violated the Excise Law. The distance between the both premises is not even 20 meters. However, while measuring distance, distance is measured from the club’s second floor entrance, upper building’s spiral staircase—which obviously comes to more than 75 meters. This has been objected by the society and hence Excise Department has cancelled the license.

The club reapplied fresh similar application for a liquor license for itself but it is held that granting a license to the Liquor bar being a few steps away can be source or
embarrassment for the church. It was also reported on 19 April 11 in the daily news paper published from Delhi. Hindustan times.

XXI. COMMERCIALISATION OF SATI

Sati is self burning in pyre with the body of deceased husband and its glorification is punishable under law which is not unreasonable and also not against the freedom of fundamental rights. Sati Glorification has been defined under section 2(b) of the Sati Prevention Act, 1987. The first limb of the provision defines ‘glorification’ of sati as including the observance of any ceremony of the taking out a procession in connection with sati. Interposing ‘or’, the second limb declares the creation of a trust, collection of funds, construction of a temple or the performance of any ceremony thereat with a view to perpetuating the honour of, or to preserve the memory of widow committing sati as glorification. Glorification of sati is a crime under Section 5 of the Act, punishable with a maximum imprisonment of seven years. The Commission of Sati (Prevention) Act of 1987 Sec 2c defines Sati as the burning or burning alive of any widow along with the body of her deceased husband or such relative or any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary or otherwise.

Systematic Sati happened in 1763 when Savitri Soni sacrificed her life with her husband in Kotadi village of Sikar district in Rajasthan. In recent past it happened again in Rajasthan in village Deorala in Sikar district when Roop Kawanr of 18 years was herself or by force (it is not known but local residents say in low voice that she was forced to) sacrificed on the pyre of her husband. Following the outcry after the sati of Roop Kanwar the Indian Government enacted the Rajasthan Sati Prevention Ordinance 1987 on October 1st 1987 and later passed the Commission of Sati (Prevention) Act 1987. The Act makes it illegal to abet, glorify or attempt to commit Sati.

In a debate on sati, following Charan Shas’s self-immolation in November 1999 in Satpura village located in Uttar Pradesh’s Mahoba district has made no head way. No one actually knows whether Charan Shah killed herself on the spur of the moment, or if it was a premeditated act. It is assumed that Charan Shah acted out of an obscurantist belief that her life as a widow was useless and that she would gain religious merit by following her husband in death.

The villages of Satpura have started propagating a mystique about Charan Shah “in order to translate the alleged sati into a money spinning enterprise.” It has
also been said that villagers are keen on converting that immolation site into a pilgrimage spot, since they expect many visitors after the interest generated by the event. This in turn may lead to some increased income for the community. Pressmen took photographs of a couple of family members of Charan Shah performing the usual post funeral rituals to build a case that they were promoting a sati cult. Even if it were true that by romanticizing the death of one Charan Shah, this horribly neglected and poverty stricken village hopes to receive a little cash flow, it appears to be a more understandable venture than other more modern and socially approved forms of commercialization. Today, thanks to generous grants available from international aid organizations, a whole slew of educated, “enlightened” people are making a living from writhing about atrocities on Indian women, organizing seminars on the theme, and filming the subject. There won’t be any dearth of people likely to want to make documentaries on the Satpura sati; any number of research grants will be proposed to discuss the misery and cultural backwardness of this region where a few sati temples already exist. Myriad careers will be enhanced as people suddenly become experts on the culture of sati. Even those who would never subject themselves to the inconvenience of making a trip to Satpura village and spending a couple of days there, will organize glamorous conferences in foreign universities, write glamorous treatises on the subject, construct and deconstruct Charan Shah’s life until it becomes unrecognizable to even her own children.

Today, these activities documenting the event fetch far more money, name and fame than running a sati temple in India. Those who disapprove of commercializing Roop Kanwar or Charan Shah’s sati cults by people of their respective communities, ought to be willing to have similar curbs put on the commercialization of social concern, whereby a whole tribe of people have made hi-fi, jet-set careers out of peddling the poverty and misery of Indian women in the international arena- of making a lucrative profession of defaming and condemning people with whom they have no relationship. More often than not, these commentators do not even embrace the ethical responsibility which calls for accuracy in their facts and credibility in their interpretations. Information is disseminated to the world on BBC, CNN, and ABC – not to those people whose lives are to be critiqued and presumably reformed. If a money-making scheme in the name of various Charan Shahs and Roop Kanwar is a condemnable practice when done by their own communities, how does it become a respectable moral intervention when taken up by total strangers? The government
financial aid of the Panchayat of Patna Tamoli, a village in District Panna in Madhya Pradesh has been stopped to penalize the villagers for abetting Sati. The villagers in return have vented their anger on the Sati K. Bai’s family by boycotting them and the family members. The family members are now left with no work to earn their livelihood as no one comes to the saloon shop of the family. Most of the families, of the said village, majority of them belonging to SCs, STs, have migrated to other states in search of work. Due to the economic sanctions, labourers from Patna Tamoli are not allowed even to work in the projects going on the nearby village. The Court struck down ban by government.  

XXII. PRIESTS

The women are today being trained in priesthood and the long lost tradition of performing the sacred thread ceremony for girls to give them the right to perform all religious rituals in the family has also been evolved. More and more people opt for women to perform religious rites. Pune based- Shankar Seva Samiti (SSS) since its inception in 1976 has trained, through its one year course, over 7000 women priests from all castes. Similarly Gurupadam Institute of Kodungallur in Thrissur district in Kerala has made 37 non-Brahmin women as priests over the past few years in the God’s own country Kerala, where till a few years ago, anything related to Vedic hymns and sacred ceremonies was considered the domain of the Namboodris and the pottis, the two classes of brahmical order. Revolution is taking place in Varanasi also where student of Panini kanya mahavidyalaya are being trained in priest hood.

