CONSTITUTIONAL STATUS OF PRECEDENT IN INDIA

“Justice must not only be done but must also appear to be done.” [Henry Cecil 1955][80]

7.1 Introduction

The seventh chapter of the thesis deals with the constitutional status of precedent in India. The Indian people established the Constitution Assembly under the Chairmanship of Dr. Rajendra Prasad. Its most important organ, the Constitutional Draft Committee was headed by the Dr. Babasaheb Ambedkar. He was one of the great Constitutional Expert of the world. He prepared a fine draft of the Constitution of India & dedicated to the nation on 14/11/1949. The assembly proclaimed the birth of a new Indian Republic on 26/11/1950. Previously it had already Privy Council Jurisdiction Act. passed the Abolition in 1948 by which judicial relations were already made autonomous for India. After the passage of the Indian Independence Act, 1947, the Central Legislature ceased to exist on the 14th August, 1947 Henceforth, the Constitution was framed & thereafter until a new Legislature was constituted under the new Constitution. Thus, the Constituent Assembly, after independence, discharges a dual function constituent as well as legislative. We have also to see how far there is a legal & constitutional recognition behind the precedent. Before turning towards the provisions of the Constitution of India it is safe to see the similar provisions’ in the Pre-Constitution British Era.

7.2 Section 212 of the Government of India Act 1935

The British Government has enacted the provisions in relation of the binding force of precedents in the Indian judiciary up the Government of India Act. 1919 first. The Act had a provision for the appeals to the Privy Council in London. There were many difficulties of the Indian people which could not allow them to knock the doors of justice at the London Court. The Act 1935 solved this problem this Govt.of India. Federal Court of India was established at Delhi. It had full appellate the British jurisdiction in India. Declared
the Federal Court as a Court of This Section 212 of the Govt. of India Act 1935 had Record for India. It means its precedence were binding upon all the Indian Courts including the Hi. Co.s. The position of the 500 Princely States was not made clear even under this Act. DrBabasahebAmbedkar was a great constitutional jurist & had decided to legalize the role of precedent in the Indian judiciary. He particularly gave them a high constitutional place under the following articles. Here we find the great case of Hanuman Prasad Pande v Mst. Babooe. It was decided upon the precedents taken from the SadarDiwaniAdalat.

7.3 Article129 & Article 215 of the Constitution of India

It is to be noted carefully that the Sup. Co. of India is a Court of Record. It means it’s dictions are binding upon all the Hi. Co.s in India, all the Sub-ordinate Courts, all the Tribunals & the Inquiry Combustions& Investigations Committees appointed by the appropriate government. The Sup. Co. of India itself is not bound by it’s previous editions& thus can become a fountain of new laws & directions for the proper constitutional interpretation as expected by the Makers of the Constitution of India. The Indian Hi.Co.s are too the Courts of Record. The editions of the Parent Hi. Co. are considered nearer to the same of the other Hi. Co.s. The editions of the Apex Court have the ultimate power to surpass the dictions of the all & even the Parent Hi. Co..The other important jurisdictions of the Sup. Co. of India may be classified as follows; -

Jurisdictions Of The Courts Of Record In India (Art. 129)
Original Jurisdiction
Exclusive Original Jurisdiction (Art. 131)
Writ Jurisdiction (Art. 32)
Disputes Relating To Election Of A President Or Vice President (Art. 71)
Transfer Of Cases (Art. 139-A)
Appellate Jurisdiction
 Interpretation Of The Constitution (Art. 132)
Civil Appellate Jurisdiction (Art. 133)
Criminal Appellate Jurisdiction (Art. 134)
Special Jurisdiction (Art. 135)
Special Leave To Appeal Jurisdiction (Art. 136)
Advisory Jurisdiction (Art. 143)
Miscellaneous.

In Indian law it is typically made by the choice of the Sup. Co. of India & the State Hi.Co.s which are the Court of Record. As it were their point of reference is authoritative upon the Lower Courts all through the nation.
In this proposition our concentration is upon the position of points of reference in India as it were. Give us a chance to have a flying creatures eye endless supply of the main cases chose by the Indian legal.

Our classical Preamble is capable enough to minds of open the Constitution Makers of. Let us have a glimpse over it because we have to consider all the precedents on the intention of the Supreme Law & the Sovereign Legislation.

Let us have a glimpse upon the Preamble in order to search the position of justice in India.[81]

PREAMBLE

DEMOCRATIC REPUBLIC only resolved to having sole represent Asian a SOVEREIGN SOCIALIST country into to any or & to secure all its citizens: IN OUR CONSTITUENT ASSEMBLY JUSTICE, economic & of opportunity social political; of thought,; EQUALITY LIBERTY of standing &; & to push calendar month, 1949among all FRATERNITY reassuring the dignity of expression, belief, religion & worship the individual & the unity & integrity of the Nation; this ordinal day of Gregorian, do herewith ADOPT, ENACT CONSTITUTION. WE, THE folks OF Asian country, provide TO OURSELVES THIS

In the Preamble, the Father of the Constitution, DrBabasahebAmbedkar has specifically provided the Indian citizens with three kinds of justice – The are [a] political justice [b] social justice & [c] economic justice. From the Courts of law we get the political justice however it is also the duty of a judge to consider the social & economic justice as well. For example, a judge can grant an application for providing free legal aid to the poor people, women, children & the citizens who practically socially suppressed are unable to engage an advocate or to pay the court fee under the provisions of the Civil Procedure Code 1908. Let us have a glimpse upon the illustrative case law in relation to the interpretation of Art 129 & Art 215 of the Constitution of India in order to make the rule clear.

7.4—

IN M/S. TASHI DELEK GAMING SOLUTIONS LTD. & ANOTHER V. STATE OF KARANATAKA & OTHERS. AIR 2006 SC 661, the Court has observed that article 131
of the Constitution will not be applicable where citizens or private parties either jointly or in alternative with State. Disputes between the people of one State & the people of another State are not an inter-State dispute. Disputes between the States as regards the sale of lottery tickets of one State in another come within the original Jurisdiction of the Sup.Co. of India.

