CHAPTER III

Philosophy of Distributive Justice under Indian Constitution

(1) Spirit of the Preamble

Every constitution has a preamble with which it begins and which embodies its objectives or basic purposes. Similarly, the framers of Indian constitution were eager to draw up a preamble which embodied the fundamental principles of new social order. The preamble to the Indian constitution was thus added which emphatically lays down:

We, the people of India having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all citizens justice, social, economic and political; liberty of thought, expression, belief, faith, and worship; equality of status and of opportunity, and to promote among them all; fraternity assuring the dignity of the individual and unity and integrity of the nation.

In our constituent Assembly, this twenty sixth day of November, 1949 do hereby adopt, enact and give to ourselves this constitution.²

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2. The italicized words "socialist secular" and "integrity" were added by 42nd Amendment act of 1976.
The sentiments expressed in the preamble carry the message of the philosophy of distributive justice, which seems itself to have been borrowed from the Objective Resolution which Pt. Nehru moved in the constituent assembly and was adopted unanimously thereafter. But the

3. The text of Resolution is as follows:

(1) "This constituent Assembly declares its firm and solemn resolve to proclaim India as an independent Sovereign Republic and to draw up for her future governance a constitution;

(2) Wherein the territories that now comprise British India, the territories that now form Indian states, and such other parts of India as are outside British India and states as well as such other territories as are willing to be constituted into the independent Sovereign India shall be a union of them all;

(3) Wherein the said territories whether with their present boundaries or with such others as may be determined by the constituent assembly and thereafter according to law of the constitution, shall possess and retain the status of autonomous units; together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the union or as are inherent or implied in the union or resulting therefrom;

(4) Wherein all power and authority of the Sovereign independent India, its constituent parts and organs of government are derived from the people;

(5) Where in shall be guaranteed and secured to all the people of India Justice, social, economic and political; Equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality;

(6) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other classes;

(7) Wherein shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and

(8) This ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind"
Nehru's resolution itself had taken shape out of what had been already said many times by Mahatma Gandhi. In 1931 when Gandhi was standing on the deck of a ship taking him to London, as the spokesman and representative of nationalist India to second round table conference, he was asked by a newspaper correspondent as to what constitution he would bring back if he could help it. Gandhi's reply is worth reproducing here. He said, "I shall strive for a constitution, which will release India from all thralldom and patronage, and give her, if need be, the right to see. I shall work for an India, in which the poorest shall feel that it is their country in whose making they have an effective voice; and India in which there shall be no higher class and low class of people; an India in which all communities shall live in perfect harmony. There can be no room in such India for curse of untouchability or the curse of intoxicating drinks and drugs; Women shall enjoy the same rights as men. ..............................................

All interest not in conflict with the interest of the dumb millions will be scrupulously respected, whether foreign or indigenous. Personally, I have distinction between foreign and indigenous. This is the dream of my India"\(^4\)

Thus the preambular spirit of Indian constitution proceeds further to define the objectives of the Indian national charter. These are four in number;

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4. See, Supra note 1, p. 151.
Justice, Liberty, Equality and Fraternity. Frankly speaking, these four objectives may rightly be said to be the pillars of the philosophy of distributive justice enshrined by our wise founding fathers in our national character. The word justice implies a harmonious reconcilement of individual conduct with the general welfare of the society. The essence of justice lies in the attainment of the common good. It embraces, as the preamble proclaims the entire social, economic and political sphere of human activity. The term 'Liberty' is used in the preamble not merely in a negative but also in a positive sense. It signifies not only the absence of any arbitrary restraint on the freedom of individual action but also the creation of conditions which provide the essential ingredients necessary for the fullest development of the personality of the individual. Since society is constituted of individuals, social progress depends on the progress of the individual. Hence it is the interest of the society to ensure the maximum liberty of thought and action of the individual commensurate with social conditions and circumstances.

Liberty and equality are complementary. Equality does not mean that all human beings are equal mentally and physically. It signifies equality of status, the status of free individuals, and equality of

5. Ibid; p. 155.
opportunity, as the French revolutionaries proclaimed: "Men are born free and remain free and equal in rights. Social distinctions are based only upon public utility". Equality of opportunity implies availability of opportunity to everyone to develop his or her potential capacities.

The concept of equality that is envisaged in the preamble as it embraces both of status and of opportunity. It highlights the philosophy that law is the expression of the public will. It must be same for all, whether it protects or punish.... all citizens being equal in its eyes or equally eligible for all public dignities, places and employments according to capacities and without distinction of their virtue and talents. Lastly, preamble emphasizes the objective of fraternity in order to ensure both the dignity of the individual and unity of the nation. The necessity of the spirit of brotherhood among the citizens was first emphasized by the French revolution which adopted it along with liberty and equality as the foundations of the law order that it aimed to establish. Ever since the French declaration, it has become a slogan of universal application. This is what the principle of distributive justice in social context means.

Moreover, the phrases and terms used by

6. Ibid.
7. Ibid; p. 156.
8. Ibid.
the wise founding fathers clearly indicate that socio-economic justice in its realization is distributive in character. It contemplates a change in social, economic and political framework in order to effect a transition from serfdom to freedom and attempts to remake the material conditions of the society. Granville Austin has lucidly remarked, "The constitution was to foster the achievements of many goals. Transcendental among them was that of social revolution. Through this revolution would be fulfilled the basic needs of the common man, and it was hoped, this revolution would bring about fundamental changes in the structure of the Indian society." Thus the scheme of distributive justice visualised, long back in the objective resolution has really been dreamt of in the Preamble especially with an emphasis on the trilogy of justice i.e. socio, economic and political. The concept of distributive justice got further impetus of great magnitude when Article 38 was embodied to our National character. It lays down, "The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all institution of the national life."

To sum up, the Preamble of the constitution

10. Article 38.
of India is one of the best of its kind ever drafted. It embodies the philosophy of distributive justice with a strong determination to build up a new and independent nation which will ensure the triumph of justice, liberty, equality and fraternity.\(^{11}\)

**II) Distributive Justice and the Fundamental Rights**

**(A) Prelude**

The primitive man had no notion of fundamental rights, though he did have a number of freedoms which no civilized man can ever boast off.\(^{12}\) But these freedoms had hardly any meaning for the primitive society as people were totally unorganized having scarcely any knowledge of a perfect social life.\(^{13}\) The progress towards organized society was not movement towards the attainment of rights, fundamental or otherwise, but towards the suppression of the absolute unrestricted and anarchic freedom of the primitive man.\(^{14}\)

If we look at the feudal society, we find that there was left nothing of the primitive man's freedoms and liberty. The feudal society was a total negation of the fundamental rights of men and citizen's.\(^{15}\)

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15. See, Supra note 12, p. 2.
In that structure, only the rulers, and his kith and kins had rights and privileges. Most of the citizens had no rights, no freedoms, no privileges. They had only burden and duties. Their rights were confined only to a few privileged persons and the majority of the people had no rights of freedom. The sovereign had not merely the absolute law making power but also the enforcement of the law depended on his whims and fancy.\(^{16}\)

The circumstances, however, went a vast change in the sixteenth and seventieth centuries. There was witnessed a rising middle class of bourgeoisie flanked by lawyers, physicians, artists, teachers, and men of letter. Though they were highly intelligent, energetic, competent and educated yet, they were oppressed by the ruling feudal class. Being aware of their plight, they raised their voice against the existing system. They championed the philosophy that if the industrialism were to survive, the feudal fetters had to go, and if necessary, the feudal order too. This led to the emergence of new ideas and philosophies which were nurtured under the guidelines of different jurists, social and political thinkers. Thus, concept of fundamental right can rightly be said to be an attempt to over throw absolutism and to demolish all arguments, secular as well as the logical that were in its

\(^{16}\) See. Supra note 13.
favour. These rights were more remedies for wrongs done to him by the despotic authority rather than substantive rights. These rights thus became fundamental—fundamental in the sense that no governments had the right to abridge them or take them away. In the then existing social conditions, these rights eventually became sacrosanct, invaluable and immutable. The fundamental rights, in political and governmental sphere, manifested themselves in constitutionalism, replacing absolutism. This meant that government had the duty to refrain from a course of action which might result in the infringement of those rights.

(B) Text of Right to Equality

The notion of equality has intimate association with the philosophy of distributive justice. It is a protest-ideal, that is, a symbol of man's revolt against chance, fortuitous disparity, unjust power and crystalized privilege. This is the ideal that calls for extreme denaturalization of the political order. Equality as an aspect of justice has two phrases namely, equality as a means doing justice and equality as an end of justice. The notion of equality, social, economic and political is an end of justice. It may, however, be stated here that the

The notion of equality without protective discrimination\(^{19}\) is not practical. The reality is that the goal of distributive justice is a two lane highway\(^{20}\) one requiring the equal treatment of the equals and the other requiring the equal treatment of unequals.

In an unequal environment where the social, economic and political inequalities are grim and large, the resort to the right of equality is often made to prevent discrimination. The doctrine of equality, thus envisages the idea of protective discrimination in all its manifestations. Equality thus, involves first of all absence of legal discrimination against any one individual group, class or race. Next, equal claims to adequate opportunities for all, recognitions of the fact that there can be no difference inherent in nature between claims of man to happiness, and especially, that no one, person or group may be sacrificed to another. Finally, claims to a minimum of education, housing, food, and guarantees against

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19. The word 'Protective Discrimination' was coined by Professor C.H. Alexanderowiez to indicate the measures of protection including reservation of seats in colleges and posts in government service sanctioned by the Indian constitution, by way of acceptance to the general principles of equality and non discrimination embodied in Articles 14, 15(1), 16(1) and 16(2) of the constitution, and in favour of the scheduled caste and scheduled tribes and backward classes. For details see, Alexanderowiez, Constitutional developments in India, (1958), p. 57.