In N. Adithayan v. Travancore Devaswom Board the Supreme Court has held that there is no justification in permitting only Brahmins to carry out the necessary rites and rituals as priests. The court held that the custom of restricting the functions of priests or poojaris to Brahmins only is violative of human rights, concept of social equality and the specific mandate of the constitution and cannot be considered as an integral part of the Hindu religion. Properly trained and qualified persons may be appointed a poojari irrespective of his caste.

The attention of the court was drawn to the fact that Thanthra vadantha school had been opened by the Travancore Devaswom board in 1969 with the specific aim of training poojaris/ shantikarans. The scheme of the school was approved by swami Vyomakesananda, specifically stated that the students would be trained regardless of their castes and communities. Ever since the opening of the school, student there
were being appointed as poojaris in the temple. Public had never objected. But state should not interfere in religious affairs.

It is analyzed that the direction by the Supreme Court in Sarla Mudgal case to the government to take fresh look at Article 44 of the Constitution which enjoins the State to secure a uniform civil code, imperative for the promotion of unity and integrity of the nation. It could not unfortunately happen as while hearing the appeal filed by one of the accused in the above case, justice Kuldip Singh, who had earlier directed the Government of take immediate steps for implementing the mandate of Article of 44 of the Constitution, clarified that its direction was only an obiter dicta and not legally binding on the Government. Even before the clarification of the court, the Prime Minister told the Muslim Ulemas of Rampur U.P. that his Government would not implement the constitutional mandate under Article 44 of the Constitution. But in the N. Adithayan case, the Court held that any custom or usage cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution.

The issue of power play among the Sikh clergy is visible in the dispute between the Liberals who want the implementation of a 1996 edict that allows baptized women to take part in the nightly rites at the golden temple Amritsar, Punjab, with a rider that the women should be above 30 years of age and escorted by a male family member while the puritans SGPC does not want to anger the orthodox group and argues that it anticipates “unsavory” problem. If the edict is implemented there will be a great problem, it is commented by a Sikh scholar member of the dharma prachar committee of the SGPC. He said that “our society is not so advanced as to rule out eves teasing even in holy places. Since carrying the heavy palanquin involves a lot of jostling it will be unwise to let women take part.” The researcher opines that the problem is more to do with the attitude. The ban on the women devotees is an expression of a deep seated patriarchal and chauvinistic mindset.

XXIII. RIGHTS OF MINORITIES TO ESTABLISH AND MANAGE EDUCATIONAL INSTITUTIONS

Article 30 (1) guarantees to all linguistic and religious minorities the ‘right to establish’ an educational institutions and the ‘right is conferred by this clause on two types of minorities- religious and linguistic minorities. The right conferred upon the above minorities is to establish and administer educational institutions of their choice.
The word “establish” indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the institution. The administration connotes management of the affairs of the institution. The management must be free of control so that the founders of their community can mould the institution as they think fit in accordance with their ideas of how the interest of community in general and the institution in particular will be served. Thus, it leaves it to the choice of the minority to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving through general education to their children in their own language. Under article 30 the minorities have some special rights in matter of establishing and administering educational institutional as is recognized under section 14(g) of Kerala Education Act, 1959. The establishment and administration of an aided school comes under article 19(1) (g). Section 33 of the Gujarat Secondary Education Act 1973 empowers state government to take over management of registered private secondary school for a temporary period in the public interest. The said provision does infringe article 19(1) (g).

In T.V. Subramanian Kurukkal v. State the private managements of school were held entitled to close down a school on the basis that it was part of the right to carry on business. It was also part of the right of the minority to establish an educational institution covered by article 30. It is submitted that right to close down an educational institution need not be included within article 19(1) (g) because an educational institution is not and ought not to be regarded as a commercial proposition. Right to close down an educational institution where minority right under article 30 is involved would be part of the personal liberty guaranteed by article 21. The law cannot compel a management to run a school or a collage. It may at the most provide for the take-over of such management by the state. Without a law to that effect, such a take-over or compulsion would violate the right to property guaranteed by article 300-A.

In Frank Anthony P.S.E. Association v. Union of India it was held that the regulatory measures designed towards making the minority educational institutions effective instruments for imparting education could not be considered to be impinging upon the right of the minorities to establish and administer educational institutions of their choice guaranteed by article 30 (1). The court upheld section 10 of the Delhi schools education act, 1975, which required that the scales of pay and allowances etc.
of employees of recognized schools shall not be less than those of the employees of schools run by the government or semi-government bodies. Section 8(3) which provided for an appeal to a tribunal against the decision of the management to dismiss, remove or otherwise terminate the service of an employee was also upheld. Section 8(4) which required prior approval of the director of education for the suspension of an employee was held valid. However, section 8(1) which required prior approval of the director of education for the dismissal, removal or reduction in rank or termination of service of an employee was held to be violative of article 30(1). Section 12 made the entire chapter IV, which contained the above provisions, inapplicable to the non-aided minority educational institutions. The employees’ association, as the petitioner in this case, demanded that such favourable provisions should become applicable to the employees of non-aided minority educational institutions also. They successfully challenged section 12 on the ground that it was discriminatory. The employees and particularly, the teachers of the school were being paid very poor salaries as compared to the teachers of other schools run by the Delhi administration. The court upheld the contention of the petitioners and thereby admitted that the right Guaranteed by article 30(1) could not be absolute and that it could be subjected to higher considerations of education. Education could not be good unless teachers were paid well and a minority educational institution could not impart good education if it did not pay to its teachers what their counterparts obtained in other institutions. This is a major departure from the position the court took on article 30(1) in the past. The court has now made that right not only subject to the interests of the minorities but also to the interests of education.