UNION OF INDIA, AIR 1978 SC 68, IN STATE government OF KARNATAKA V., It has been observed that when difference arise between the representatives of the State & those of the whole people of India a question of interpretation of the Constitution, which must affect the welfare of the whole people, & particularly that of the people of the State concerned.

IN MAHANAGAR TELEPHONE NIGAM LTD. V. CHAIRMAN, CENTRAL BOARD, DIRECT TAXES & ANOTHER, , It has been observed that disputes between the centre& States & the disputes between Government departments & the disputes between the State & State owned undertaking shall be settled by negotiations & are not entertain able by any Court. It is against the public policy. (AIR 2004 SC 2434)

IN T.N. CAUVERY SANGAM V. UNION OF INDIA AIR 1990 SC 1316, It has been observed that in inter-State water disputes, Jurisdiction of the Sup. Co. is excluded from art, k131 of the Constitution since Parliament has enActed the Inter-State Water Disputes Act, 1956.

IN GANDHI SAHITYA SANGH V. UNION OF INDIA, (2003) 9 SC 356, It has been observed that inter-State water dispute can only be brought by a State & not by an individual or society. In case of water dispute between two States.Individualor society of the inter-State standi to file water dispute or challenge the validity of the inter-State water Disputes Act or setting up tribunal & also to the reference of Cauvery water disputes for adjudication to the tribunal.

Year and Ref. No.SC 1241 AIR 1963. WEST BENGAL STATE OF V. UNION OF INDIA,

Until 1963, no suit in the original Jurisdiction has been decided by the Sup. Co.. All the disputes, if any between the Union & between States inter se had been settled by negotiations or agreements rather than by adjudication. The first suit is from West
Bengal. In this case, the State of west Bengal filed a suit against the Union of India in 1961 to declare the unconstitutionality of the The Areas is Coal Bearing (Development&Acquisition). It was dismissed by the Sup. Co.

IN STATE OF BIHAR V. UNION OF INDIA & ANOTHER, AIR 1970 SC 1446,
A suit was filed by the State of Bihar against Union of India as first defendant & the Hindustan Steel Ltd. (A Government Company) as second defendant. The Court has held that the suit cannot be entertained due to inclusion of the Hindustan Steel Co. & as it is not a dispute between the Government of India & the Bihar State only.

IN STATE OF KARNATAKA V. UNION OF INDIA, AIR 1978 SC 68,[82]
The State of Karnataka brought a suit against the Union Government under article 131 alleging that the appointment of a combustion of Inquiry. Under the Combustions of InquiryAct,1952 to inquire into the allegations of corruption & misuse of powers by the Chief Minister & a few other Ministers of State of Karnataka was illegal & ultra vires as the Central Government is not authorized to constitute a Commission of Inquiry in the matters relating to exclusively within the State’s legislative & executive power. The Government of India contended that the Jurisdiction under article 131 cannot be invoked since the dispute was not with the State of Karnataka but only with the corruption & misuse of powers of chief Minister & other Minister. The Sup. Co. rejected the contention of the Government of India. It was held that there would be no distinction between the State & its Government & held that the suit filed by Karnataka State was maintainable.

AIR 1977 SC 1361, IN RAJASTHAN STATE V. UNIONS OF INDIA, It has been held that is only when a legal, not a mere political issue arises touching upon the existence or extent of a legal right that Article 131 is attracted. The legal right includes the challenge by the State & the right of the Union to dissolve the State Assembly under article 356. The legal right which is brought before the S.C. (Sup.Co.)Under article 131. In Union of India v. State of Rajasthan, AIR 1984 SC 1675, the Court has observed that the State’s suit against the Union of India claiming damages for the loss or damage caused to its goods by Union Railways is not maintainable under Article 131. Such suits should be instituted before the ordinary Courts.
As examined in the previous chapters of the thesis our Indian Constitution engages the Sup. Co. to exercise purview in taking after principle zones: Original, Appellate, Advisory & the Writ locales. The Sup. Co. is vested with unique & elite ward in all matters identifying with the authorization or translation of the Constitution as its CUSTODIAN & furthermore concerning whether Parliament or whatever other expert or individual enabled to establish any enactment has surpassed its forces [Ultra-Vires]. It ought to be focused on that the Constitution itself does not give any standards or direction which might be connected by the Sup. Co. in practicing its interpretative part. It creates the impression that the evident suspicion of the designers of the Constitution is that the Sup. Co. would itself form out the imperative approach & standards & tenets of protected translation. The hard certainty is that, where it makes a difference most, constitutions don't contain directions on how arrangements are to be deciphered.

Having abridged a portion of the fundamental standards as controlled by the Sup. Co. of India through it's several choices over the most recent 66 years which, of part in the activity, should now continue may direct its interpretative the court in national constitution, understanding a we to some of these standards in the look at in detail light of the chose cases in our nation. We have analyzed in detail beneath on the significance of the soul of the Constitution in established elucidation.

In Misrilal Jain Vs State Of Orrisa&Another AIR 1977 Sr 1686

It is a case in relation to Art 144A of the Constitution of India. The 42nd amendment of the Constitution had introduced the said new article namely Article in which it was provided that if any question as to the Constitutional validity of any State or central law came up before the Sup. Co., the minimum number of Judges of the Sup.Co. who would have to sit to determine such a question, would be seven. It was given that such a law couldn't be announced to be constitutionally invalid by the Sup. Co. unless a lion's share of at least 66% of such Judges held it to be constitutionally invalid.considered by the Sup. Co. in This article was above case, a while condemning the presentation of such an arrangement ,the Court also highlighted the inconvenience resulting from the enactment of article 144A. As the Sup. Co. pointed out , under article 13 of the Constitution, the word "law" also includes orders, by-laws, rules, notifications, etc having
the force of law. The result would be that seven Judges of the Sup. Co. would have to sit for determining any & every question as to the Constitutional validity of even such orders, bye-laws & notifications issued by the Govt. In this case, the points which were raised undoubtedly involved the determination of questions as to the Constitutional validity of a State law, but the Sup. Co. felt that they were utterly devoid of any substance as observed in the Judgement. “Were it not for the valiant, though vain, attempt of Mr. Govind Das to pursue his points, the appeal would have taken lesser time to dispose of, than for a Court of seven to assemble”. Whilst delivering its Judgements, the Sup. Co. hoped that article 144A Would be amended by the Parliament, so as to leave it to the Court itself, the duty to decide how large a bench should decide any particular case.

