Chapter 4

The Constitution of India: A Reflection of Gandhism

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4.1 Introduction

In previous chapter third, we have studied the reflected socialism in the Constitution of India and a brief study of the reflection Dr. B. R. Ambedkar’s State Socialism and Pt. Jawaharlal Nehru’s Democratic Socialism. In this chapter fourth; ‘The Constitution of India: A Reflection of Gandhism’, there is to study of a reflection of Gandhism in the Constitution of India. ‘Gandhism’ here is M.K. Gandhi’s ideas or thoughts. M. K. Gandhi; Mohandas Karamchand Gandhi (1869-1948).

The study will have been taken place, what Gandhism is and in what extent Gandhiji’s ideas of ‘Ram Raj,’ Divine theory of State, Varnashrama, truth and non-violence, Sarvodaya, his socialism etc., are reflected in the Constitution of India. It has been attempted to study in this research chapter.

4.2 Meaning of Gandhism

M.K. Gandhi’s set of socio-economic and political ideas are called to Gandhism. According to Gandhiji there is nothing such as Gandhism. He said that there is no such as ‘ism’ in his ideas. But another place he stated that ‘Gandhi can die but Gandhism will live forever’. During the active participation in the Indian freedom movement, he conceived the new social order for future India. “Gandhism is not only a politics. It is a view of life. View of Gandhism is not scientific. It is not based on history and logic. It is based on belief and nurture Gandhism can not believe in intelligency and reason to strengthen the belief, it depends upon God’s instinct.”

There are many orthodox in his thought, but his point of view and way to achieve is important, it cannot be rejected. Whatever may or may not be called such as theory, philosophy or ideology for Gandhiji’s thought. Here, Gandhism meant his social, political and economic ideas.

For this study Gandhiji’s main ideas such as ‘Ram Raj,’ Divine theory of State, Varnashrama, truth and non-violence, Sarvodaya, socialism, and etc..
This chapter is going to study of these ideas’ reflection in the Constitution of India.

### 4.3 Sarvodaya: an egalitarian society

Gandhiji conceived new ideal social order, Sarvodaya, in which the aim of good and welfare of all people and not select few. His concept of Sarvodaya is as an egalitarian society.

India’s Constitution underlying order of socio-economic and political democracy is based on the liberty, equality, fraternity and social justice. The Constitution envisaged socialist society, simply mean, the egalitarian society.

Egalitarian means believing in or based on the principle that all people are equal and deserve equal rights and opportunities. Egalitarian is one who advocates or supports the principle of equality for all people.

Hence, there was essential to study the reflection of Sarvodaya in the Constitution of India. So, there is same aim of the Constitution and Gandhiji’s Sarvodaya.

Gandhiji wanted decentralized socio-political and economic order. His concept of rural reconstruction and development are based on independent, self-contained, autonomous, self-supporting, self-ruling and self-reliant village communities whose centre will be the individual like an egalitarian society.

This is one of the optional policy matters before the government.

The concept, ‘equal protection of laws’ is positive in content. It denotes equality of treatment in equal circumstances. There should be an equality of treatment under equal circumstances. It means “that equals should not be treated unlike and unlike should not be treated alike. Likes should be treated alike”. Article 14 provides positive and not negative equality.

The classification is to be reasonable. It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction which distinguishes persons or things grouped together in the class from others left out of it. The differentia adopted as the basis of
classification must have rational or reasonable nexus with the object sought to be achieved by the statute in question.³

The Supreme Court has however warned against over-emphasis on classification. The Court has explained that ‘the doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, over-emphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equity enshrined in Article 14 of the Constitution. The over-emphasis on classification would inevitably result in substitution of the doctrine of classification for the doctrine of equality…Lest, the classification would deny equality to the larger segments of the society”.⁴

The differential treatment must have a rational relation to the object sought to be achieved. Constitutional interpretation being a difficult task, its concept varies from statute to statute, fact to fact, situation to situation and subject matter to subject matter.⁵

“There cannot be perfect equality in any matter on an absolute scientific basis and certain inequities here and there would not offend Art. 14”.⁶

4.4 Non-Authoritarian and Non-Exploitative Society

Gandhiji dreamed of building up a non-authoritarian, non-exploitative society. The Indian Constitution through its various mechanism such as “Constitutionalism”, “Rule of law”, Supremacy of the Constitution, “Federal structure”, “sovereignty of the people”, “Responsible Government”, “Judicial Review”, ensured “Fundamental Rights”, “Division of the Power” among executive, legislative and judiciary, etc. prevented the State to become an authoritarian. So, Gandhiji’s non-authoritarian idea is reflected in the Indian Constitution.
Gandhiji’s another dream of “non-exploitative” society is reflected in the Constitution. Indian Constitution ensures the Rights against exploitation. Art. 23 prohibited the traffic in human beings and forced labour. Art. 24 prohibits the exploitation of children. “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”. Indian Constitution like Gandhiji laid the foundation of non-exploitative society.