In St. John’s Teachers Training Institute V. State of Tamil Nadu the appellant challenged the validity of the recognition rules made by the government under the T.N. minority schools (Recognition and payment of grants) rules, 1977 as amended by the order of 1991 on the ground that they were violative of articles 30 (1) and 14 of the constitution. They were running teachers training institutes in the state of Tamil Nadu. The government had refused to recognize these institutes on the ground that they have failed to satisfy the conditions for grant of recognition as provided in the government order. The recognition rules provided for the extent of land sizes of class rooms, cost of library with 10,000 books, number of bathrooms, furniture and laboratory equipments, teaching appliances, sports, games, music equipments, play grounds, minimum qualification for teaching and non-teaching
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staffs, hostel, staff quarters etc. the High Court reviewed the whole case law on the point and dismissed the writ petition holding that these conditions were regulatory in nature and framed with a view to promoting excellence of educational standard and ensuring security of the service of teachers and other employees of the institutions. The minority institutions must be fully equipped with educational excellence to keep in step with other institution. The Supreme Court agreed with reasoning and conclusions of the High Court and dismissed the special leave petition.

In the landmark decision in T.M.A. Pai Foundation v. State of Karnataka an 11 judge constitution bench of the Supreme Court headed by chief justice B.N. Kirpal, relating to minority educational institutions, it was sought to clarify the rights of these educational institutions that have been laid down in the constitution and the previous judgment and thereby re-defining the rights of minorities to establish and run educational institution of their choice. It was held that the state government and universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities, but state government and universities can specify academic qualification for students and make rules and regulations for maintaining academic standards. The same principle applies in the appointment of teachers and other staff, an unaided minority educational institutions would be free to hire as it pleased as long as some essential qualification were adhered to. Minority educational institutions would have to comply with conditions laid down by universities or boards to get recognition or affiliation” the judgment has elicited varied reaction. The court held that the rights of linguistic and religious minorities (as well as the majority community) to set up educational institutions of their choice are unfettered, but that the right to administer them is not absolute. It further held that the state and the universities could apply regulatory measures in order to maintain educational standards and excellence in such institutions.

The judgment is important from the point of view of the interplay between Articles 29(2) and 30(1) of the Constitution. However, nine of the 11 Judges concluded that as long as Minority Educational Institutions permitted the admission of non-minorities to a reasonable extent based on merit (what the reasonable extent is would be determined by the State); it would not be an infraction of Article 29(2). The Constitution Bench has redefined the place of Article 30 in the constitutional scheme of rights linking it to secularism and equality – the two basic features of the Constitution. “The essence of Article 30(1) is to ensure equal treatment between the
majority and institutions. No one type or category of institution should be disfavored or, for that matter, receive more favourable treatment than another.”

A few questions are relevant in this connection: If “the essence of Article 30 (1) is ensuring equal treatment between the majority and minority institutions”, what is the meaning of minority status for an educational institution? What are the criteria by which such status is conferred? Can any institution started by any person or group in a minority community claim minority status and enjoy its benefits?

According to the Supreme Court the term ‘minority’ implies “numerically less” and both linguistic and religious minorities are covered by this expression under article 30. Since the states have been formed by grouping people on linguistic lines, the unit for determining a minority is not the whole of a sect or denomination of a particular religion can claim minority status even if the followers of that religion are in a majority in that state. Nor did it find it necessary to spell out the indicia for determining whether an educational institution is a “minority educational institution”. These issues will now need to be resolved by the state and or by a regular Supreme Court bench.

The judgment gives unfettered freedom to unaided minority educational institutions. The only regulation a state government or university can make is regarding the qualification and minimum condition of eligibility in the interests of academic standards. The state can make no laws regarding admission or fees in such institutions. The only condition is that admission to unaided educational institutions should be “on a transparent basis and merit was adequately taken care of”. The Supreme Court seems to be in favour of freeing minority educational institutions from government control excepting to maintain academic standards through prescribing qualifications for teachers and minimum eligibility for students. The right to admit to students is part of the right to administer educational institutions.

On the other hand, the judgment gives scope for a tightening of the regulations, including those on admission in minority institutions which receive grant-in-aid. An aided minority educational institutions would therefore be required to admit a reasonable extent of non-minority students so that the rights under article 30 (1) are substantially maintained while the citizens’ rights under article 29 (2) are not infringed. What would be a reasonable would vary depending upon the types of institutions the courses of educational needs of the minorities and similar factors. It is for the state government concerned to determine and notify this percentage of non-
minority students. In the case of aided professional institutions it can also be
stipulated that passing of common entrance test held by the state agency is necessary
to seek admission unless specifically exempted otherwise.

However in the absence of any guidelines from the Supreme Court in the
matter, there is ground for genuine concern that some state may arbitrarily impose
restrictions on such institutions along with the attraction of the unfettered freedom of
unaided institutions may encourage management of many aided minority institutions
to convert them to unaided institutions. Such a trend will be welcomed by states
which are already beginning to withdraw from public education.

While the court recognizes the charitable nature and service goals of
education, it allow the authorities full freedom to collect fees and charges they find
appropriate in unaided educational institutions, the only stipulation being that they
should not appear to be charging capitation fee for profiteering. Realizing that
education is increasingly being run as a business and that the cost of running it is
escalating, the court conceded the need to have surplus income generated to meet the
cost of expansion and augmentation of facilities. In the court’s view this surplus will
not be deemed “profiteering”. The subtlety of the distinction that the court seeks to
make here will unfortunately become a green signal for ‘free market’ in professional
colleges. This will be to the detriment of large sections of students from low income
and poor families who benefit from aided minority schools and who cannot afford the
high fees in unaided institutions.