7.5 General Principles Of Constitutional Interpretation

Here we need to find in short the general standards of the established translation in India by keeping in view the comparable position in the USA, the UK, the USSR, & the UAE. The Judicial understanding is a hypothesis or method of felt that clarifies how the judiciary ought to translate the law, especially protected records & enactment. The statutory understanding is a somewhat extraordinary idea. An elucidation which brings about or bolsters some type of law-production part for the legal in translating the law is now & then deprecatorily described as legal activism, the opposite is legal laziness, with legal restriction some place in the middle. In the United States, there are different techniques for protected translation.

Teetotalism is when judges counsel the genuine dialect of the Constitution to begin with, & maybe last, as indicated by government researcher John E. Finn, who included that the strategy has an "undeniable interest" for its effortlessness yet can be hampered when the dialect of the Constitution itself is equivocal. Strict constructions is the point at which a judge translates the content just as it is talked; once an unmistakable importance has been built up, there is no requirement for further investigation, & judges ought to abstain from drawing surmising from past statutes or the constitution & rather concentrate on precisely what was composed.
Originators’ Intent is when judges attempt to gage the expectations of the creators of the Constitution. Issues can emerge when judges attempt to figure out which specific Founders or Framers to counsel, & also attempt to figure out what they implied in view of frequently inadequate & deficient documentation. Originals are when judges attempt to apply the "first" implications of different sacred arrangements. Adjusting happens when judges measure one arrangement of interests or rights against a restricting set, commonly used to make decisions in First Amendment cases. This approach was reprimanded by Sup. Co. equity Felix Frankfurter who contended that the Constitution gives no direction about how to weigh or measure unique interests.

Prudential's disheartens judges from setting expansive principles for conceivable future cases, & encourages courts to assume a constrained part. Doctrinarism considers how different parts of the Constitution have been "formed by the Court's own law", as indicated by Finn.[84]

Point of reference is when judges choose a case by looking to the choice of a past & comparable case as indicated by gaze decisis, & finds a control or rule in the prior case to manage the present case. As indicated by driving legal scholar Finn the Structuralism is a strategy judges use by finding the significance of a specific protected rule just by "understanding it against the bigger established report or setting," Functionalism is the real business as usual which the judges use for the translation of the Constitution of America. Give us a chance to perceive how far the Sup. Co. of India has turned out to be fruitful in using the standards of translation in choosing the legal matters.

In The Matter Of Kerala Educational Bill (A.I.R. 1958 S.C. 956 )The vital articles Arts.30 & 143After the Kerala Legislative Assembly passed the Kerala Education Bill, it was introduced to the Governor for his consent. The Governor, notwithstanding, held the Bill (under Art.200) for the thought of the President. The President alluded the bill under Art.143 to the Sup. Co. of India for thought & report.
The Court, throughout its conclusions, set out certain imperative standards with respect to the elucidation of the Constitution, as takes after:

(1) Ambit of the In deciding the extent ion& Fundamental on by or for sake anybody Rights depended, individual or the not by any Court may means overlook the mandate standards of State arrangement, however ought to embrace the guideline of amicable development, & ought to endeavor to offer impact to both however much as could reasonably be expected.

(2) The insurance of Art.30 (1) stretches out to the instructive foundations of minorities, religious or phonetic, regardless of whether set up before or after the initiation of the Constitution. It additionally reaches out to supported schools, where there are researchers from outside the minority group. Art.29 (2) blocks supported schools from denying affirmation on the grounds of just religion, dialect, rank, race or any of them.

(3) The ambit of the privilege gave by Art.30 (1) is to be resolved from the perspective of the instructive foundation itself. The Constitution does not set out any confinement as respects subjects to be educated in that.

(4) The genuine expectations of Art.30(1) is to furnish minorities with a shield whereby they could safeguard themselves against assaults by dominant parts, religious or etymological, & not to arm them with a sword whereby they could force the greater parts to give concession.

In Indian Alluminium Company V State Air 19992sc 2169 It has been observed that in deciding the question of legislative competence one must bear in mind that the Constitution is not to be construed with a narrow or pedantic approach & it is not to be construed as a mere law but as a machinery by which laws are made. It should be construed broadly & liberally. The entries in the Constitution only demarcate the legislative fields of the respective legislature & do not confer legislative power as such.
Sometimes a number of American & very rarely European decisions have been cited before Indian Courts on behalf of both the parties in course of the arguments, but they could not always apply to our Constitutional conditions because the social scenarios in our country are quite different.

7.7 Sup. Co. of India as a Last Resort

Here we have to see how the Sup. Co. of India has become a Last Resort of the Indian litigation. Abolition of Privy Council Jurisdiction Act 1948 has made the Sup. Co. of India far more powerful than that of its predecessor the Federal Court of India. Dr. Ambedkar always stressed that the Democracy is not only a system of Government but also is an influential way of common life & he expected that the people of India would quickly grasp the ways of life suitable to a Territorial Representative Democracy. However the medieval attitude of some of the people causes injustice as they don’t truly believe in the noble principles of liberty equality & fraternity enshrined under the Constitution Law of India. In such circumstances it becomes the sacred duty of the Sup. Co. of India to set the things right by deciding the matters of the parties who knock the doors of the justice. Sometimes the Court has to take the SUO MOTU Actions as the victim is so suppressed that cannot come to the Bench on account of socio-economic as well as political reasons.