**Divine Rights Rejected**

According to him, “There is no such thing as the divine rights of the kings to rule and the humble duty of riots to respectful obedience to their masters. Divine knowledge is not barrowed from books. It has to be realized in oneself. My belief in Hindu scriptures does not require me to accept every word to and every verse as divinely inspired” In the Constitution it does not prevail the “divine right theory”.

**4.5 Equal Opportunity**

His idea of society was based on the view that “while we are born equal meaning that we have a right to equal opportunity, all have not the same capacity. It is in nature of things, impossible.”

The Constitution ensures the “Right to Equality”, in Articles 14, 15, 16, 17, and 18. The Constitution, in Article 14, ensures the “equality before law. The article 14 (1) ensures, “The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.” Article 16 ensures the equality of opportunity in matter to public employment. Gandhiji says that we born equally and we have right to equal opportunity, the Constitution ensures the “equality before law”, “equal protection to all”, “equal opportunity” in matter of public employment. Hence, Gandhian idea of equal opportunity is reflected in the Indian Constitution. “Gandhiji’s ideal social order stood for equality and justice - social, political and economic”.
The Constitution ensures the “equality before the law” “equal opportunities to all”. “He calls ‘Sarvodaya’-an egalitarian socio-economic and political order… His mission was to construct an egalitarian socio-economic and political order with equality prevailing in every sphere of human life”.  

**Economic equality**

Gandhiji wrote, “My ideal is equal distribution, the real meaning of economic equality is, “to each according to his need”...“but so far as I can see, is not being realized: I therefore work for equitable distribution.”  

“Economic equality does not mean the equalization of income on the contrary it may be taken to mean that all are entitled to have the basic necessities of life”.

He wanted every labour should get just wage. The nature and extent of production should be according to the need of the society. The motive of the production should not be the individual profit.

The Constitution does not permit the individual profit motive, and Capitalist society. The Constitution obligates to State to give a ‘just wage’. Gandhiji was not against the capitalist but only against the capitalism.

Indian Constitution Article 39 “(b) **That the ownership and control of the material resources** of the community are so distributed as best to subserve the common good”.  

Like the Constitution, Gandhiji wanted “each according to his need”, and equitable distribution. “Gandhiji considered that it is our bounden duty to serve the poor to bring about economic equality. He has laid special attention to the use of indigenous methods of production such as spinning wheel, cottage and village industries, the revival of handicrafts, decentralization and rehabilitation of the villages to bring about economic equality and well-being of the semi-starved millions of India”. The basic question is what principle, not the policy is. Gandhiji and the Constitution, they both, have a goal is the same but how to reach at it is depend on the people of India.
The Directive Principles of State Policy, the Preamble of the Constitution, and Fundamental Rights of the Constitution envisages the goal of socio-economic and political democracy. “Sarvodaya as conceived by Gandhiji is an egalitarian socio-political and economic order with equality prevailing in every sphere of life.

In Gandhian thoughts, there is no scope for separation and exploitation of man by man. He stands for equality of income and decentralization. Gandhiji pleaded for economic equality. “It simply means that everybody should have enough to satisfy their basic needs namely dwelling place, food - at least a square meal a day and clothing – minimum Khadi to cover the body. By economic equality approximates but not absolute equality”.

The Constitution holds the “living wage”. Daily RC Labour, P &T Dept v. Union of India 1988 and Dhirendra Chamoli v. State of U.P. 1986 The Court said, the state cannot deny to casual labourers at least the minimum pay-scales of employed workmen. Such denial amounts to exploitation of labour which is not permissible. Article 43 envisages the ‘living wage’ to all workers.

A living wage is such wage as enables the mail earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but a measure of frugal comfort including education for children, protection against ill-health, requirements of essential social needs, and a major of insurance against the more important misfortunes including old age.

Gandhiji wanted distribution of wealth of nation. He does not want a concentration of wealth in hands of a few. Article 39 (c) the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Gandhiji wanted that “Everyone must have a balanced diet, a decent house to live in, facilities for the education of one’s children and adequate medical relief”. This idea also reflected in the personal liberty, Article 21. The Constitution of India ensures these facilities in the name of “social security”. Hence, Gandhian idea of the “economic equality” and the
Constitution’s concept of “Economic Democracy” are reflected in each other in more extent.

**Individual Dignity**

Individual dignity wanted of both Gandhiji and the Constitution of India.