Lord Bryce makes mention of four kinds of equality: civil equality, political equality, social equality and natural equality. Bryce's classification may be supplemented by economic equality. To sum up, civil equality consists in the enjoyment by all citizens of the same civil rights and liberties. All should be subject to the law and equal before the law. Its basis is, thus equalitarian. Political equality means that all citizens have the same political rights, and equal voice in government and in equal access to all offices to authority provided the necessary qualification are fulfilled. This implies democracy and adult suffrage.

Social equality, means that all citizens are equally tangible units of society and no one is entitled to special privileges. All have an equal opportunity to stand up and develop their personality. It implies no discrimination in the social status of the people, because of differences in race, colour, rank, class or caste, that is, there exists no unnecessary social restraint which retards the growth of an individual and the realization of his ambition of a good and happy life. In India there is no social equality as the society is rigidly divided into castes and free intercourse between different castes is a social taboo.

22. Ibid.
Social equality however, cannot be forced upon people by the laws of the state unless the sentiment of equality produces great changes in our social habits and social institutions. Regarding natural equality, Cole Lucidly point out, "radically unlike in strength and physical powers in mental ability and creative quality, in both capacity and willingness to save the community and perhaps most radically of all in power of imagination." 23

Actually, the doctrine of natural equality highlights that none of those inequalities is to be recognised by law. Rather law must treat all alike, keep all doors open to all and admit of no official predominance due to anything else. Moreover, if we want a society of social equals, we can hope to build it only a foundations of economic equality. The state should accordingly, guarantee to all citizens access to the means of satisfying their primary needs, by each man a minimum of sufficiency. The state guarantees him all those things without which life is meaningless. To sum up, it amounts to protecting the weak and limiting the power of the strong. Laski succinctly remarked that, "Upto point where human urgencies are in question, Beyond that point equality is not possible;" 24

In fact, equality is a grammar to justice, social, economic and political unless there is quality there cannot be justice. The Right to equality as guaranteed by our national charter owe a great deal to economic reconstruction of the Indian society. Though India has attained liberation from the long bondage of the slavery on 15th August, 1947, yet political freedom is not complete without economic freedom. That is why the founding fathers of our constitution gave a clarion call for justice, social, economic and political. To quote Nehru: "In the past democracy has been taken chiefly to mean political democracy, roughly represented by the idea of every man having a vote. It is obvious that a vote by itself does not mean very much more interested in food to eat than in a vote. It is obvious that a vote by itself does not mean very much to a person who is down and out and starving. Such a person will be much more interested in food to eat than in a vote. Therefore, political democracy by itself is not enough except measure of economic democracy. The good things of life must become available to more and more people and gross inequality must be removed."  

All this made our makers of the

25. See, Constitution of India, Article, 14.
constitution to think to embody 'equality protection clause' in part III of our national charter.\(^{27}\) It imbibes the spirit, "Men are free and always continue to be free and equal in respect of their rights."\(^{28}\) The Indian Constitution sets forth a programme for the reconstruction and transformation of medieval...hierarchical society emphasising in-equality in-to a modern equalitarian society based on individual achievements and opportunity for all regardless of castes, tribes, race or religion.\(^{29}\) The purpose of the equality clause under our constitution is that of distributive justice. It denotes that equal treatment should be meted out in like circumstances irrespect of any consideration, Whatever; the law of the land should be the same to the highest and lowest.\(^{30}\)

The framers of our national charter were aware of the political, social and economic in-equalities which existed in the country due to historical reasons and were anxious to remove there inequalities by positive state measures even if these measures imposed unequal burden on those individuals who had hitherto enjoyed undue advantages.\(^{31}\) They were well aware of the prevailing

\(^{27}\) See Constitution of India, Article 14-16.
\(^{29}\) Constitution of India, Articles 14, 15(1), 16(1) and 29(2). Also see Ivor Jennigs, Law of the constitutions (3rd ed.), p. 49.
\(^{30}\) See, Supra note, 28, p. 44. (Also see, Anthony Lesier and Geoffy Bindman, Race and Law,(1972), p.74.
miserable and appalling conditions of the backward groups who had remained far behind and segregated from national and social life and had continued to be socially oppressed and economically exploited for centuries due to various types of disabilities. They believed that in the caste ridden society like our where due to "The historical reasons certain castes and classes were for decades socially oppressed, economically condemned to live the life of penury and educationally coerced to learn the family trade or occupations and to take to education set out, for each caste and class by the society" a doctrinaire insistence on formal equality would in fact aggravate and perpetuate inequality.32

Thus, it became imperative, therefore, to adopt a policy of "Distributive justice" or compensatory or 'protective discrimination' as an equalizer to those who were made too weak to compete with the advanced section of the society in the race of life. The constitution guarantees to every person a right to "equality before the law and equal protection of laws."33

The guarantee of the equal protection of the laws means the protection of equal laws. It forbids class legislation but does not prohibit classification which rest upon reasonable grounds of distinction. It

32. Ibid; p.21. For details see Infra 38, p.154
33. Article 14, "The state shall not deny to any persons equality before the law or equal protection of the laws within territory in India".
merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed. Mathematical nicety and perfect equality are not required, and one who assails classification must carry the burden of showing that it does not rest upon any reasonable basis. 34

The guarantee of equality before the law or equal protection of the laws means substantial equality of treatment under the laws. Equal treatment does no necessary mean identical treatment. In fact, identical treatment in unequal circumstances amounts to inequality. In other words, in different circumstances the variation in legal procedure is not only permissible but necessary. Equal protection of laws does not mean identical laws. Sometimes, it is necessary to abridge the ordinary procedure in the interest of justice itself. Of course, no abridgment of legal procedure which curtails the essential safeguard can be permitted. A detailed procedure in abnormal times and in ordinary cases may become harmful in abnormal times or in extra ordinary and special cases. 35

The right to equality affords protection not only against discriminatory laws passed by the

35. Abdul Rahim Vs Joseph, (A Pinto Petition No 14-20 of 1950, Hyderabad.)
legislatures but also prevents arbitrary discretion being vested in the executive. In the modern state, the executive is armed with vast powers, in the matter of enforcing by laws, rules and regulations as well as in the performance of a number of other functions. The equality clause prevails such power being exercised in a discriminatory manner.  

More so, the right to equality and protection of laws loses its reality if all the citizens do not have equal facilities of access to the courts for the protection of their fundamental rights. It is the states function to make justice free, especially when we realizes that most litigation center around small men with poor means. The reality thus is that equality clause embodied in Article 14 does not speak about equality in law but also envelopes a wide range of equality in fact which may be said to be the pillar of distributive justice.

(c) Objective of Protective Discrimination

The introduction of the idea of protective discrimination is the brain child of the framers of Indian constitution. They were aware of political, social and economic inequalities which existed in India due to historical reasons and were therefore, anxious to remove

36. See. Supra note 1, p. 206.
these inequalities by positive state measures even if these measures imposed equal burdens on those individuals who had hitherto enjoyed undue advantages. The wise founding fathers were aware of the prevailing miseries and appalling conditions of the down-trodden who had remained far behind and had continued to be socially oppressed and economically exploited for centuries due to various types of disabilities.

It was in this context that adoption of the policy of "compensatory discrimination" or "protective discrimination" became imperative as an equalizer\(^{38}\) to those who were made too weak to compete with the advanced sections of society in the race of the life. That is why the constitution of India is prefaced by a strong resolve "to secure to all its.....equality of status of opportunity...."\(^{39}\). The framers agreed that the claim for equality is in fact a protest against unjust, undeserved and unjustified inequalities. It is a symbol of man's revolt against chance, forfuitious disparity, unjust power and crystallized privileges.\(^{40}\) Thus the measures which are compensatory in character designed to promote an effective equality by giving more equal opportunity to the

disadvantaged, would in no way vitiate the equality principle. Infact, the preferential treatment to the unequals to make them equals is an effective and powerful instrument to bolster up the scope of distributive justice.

It may be made clear that the compensatory discrimination notion takes into account the inequalities of social, economic and educational background of the people and seeks the elimination of the existing inequalities by positive measures. Unless preferential treatment is given to them it would be impossible to say that they have been afforded equal opportunity with the forward sections of the society. Thus protective or compensatory discrimination requires the state to adopt a standard which takes into account the differing economic and the social conditions of the people wherever those differences and disparities stand in the way of equal access to their basic rights. It is in this context that the constitution of India authorises the state to provide special benefits and preferences to certain sections of population to reserve posts in government services, to reserve seats in legislatures and local bodies to reserve places in public institutions and so on.

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43. For detail see, Constitution of India, Part III, Articles 15(3), 15(4) and 16(4), Part IV, Article 46, Also see Articles; 330 to 342.
With this objective in mind articles 15(4) and 16(4) have been embodied in the constitution to enable the state to achieve equality among the disadvantaged sections of Indian society by giving them preferential treatment in all its dealings and particularly in the area of public employment. These provisions are not included to be derogatory of the equality guarantee of Articles 14, 15(1) and 16(1) and 16(2) but are supplementary and complementary to it. Article 15(4) and 16(4) clarify that when making a classification showing favoured treatment to the disadvantage sections, the state might use forbidden extra because any real classification will have to take into account the inequalities based on the abuse of caste, religion race etc. Therefore, on the one hand the constitution forbids discriminations on the grounds of race or religion etc. So that the old inequitious situations may not be continued, on the other hand it permits these very criteria for correcting evil consequences flowing from their past misuse

Undoubtedly, the purpose of compensatory discrimination is to counterbalance the disadvantaged classes for past wrongs suffered by them because of unequal social structure of Indian society. Art 15 (4) and 16(4) authorize the state to make any special

measures" for the advancement of the weaker sections of the society. It can, for instance, give benefits in housing, loan, scholarships land distribution, health measures and can assist all backward sections who because of the lack of resources, attainments and background cannot successfully compete with more advanced sections of the populations. The state can adopt new strategy to repair the loss of the backward classed in order to level them up to the rest of the society.