Dr. Ambedkar has particularly made the Indian Constitution partly rigid & partly flexible. He must have expected certain changes in the passage of time. He was looking ahead of his ages. He also knew the limitations of any written document. He once expressed an important opinion that the success of a Constitution depends not upon its liberal privations but upon its prudent runners. Internationally acknowledged law specialists Wade & when they book made the point clearer composed Bradley in their:

"Be that as it may, alone can guarantee no composed archive the smooth arrangement of a working of a Government. A composed archive has no more prominent drive than that which people in expert will ascribe to it… Nor can a composed Constitution contain all the point by point rules whereupon Government depends."
Dr. Ambedkar was very careful about the Indian historical & the social factors which ultimately become economic too. In a representative democracy based upon the territorial representation the religious, the ethnic & the social minorities were bound to suffer in the numerical statistics of the Parliamentary elections & ultimately occupying the various offices of profit in the country. There was & still is the fear of an oligarchy with a dictatorship of the majority under which the minorities are bound to be suppressed. In such crucial circumstances there is much scope to the judicial interpretation. Thus the Role of the S.C. (Sup.Co.) becomes pivotal when Dr. Ambedkar raises its importance as a Custodian of the Constitution.

The Constitution of India is regarded as a social as well as a legal document with a sanctity given by the Indian citizens to it in the last 67 years by truly watching the benefits which it has provided to the people at large under the great Benthamite Theory of - [BahujanHitaya- BahujanSukhaya. (The Maximum Good of the Maximum Number)][85]

However Dr. Ambedkar, along with the benefits of the majorities was always conscious of the benefits of the minorities. He was in fact a Pioneer of Social Justice & actually brought the Social Principles in our Constitution in such a delicacy that the expected Welfare of all the sections of the Indian society must be done in the coming years. Let us have a bird’s eye’s view upon the salient features of our Constitution with a special reference to Indian Judiciary in general & Sup. Co. of India in particular. The Constitution further expects that the Sup. Co., as a custodian, is bound to protect the Fundamental Human Rights

NATIONAL CONSTITUTION AS A DOC SUI GENERIS TO BE CONSTRUED BY THE SUP. CO.(SC) OF INDIA CONSIDERING THE DOCTRINE OF PRECEDENT

In India, the successful implementation of the democracy supported with a peaceful & civilized way of life certainly goes to our Father of the Constitution, Dr. Babasaheb Ambedkar. He had considered all types of strifes in socio-political life of the people & had provided all types of excellent measures for their cure. Thus in national emergencies like war or epidemic the federal country can practically become unitary. All
the Fundamental Rights can be abrogated for a certain period. Soon after such a situation ends, the country can again go to its previous status. Our Constitution can cool down the struggles in all walks of life. Let us see the following cases-

In M. P. SHARMA Vs. P. C. GHOSE (1968, 72 C.W.N. 328) [Arts. 163 & 164]

The Governor of West Bengal was informed that the ministry of Shri Ajay Kumar Mukharji the Legislative Assembly of had lost the confidence. In spite of present suggestions made by the Governor to the Chief Minister to convene the meeting of the legislature to assess whether he enjoyed his confidence or not, the Chief Minister failed to call such a meeting. The Governor dismissed the Ministry, prorogued the Assembly, & declined to dissolve it. Later he appointed a new ministry with Shri P.C. Ghose as the Chief Minister. The Governor convened the session of the Assembly, but before it could hold a meeting, the Speaker gave an interim ruling that as the House had been illegally prorogued, he would adjourn the House sine die.

The matter was brought before the Calcutta Hi. Co., & it was contended that, under Article 163(1), the Governor was under an obligation to Act on the advice of his ministers, & as the ministry has been dismissed without such advice, the fresh ministry could not be lawfully appointed. It was also contended that the Governor could not dismiss the ministry till it had been defeated in the House. In rejecting these contentions the Calcutta Hi. Co. held as under: Art. 164(1) did not impose any restriction or condition upon the power of the Governor to appoint a Chief Minister, through the appointment of other ministers had to be made on the advice of the Chief Minister. Therefore the appointment of Shri P.C. Ghose as Chief Minister was not open to the objection on the ground that the outgoing Chief Minister had not advised such appointment. After new elections or on a dissolution of the legislature, there may be no Chief Minister, in which case it could not be contended that a Chief Minister could not be appointed. The ministry held office at the Governor’s pleasure, & Art. 164(1) placed no fetters on the Governor exercising his pleasure. The provision relating to ministers was a special provision within the meaning of Art. 310(1), & it did not fetter the pleasure of the Governor, as Art. 311 did. Under Art. 163(2), the Governor was constituted the
soled Judge whether any power was required by the Constitution to be exercised in his discretion, & the Courts were precluded from deciding that question.

In CHIRANJITLAL CHOU DHURY VS. UNION OF INDIA & OTHERS (A.I.R 1951 S.C. 41) [ARTS. 14 & 31]

The Governor – General of India promulgated an Ordinance, which purported to make special provisions for the proper management & administration of the Sholapur Spinning & weaving Co. Ltd., as it was mismanaged & neglected. For this purpose, the shareholders were precluded from nominating or appointing any director, as long as, the management continued in the hands of the statutory directors. The ordinance was repealed but an Act was passed by the Parliament incorporating all the provisions of the Ordinance.

One ChiranjitLalChowdhury a shareholder of the company petitioned praying for a Writ of Mandamus & certain other reliefs under Art. 32 of the Constitution. The main grounds on which the petitioner based his prayers were the following: The pith & substance of the enactment was to make possessions of & control over, the mills of the company which are its valuable assets, & such taking of possession of property amounted to the deprivation of the right to property of the shareholders as well as the company, & therefore such legislation violated the fundamental right guaranteed under Art. 31 of the Constitution.

The said enactment also constituted an unjustifiable interference with the right to hold property & therefore, violated the Fundamental Right guaranteed under Art. 14 of the Constitution.

As the enactment was solely directed against the company. It denied equality before the law & equal protection of laws, guaranteed under Art. 14 of the Constitution. The Sup. Co., in this case, laid down the following principles:

To make out a case under Art. 32 the petitioner must establish not merely that the law complained of is beyond the competence of the particular legislature. But that it affects or invades his Fundamental Right. The right that could be enforced under Art. 32 must
ordinarily be the right of the petitioner himself who complains of infraction of such right & approaches the Court for relief.