The definition of minority was taken in the context of the India as a whole. i.e.
Christians are a minority community anywhere in India. The definition has been
restricted to the context of state alone. Therefore in Nagaland where Christians are in
majority the community is not a minority community. Also it would make Hindu’s a
minority in a State. No regulatory measures for unaided minority’s educational
institutions except as regards the qualification and pay-scale of the teachers and the
minimum conditions of eligibility. State can provide the manner of admission
(common entrance test) in case of an unaided minority’s educational institutions to
ensure that it is done on the basis of merit. Unaided minority’s educational institutions
could have their own procedure for admission but the same had to be fair and
transparent. In aided minority’s educational institutes up to 50% seats could be
reserved for students belonging to the minority community for whom the school had
been set up. The state will decide as to the % of seats that can be reserved for students belonging to the minority community.

The focus of education was charitable. The main benefactors being those who are oppressed and poor and the minority communities to bring them into the main stream under article 29 and 30. However providing education is viewed as an occupation governed by articles 19(1)(g) and 26 open to all citizen not merely the minorities. Minority institutions which continue to administer educational institutions in the spirit of service (and not profiteering) have nothing to lose or fear from the judgment. If they are not seeking aid from the government they are totally free from any control excepting the demands of natural justice and transparency. If they receive government aid, the judgment asks the government/university to exercise only the minimum regulation necessary to maintain standards and to provide some representation for non-minority students.

In the T.M.A. Pai Foundation\textsuperscript{272} and Islamic Academy of Education v. State of Karnataka\textsuperscript{273} the court has granted freedom to the unaided minority institutions to fix their fees structure without interference from the state. But held that capitation fee cannot be charged directly or indirectly. Further it is held though the minorities have a right to establish institutions of their own choice; they admittedly do not have any right of recognition or affiliation for the said purpose. They must fulfill the requirements of law as also other conditions which may reasonably be fixed by the appropriate Government or the university. It is also clarified that merely because the recognition was granted at some distance point of time it does not mean that appropriate Government is debuted of its power to lay down any law in imposing any fresh condition despite the need of change owing to passage of time. Further the State Legislature or Parliament are not denuded of their powers having regard to restrictions that may satisfy the test of clause (6) of Article 19 of the Constitution of India or regulation in term of Article 30 depending upon the national interest/public interest and other relevant factors. Though it is clarified that the state granting recognition cannot impose any condition in furtherance of its own needs or in pursuit of the directive principles of State\textsuperscript{274}

In Unnikrishnan’s\textsuperscript{275} case, the Hon’ble Court overlooked that all minority institutions are private but all private institutions are not minority institutions and went on to decide the ratio of admissions. Justice Mohan respectfully submitted, that we misread the rights granted to minorities because the Articles (25-30) do not set up
majority community along with or against, any minority either religious or linguistic. Nor did he see any legislation either by center or any state whereby a minority institution was allowed to be established by prohibiting a majority institution or a government institution. There was absolutely no material before him either in the form of a statutory or a judicial order to draw such a drastic view which would only advance biased and prejudiced views among common people.

After the Unnikrishnan judgment was delivered as in A.R. Antulay’s case, the Court sat to rectify the situation in T.M.A. Patnaik’s case, but still joined non aided minority institutions along with non aided private institution (which only means majority community owned private institutions). The Court treated them as single class on the superficial parameter of not receiving aid from the government. It is humbly submitted that economic disparities are monumentally existing between the majority community and a minority like Christians and Muslims, while former has all the wealth of the nation, all the means of production, with an overwhelming nationwide trade class and all the managerial class, it can run any number of institutions without any aid. Is it possible for a microscopic community with no material assets to establish and run institution having poorest people as their contributors and supporters? Can a student of its own pay the requisite fee? The Court again missed the true mature of the issue that even among the majority community there are hundreds of castes which cannot think even of a single primary school anywhere in India without aid. The present scholar has not come across a single un-aided institution set up by a Nakash, Blacksmith or Washer man or any sect of Harijans or tribals. If one juxtaposes these castes with the power of Agarwals, Vaish, Marwadi, Gaur, Jain, Rajput and Maswari classes merely on the basis or un-aided is most impractical.

XXIV. RELIGION AND INVESTMENT

In a market where investors live and die with every rise and fall of the Sensex, religion is emerging thicker than monetary gains. Realizing the attractiveness of a niche market of such high net worth investors portfolio managers are increasingly catering to the specific needs of religion-finicky investors. The portfolio management route offers a choice to the investor for specified sectors in which the investor wants to invest. For selected players, religion matters much more than cheap valuations and the growth prospects of a company. To take care of the needs of these players, selected mutual fund players provide various schemes. However, Jains prefer not to invest in stocks of those companies which are against the tenets of their faith, like
aqua farming, tobacco, tannery, leather, liquor etc. A leading player active in the market for last 15 years and certain other players in his circuit also strictly follow certain norms while they invest in the market, according to sources close to these players. They keep away from investing in the stocks of those companies engaged in the industrial sectors like marine, fisheries, leather and breweries etc.