The present constitution is, therefore, not only a revolt against injustice and exploitation caused to the poor brethren in the deep past of the history but also endeavours to imbibe the spirit of distributive justice both in letter and spirit. The device of "protective discrimination" is really an instrument of distributive justice aimed to function as a balancing wheel between the haves and haves not the cherish the goal of welfare state. Similarly, the Indian judiciary from the very beginning has been cautious and fully awake to social need and has very intelligently caught the pulse of social problems. Almost every decision of Indian judiciary reflects the new judicial trend towards the legitimization of the governmental initiatives to level up the social.

45. See Anirudh Prashad, "Social Engineering and constitutional protection of weaker sections in India, (1980), p. 64.
educational and economic status of the disadvantaged and oppressed section of the society. Krishna Iyer, J. has rightly observed: "The sole purpose of protective discrimination is the promotion of the common man capabilities overpowering environmental adversities and opening up full opportunities to develop without succumbing to the sophisticated argument of the elite that talent is the privilege of the few and they must rule".

Thus, the idea of distributive justice seems to be quite alive in Article 15 (3) and 15(4), and 16 (4) and the purpose to incorporate these provisions is that India is a vast country with acute problem of unequal distribution of property and unemployment. We are living in the era of competing interest where survival of the weaker section is not possible without special protection to be given under the constitution. Thus article 15 (3), 15 (4) and 16(4) have been carved out with an objective to protect them against the stronger section of the society. These provisions deal with humanization and adjustment maintaining unity in diversity. Maximum of satisfaction with minimum of friction is the crux of these provisions and can be said to be effective instrument of distributive justice.

46. See Dr. Paramanand Singh, Equality,reservation and Distribution in India (1982), p. 43
47. State of J & K Vs Trilokinath Khosla, A.I.R 1974 SC 4
48. For details see, Constitution of India, Art.15(1), (2), 16(2), 29(2) and 30(2).
The notions of protective discrimination aims at unequal treatment of unequals. Mere proclamation of abstract equality will be of no use to such persons groaning under the abject poverty and the deadening weightage of backwardness. They need 'protective discrimination' and adventitious aids to develop their personality and to participate in the mainstream of national life. The situation demands that government has to perform a formidable task of balancing the competing interests of different section of the society. The harmonization is required to resolve this conflict between "need based claims" of the backward groups and the neglects of members of the advanced sections to which they become entitled because of their preferences, contributions and merits. A care, however, has to be taken to the effect that government does not abuse or misuse its powers so as to impair the interest of others.

The study of Constituent Assembly Debates discloses that policy of "compensatory discrimination" under our national charter has been adopted as an equaliser to those who were made too weak to compete with the advance section of the society in the race of life. The policy of

49. For example, those who were the victims of man made barriers for centuries together now need to be compensated.
51. See Constitution of India, Article 335.
compensatory discrimination" sets forth a programme for the construction and transformation of Indian society by a firm commitment to raise the weaker status of particularly neglected and disadvantaged sections of our society.\(^5\)\(^2\) The sole philosophy hidden in the policy of "compensatory discrimination is that the equality between the members of the majority and the minority must be effective, genuine equality. The sole purpose to incorporate protective discrimination is to obtain results which establish an equilibrium between the different situations in the light of prevailing circumstance of Indian society.\(^5\)\(^3\)

The policy of "compensatory discrimination" implies the notion of distributive justice in its true perspective. The compensatory discrimination notion takes into account the inequalities of social, economic, and educational ground of people and seeks the elimination of existing inequalities by positive measures. According to distributive justice, equality in fact can be attained only by mitigating the inequalities of men by positive state action. Thus philosophy of compensatory discrimination necessitates the state to adopt a standard which takes into account the differing economic and social conditions of the people where the huge difference and disparities stand in

\(^5\)\(^2\) Ibid, Article 46.
\(^5\)\(^3\) St. Xaviers Vs State of Gujarat, A.I.R. 1974 SC. 1389
the way of equal access to their basic rights.  

The rationale behind compensatory discrimination has very succintly been pointed out by one of the former chief justice of India, in his lucid writings, in the following words.

"In the race of life, unless adventitious aids are given to the under privileged people, it would be improveable to suggest that they have equal opportunities with the more advanced people. This is the reason and the justification for the demand of the social justice that the unprivileged citizens of the country should be given a preferential treatment in order to given them an equal opportunity with other more advanced sections of the community."

We may thus safely say that Articles 15 (3), 15 (4), and 16 (4) are aimed to function as an instrument of distributive justice. The care should, however, be taken that these provisions should not be pressed too far so as to eat away the social interest or breed reverse discriminations. It is just and reasonable to limit the scope of protective discriminations to only most desirable

54. Morris D. Forkosch, Equality and Inequality - the Laws Ambivalence, University Law review (1975), pp. 249 at 266.
56. See Aniruddh Prasad, Social Engineering and Constitution protection of weaker sections in India, (1980) p. 64.
cases. 57

(D) Untouchability and Social Justice

Our constitution guarantees to all the citizens "equality of status and of opportunity" and to promote among them "fraternity assuring the dignity of the individual and the unity and integrity of the nation". 58

The philosophy of distributive justice as permeated in the Preamble prohibits all sorts of discrimination based on religion, race, caste, sex or place of birth. It also envisages to undertake the effective measure to eliminate the existing discriminatory practices of social inequality prevailing in the society from centuries together because of many religious, social and economic factors. With a view to improving the lot of the down-trodden, the lowest and the lost and putting a check on the oppression of a sizable section of the community, the constitution vigorously proclaims its policy of untouchable in article 17 which forbids its practice in any form. 59

In Hindu society, the practice of untouchability has resulted in the creation of two classes of people, one superior and the other inferior. The badge of inferiority carries with it all the disadvantages of

59. Ibid. Article 17.
life and the social justice is never conducive to the well-being of members of untouchables as well as touchable classes. Article 17 is thus interested to remove this social stigma and badge of inferiority, degradation, degeneration and halt the engine of social and economic oppression and exploitation. It sternly promises to accomplish the goal of distributive justice which helps to level up the disabled and distorted contours of the societal set up.

The word 'untouchability' has not been defined in the constitution. However, the executive, legislature and the courts tend to define the term denotatively, by pointing to the well known examples of its practice, rather than connotatively by specifying boundary criterial thus leaving it to the judge as a tier of the fact to decide whether this complex and obscure notion of Untouchability was component of the mental state of the accused at the time at the commission of the offence. There


61. The English term 'untouchability' is of relatively recent coinage, its first appearance in print was in 1909 and while it gained wide currency, it did not gain clarity. The Maharaja of Baroda in his remarks to the depressed classes mission of Bombay on October 18, 1909 used the term and provided an explanation to his audience. Also see Marc Galanter, "Untouchability" and the law; Economic and Political weekly, pp. 131-139. (Annual number (Jan. 1969).

is thus, a need of precisely defining the term 'untouchability'. Several attempts were made in the Constituent Assembly to define untouchability, but most of the members described it as vague and indefinite thus no acceptable definition, could be carved out. Explaining the necessity of the definition, D.N.Datta said, "Unless there is a definition, it cannot be dealt with as offence." K.T.Shaw said, "This constitution lacks very much in a definition clause, and consequently we are at a great loss in understanding what is meant by a given clause and how it is going to be given effect to." B.N.Rau envisaged that the law which has to be enacted under clause 27 (now article 35) for prescribing punishment for offenses in respect of 'untouchability' will define the various forms in which it is practiced. The untouchability offence, Bill defined untouchability. The joint committee of parliament to which the bill was referred did not approve the definition of 'untouchability' and so clause 2(6) along with two explanation was deleted from the Act. This was perhaps because of difficulty of a precise legal definition of the term untouchability. The government also

63. C.A.D. III, p. 413, Also see C.A.D. VII, p. 665.
64. C.A.D. III, p.414.
66. See, Select document, II, 4(V) (C), 148.
thought that if any statutory definition is given, it would narrow the scope of the statute. The committee left the term undefined. To sum up, parliament and courts consider that it is not easy to define an untouchable, but all of us know the person who is actually meant.

M.C.J. Kagzi lucidly finds that, the term untouchability, "bears no literal, technical, grammatical, formalistic or statutory definition" and means and explains "the practice as it had developed historically in this country." He further explains, "It connotes the caste action or practice of non-touching of the members of the lowest caste Hindu by caste Hindus. It means separation segregation and isolation of such persons from the higher caste Hindus. It means keeping the Harijans untouchables away from, and inside the main social stream for mis-placed fear of pollution requiring them to keep themselves aloof from places of public resort and also temples. It accompanies social segregation, economic isolation, non-entry into educational institution, disqualification for the learned professions, trade and industry. It impels absence of social intercourse, and forbids a marriage between Higher Hindu and a low caste Hindu. It results in socio-economic discrimination, loss of status, absence of

69. Ibid
civil personalities and civil liabilities, perpetual social boycott. 70

The exact meaning of untouchability can also be ascertained from the context and relative position of Art. 17 in the constitution. It is flanked by critics guaranteeing right to equality, social equality and equality in employment opportunities. 71

It is followed by other Article which abolishes inequality in conferring titles. 72 Article 17 endeavours to eradicate this practice and to eliminate the potent factors of social inequality found in Hindu society. So the primary purpose is the elimination of factor of social inequality, the presence of which would render equality guaranteed in the constitution an unrealistic idea. It is true that it does not create any special privileges or confer any right on any one. Yet, it is a great fundamental right, a character of deliverance of one sixth of Indian population from perpetual subjugation and despair, form perpetual humiliation and disgraces. 73 It is because of this reason that the members who spoke on draft article, welcomed it as a historic measure designed to put 'down to and end the great social evil which had long been a