Apart from the right of the company, it was necessary to establish that the rights of the petitioner shareholder were violated by the legislation in question.

Every sovereign has an inherent right to take private property for public use.

Art. 31 of the Constitution prescribe a two-fold limit within which such superior right of the State should be exercised: One such limit is that no property could be taken, unless the law which authorizes such appropriation contains a provision for payment of compensation. The other limit is that no property could be taken, unless the law which authorizes such appropriation contains a provision for payment of compensation.

While reasonable classification is permissible, such classification must be based upon some real & some substantial distinction, bearing a reasonable & just relation to the object sought to be attained, & the classification cannot be made arbitrarily& without any substantial basis.

A TOOL FOR DIRECTIVE PRINCIPLES ROLE OF STATE POLICY AS CONSTITUTIONAL INTERPRETATION

In India, a political document the Constitution is not only but equally it is a document at all social. The Father of the Constitution Dr. B. R. Ambedkar has stressed to preserve the Constitution as a way of peaceful & civilized life. the Directive What the Principles of State part of Policy is as IV Constitution planned in Part? Will the Sup. Co. apply them as an apparatus for the translation of the Constitution? Give us a chance to have a look over the well knownBalsara's case in this matter.

STATE OF BOMBAY & ANOTHER Vs. F. N. BALSARA (AIR 1951 S.C.319)

The facts of the case were as follows. F. N. Balsara, who was accused & convicted of having violated certain provisions of the Bombay Prohibition Act, 1949, prayed for a Writ of Mandamus against the State Bombay & the prohibition commissioners, ordering them to forbear from enforcing against him the provisions of the Act. He challenged several privations of the Act on the ground that they violated his
Fundamental Rights under Arts. 14 & 19. The following are the important principles laid down by the Sup. Co. in the case:

THE CONSTITUTION & THE ROLE THE SPIRIT FOR INTERPRETATION OF AS A TOOL [86]

The Sup. Co. of India has partly of the Constitution, Thus the Doctrine distinct from recognized the its letter Spirit as, constitution as a tool for interpretation. of the Constitution had Spirit of the by the Sup. been recognized Co. of India extent only up to a considerable. On the related issue of regardless of whether the Directive Principles of State Policy are justifiable or legitimately enforceable.

The judges will bomb in their obligation to effectuate on the off chance that they don’t consider the translated the Constitution, the will of the Constituent Assembly of India. Subsequently the Constitution is to be deciphered note precisely Recording tor its letter or soul yet Recording tor some juristic inflexible hypothesis.

The Similarly has its letter of the law The Constitution., has its soul. the specialist It is the wellspring the Constitution head for which each of the three arms of government has & works out. It is a wellspring of quality. It is a wellspring of force. An expansive & liberal soul is required for its legitimate translation.

The assessment our own commitment to of a, a Constitution is the out-pouring of the country Constitution is that& its soul its valuable spirit of the life-blood is. As needs be, in deciphering the Constitution, we flop in our obligation on the off chance that we overlook its soul. Both the letter & the soul of the Constitution are fundamental variables which give the assistance in the undertaking of it's translation. For each situation, a genuine insight of the Constitution can just continue from the expansiveness of comprehensions of its soul. The essential conclusion is that the composed word & its basic soul are indivisible associates in the genuine understanding of the Constitution. In India too the Sup. Co. has depended on the Spirit of the Constitution as a guide to its understanding as a rule. Notwithstanding it ought to be noted painstakingly that the exacting translation is exceptionally normal in the Indian Hi. Co.s& the Sub-ordinate
Courts of the nation. It is dependably the Apex Court which considers the idea of equity under the Spirit of the Constitution in its tremendous optional power.

VIJAY COTTON MILLS V STATE OF AJMER[AIR 1955 SC 33] [87]

This is the historic point instance of the elucidation of the Spirit of the Constitution. The Mills tested the specific arrangements of the Minimum Wages Act 1948 which as indicated by them were abusing Art.19[1][G] of the Constitution of India. The Sup. Co. considered the significance of Art 43 of the Constitution of India & proclaimed that the State has extreme energy to inspire the expectation for everyday comforts of the general population. We live in a Welfare State & not a Police State. The Mills which can't give the base wages have neither good nor lawful right to exist. The Right to Trade is under the Spirit of the Constitution which plainly perceives the communist standards as our lifestyle.

There is most likely, as exhibited by the talk in this section, the Sup. Co. has made an extremely unmistakable commitment to the essential & critical question of the interpretation of a Landmark National Document, for example, the Constitution of India. It is recommended that the best accomplishment that the Sup. Co. of India would be glad for & along these lines legitimize its essential part as an Apex Constitutional Court is to satisfy desire by interpreting the Constitution as a living report equipped for development, & time, giving at the same due the present needs & acknowledgment to goals of population. the general Such an make the quiet & approach would amicable climate for in every one of its features national improvement. How the Sup. Co. of India had given suggestions to the Executive & the Legislation in connection to the real revisions to be affected on the Constitution for adapting up to the will be examined in the changing times coming part of the proposal. What's more, given the talk in this part, it could be inferred that the Sup. Co. of India, similar to that of the Privy Council-The Apex Court of the Sixteen Commonwealth Realms under the House of Windsor & the Federal America shares Court of the United States of America now very much interpretation, namely settled control of sacred, sui generis approach that of giving or arrangements Notwithstanding thought to protected., likewise principles of perceive that
the courts do conventional statutory elucidation & assumptions are wrong to construing a National Constitution, particularly the arrangements setting out the Fundamental Rights & Freedoms of the person. Hence, one might say that an unmistakable commitment of the Sup. Co. to the advancement of Indian Constitutional Law, is covered up in its part as the Custodians of the Constitution & the Protector of Civil Liberties.