**XXV. SAFFORANISATION OF TRADE:**

In recent times, a new ugly face of the religious dimensions of business activities has cropped up. Its main initiation lies in the days of Taliban rule in Afghanistan. Taking a clue from their manners, some religion based parties are trying to impose their autocratic and fanatic ideology on the trading rights of the citizens of India. A glaring illustration of this attitude is the attempt of Shiv Sena members to ensure in different parts of the country, that Valentine’s Day cards stayed off the shelves, insisting that they were opposed to the invasion of an “alien culture and ideas.” Several right wing groups like the Shiv Sena, Bajrang Dal and Vishwa Hindu Parishad (VHP), every year threaten to disrupt the celebrations and ransack stores selling Valentine’s Day merchandise across the country. On the Valentine day, a variety of cards in all shapes and sizes, heart-shaped candles, teddy bears and chocolates are in great demand in the urbanized centers of Delhi, Mumbai, Kanpur, Lucknow and other cities. The shopkeepers, however; are forced to keep a low profile. On Valentine’s Day every year, Shiv Sena activists smash gift shops in the cities. There were several violent incidents where fringe Hindu groups go on a rampage, smashing cars and windowpanes and burning cards. In fact, greetings card giant Archie’s on Valentine day requests every years to the various state governments where its business is located to protect them from the Hindu rightwing groups against any untoward incident. The company seeks restrictions against leaders of the Shiv Sena, VHP and Bajrang Dal so that they would not stop customers from buying cards and gifts. Archie’s is a Rs. 700-Million ($14.4-million) Business Company and controls 80 percent of the market for cards and gifts.

Another example is that on the pretext of prize rise on 5 July 2010 a one day general strike or bandh was called on by BJP and its allies and supported by all opposition parties paralyzing the life of nation as whole and particularly that paralyzed the Indian commercial and industrial city of Bombay is noticeable for raising important political issues for the working class. It reflected the unholy alliance that is developing internationally between the so-called left and organizations of the
extreme rightwing in the name of combating “globalization”. In Bombay, the organization of bandh embraced not only the so-called Communist parties[the Communist Party of India Marxist (CPI [M]) and the Communist party of India (CPI)] but the fascistic, Maharashtra-based Shiv Sena which espouses a combination of virulent Hindu communalism and Marathi chauvinism. Marathi is the main language in the state of Maharashtra. The protest was organized to oppose the privatization of state-owned enterprises as well as proposed changes to labour laws that will allow companies employing up to 1,000 workers to retrench their workforce without government approval.

The other demand was to halt government plans to lift quantitative restrictions on imports as part of India’s commitments to the World Trade Organization. As the day of the protest approached Shiv Sena announced that it intended to back the strike. The party was founded in the 1960s on the basis of chauvinist attacks against migrant workers from other states and demanding job preferences for local Marathi-speakers.

It is notorious for its anti-Muslim rhetoric and was involved in forming anti-Muslim pogroms in Bombay in the 1990s. Its goon squads with BJP cadres have conducted physical attacks not only on Muslims but also on members of the CPI (M) and CPI. Rapidly setting aside past differences and conflicts, the CPI (M), the CPI and their trade unions not only welcomed Shiv Sena’s involvement, saying its presence would make the protest “a total success,” but effectively handed over the leadership of the strike to the chauvinist parties.

Shiv Sena worker played a prominent role in the strike. Mobs were organized to try to halt road and rail traffic. At a number of places throughout the city, buses were stoned, journalists were assaulted by a group of thugs who reportedly said “only the Saamna [the Shiv Sena newspaper] will come out.” Saamna claimed full credit on behalf of Shiv Sena for the success of the bandh and warned the other unions not to “annoy” the party. In the past, Shiv Sena has appealed to layers of small business and traders on the basis of so-called swadeshi policies – economic protection for India firms combined with virulent denunciations of foreign transnational. In power, however, it has as a capitalist party, been compelled by the logic of the market and the globalization of production to accede to the opening up of competition. The ability of Shiv Sena to “hijack” the strike and parade on the public stage as a defender for working people has depended on the acquiescence of the CPI (M) and CPI leaders. For decades these parities have justified various opportunist alliances with openly
bourgeois parties by claiming that their partner at the time represented a more progressive wing of the Indian ruling class. So degenerate have these parties became that they now find themselves taking a back seat at press conference to a fascistic party, which has never heisted to unleash its thugs against its political opponents. In the aftermath of the strike the general secretary of the CPI (M) affiliated centre of Indian trade union in Maharashtra told the media. “We welcome the Shiv Sena participation in the bandh.of course, we are on parallel lines.” These words are a sharp warning to workers in Bombay and throughout India. The Stalinist parties are preparing to accommodate themselves not only to Shiv Sena but to other Hindu extremist organizations, including the BJP and the associated Rastriya Swayam Sevak Sang (RSS) whose agenda is to divert the country’s growing social tensions down the reactionary road of communal conflict.

XXVI. RELIGION CANNOT BE NEGLECTED

To believe that one can deal with issues of rights while neglecting religion is to lose power to deal with most of human beings activities. In every case one pictures that when rights get argued and defended on religious grounds, they secure maximum attention of people. All religions comprehensively are the same but they differ on their reflective nature. Resource of religion traditions are an instrument for enlarging and assuring human rights. To neglect the religion is to neglect the potentiality of positive resources of man kind. Every citizen irrespective of his/her religion is entitled to the same fundamental rights and is subject to the same fundamental duties and obligation. While in Noor Saba Khatoon v. Mohd.Qasim the Supreme Court has held that the religion of an individual and denomination has nothing to do in the matter of socio-economic laws of the state. It is only when religion, caste and gender cease to become a factor or cease to impinge on economy we can say that capitalism has shorn off its feudal remnants. To fight against them is also to fight for equal citizenship and for the creation of class solidarities among working people which are also the best guarantees for democracy.

Samuel Huntington identifies religion as the most important defining element of any civilization as contrasted with race, language, or way of life. As such, it is also portrayed as a defining element in future conflicts. Whether the root cause of a particular conflict or merely a vehicle for the mobilization of Nationalist or ethnic passions, religion is certainly too much of the strife currently taking place around the globe. Equally sobering in the fact that the level of discontent is likely to grow worse
over time as an increasing fraction of the world’s population is left behind by rapid technological change the economic gap continues to widen between the haves and the have nots. Secular governments in hard-pressed areas fail to meet the legitimate expectations of their population. Adding to the problem, is the fact that religious institutions have on more than a few occasions strayed from their original purpose and become an integral part of the problem, exacerbating human suffering rather than alleviating it.  