70. Id.
71. See Constitution of India, Arts: 14, Art. 15, Art.16
72. Ibid, Articles. 16.
Article 17 thus evolves a policy of a distributive justice inspired by the constitutional objectives of liberty, equality and fraternity. It signifies a kind of new power morality securing to all its citizens "equality of status and of opportunity and promote among them fraternity assuming the dignity of the individual and the unity of the nation,". It is comparable to the proclamation of emancipation issued by Lincoln in America freeing their slaves of slavery and as such frees the untouchable of untouchability and disabilities, discrimination, indignities, exploitation, liabilities associated with the age old abuses of untouchabilities. It is really a positive rule of distributive justice which confers certain fundamental immunities and privileges on all those subjected to the disabilities and liabilities consequent to "untouchability." It enables and permits the hitherto untouchable person subjected to the practice of "untouchability" to refuse to be so subjected to such an abolished practice. It may be noted that the provision which forbids practice of untouchability, itself executing, and therefore, does not require a supplementary or aiding

74. Ibid (views of V.I.Muniswamy pellai, Man Mohandas, Shantano Kumar Das and (Mrs. Dakshayani Velaguddhan, also belonging to scheduled caste).
75. Supra note 70.
76. Ibid.
77. See, Supra note, 72, p. 203
legislation for its effectiveness. The violation of this provision whether by state or by an individual would be unconstitutional for which remedy lies under articles 32 and 226 of the constitution. The aggrieved person can move to court, for the appropriate writ, direction or order and the court has got ample power to direct the individual or state or desist from the practice of untouchability. Moreover, Indian Parliament has enacted the Untouchability (Offences) Act, 1955. The Act has further been amended by the Untouchability (Offenses) Amendment Act, 1976 with an objective to make the law more stringent to remove untouchability from Indian soil. It has been now renamed as the Protection of Civil Rights act, 1955.

(E) Right Against Exploitation

The founding fathers of our national charter were fully aware of the problems of the weaker sections of the Indian society and therefore, they made protective provisions to give them the social security. The desire of the founding fathers was to emancipate the


people from economic hardships and exploitation. Right against exploitation has been specifically embodied in fundamental right of every citizen of India not to be compelled to work without wages. Article 23 prohibits traffic in women or human beings as well as forced labour. The primary objective of Article 23 and article 24 is to abolish the complex dealing in human beings. During the considerations of Art 17 of the Draft constitution of India, which practically correspond to Art 23 of our constitutional, Sh. Raj Bahadur (United State Of Matsya) observed. "Beggar like slavery has a dark and dismal history behind it. As a man coming from an Indian state I know what is this beggar, this is extortion of forced Labour, has meant to the down-trodden and dumb people of the Indian states. If the whole story of this beggar is written, it will be replete, with human misery, human suffering, blood and tears, I know how some of the

80. Art. 23(1) runs," Traffic in human labour are prohibited and any convention of this provisions shall be an offence punishable in accordance with law". Art 23(2) further lays down," Nothing in this shall prevent the state to impose compulsory services for public purposes provided that the state shall not make any discrimination of grounds only of religion, race, caste or class or any of them." Similarly, Art. 24 makes it clear that "No child below the age of fourteen year shall be employed to work in any factory or mine or in any other hazardous employment.

82. see, supra note,79.
princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they used the down-trodden labourers and dumb ignorant people for the sake of their pleasure. I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are paid nothing or paid very little for the petty official. Not only do these petty officials perpetrate such tyrannies but they also extort bribes from the labour's who want to escape the course of beggar...."\(^{84}\)

Summing up, it may add that article \(^{85}\) constitutes the charter of freedom for the common man, and this article \(^{86}\) is a sort of complement of that charter of freedom. This frees the poor, down-trodden, and dumb people of the Indian states. I can say anything of other provinces from this course of 'beggar'. This beggar has been a blot on humanity and has been a denial of all that has been good and noble in human civilization. Through the centuries this course has remained as a dead weight on the shoulders of the common man like the practice of slavery. Drafting committee, the members and this Constituent Assembly are entitled to the grateful thanks of the dumb down-trodden millions who would be freed by this article from this

\(^{84}\) Ibid.
\(^{85}\) Of the draft constitution of India corresponding to the article 19 of the constitution.
\(^{86}\) i.e. Art. 17 of draft constitution of India corresponding to art. 23 of the constitution.
Bonded labour system in India has a long history of its existence. It was deeply rooted even during the Mughal period. No concrete measures seem to have been taken by the rulers to weed out this practice from Indian society. The first step to prevent the abuse of the system was initiated by the Britishers in 1843. This was done through the Indian Act of 1843. Despite being legally abolished, the system prevailed, and the laws either remained on the statute book or brought about minor modifications in this system.

It was only after independence that the government realized the crux of the problem. In these years since the attainment of independence, the government has shown the heightened degree of awareness about the problem, and the government has charged the officialism with responsibility to provide relief to the exploited by taking prompt steps. The availability of impersonal bureaucratic administration has provided the depressed classes with institutional mechanisms to appeal against the exploitation and tyranny of the upper class. Our founding fathers of the constitution incorporated Article 23 in the constitution.

87. Supra note 83, p. 810.
89. Ibid, p. 130.
90. See, Supra note, 83.
This frees the poor, down trodden and dumb people from the curse of beggar. It constitutes a charter of freedom for the common man.  

Most effective step was taken by late Prime Minister, Indira Gandhi, who had a kind touch for the poor people, announced a new economic policy like 20 point programme on July, 1975 for the amelioration of the socio-economic conditions of the weaker sections of the society in which it has been proclaimed: "Bonded labour, wherever it exists, will be declared illegal." On the basis of this basis proclamation, the Bonded Labour System (Abolition) ordinance was promulgated by the President of India on October 24, 1975, which came into force throughout the country. It was further amended in November 1985 to bring the contract labour and interim state immigrant workers under the purview of the Act.

It is now doubly sure that the incorporation of articles 17, 23 and 24 in our constitution furnish us the guarantee of individual interest, even of the poorest of the poor, would be safeguarded and they would be emancipated from economic hardship and exploitation which was undoubtedly an age old practice in our country.

93. Ibid, p. 162.
Efforts have been put by our founding fathers of our constitution to bring a balance between individual interest on the one hand and social and public on the other hand. Thus introduction of articles 17, 23 and 24 in part III of the Indian constitution is a right step initiated by the wise founding fathers of our constitution to accomplish the dreams of distributive justice intended to by them in the very preamble of our National charter.

(F) Cultural and Educational Safeguards

The problem of minorities is such that it has evoked inquiry not only in India but in almost all democratic countries of the world because a true democratic set up envisages not only a majority rule but a system, political, economic, social and legal in which section of the community is provided with an opportunity of participation in national reconstruction without losing its separate entity.

Keeping this end in view, the constitution of India makes certain special provisions for the protection of some genuine interests of the minorities, so that a condition may be created in which democratic political institution can work successfully.

94. See, Constitution of India, Art. 23, clause (2).
Historical background of the incorporation of the provisions relating to the protection of minority rights indicates that the idea of distributive justice was pervading in the hearts of the framers of the Indian constitution. They conceded minority rights, as it was essential in the social and national interest, but their earnest desire was that the constitutional safeguards will enable majorities and minorities to merge some day into one. The high ideals of the farmers have been fulfilled to some extent, as Dr. Zakir Hussain and Ali Ahmed, who belonged to Muslim minority community were elected to highest office of presidency with thumping majority.

The constitution of India seeks to avoid conflicts between majority and minority groups in the country by providing ample safeguards for the protection of the minorities in the constitution itself. In free Indian society any discrimination and exploitation by any section of society against them cannot at all be justified either morally or legally.

The framers of our constitution realized that colonization of the religion, race, caste and birth place must be ended through the constitution, they also realized that caste was inimical to democracy and progress.

97. C.A.D., VIII, p. 39 (Dr. B.R. Ambedkar view).
of the country. It became imperative, therefore, to adopt a policy of compensatory discrimination, as an equaliser to those who were made too weak socially and economically, in the caste ridden society. Constant with resolve in the preamble to secure to all citizens a equality of status, opportunity and justice social, economic and political, the constitution guarantees to all citizens a right to equality and freedom from discrimination on grounds of religion, race, caste, sex, place of birth and residents. The concept of equality as enshrined in constitution has made every one equal in the eye of the law as has been accepted as a basic principles of our national life. Minorities have every right to be appointed to any public office, how so ever high, they have a common citizenship, and these rights along with their cultural affinity a cohesive existence. However, in order to preserve the special characteristics, tradition and culture of the minorities the constitution has further provided certain safeguards to the effect that all the minorities whether based on religion or language shall have the right to establish and administer the educational institution of their choice.

100. Constitution of India, Arts. 14-16.
101. Supra note 99.
102. Constitution of India, Art. 30(1)
constitution specially discourages the state from passing any law which could be called oppressive. Any law made by state inconsistent with the minority interest envisaged in our national charter is invalid. This spirit to safeguard the interests of minority was also very much present in the minds of the framers of the constitution.

Moreover, the state is obligated to promote educational and economic interests of the minorities and protect them from social injustice and other forms of exploitation. The constitution framework has been intentionally designed to strive to promote the welfare of the minorities serving a social order based on social-economic and political justice. The framers intended to include all citizens irrespective of majority or minority within the ambit of non-discriminatory treatment in admission and to educational institutions state-maintained or state-aided. Mrs. Purnima Banerjee suggested for making it obligatory to the state-aided institution, not to discriminate against minority in matter of admission, supporting such more Mr. Hussain Imam and H.N.Kunzru, emphasized that while there was no bar to any community

103 Supra note 98, p. 109.
106. Ibid.
maintaining its own educational institution, if such an institution wanted aid it must throw open its door to members of all classes of persons irrespective of their religion, community or language or creed.  