There might be the circumstance where given the setting of the protected arrangement, the normal standards of statutory understanding & assumptions in order to effectuate the evident expectation of the designers of the Constitution the court may apply. It likewise appears to be evident that the standards of established elucidation, for example, the requirement for an altruistic, wide, liberal & purposive development of the Constitution as a political report, sui generis & fit for development, would particularly help the Sup. Co. in the activity of its interpretative & authorization ward under the articles of Constitution. As expressed somewhere else our Constitution is the central law, must not be barely understood to stay away from silliness; the Constitution must be given: " … a wide, liberal & purposive development with regards to the general population's yearnings & expectations and with uncommon reference to the political, social & financial advancement of the nation."

7.8 Last Civil Appeals

Article 133 of the Constitution gives that.

1) The region of India if the Hi. Co from any judgment An intrigue may trap the Sup. Co., demand in a normal proceeding introduction or last of a Hi. Co. in. guarantees under Article 134A.

2) Anything in Article 132, any tending to the Sup. Co. under game plan notwithstanding(1) may request as one from the grounds in such interest that a liberal
question of regards to the law with cognizance of wrongly picked this Constitution has been.

(3) Parliament by law in this Article, Despite anything no intrigue ought to, unless by and large gives, flabbergast the Sup. Co. from the judgment, declaration or last demand of one Judge of a Hi.Co..

The Constitution (30th Amendment) Act, 1972 [17] has expelled the condition fiscal qualities that an interest could go to the Sup. Co. precisely when the entire or inspiration in common contention was in any occasionRs 20,000/- Under the altered course of action of Article 133, now an interest could go to the Sup. Co. just if the Hi.Co. statement under Article 134-A that the case fuses the immense question of general massiveness. The expressions normal procedures construe continuing in which a social affair communicates the proximity of a run of the mill right. s typical suits. As necessities be frameworks under the careful gaze of a Hi. Co. under Article 226 for the allow of writ, constitutes a normal techniques. The words different philosophy join all procedures other than ordinary and criminal methodologies unite every one of all frameworks other than typical and criminal strategies. The words particular methodologies, therefore, meld pay strategies and systems under cost laws consequently forth.In Parana Kumar Ray. AIR 1996 Sc State Of Karmakar V West Bengal, 1517,

The statement is surrendered exactly when the case incorporates an issue of law as to the clarification of the Constitution and the question is a liberal question. The essential of giving assertion under, Article 133 has now ended up being amazingly stringent.

The subject of law is required to be of general centrality. To be of general centrality it must be to such a degree, to the point that, beside the social the arraignment, occasions to the general populace should be possessed with an affirmation of such question by the most raised tribunal. No intrigue may lie, unless Parliament by law by and large provides for the Sup. Co. from the judgment, declaration
or last demand of a lone Judge of Hi.Co.. Thisforeswearing can be cleared by Parliament by law.

Such a law won't be modification of the Constitution. In an enthusiasm under Article 133, the engaging party can't be allowed to raise new ground not raised under the attentive gaze of the lower Court. Regularly; the Sup. Co. does not interfere with the concurrent findings of the Court underneath, However by virtue of Miscarriage of value or encroachment of rule of law of procedure, the Sup. Co. may intrude with such revelations. The Sup. Co. may interfere if the complete of the Hi. Co. relies on upon misleading verification or material affirmation has been neglected.

Notwithstanding the likelihood that the presentation has been permitted by the Hi. Co., the Sup. Co. can decay to draw in the intrigue if, as its might want to think, it doesn't lie under Article 133. If a man is denied statement by the Hi. Co., he may approach to manage the Sup. Co.(S.C). for remarkable leave to progress under Article 136 and Sup. Co. can give one of a kind leave to offer under Article 136.

In Kiranmal V. Dayanoba, AIR 1983 Sc 461, The Hi. Co. rejected the enthusiasm by single word demand, Dismissal against the judgment of the basic Judge. The Sup. Co.(S.C). Found that the engaging party. Could have raised real issue of laws and substances before the Hi. Co., and along these lines, held it was a fit case which ought to be yielded and disposed of, on authenticity the case was transmitted to the Hi. Co. for exchange on advantages.

In Union Of India V. R.K. Sharma, AIR 2001 Sc 3035, It has been held that by virtue of demand against the train allowed by Court Martial, the supplication that the Court Martial was not property collected won't be allowed to be raised curiously before the Sup. Co..

**In U.P. Katta Factory Case, AIR 1996 SC 1997**

The leading group of the forest Department constrained denial on Government part of woodlands wood on account of non-availability of timberland wood in the State and the little scale Industries were required to work subject to their getting the required
sum from outside the State. The being an approach matter, the Sup. Co. declined to intrude in the procedure matter.

7.9 Last Criminal Appeal (Art. 134)

Propels in the Criminal matters are considered by the Sup. Co. under the courses of action of the Article 134 of the Constitution which gives that.

1) An interest may beguile the Sup. Co. from any judgment, last request or sentence in a criminal continuing of a Hi.Co. in the region of India if the Hi.Co.s.

2) Parliament may by law give on the Sup. Co. any further powers to connect with and hear offers, last demand from any judgment or sentence in a proceeding of a Hi. Co. in criminal the space of India subject to such conditions and containments’ as may be shown in such law.

Going before the Constitution, there was no Court of criminal enthusiasm over, the Hi. Co.s. It was simply in limited circle that the Privy Council connected with interests in criminal case from the Hi. Co.s by extraordinary leave however there was no enthusiasm beginning at proper without statement of the Hi. Co..

Article 134 of the Constitution shockingly suits an enthusiasm to the Sup. Co. from any judgment, last demand or sentence in criminal proceeding of a Hi.Co.s beginning at fitting without a confirmation of the Hi.Co. I two specific classes or cases-

A) Where the Hi. Co. has on an intrigue pivoted a demand of reemission of an impugned individual and sentenced him to death;

B) Where the Hi. Co. has pulled back itself for any Court trial before any case from its energy and subordinate to has in the reproved and such trial arraigned sentenced him end.
In these two classes of cases relating to a sentence of death by the Hi. Co., ask for deceives the Sup. Co. beginning at right. The term Final Order in Article 134 is translated as significance a demand which finally chooses the power in level headed discussions and passes on and passes on the case to an end. An ask for won't be seen as a last demand if it doesn't, in solitude drive tie or impacts the benefits of the social locations.