Communal conflict, although not totally attributable to globalization itself, is becoming a hallmark of globalization. Also, there is the growing confrontation between secular nationalism and “parochial political identities based on ethnic and religion allegiance. One of globalization’s major side effects has been the accelerated revival of religious and cultural identities that, as a result of the enlightenment, the industrial revolution, and the technological advances of the 20th Century were once thought to be in decline.

Thus it is concluded that except granting a right to the minorities in establishing their own educational institution which incidentally create some jobs, there is nothing which a particular religion as per law can promote or confer privilege of employment to any minority under the constitution. This is evident in a religious-educational movement that demands “Islamic education” for children in Mushirabad district of West Bengal the Barua Rahamani Education Society (BRES), an organization of Islamic leaders was opened in 1993 and till now it has opened 150 Madrasas in the state of West Bengal itself. Over 60000 students attend the classes and the number is growing but it has not given requisite employment to the Muslim scholars and job aspirants. The institutions which try to maintain a separate identity, and in many cases run by foreign finance must be brought under the system like any other institution. It must be monitor by the state machinery that these institutions impart the modern knowledge invention and technology side by side with the theological educations and religious tenets. History textbook must teach their students the feeling of national integration and the economics textbook must teach the chief source of national income way of earning their livelihood.

Religious toleration may have been defended in the name of individual conscience, and it must serve communal peace. Though religious freedom is usually conceive in terms of the interest of individuals and that the interest and the ability to serve must rest in practice on the secular existence of a public good. The existence of
religious communities within which people pursue the freedom of the right
guaranteed to them, that communal harmony must be maintained at all cost.281
People must enjoy the right they shared from the style of life of a known social group
and discrimination on grounds of religion, race must be eschewed in pursuing the
freedom of fundamental right to religion.. People must feel pride in being a member
of religious group they belong and their identification is an important element in their
life.

The object of articles 25-30 of the constitution is to protect any class or section
of citizens against religious and cultural aggrandizement by the government. yet
articles 25-30 have been something so wrongly interpreted against the national
interest, as to give more rights to so called ‘religious minority’ than possessed by
others. Indeed the nation now needs protection from a disease called ‘minorityism’
which is sometimes spread by interested persons. The trouble arises because of
Ahmedabad St. Xavier’s college v. State of Gujarat282 and subsequent cases which
confer immunity to the management of the institutions run by the members of a
religious or linguistic minority, though teaching the same courses from any law
restricting their rights. This matter has been dealt with In TMA Pai Foundation v.
State of Karnataka283 it is opined that article 30 be redrafted by substituting classes for
minorities and adding for children taking the cue from article 350A relating to
linguistic minority. Under article 25 how Jainism (minority) differs from
Hinduism defined in a case of Bai Patil and Another v. Union of India and Another284,
in philosophical sense Jainism is reformist movement amongst Hindus like,
brahamsamajis, aryasamjis and lingayats. The aforesaid aberration in interpretation of
rights of minorities requires the redrafting, to bring out the true meaning more clearly
and to make all such rights subject to national interest.

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1. Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it impose, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the state from making any law elating to:
(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or
(ii) the carrying on by the state, or by a Corporation owned or controlled by the state, of any trade, industry or service, whether to the exclusion, complete or partial or citizens of otherwise.

2. Fertilizer Corporation kamgar Union, Sindri v. UOI; AIR 1981 SC 344.
5. fundamental Right guaranteed under Articl 19(1)(g) and (6)
7. Sampat STC Mahavidyalaya Etc. v. State of Rajasthan & Ors AIR 2010 NOC Raj 419
   Prescribed approval by NCTE is not violate rights under Articles 19(1)(g) and 16(6). In Ramal Arya v. State; 1970 B.L.J.R. 536, Regulations prescribing additional qualification and passing of test for supervisors already in trade did not violate right under Article 19 (1)(g) of the Constitution.
13. The definition of the expression 'business' given in the Act is an inclusive one. The expression 'business connection' however is not defined in the Act. It is manifest that the words in section 9(1) and section 163 are comprehensive enough to include all heads of income mentioned in section 14 of the Act. It is no doubt true that there is specific reference to 'business' in section 9(1) and there is no reference to 'profession'. But no tenable reasons are discernible from the statute for excluding income arising out of profession from its scope. The expression 'business' dose not necessarily mean trade or manufacture only. It is being used as including within its
scope professions, vocations and calling from a fairly long time. The Shorter Oxford English Dictionary defines ‘business’ as ‘stated occupation or trade’ and ‘a man of business’ is defined as meaning ‘an attorney’ also. In view on the above dictionary meaning of the word ‘business’ it cannot be said that the definition of business given in Section 45 of the partnership Act, 1890 was an extended definition intended for the purpose of that Act only. Section 45 of that Act says: The expression "business includes every trade, occupation, or profession". Section 2 (b) of the Indian Partnership Act, 1932 also defines "business" thus "Business" includes every trade, occupation and profession. The observation of Rowlatt, J. in Christopher Barker & Sons. v. Commissioner of Inland Revenue,” all profession are businesses, but all businesses are not professions. Also supports the view that professions are generally regarded as businesses The same learned judge in another case Commissioner of Inland Revenue v. Marine Steam Turbine Company Limited held: the word "business" however is also used in another and a very different sense as meaning an active occupation or profession continuously carried on and it is in this sense the word is used in the Act with which we are here concerned. The word 'business' is one of the wide import and it means an activity carried on continuously and systematically by a parson by the application of his labor or skill with a view to earning an income. S. Mohan Lal v. R. Kondiah. AIR (1979)SC 1132. (1979)3 SCR 12. (1979)2 SCC 616.  