With high emotional spirit of India finding unity in diversity and assimilating best of all creeds and cultures and sacred constitutional guarantees to minorities the learned chief justice of India, S.R.Das in Kerla, Re-Education, 1957 allowed minorities rights giving widest possible meaning to such guarantees. The majority opinion is appreciable from the point of the view of implementing constitutional obligation and allowing assimilation of state regulation is concerned. The sole objective of the constitution of India is to reconcile the interest of a linguistic minority in a state in such a fashion that it ultimately promotes among them a sense of participation in the state administration.

The very preamble of our constitution while speaking of justice, social, economic and political, to be secured to all citizens, proclaims as one of its aims the promotion among them all; Fraternity assuring the dignity

111. See, Constitution of India, Art. 347.
of the individual and the unity of the nation. In order to accomplish the goal of distributive justice, constitution of India has adopted two methods for protecting the minorities. First, the guarantees of what might be described as negative equality, which protected them from the possibility of discriminatory treatment. The constitution confers certain positive rights on members of minority groups which they share with other citizens of the country. The other kind of rights guaranteed may be described as those of special nature which ensure to the minorities the right to conserve their distinct language, script or culture and the right to establish and administer educational institutions of their choice.

The framers of the constitution have bestowed much thought and attention to the minority problem in all its facts. They tried to do their best to safeguard the interests of various minority groups whether based on religion or language, culture or socio-economic factors so as to give them a sense of justice and security as well. The rights of minority are sought to be preserved, first through the fundamental rights. These rights apply generally to all citizens, as well as minorities in particular, and offer valuable safeguards for the minorities over

113. Ibid; Articles: 14, 15, 16, 19, 24, 25 and 29(2).
114. Ibid; Articles: 29 and 30.
comprehensive field of their social life. 115 Besides, there are a few directive principles of state policy, which are relevant from the point of view of minority rights. Thus article 46 requires the state to take special care in promoting the educational and economic interest of the weaker sections of the people. Similarly, Article 38 requires the state to promote the welfare of the people by securing a social order based on social, economic and political justice. Article 326 also strengthens the position of minorities and gives them full political rights. But this is not all. A number of special provisions have also been made in the constitution safeguarding specifically the social, economic, educational and cultural rights of the minorities. 116

It may, however, not be out of place to mention here that while minorities are entitled to reasonable safeguards to protect their educational, cultural and other interests, it has to be borne in mind that such safeguards should not so operate as to perpetuate separation or to impede the process of natural assimilation. That is why the rights conferred on the religious and linguistic minorities to administer educational institutions of their choice has not been made.

115. Supra note 113.
116. Constitution of India, Part IV, and also see Arts: 347, 350, 350-A and 350-B.
an absolute right. More so, the courts have also played a creative role and interpreted the relevance constitutional provisions liberally so as to confer on the minority groups due safeguards consistent with national interests and due interests of the majority groups and sought to draw a fine balance between minority and majority linguistic groups. The glory of the constitution lies in the fact that while ensuring national interests, two paramount values have been projected by constitution: (1) a common citizenship irrespective of race, religion or language, based on common civil law, thus, wielding the individuals into a civil community, and (2) justice, social and economic to those who, for historical and other reasons are trailing behind and have been and are still suffering from handicaps and disadvantages. The constitution, therefore, provides safeguards for minorities which are meant for the uplift, progress, full development of the members of the minority communities in all fields of human

117. Ibid, Article, 29 and 30.
118. For detail see state of Madras Vs Champakam Dorairajan, AIR 1956 SC 226; D.A.V. college Bhatinda V state of Punjab, AIR 1971 SC St. Xaviers college V state of Gujrat, AIR 1974 SC 1389; Re Kerala education Bill AIR 1958 SC 956; All saints high school Vs govt. of AP, AIR 1980 SC 1042; Managing Board of Mills Tallmi Mission V union of India frank Autonomy Public School Employees Association V. Union of India (1986) 4 See 707; Christian Medical College Hospital Employees Union V Christian Medical Vellore association, AIR 1988 SC 37, All Bihar Christian School Assam V state of Bihar, AIR 1988 SC 305.
activity—-social, political, cultural and economic etc. The National charter has kept the ideal of securing to all the citizens, Justice—social, economic and political.

(iii) Directive Principles and the Philosophy of Distributive Justice

(A) Prelude

The Directive principles of state policy highlights the ideals, the aspirations; the sentiments, the precepts and the goals of the entire freedom movements. They represent the conscience of Distributive justice. They set forth the humanitarian precepts that were, and are the aims of the Indian social revolution. Our founding fathers were really social engineers who designed part IV of the constitution deliberately to bring about, primarily a desired social-economic pattern of society into existence. They connect, India's future, present and past and give strength to the pursuit of the social revolution in our great ancient land. Austin has rightly observed that despite the permeation of the entire constitution by the aim of national renaissance, the core of the commitment to the philosophy of Distributive justice

122. Ibid, p. 271.
lies in part III and IV. In the Directive principles, however, one finds and even clearer expression of the kind of Distributive justice. They aim at making the Indian masses free in the positive sense from the passivity engendered by centuries of coercion by society and by nature free from object.

The Directive principles embody the philosophy of the Indian constitution and contain a system of values some of which are borrowed from the liberal humanitarian tradition of the west, some are peculiar to end yet some other represent an attempt to find the traditional and modern modes of life and thought. The first and paramount principle enjoin that the state shall secure a social order in which social, economic and political justice shall inform all the institutions of national life. The other go in specific, following which would help to realise the central goal. These specifically provide that the wealth and its source of production shall be distributed so as to subserve the common good, and there shall be adequate means of livelihood for all and equal pay equal work. The state shall endeavour to secure the health and strength of workers, the right to work, to education and to assistance in cases of want, just and

123. Constitution Of India, Part III and IV.
125. Ibid. Part IV
human conditions of work, and a living wage for workers, uniforms civil code and force compulsory education for children. The other directions seek to secure the organisation of village panchayat, promotion of the educational and economic interests of weaker sections of the society, raising of the level of nutrition and standard of living, improving of public health, organization of agricultural and animal husbandry, separation of judiciary from executive and promotion of the international peace and security.

Thus the directive principles are in the nature of duties which the constitution calls upon the state to perform to achieve the goal of distributive justice. The study of the provisions contained in part IV reveals that it attempts to maintain a proper balance between legal equality and actual or positive equality by adjusting the need of uplift of weaker segments of the society with social interest and constitutional protections given to other section.

(B) Goal of New Social Order

The constitution visualizes that society as a whole and every member of the society should make progress and imposes an affirmative duty upon the state to

126. Ibid.
127. Id.
help its citizens in the realization of ideals of distributive justice. Directive principles on other hand destroy social and economic inequality and provide the necessary hope, promise and aspiration of distributive justice.\textsuperscript{128} It is in this context "primacy was, therefore, accorded in the Indian constitution to the rights of the masses, of minorities and the under-privileged classes against the political and civil rights of a few individuals, entrenched interests or propertied classes.\textsuperscript{129} Article 38 provides "The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order which justice, social economic, and political, shall inform all the institutions of the national life. For instance Article 38, directs the state to bring about a social order where justice, social, economic and political shall inform all the institutions of national life. The article further provides that "The state shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individual but also amongst groups of people residing in different


areas or engaged in different vocation.  

The provisions contained in part IV envisage the goal of socio-economic justice in consonance with the spirit of the preamble of the constitution. In short, Art 39 in itself is a complete code of economic justice. It states, "The state shall, in particular, direct its policy towards securing:

(a) That the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

(c) that operation of the economic system does not result in the concentration, of the wealth and means of production of the common detriment.

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(g) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom.

130. Inserted by The constitution 44th Amendment act (1978) Sec. (9)
and dignity and that childhood and young are protected against exploitations and against moral and material abandonment. 131

The provisions begin with the word 'in particular'. It means that the code is not exhaustive in itself. It simply lays down the minimum programme of the state to formulate its policies as to create an atmosphere of social and economic justice. In fact, the socialistic ideals of the national movements and the national goal are embodied in this article.

The ideals proposed in Article 39 is meant for a socialistic pattern of society. Women's liberation is the call of the Directive of clause (a) and (d). State is obligated to liberate the women folk from the moral and material abandonment. However, it is strange and disheartening to note that despite several legislations the conditions of the women, children and the workers have not yet been improved. The welfare legislations are mostly abused in case of private sector, even maternity leave provision is not applicable generally to millions of women working casually or on daily wage basis in innumerable private sectors where profit matters and not the humane laws or constitutional directives. Women liberation does not mean only allowing them freely to do the jobs. The

131. Substituted by the Constitution (42nd amendment) act 1976. sec. 7. w.e.f. 3-1-77.
liberated chunk of population in the highly aristocratic societies of the capital city and other metropolis should think of millions of Indian women children and the workers subjuged to domination due to poverty, lack of education and social customs. 132

(c) Aims and objective of Free Legal Aid Movement.

In order to ensure equality of justice it is not only sufficient that law treats rich and poor equally, but is also necessary that poor must be in a position to get their rights enforced and should put up proper and adequate legal aid to the poor. Legal aid is not a minor problem but a question of a fundamental character which may serve as a spring board to reach the threshold of distributive justice. 133 Effective access to justice is the most basic requirement of a system which purports to guarantee legal rights to the people at large. In so far as a person is unable to obtain access to the courts of law for having wrongs redressed for defending himself against criminal charge, justice has no meaning and to that extent fails in its purpose. Unless some provisions are made for assisting the poor man for the payment of court fee and lawyer's fee and other incidental costs of litigation, he is denied equality in the opportunity to seek justice as

151

evisaged in our national charter. It is the state's function to make justice free, especially when we realize that most litigation centres round small men with poor means. Let it not be forgotten that if law is not only to speak justice but also deliver justice legal aid to the poor is an absolute imperative. It is in fact a delivery system of social justice.