Maharashtra Dame Surat v In Tarachand State. AIR 1962 Sc 130, by the Court that It was held not suggest that the exemption does trial almost certainly completed in a whole vindication yet would in like manner join the circumstance where a reprimanded has been pardoned for the charge of murder and has been sentenced a lesser offense. Where the Hi.Co.H.C., on demand, reverses the deception of the trial Court and convicts the rebuked for murder, it indicates exchanging of a demand of absolution and the censured is met all requirements for confirmation under Article 134 (1) (a) beginning at right.

With the support of the Hi.Co. to the Sup. Co. of India [88]

Other than the courses of action of offer in criminal cases beginning at perfect to the Sup.Co. without affirmation of the Hi. Co. (H.C.), an intrigue may betray the Sup. Co. in any criminal case if the Hi. Co. certifies that the case is a fit one for claim to the Sup. Co.. The word assert in Article 134 (1) (c) guesses the action of legitimate reasonability in choosing whether the question requires the decoction of the Sup. Co. additionally, it should not be surrendered Recording tor normal.

Under Article 134(1) (c) an intrigue bamboozles the Sup. Co. in case the Hi. Co. insists under article 134-A that it is a fit case for demand to the Sup. Co.. The enthusiasm under stipulation (c) of Article 134 (l) lie subject ought to to as may be such plans made under article 145 for that advantage (l) and to such conditions as the Hi. Co. may be develop or require. When it appears to the Sup. Co. that the support yielded by the Hi. Co. was lacking, the Sup. Co. can permit extraordinary leave. In Nar Singh v U.
P. 457, AIR State Of 1954 Sc, It has been held that the energy of the Hi. Co. to concede wellness testament in the criminal cases is an optional power, however the caution is a legal one and must be judicially practiced alongside the settled lines which administer these matters.

In Babuv State Sc 1467Of U. P. AIR 1965, It has been watched that the High Court ought to give the endorsement just when the case includes a significant question of law or standards. The testament ought not be allowed if the question required on account of certainty only. The Sup. Co. has set down whole managing standards of the Hi. Co.s to follow in giving endorsements, the Hi. Co. ought to allow endorsement just where there has been remarkable conditions e.t. where generous and grave foul play has been finished. The Hi. Co. is required to State the explanation behind the allow of the authentication and the reasons must be clear on the face there of so that the Sup. Co. might be capable realize that the Hi. Co. has connected its brain to the matter.

The Sup. Co. does not meddle with the simultaneous discoveries of fActs so of the Court beneath aside from in extraordinary cases e.g. net unnatural birth cycle of equity. Regardless of the possibility that the endorsement is conceded by the Hi. Co., the Sup. Co., the Sup. Co. can decline to engage the interest it, as its would see it the declaration has not been properly granted. If the denounced is fancied such testament, and neglected to get it, he may approach the Sup. Co. for exceptional leave to request under article 136. It is to be noticed that under article 134 (I) (c), the Sup. Co. is not constituted as general Court of criminal interest. A constrained criminal re-appraising Jurisdiction is given upon the Sup. Co. by Article 134.

Artionce our Father of the Constitution Dr. Babasaheb Ambedkar was asked by a journalist about the most important Article of the Constitution of India. Dr. Ambedkar firmly stated that the whole Constitution of India would become a useless text if Article 32 is omitted. Writ Jurisdiction is the most important power vested in the Court is the power to issue under Art 32(2) of the Constitution the directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto&
Certiorari which even may be appropriate for the enforcement of the right conferred by the Constitution.

The Jurisdiction of the Super. Co. to entertain in applications under article 32 for the issue of a Constitutional writ for the enforcement of Fundamental Rights, is sometimes treated as an original Jurisdiction the Sup. Co., Article 32(2) provides that the Sup. Co. shall have power to issue directions or orders or writs, including writs as mentioned above which are in the nature of habeas corpus, mandamus, prohibition, quo warranto & certiorari, whichever may be appropriate, for the enforcement of any of the Fundamental Rights conferred in part III of the Constitution. It is to be noted very carefully that our Father of the Constitution Dr. BabasahebAmbedkar has not allowed certain other writs which are issued by the Grand Privy Council which Recording for him are suitable to the monarchies & not to the democratic countries. Such writs include the Writ of Capias.

It is not question unique as in the gathering abused has the privilege to straightforwardly move the Sup. Co. by the introducing a request, rather than getting through a Hi. Co. by method for claim, nevertheless it, ought to dbeHence, the Jurisdiction under craftsmanship, 32 has no similarity to the Jurisdiction under Article 131 Constitution gives that by law give Parliament may on the Sup. Co. bearings, energy to issue, disallowance incorporating requests or writs of habeas corpus, way mandamus, writs in the, quo warranto & certiorari, or any of them, for any reason other than those specified in provision (2) of article 32". The most critical of the Human Rights is the elite ideal to Constitutional cures under Articles 32 & 226 of the Constitution of India. Those people whose rights have been damaged have ideal to specifically approach the Hi. Co.s & the Sup.Co. for legal amendmentredresses of grievances & authorization of Fundamental Rights. In such a case the Courts are enabled to issue suitable bearings, incorporating requests or writs of Habeas Corpus writs in the way Mandamus, , Quo-warranty, & Certiorari. Prohibition By f Article 32prudence o, the Sup. Co. of India has extended the ambit of Judicial Review to incorporate audit of every one of those State measures, which either disregard the vocative of the Basic. Fundamental Rights or Structure of the Constitution. This Judicial Review practiced by the Sup. Co. is expected to keep each organ of the State inside its points of confinement set around the
Constitution & the laws. It is in exercise of the force of Judicial Review that, the Sup. Co. has built up the methodology of Public Interest Litigation. The privilege to move to the Sup. Co. to uphold Fundamental Rights is itself a Fundamental Right under Article 32 of the Constitution of India. This healing Fundamental Right has been portrayed as "the Edifice Democratic" as the Cornerstone of defender & underwriter of the Fundamentals Rights. It has been portrayed as a vital piece of the Basic Structure of the Constitution. At whatever point, the administrative or the official choice outcome in a break of Fundamental Right, the Jurisdiction of the Sup. Co. can be summoned. Subsequently the legitimacy of a law can be tested under Article 32 on the off chance that it includes an issue of authorization of any Fundamental Rights.