15. Excess Profits Tax Act, 1940, Sec. 2(5).
16. Indian Partnership Act 9 of 1932, 2 (b).
27. AIR 1955 SC 176.
28. The SC has distinguished between the meanings of words "trade" and business in Krishan kumar v. State of J&K; AIR 1967 SC 1368. the sc brings out the distinction between the two terms in the following manner: "The word; ‘business’is ordinarily more comprehensive than the word 'trade', although very often one is used synonymously with the other. The word 'business' connotes some real, substantial and systematic or organized course of activity or conduct with a set purpose. Although a citizen has a fundamental right to carry on a trade or business, he has no fundamental right to insist upon the Government or any other individual
for doing business with him."

29. T.M.A. Foundation v. state of Karnataka (2002) 8 SCC 481
30. AIR 1981 SC 344
33. Footpath Khyudra Byabasai Sangh Bhuneswar v. State of Orissa & Ors; AIR NOC 2010 Ori. 125
34. Dattamal Chiranjilal (M/s) v. Lodhi Prasad; AIR 1960 All 622.
35. Paika Padhani v. Pindiko Petro.; AIR 1958 Orissa 15
36. AIR 1981 SC 298
37. AIR 1982 SC 149
38. AIR 1971 SC 246
44. Himachal Transport Workers’ Union v. Secretary to Govt. of H.P.; AIR 1967 H.P. 21.
47. Ghodra Electricity Co. Ltd. V. State of Gujarat;(1975) SC 199; AIR 1975 SC 32
48. Dharam Dutt and others v. Union of India and others;(2004)ISCC 712
51. AIR 1964 SC 1140
52. AIR 1993 Del 252.
53. 14th Amendment assures the citizens that no state shall deprive any person of life, liberty or property without due process of law and contains the guarantee to the individual freedom to practice any profession or trade he chooses.
54. (1876)94 U.S. 113,
56. Green v. Me Elery (1950)360 U.S. 474
57. Bulankulama v. Secretary, Ministry of Industrial Development : (2002)4 LRC 53 (Sri Lanka)
59. Collins Cobuild English Language Dictionary.
60. 1968 A.L.J. 449.
62. P.P. Enterprises V. Union of India. 1982 S.C.C.(Cr.)341
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63. Habibullah v Gulam Ahamed Baba 1979 Kashmir Law Journal 309
64. Kochuni v State of Madras, (1963) SCR 887 (1914)
67. P.P. Enterprises v. Union of India; 1982 C.C. (Cr.)341
68. In Sukhmandan Sharma Dinesh kumar v Union of India AIR 1982 SC 902. The Court held that when the object of the statute does not suffer from any vagueness of uncertainty and the discretion is exercised by the authority toward attaining of the object and further if the statute provide adequate safeguard against arbitrary exercise of the discretion by the authority, such Act cannot be termed as unreasonable. However, when the Act provides arbitrary and uncontrolled discretion on the authority regarding licensing, price fixation and control and movement of commodities, such Act would be unreasonable:
69. Santokh Singh v Delhi Administration; 1973 M.L.J.(Cr.)456
70. Chintamon Rao v State of MP; AIR 1951 SC 118
72. Collector of Custom, Madras v Sampathu Chetty, (1962) 2 S.C.J. 68
82. Kishori Lal v. State; AIR 1957 Punj. 244.
85. V.G. Deshpande v. City Magistrate. Lucknow; 1953 Cr. L.J. 1358
88. Jammagar Motor Transport union Ltd. v. State of Maharashtra; AIR 1955 Sau 57
89. AIR 1961 SC 705
95. CAD, Vol VII, p. 769

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107. Article 47 has been applied by the Court in upholding the reasonableness of Law.
113. R. C. Cooper v. Union of India; AIR 1970 SC 564.
115. Raghubir v. Court of World, (1953) SCR 1049
117. AIR 1961 SC 1559.
120. State of Madhya Pradesh v. Galla Tilhan Vyapari Sangh; (1977) 1 S.C.C. 657
121. Babu v. Municipal nBoard, Kheri; AIR 1976 All. 326
123. AIR 1993 SC 1267
124. AIR 1960 SC 923
125. Following the principle in Hari Singh case (supra) the SC in Excel Wear's case [AIR 1979 SC 25] held that the right to close down a business was an integral part of the fundamental right to carry on any business guaranteed under Article 19(1)(g).
126. DCM Ltd. v. Union of India; AIR 1989 Del. 207 (FB)
128. AIR 1993 Guj. 30
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133. Motor Transporters Association v. Senior Superintendent of Police.; AIR 1974 All, 448
134. Devakinandan & Co. v. Union of India; AIR 1961 Punj. 136
139. AIR 1954 SC 224.
141. AIR 1974 SC 224.
142. Motor Transporters Association v. Senior Superintendent of Police.; AIR 1974 All, 448
143. Devakinandan & Co. v. Union of India; AIR 1961 Punj. 136
146. Workmen, Meenakshi Mills; AIR 1994 SC 2696.
148. Communist Party of India (M); AIR 1998 SC 184.
150. AIR 1979 Ori. 13.
151. AIR 1969 SC 1081.
154. T.V. Suramania Kurukkal v. State; AIR 1987 Ker 200
155. AIR 1967 SC 829.
156. AIR 1950 SC 63.
158. AIR 1989 Pat. 69.
159. AIR 1996 All. 30.
168. Article 47 of the Constitution of India Provides the state shall endeavour to be about
prohibition of the consumption except for medical purpose of intoxicating drinks and of drugs which are injurious to health.