It is in this context that the strong move for legal aid in recent years is an outcome of emergence of the socio-economic philosophy. The widespread insistence on free, legal assistance is obvious from the universal Declaration of Human Rights. It emphatically says that every one has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law. But unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about changes in their life conditions and to deliver justice to them. It is, therefore, necessary that we should inject equal justice into reality and that can be done only by a dynamic and activist scheme of legal service.

The landmark was reached with the welcome step of introduction of new Article 137 through the Constitution Forty Second Amendment Act, 1976. Henceforth, legal aid in India has acquired the status of a new legal right. Besides this, the need for providing free legal aid to the poor has been recognised within the framework of entry 3 of the state list and entry II(A) of the concurrent list as provided in the seventh schedule of the constitution. It is the primary responsibility of the state to provide legal assistance to those who cannot afford to go to the court of law on their own because of financial limitation. There is in the legislative lists not one entry, but a host of entries of legal aid. 138 There are also number of other articles 139 which contemplate legal aid to the people of poor means. 140

All these provisions of the constitutions put the state under an obligation to see that there is no violation of fundamental rights of any person particularly when he belongs to the weaker section of the community and is unable to wage all legal battle against strong and power

139. Ibid, Ch. XVI Arts. 22(1), 38 and 46.
full opponent who is exploiting him. It is the constitutional obligation of the state to devise such a procedure as would ensure free legal services to the poor. State cannot be permitted to delay this relief on the plea that the state has no adequate financial resources to incur the necessary expenditure needed for providing the administration and judicial apparatus with a view to ensure free legal service to those who need it most. The state may have its financial constraints and its priorities in expenditure, but law does not permit any government to deprive its citizens of constitutional rights on plea of poverty.

There is now left no doubt that the state governments are under a constitutional mandate to provide free legal aid to the poor. Article 39-A has been inserted in the constitution with an objective that there is an urgent necessity of introducing a dynamic and comprehensive legal service programme to impart justice to the poor masses. With this philosophy in mind, almost all the states in India have provided for the grant of legal aid to certain categories of litigants in pursuance of the philosophy contained in Article 39-A of the constitution.

141. See, Supra note, 135; also see Legal Services Authorities Act, 1987.
143. Ibid., also see Legal Services Authority Act, 1987.
(D) Uniform Civil Code: A Projection of Equality

Article 44 of the constitution of India contemplates that the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The object underlying in this directive embodied in part IV is to cut across the barriers of cast, creed and religion and usher India a homogeneous nation. It is well known that India is a land of diversities with a variety of communities such as Hindu, Muslims, Parsis, & Christian etc. residing together and following their own personal law which greatly differ from one and other. This multiplicity of religious belief might tend to encourage separatist tendencies which may adversely affect their integrity and unity of the country.

The framers of the Indian constitution introduced provisions relating to uniform civil code in the constitutional documents, with a view to do away, with diversities of laws applicable to the people of India in matter of administration of civil law and distributive justice on equal footing. While the clause was being discussed in the constituent Assembly, a section of members belonging to a minority community strongly opposed the measure on the ground that it would mean undue interference

with their personal law and freedom of religion and conscience and therefore, contravene Art. 19 of the constitution. Replying to the objection of these members, Sh. K.M.Munshi, one of the prominent members of the house, observed that the clause relating to the uniform civil code was neither an infringement of any fundamental rights contained in Article 19, nor it was tyrannous to the minority communities in India. He emphatically stressed, that the objectives of the proposed Article was to make an attempt to unify the personal laws of the country as and when parliament deemed it necessary.

Shri Munshi drew the attention of the members of the house towards the fact that even in European countries which had a civil code, everyone who went therefrom any part of the world and every minority had to submit to that civil code. This efficiently explains that there is no necessary connection between religion and the personal law in a civilized society. He categorically pointed out that the real object of the directive regarding the uniform civil code was to unify the nation without tempering with the prevalent religious practices of any community, much less of the minorities.

146. Minutes of Proceeding of the Draft committee, Nov. 3, 1947
149. Ibid.
Justifying the insertion of the clause for a uniform civil code for the country, Dr. B.R. Ambedkar, the chairman of the Drafting committee, argued that the real objects of the mandate was to unify the laws as to marriage and succession which were the only aspects of civil law not hitherto unified. The clause was finally adopted as one of the directive principle of state policy in part of the constitution of India.  

We may thus regard article 44 as the welcome step as it would certainly promote the spirit of nationality and unity and ultimately help in rendering justice to all irrespective of religion, race, caste, creed etc.

Introduction of uniform civil code is really an attempt to avoid discrimination. It enhances the spirit of equality and justice embodied in Article 15 of the constitution and shuns away the discrimination in the area of civil law including inheritance, marriage, divorce and succession. It is a question of being governed by the same set of laws irrespect of their race, religion, cast, colour or creed. The wisdom of corporating Art, 44 into the constitution lies in the fact that it opens up a new chapter of equality. The reason being that uniform civil

code will bring about uniformity in the way of life of the people and will also get equality of treatment and enjoyment of civil rights at par with other sections of the people irrespective of their cast, creed, colour, religion, race etc. It is based on the constitutional philosophy that the individual, not the group is the basic unit of the nation.

(E) Protection of Women and Children Interests

The constitution of the country, which is the supreme law of the land, guarantees special protection to women and children, against the exploitation and makes provisions for giving them opportunities for their all around development.\textsuperscript{151} State has been empowered to make special provisions for women and children\textsuperscript{152} No children below the age of fourteen year can be employed to work in any factory or mine or engaged in any other hazardous employment.\textsuperscript{153} Further, the state is directed to ensure that the tender age of children is not abused and those citizens are not forced by economic necessity to enter a vocations unsuited to their age or strength\textsuperscript{154}. It is further directed that children are given opportunities and facilities to develop in a healthy manner and in a

\begin{enumerate}
\item \textsuperscript{151} Supra note 14, p. 245.
\item \textsuperscript{152} Constitution of India Art. 15(3) and Articles: 23 and 24.
\item \textsuperscript{153} Ibid,
\item \textsuperscript{154} Art. 39(c).
\end{enumerate}
condition freedom and dignity and the childhood and youth are protected against exploitation and moral and material abandonment. Consequently, Factory Act, 1948 enjoin upon the state to obtain a certificate of fitness from certifying surgeon. It has been done to safeguard the health of young workers of above 14 years of age and below eighteen years. Similarly, under the mines Act, 1952, the minimum age for employment in mines is 15 years.

In many states the welfare acts prohibits the imprisonment of children especially of those who are under 12 years. Besides, there are other enactments, which make several provisions to protect the childhood, youth and women against exploitation and moral, degradation. All welfare legislations enacted by the states in pursuance of the constitutional philosophy of 'Distributive justice' are aimed at bringing the balance between social interest on the one hand and individual interest on other. The whole scheme behind welfare legislation is a sincere effort towards the process of harmonisation of the interests of the weaker section with the mighty section of Indian society.

155. Art. 39(b).
156. See, Factory Act, 1948.
158. See, Suppression of Immoral Traffic in women and children act (1956).
159. Supra note, 71
The framers of the Indian constitution seemed to be aware of its balancing role between preferential treatment of women and children and social interest in not allowing them to develop anti-social tendencies. That is why the framers of Indian constitution prohibited any kind of discrimination on ground of sex, prohibited traffic in human beings including traffic in women for immoral purposes. Not only this, constitution requires positive act of equalization between the sexes by giving preferential treatment in favour of women and children.

Similarly, article 15 (3) says that nothing shall prevent the state from making any special provision for women and children. The state has been empowered to enact special provisions for women because their physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race. That is why Article 42 has been designed to provide women special maternity

160. Constitution of India, Art. 15(1), and 16(1)
161. Ibid, Art. 23.
162. Raj Bahadur Vs Legal Remembrances Govt. of West Bengal, A.I.R., 1953. SC 522.
164. Muller Vs Oregon, 52L. Ed. 551.
(F) Objective of Free and Compulsory Education

Education is the most important compendium of democracy. Our wise founding fathers have realised the importance of education and added Article 45 particularly for free and compulsory education for all children, and generally Articles 41 and Articles 45 and 46 where emphasis has been put on education.165 Art. 45 requires the states to endeavour to provide, within a period of ten years from the commencement of the constitution, for free and compulsory education for all children until they complete the age of fourteen years. The directive in Article 45 is not confined merely to primary education; it extends to providing free education even in its larger perspective. Art 45 is supplementary to art 24 for if the child is not to be employed below the age of 14, he must be kept occupied in some educational institution. Article 45 also supplements Article 39(c) and (f). However, as a matter of fact the direction in Art 45 has not been fully implemented as yet although more than 45 years have elapsed since the independence. This constitutional directive aims at doing away with illiteracy166 so that the coming

165. Constitution of India, Article 41, 45 and 46.
166. According to 1981 census illiteracy rate in India was 63.92% (1991) census Report illiteracy rate decreased to 47.89%.
generation can have better understanding of the social, economic and political problems surrounding them.

The programme of education as envisaged in the constitution has been divided into two stages; 6-11 and 11-16. But despite all efforts of the state during the last four decades of the working of the constitution and assigning special priority to this programme in sixth five year plan, it has not yet been possible so far for the educational system to achieve the goal of universal education to all children upto the age of 14 years as enshrined in the directive of the state policy. Therefore, the state has specifically made it clear that universalisation of education in India would still continue to be a part of the minimum needs programme as the universal education is the only via media through which the dream of distributive justice can be actualised without further loss of time.