The Right to Constitutional cure under Article 32 can be suspended as given under Articles 32(4), 358 & 359 amid the time of proclamation crisis. As needs be, if there should be an occurrence of infringement of Fundamental Rights, the solicitor under Article 32 for authorization of such right can not be moved amid the time of crisis. In any case, when the request stops to be agent, the encroachment of rights made either by the authoritative enactment or by official Action can be tested by a subject in a Court of law & the same may must be attempted on benefits, on the premise that the rights claimed to have been encroached were in operation notwithstanding During the pendency of the Presidential declaration of crisis. On the off chance that, at the termination of the Presidential request, the Parliament passes any enactment to secure the official Action taken amid the pendency of the Presidential request & bear the cost of repayment to the execution for that benefit, the legitimacy & impact of such enactment may must be painstakingly examined. Under Article 226 of the Constitution of India, the Hi.Co. have simultaneous Jurisdiction with the Sup. Co. in the matter allowing alleviation in instances of infringement of the Fundamental Rights, however the Hi.Co.s practice Jurisdiction if there should arise an occurrence of some other rights moreover. The Sup. Co. watched that where the Hi. Co. rejected a writ appeal to under Article 226 in the wake of hearing the matter on benefits, an ensuing request in the Sup. Co. under Article 32 on similar certainties & for a similar alleviation recorded by similar gatherings will be banned by the run of Resjudicata. The coupling charActer of the
The judgment of the Court of skillful Jurisdiction is basically, a piece of the lead of law on which, the organization of equity is founded. In this manner the judgment of the Hi. Co. under Article 226 go subsequent to hearing the gatherings on benefits must tie the gatherings till put aside in the interest as gave by the Constitution & can not be allowed to be maintained a strategic distance from by an appeal to under Article 32.

In Daryao V/S State Of U.P.(A.I.R. 1961 S.C. 564) [Res Judicata & Art.32] The Board of Revenue in U.P., in a moment offer under Section 267 of the U.P. Occupancy Act, 1939, chose that Daryao had no title to certain property as for which there had been a long case. Daryao moved the Hi. Co. at Allahabad under Art.226 the judgment of the certiorari to subdue for the issue of a writ Board of Revenue. His appeal to was expelled by the Hi. Co., Darayao presented another request of to the Suprem Court under Art.32 & petitioned God for an indistinguishable alleviation from under the watchful eye of the Hi. Co..The Sup. Co. connected the guidelines of res judicata to such continuing, & watched:

The simultaneous Jurisdiction presented on Hi. Co.s under Article 226 does not suggest that a man who charges the infringement of Fundamental Rights should first approach the Hi. Co., & he can approach the Sup. Co. specifically.

It is to be noted painstakingly about the refinement of the forces of the Indian Hi. Co.s& the Suprme Court of India in the forces to issue Perogative Writs. Article 32 of thumping the Doors of the Suprme Court of India itself is a Fundamental Right while the forces of the Indian Hi. Co.s for issuing the comparative Prerogative orbits is not at all a The Fundamental Right can be Fundamental Right under Article 226. suspended at the times of Emergency thus Art.32 becomes helpless at that time. However the powers of the Indian Hi.Co.s for issuing the similar Prerogative Writs are not affected by the Proclamation of Emergency. During the emergency period, if a person is arrested under preventive Detention Act, or MISA etc. such person may not be released. Even then, the person arrested &detained shall enjoy the rights under Articles 21 & 22 of the
Constitution. He may approach the Hi. Co. or Sup. Co. under these two Articles. Let us see the contents of landmark judicial decisions-

In his dissenting Judgement, Mr justice Khanna held that the Constitution of India does not confer any power or any authority to suspend the power of the Hi. Co.s to issue rights of habeas corpus during the period of emergency. His Lordship meant that Art.226 of the Constitution, under which the Hi. Co.s can issue rights, is an integral part of the Constitution and the same cannot be suspended by putting a particular interpretation on the Presidential order issued under Art. 359(1).

In State Vs. V.C. Shulka & Sanjay Gandhi & V.C. Shulka Vs State (A.I.R. 1980 S.C. 1382) [Art. 14 & 21] The above appeals arose from convictions by the session Judge, Delhi of certain persons under various section of the Indian Penal Code, in respect of alleged offence committed in connection with the negative & the positive prints & other material of the controversial film “kissakursika”. as being violative the validity of the special Courts Act, In this case, 19/9, was challenged on several grounds, & in particular, Constitution of Articles 14 & 21 of the. The Sup. Co. held that the heading itself of the special Courts Act shows that its main object is to provide for the speedy trial of a certain that a particular type of persons, namely those holding high public or political offices, are put in a separate class.

The above mentioned some of the landmark cases are able to witness the realistic position of the good governance in India under the constant watch of the efficient Indian Judiciary famous for the Impartial Attitude & the Fearless Decisions. It is in fact the Gift of our Fathers of the Constitution.

In short the administration of any democratic country must think that they are not the masters but the servants of the people. The Preamble of our Constitution declares that the Sovereignty lies in the People of India. It is the duty if the Administrators to follow the principles of the good governance with utmost responsibility, failing which they may have to face the Writ Jurisdiction of the Sup. Co. under Art 32 or of the Hi. Co. under Art 226 of the Constitution of India. The Sup. Co. has further developed the novel concepts like the Right to Information, Public Interest Litigation & the Court on its Own Motion all in a systematic manner which has practically uplifted the former official confidentiality & has truly developed the Constitutional spirit in the last two decades of the 20th century.
7.11 Conclusion

In short we can say that the Constitution of India under the provisions of the Art 129 & Art 215 has provided us is full sanction for the application of the precedents in Indian Courts. Their actual modus operandi will be seen in the next chapter.