170. AIR 1995 Del. 17.
171. Narendra Kumar v. Union of India; (1960) 2 SCR 375.
173. AIR 1987 Mad 235.
175. AIR 1951 SC 318 at p. 329.
176. AIR 1955 SC 33; (1955) 1 SCR 752.
177. Article 43 of the Constitution.
184. Ram Manohar Lohia. Dr. v. V.S. Sundaram; AIR 1955 Manipur 41.
188. Himachal Transport Workers Union v. Secretary to Govt. of H.P. ; AIR 1967 H.P. 21.
194. Cooley, Constitutional Law p. 300
196. Humphrey, In re.(1929)227 N. Y. 179]
197. The Bar Councils Act, 1949; The Legal Practitioners Acts (Act no 1 of 1890); The Indian Medical Degrees Act, 1933; The Medical Diplomas Act, 1939; The Medical Council Act, 1933; The Punjab Medical registration Act, 1916; The Pharmacy Act, 1948; The Dentists Act, 1948; The Usurious Loans Act,1918; The Provincial Money Lenders Acts; The Bengal Touts Act, etc.
198. Moti Lal v. Uttar Pradesh L; AIR 1951 All 257
199. A.L.R. 1953 S.C. 79,
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201. Ram Vilas Service (P) Ltd. v. Raman & Raman (P) Ltd.; AIR 1959 Mad. 492.
203. AIR 1990 MP 158.
204. Ram Vilas Service (P) Ltd. v. Raman & Raman (P) Ltd.; AIR 1959 Mad. 492.
206. AIR 1953 All 95.
207. AIR 1953 Mag. 142.
208. AIR 1998 Cal 121.
210. Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal; AIR 1995 SC 1236.
211. (1958) 9 Sau L.R. 184.
217. Express Newspaper ; AIR 1986 SC 515.
221. The Gauhati High Court approached the question of compensation for property acquired as follows, upholding the law in question, the court said that the formula to assess the 'amount' 'payable' was not "irrelevant or arbitrary". The compensation in the instant case could be inadequate but it was not a case of taking "a fortune for a farthing": Mahesh Kumar Saharia v. Nagaland; AIR 1984 NOC 268.
222. AIR 1978 SC 597.
226. Art. 37: "The provision contained in this part shall not be enforceable by any court, but the principles laid therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."
229. Art 19 of the J & K Constitution- Right to work and to public assistance in certain cases.- The State shall within the limits of its economic capacity and development, make effective provision for securing these rights.
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230 All India Bank Employees Association v. National Industrial Tribunal; AIR 1962 SC 171(230a.)
The Premier Automobiles Ltd. v. Kamalakar Shantarm Wadke, 1975 Lab Inter College 1651; AIR 1975 SC 2238

231 Declaration adopted without vote by GA resolution 36/55 November 1981

232 Gazette of India; P 175 Last Para

233 Amataya, Sresthi and Gramabhoyaka.

234 Barbara Harris-White (India Working: Essays on society and economy; Cambridge University Press, 2003)

235 Sachar Commission was constituted to ascertain the real condition of Muslims in India by Govt. of India. Sachar Commission has described that Muslims condition is very pathetic in India.

236 Dominique lapierre’s Freedom at Midnight-

237 Verse 1-5-14-29, Ref-The Moo the Merrier & Bow Before Bovinity -

238 AIR 2008 SC 1892.

239 Article 48 A of the Constitution

240 AIR 1952 ALL 753

241 AIR 1958 SC 731

242 Express Newspaper v Union of India; AIR 1958 SC 578.0.

243 AIR 1958 SC 731

244 Article 48 of the Constitution

245 AIR 1961 SC 448.

246 “Duty of prohibiting the slaughter of cow’s calves and other milch and draught cattle”

247 AIR 1958 SC 731

248 AIR 1970 SC 93

249 AIR 1993 SC 2076

250 Supra n. 247.

251 State of W.B. v Ashutosh Lahiri AIR 1995 SC 464

252 The Ivory Tower; 51 Years if the Supreme Court of India-VKS Chaudhary Universal Law Publishing Co. Pvt. Ltd. 2002 edn

253 Supra n. 247.

254 AIR 1970 SC 93

255 AIR 1996 SC 2076.


257 AIR 1998 Gujarat 220

258 Sarbari Bhattacharya ibid


261 (2002)8 SCC106


263 (1995) 3 SCC 635

St. Xavier’s College v State of Gujarat; AIR 1974 SC 1389, per Khanna J
Bharata Sevashram Sangh v State of Gujarat AIR 1987 SC 494 (para 7)
AIR 1987 Ker 200.
AIR 1987 Mad 187; (1986) SCC 707
AIR 2003 SC 355
(2002)(8)SCC 481.
2003 (6) SCC 69.
Islamic Academy of Education vs. State of Karanataka (2003) 6 SCC 697
Party general secretary Prakash Karat told the media “of late the government has let loose. Privatization and globalization have been designed wrongly and they’re not taking care of the working classes”. He attacked the growing influence of transnational corporations in India, declaring that international trade was too liberal. “We wish that the working community should be iven proper protection”.
AIR 1997 SC 3280.
POK based terrorist outfit Harkat-ul-Jehadi Islami (HUJI) issued warnings to all Muslim women serving in J& K Police to quit their jobs or face serious consequences. There is need to expose the military outfits against the Equality Spirit. They order seeks to prevent the women from working outside the house.
State of Karnataka & Anr. v. Dr. Praveen Bhai Thogadia; AIR 2081.
AIR 1974 SC 1389.
(2002) 8 SCC 481.
AIR 2005 SC 3172.