The Acharaya Ramamurti committee Report, submitted to the union government late in Dec, 1990, has rightly suggested that there is a dire need to give a fresh look to the National Education, Policy outlined in 1986 by late Sh. Rajiv Gandhi's Government. The committee was rightly of the view that there was a need to abolish Macaulay system of education and concentrate vocational

167. See, Acharaya Ramamurti Committee Report, 1990
education. To achieve the objective of distributive justice, the committee suggested that government should examine the scope for making universal elementary education a fundamental right and ensure a fair deal to the educationally backward people. The committee has even gone to the extent of recommending that constitutional directives should include within the framework of education policy the important aspects of human life such as childhood care, by making amendment in Article 45 of the constitution. Further, a series of measures have also been suggested for promoting woman's education so that they are enabled to mitigate their grievances without fear and wage war against injustice caused to them from time to time. The need to pay much emphasis on education is just to make all sections of society aware of their legal and constitutional rights and make them strong enough to stand against injustice bravely as and when the mighty sections of the society try to deprive them of their guaranteed rights.

(IV) Miscellaneous Provisions

(A) Universal Adult Suffrage

Franchise prior to independence was very much restricted. The inception of the Indian constitution has been a great event not only in the political history of India but also in the history of human rights. The constitution has opened up new vistas of growth through an
array of rights and privileges to the citizens in general and weaker segments like scheduled castes and scheduled tribes in particular. 168

The Preamble 169 clearly illustrates that the constitution has realized the importance of justice, liberty, and fraternity for the success of democracy. It gives accent to justice in the social, economic and political sphere. Political justice refers to the absence of arbitrary treatment of citizens in the political sphere—the right to exercise franchise and enter legislatures without any distinctions. With this idea in view, one of the recommendations of the "Constitutional proposals of the Sapru Committee" was the introduction of adult franchise for seats other than those reserved for special communities. The question of introducing adult franchise was examined first by the Lothian committee in 1932. The impediments to the introduction of adult suffrage occurring to the Franchise Committee were "....the huge numbers involved......numbers which are far larger than have ever been made the foundations for a democratically governed state in history----and the fact that only 8% of these are literate (men literates 13.9 percent; women literate

169. Preamble, Constitution of India.
illiteracy was stressed as an impediment to the intelligent exercise of knowledge in casting vote. Besides, lack of faculties in the villages to enlighten the illiterate masses regarding public question was another drawback in the introduction of adult franchise."

But the constitution of independent India took a bold step in introducing adult suffrage, in spite of the prevalence of an overwhelming population ignorant of social, economic and political rights. The principle of popular sovereignty has not only been enshrined in the constitution as an ideal but practice as a basic reality. If the preamble begins with a ringing note of popular sovereignty, Art 326 proceeds with an enhancement of the worth and value of individual personality. Every individual, living in any part of the country, is made to realize his importance in the country's national life through the exercise of franchise, irrespective of educational qualification, or social status he bears in the society. Weaker segments, like other citizens of India, are placed on a footing of equality, called upon to join hands to make the venture of democracy a success of life.

Universal Adult Suffrage denotes the concept that all are entitled to vote if they have

171. Ibid.
completed a specified age and there must be complete
equality among all electors, irrespective of religion,
race, caste or tribe. Every person who is a citizen of
India and who is not less than eighteen years of age has
been entitled to be registered as voter. It has been made
abundantly clear that there shall be one electoral roll for
every territorial constituency of election to either house
of the parliament or to the house or either house of the
legislature of a state and no person can be declared in
eligible for inclusion is any such roll on ground only of
religion, race caste, sex or any of them.

The introduction of adult franchise
undoubtedly roused the curiosity of the world and planted
doubt in many nations as to the success of adult franchise
in a country like India with its huge illiterate
population. But the experiences of the previous general
elections of the country has left no scope for any such
fears. The Report of First General election so observed.

"However backward and ignorant the common man in
"underdeveloped" country may be, he possesses in his own
way enough common sense to know what is good for him. Given
a simple enough systems of ballot which he understands, he
can be trusted to cast his vote intelligently in accordance

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174. See, The Report of First General Election in India,
with his own free will in favour of the representative of his choice."

Speaking about the Adult suffrage A.L.Mudaliar remarked in the Madras legislative council on August 9, 1950.

"Adult suffrage is a unique experiment in this country. No civilized country in the world has given adult suffrage to voters, 80 percent of whom are illiterate..... The point I want to emphasize is that ....... you must be vigilant so that the avalanche of adult suffrage may not land you in a morass. For the sake of keeping abreast of the times and showing to the world on paper how enlightened we are, the Constituent Assembly rushed to the conclusion that adult suffrage was a good thing. it is very necessary to take steps to see that this adult suffrage does not prove to be like the "churning of the ocean" which resulted in producing not nectar but something else." 175

It was Nehru who strongly advocated adult suffrage, for he always felt that the widest possible franchise was an essential requisite for the realization of "Fullest Democracy". He ruled out the fears that illiterate masses are not capable of casting their votes intelligently and vice-versa.

Whatever the impediment in the introduction of adult suffrage and drawbacks in the smooth running of the system, it has come to stay in independent India. The constitution, by conferring adult franchise on citizens, has not only postulated the equality of man and restored the dignity of human personality, but also offered opportunities to the citizens for the development of their structure. Weaker segments of the society are equally aware of their franchise and have started feeling that they are also equally entitled to participate in the day to day politics of the administration. They have the same rights and duties as other people of the free India do have. Introduction of adult suffrage have opened up a new vista of growth in their thinking and are exerting to compete with every section of the society in every field of their life. The introduction of universal Adult Suffrage is thus a right step towards the goal of distributive justice. In this way the constitution of India has really heralded a new era of growth through an array of rights and privileges to the citizens in general and also to weaker sects of the Indian society in particular. To be brief, Art. 326 is the symbol to provide political justice to all irrespective of any distinction of cast, colour, creed, religion, sex etc. and bring all on the same political platform by providing equal opportunity to all of them to govern the affairs of the country of their own choice.
Safeguards to Anglo-Indians

Our national charter defines the term Anglo-Indian," An Anglo-Indian means a person whose father or any of whose other male progenitors in the male line is or was of the European descent but who is domiciled with in the territory of India is or was born within such territory of parents' habitually residents there in and not established there for temporary purpose only."176

Our constitution contains some special provision safeguarding the interests of the Anglo-Indian community. President of India may, if he is of opinion that the Anglo Indian Community is not, adequately represented in the house of the people, nominate not more than two members of that community to the house of the people.177 Similarly, the governor of the state, if he is of the opinion that the Anglo Indian community is not adequately represented in the state legislative assembly or needs representation in the legislative assembly nominate as he considers appropriate.178 The constitution of Indian also preserves certain special rights and privileges to be enjoyed by the Anglo-Indian community.179

Anglo-Indians enjoy the right to be appointed to the posts other than or in addition to those

176. See, Constitution of India, Art. 366 (2).
177. Ibid, 331.
178. Ibid, 333.
179. Ibid, 336.
reserved for the community.\textsuperscript{180} The union and state
governments have been empowered to make grants for their
upliftment so that they are afforded ample opportunity to
come up to the level of other sections of the society.
However, no educational institution run by the Anglo-Indian
community are entitled to receive any grant unless at least
40\% of the annual admission is available to the members of
communities other than Anglo-Indian community.\textsuperscript{181} The
constitution makes it specifically clear that the state
cannot impose any other religion on the Anglo-Indian
institution as a condition to receive grant or so to
deprive them from such grant except the condition of
admitting at least 40\% of non Anglo-Indian.\textsuperscript{182}

Thus, various provisions grafted in Indian
constitution regarding the Welfare of minority communities
reveal that sincere efforts have been made by the framers
of the constitutions to safeguard the interest of the
anglo-Indian. The provisions are directed to bring a
balance in case there arises a conflict between Public
interest on the one hand and social interest of the
minority communities on the other.\textsuperscript{183}

\begin{flushleft}
\textsuperscript{180} Ibid, Art. 336(2)
\textsuperscript{181} Ibid, Art. 337.
\textsuperscript{182} Ibid.
\textsuperscript{183} Id.
\end{flushleft}
(V) Sum Up

The foregoing study reveals that the very preamble of the constitution stands as a testimony to witness the presence of the philosophy of distributive justice under our National Charter. The opening words of the Preamble show beyond the shadow of doubt that the people of India have solemnly committed themselves to secure to all citizens: "Justice, social, economic and political; liberty of thought, expression, belief, faith, and worship; Equality of status and of opportunity, and to promote among them all; Fraternity assuring the dignity of the individual and unity and integrity of the nation". 184

The sentiments contained in the Preamble vigorously carry the message of the philosophy of distributive justice intended to be designed long back by Pt. Nehru under the pious document, known popularly as "Objective Resolution". 185 Moreso, Pt. Nehru perhaps was much influenced by Gandhian philosophy that he had in his mind for new India. To quote Gandhi: "I shall strive for a constitution, which will release India from all thralldom and patronage, and give her, if need be, the right to see. I shall work for an India, in which the poorest shall feel that it is their country in whose making they have an effective voice; and India in which there shall be no

184. For details see Constitution of India, Preamble. 185. See text of resolution supra note 3.
higher class and low class of people; an India in which all communities shall live in perfect harmony. There can be no room in such India for curse of untouchability; women shall enjoy the same rights as men. All interests not in conflict with the interests of the dumb millions will be scrupulously respected."\textsuperscript{186}

The entire framework of the constitution, mirrored in the Preamble, makes everyone to feel that justice, liberty, equality and fraternity are really the basic objectives to be obtained. These four objectives necessarily signify not only of individual action but also the creation of conditions which provide the essential ingredients necessary for the fullest development of the personality of the individual because social progress after all depends on the progress of the individual. The phrases and terms used by the makers of the constitution clearly indicate that the socio-economic justice in its realization is distributive in character. It contemplates a vital change in social, economic and political framework in order to effect a transition from serfdom to freedom and attempts to remake the material conditions of the society.\textsuperscript{187}

Frankly speaking, constitution of India

\textsuperscript{186.} Quoted in M.V. Pylee Constitutional Government in India (1960), p.149.
\textsuperscript{187.} For details see Granville Austin, The Indian Constitution: Cornerstone of a Nation (1966), pp. 26-27.
imbibes the goal of social revolution. \textsuperscript{188} Through this revolution would be fulfilled the basic needs of the common man. With this objective in view, state has been obligated to strive hard to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all institutions of the national life. \textsuperscript{189} The constitution is devoted to the cause of building up a new India which will earnestly ensure the triumph of justice, liberty, equality and fraternity.

It is also equally true that notion of equality, as envisaged in our National Charter, represents the symbol of man's revolt against chance, fortuitous disparity, unjust power and crystallized privileges. \textsuperscript{190} The philosophy of 'equality' highlights the fact that law must treat all alike, keep all doors open to all and admit no official predominance. In fact, equality is a grammar to justice, social, economic and political, unless there is equality there cannot be justice. Thus, distributive justice embodies within its kingdom the attainment of five kinds of equality: civil equality, political equality, social equality, natural equality and economic equality. Civil equality consists in enjoyment by all citizens of the

\textsuperscript{188} Ibid.
\textsuperscript{189} See Constitution of India, Article 38.
same civil rights and liberties. Its base is equalitarian. Political equality means that all citizens have the same political rights and equal voice in the government. This implies democracy and sufferage. Social equality denotes that all citizens are equally tangible units of society and no one is entitled to special privileges. It implies no discrimination in the social status of the people because of differences in race, colour, rank, class or caste. Natural equality says that all are equal in the eyes of law. Equally so, economic justice means that state should guarantee to all citizens access to the means of satisfying their primary needs. Its objective is to protect the weak and limit the power of the strong. To quote Laski, "Upto point where human urgencies are in question, beyond that point equality is not possible."

The philosophy of protective discrimination has been evolved as an equaliser to those who were made too weak to compete with the advance section of society. The makers of our constitution were fully aware of political, social and economic inequalities which existed in India due to historical reasons and were.

191. Constitution of India part III.
192. Ibid; Article 326.
193. Ibid; Article 15(1) and 16(1).
194. Ibid.
196. Supra note 191, Articles: 15(3), 15(4) and 16(4).
therefore, desirous to weed out these inequalities by positive state measures even if these remedial measures imposed equal burdens on those individuals who had earlier enjoyed undue advantages. The underlying idea behind compensatory justice is that state must adopt a standard which takes into account the differing economic and social conditions of the people wherever those differences and disparities stand in the way of equal access to their basic rights.\textsuperscript{197} Strictly speaking, it is with this objective in mind that the Constitution empowers the state to provide special benefits and preferences to certain sections of population to reserve post in government services, to reserve seats in legislatures and local bodies, to reserve places in public institution or so on.\textsuperscript{198} The constitution is a double edged weapon which on the one hand forbids discrimination on grounds of race, religion, caste, colour, creed, sex etc. with a view to discontinue the old inquityous situation, on the other hand it permits these very criteria to creep in for correcting evil consequences following from their past misuse.\textsuperscript{199}

The underlying objective of "Compensatory Discrimination" is to counter-balance the disadvantaged classes for past wrong suffered by them because of unequal

\textsuperscript{198} For details see Constitution of India, Part III, Articles: 15(3), 15(4), 16(4) and Articles 330 to 342
social structure of Indian society. In these circumstances the constitution of India is really an instrument designed to function as a balancing wheel between the 'haves' and 'haves not' to accomplish the goal of distributive justice. The sole purpose, therefore, of distributive justice is to promote common man capabilities by overpowering environmental adversities so as to make them strong enough to participate in the mainstream of the national life. The need of the day is to harmonize and resolve the conflicts between "need based claims" of the backward groups and the 'right based claims' of the advance groups on the principle of maximum of benefits with minimum of friction.

Further the idea of social equality has been tenaciously upheld by prohibiting all sorts of discrimination based on caste, colour, race, sex, place of birth, religion etc. The constitution endeavors to proclaim its policy of untouchability by removing the badge of inferiority that carried with it all the disadvantages of life. Article 17 has been given place in the constitution with a view to eradicate and eliminate the potent factor of social inequality found in Hindu society. It signifies a kind of new power morality securing to all its citizen equality of status and of opportunity and promote among them fraternity assuming the dignity of the individual. The spirit behind Article 17 and the
legislations passed from time to time to weed out the stigma from Indian society is to free the untouchable of untouchability and disabilities, discrimination, indignities, exploitation, liabilities associated with the age old abuses of untouchabilities.

The survey of the provisions of the constitution of India establish it beyond doubt that several safeguards have been incorporated in our national charter to emancipate poor from economic bondage and exploitation. Right against exploitation has been given the status of fundamental right by incorporating Article 23 and Article 24 in the constitution. Now it is a fundamental right of every citizen of India not to be compelled to work without wages. Consequently, Bonded Labour System (Abolition) Act 1976 has been brought into existence with a guarantee that the interest of the individual, even of the poorest of the poor, would be safeguarded and he would be emancipated from economic hardship and economic exploitation. It proclaims that bonded labour, wherever it exists, will be declared illegal. The government officials have been charged with the responsibility to provide relief to the exploited promptly. Similarly, Article 23 prohibits traffic in women

200. For details see, Untouchability Offences Act, 1955; also see Untouchability (Offences) Amendment Act, 1976 now renamed as the Protection of Civil Rights Act, 1955.
or human beings and makes it an offence.

The problems of the minorities have also been given due place in the constitution and special provisions for the protection of the cultural and educational interests of the minorities have now every right to be appointed to any public offices howsoever high it may be. The constitution of India specifically provides certain safeguards to the effect that all minorities whether based on religion or language shall have the right to establish and administer educational institution of their own choice. The state has been prohibited to enact any law which jeopardises their interests. State has been obligated to promote educational and economic interests of the minorities and protect them from social injustice and other forms of exploitation.

The rights of the minority are sought to be preserved firstly, through the fundamental rights which applies generally to all citizen. Secondly, through directive principles. However, a care has been taken to see that such safeguards should not so operate as to impede the process of natural assimilation. That is why the right conferred on the religions and linguistic minorities to administer educational institution of their choice has not

201. For details see Constitution of India, Article 29-30.
203. Constitution of India, Part IV, Article 38, 39, 46.
been made an absolute right. Similarly, the Directive Principles of State Policy contained in Part IV of the constitution represent the conscience of 'Distributive Justice'. These directives have been incorporated to give strength to the pursuit of distributive justice. They aim at making the Indian masses free in positive sense from the passivity engendered by centuries of coercion by society and by nature. These directives obligate the state to secure a social order in which social, economic and political justice shall inform all the institution of the national life. There is a guarantee provided in Part IV of the constitution to the effect that the wealth and its sources of production shall be distributed so as to serve the common good. The state is under a statutory duty to maintain a proper balance between legal equality and actual equality by adjusting the need of uplift of weaker segment of the society with social interest and constitutional protection given to other section of the society. The constitution of India visualizes that society as a whole and every member as a unit of the society should make progress in such a way that the goal of political, social and economic justice is attained without any further loss of time. It is in this context that primacy has been accorded in Indian constitution to the rights of the masses, of minorities and the under privileged classes.

204. Ibid; Articles 29 and 30.
against the political and civil rights of a few individual i.e. the protected class. Similarly, Article 39 in itself is a complete code wherein we find the complete reflection of the 'Distributive Justice'. It calls upon the state to direct its policies toward securing the goal of distributive justice, with a view to cherish the goal of 'welfare state'.

Further, the strong move for free legal aid is an outcome of the emergence of distributive justice philosophy. Consequently, legal aid in India has acquired the status of new legal right by way of introduction of new article through the Forty Second Constitution Amendment Act, 1976. Now, it is primary responsibility of the

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205. Ibid, Art.38.
206. For details see, Constitution of India Art.39: It states; (a) "That the citizen, men and women equally have the right to an adequate means to livelihood. (b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good. (c) That the operation of the economic system does result in the concentration of wealth and means of production to the common detriment. (d) That there is equal pay for equal work for both men and women. (e) That the health and strength of workers, men and women, and the tenderage of children are not abused and that citizens are not forced by economic necessity to enter a vocations unsuited to their age or strength. (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandoument.
207. Also see, Legal Services Authorities Act, 1987.
state to provide the legal assistance to those who cannot afford to go to the court of law on their own because of financial limitation.\footnote{208}

In order to achieve the goal of distributive justice, the constitution of India guarantees special protection to women and children against the exploitation. To impart justice to them, state has been empowered to make special provisions for their welfare so as to bring them on par with other section of the society. There are various provisions in the constitution which put the state under duty to ensure that the tenderage of the children is not abused and they are not exposed to economic necessity to enter a vocation unsuited to their age and strength. The Factories Act 1948, Mining Act 1952, The Minimum Wages Act 1948, The Maternity Benefit Act 1961, Plantation Act 1951, Motor Transport Workers Act 1961, The Child Labour (Prohibition And Regulation) Act 1986 and The Indecent Representation of Women (Prohibition) Act 1986 are the welcome steps taken by the state to ensure distributive justice in their favour in consonance with the philosophy of constitution.

Above all, education has been assigned a great role to accomplish the goal of distributive justice. Our wise founding fathers have rightly realized that education is the true vehicle of progress and it is

\footnote{208. Constitution of India, Article 39-A.}
essential to universalize it if the country is to be made really progressive one. Therefore, Articles 41, 45 and 46 have been added in Part IV of the constitution which require the state to provide free and compulsory education for all citizens within stipulated period. The role of education has been highlighted with a view to enable the coming generation to develop a better kind of understanding of social, economic and political problems and enable them to mitigate their grievances without fear and wage war against injustice caused to them from time to time. The need to pay much emphasis on education is also highlighted with a view to make all sections of society aware of their legal and constitutional rights and make them strong enough to stand against injustice bravely as and when the mighty section of the society attempts to deprive them of their guaranteed rights.\textsuperscript{209}

\textsuperscript{209} For details see, National Education Policy Outlined in 1986.