“In Gandhi’s system of thought man is one of supreme consideration. Man is at the root of all progress, civilization and culture…Man is essentially spiritual in nature”.\(^{18}\) Into basic structure of the Constitution Man got a central point or supreme consideration. The Fundamental Rights stand for the basic human rights. The Directive Principle of State Policy stands for the welfare of all people.

The Preamble ensures the dignity of individuals. But Gandhiji’s the idea of ‘man is essentially spiritual in nature’, is different from the Constitution.

The right to life enshrined in Art. 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence.

**Article 21 envisages a quality of life consistent with his human personality.**

“The right live with human dignity is the Fundamental Right to every Indian citizen”.\(^{19}\)

**4.6 Trusteeship**

The theory of trusteeship was an integral part of Gandhiji’s scheme of the non-violent transformation of the society. The Constitution permits to the non-violent transformation of society. And Gandhiji’s idea of trusteeship is very good, but it does not seem to transforming society as trusteeship idea. Hence, it may difficult for the Constitution to believe in Gandhiji’s idea of trusteeship.

In Gandhiji’s idea of trusteeship, “Private property was not denied. But he has fixed certain limits for private property. The owners of property were asked to act as trustees of the property for the benefit of the community.
Trusteeship means that the possessor of wealth should consider himself as a trustee and use the wealth for the good of others. Elimination of exploitation of man by man and inequalities in income are the goals of trusteeship”.20 Property use for public benefit and not profit motive is a appropriate to the Constitution. “Trusteeship provides capitalist order of society in to an egalitarian one. He wanted to bring about a total transformation – a heart change in the capitalists. Gandhiji stood for their reformation through non-violent method. He wanted to affect a harmonious union between the capital and the labour”. In the Constitution Right to Property and Eminent Domain these concepts prevail.

**Eminent Domain**

The power of eminent domain can be defined as the power of the state to take property for public use, without the owner’s consent upon making just compensation to him. The two essential ingredients of eminent domain are:

1. Property is taken for public use;
2. Compensation is paid for the property taken.

The Court defined ‘eminent domain’ as “the power of the sovereign to take property for public use without the owner’s consent upon making just compensation”. The ideas of ‘public purpose’ and ‘compensation’ are thus inherent in entry 42.21

**Right to property abrogated**-to start with, the Constitution had Art. 19(1) (f) and Article 31 to protect property rights. Article 19(1) (f) guaranteed to the Indian citizens a right to acquire, hold and dispose of property. Article 19(5), however, permitted the state to impose by law reasonable restrictions on this right in the interests of the general public or for the protection of the interest of any Scheduled Tribe.

**Right to property** the Constitution 44th Amendment Act, 1978, it is end of the fundamental Right to Property. **Right to property curtailed and** the
fact remains that the right to property has practically ceased in India. **Right to property ceased due to socialistic philosophy.**

It was stated that for purposes of Article 19(1) (f), property was that which could by itself be acquired, disposed of or taken possession of.

In course of time, Art. 31 came to be modified drastically through several constitutional amendments, ultimately, in 1978, by the Constitution 44th Amendment, Arts. 19(1)(f) and 31 were abrogated. Articles 31A, 31B and 31C as well as Art.300A are the existing constitutional provisions concerning private property. Art.300A has been added by the 44th Amendment.22

**Article 300A-Right to property**- The forty- fourth Amendment of the Constitution in 1978 transformed the right to property form the category of Fundamental Rights by repealing Art. 31 and converted it into an ordinary constitutional right by enacting Art. 300A instead. Article 300A merely says: **No person shall be deprived of his property save by authority of law.**”23

“The Supreme Court treated it as acquisition of land for public purpose without paying compensation and declared relevant statutory provision unconstitutional and violative of Art. 14.

“Thus Gandhiji’s theory of trusteeship stands for equitable distribution, economic equality, individual non-possession and also belief in the strength of people’s non-violent direct action”.24 To establish economic equality is one of the goals of the Constitution. Indian Constitution has a social mission to establish social and economic democracy.

**Amendments to the Constitution**

73rd and 74th Amendments of the Constitution are given importance to democratic decentralization. Panchayat Raj states laws may be different state to state. “It provided a ‘concrete form’ and ‘unified structure’ for the realization of the local self-government”… provides a detailed account of the distribution of financial resources and income of the Panchayat. It also
suggests constituting state – district planning bodies along with the lines of
democratic decentralization”.25 Gandhiji emphasised on Panchayat Raj System.

To Gandhiji, decentralization is the basic requirement for the success of
democracy. “The spirit of democracy cannot be imposed from without. It has
to come from within. Gandhiji said, “A democracy established by non-
vioence, there will be equal freedom for all. Everybody will be his own master”.26 Panchayat Raj Systems realizes Gandhiji’s concept of
decentralization of democratic power. He advocates decentralization to prevent
exploitation, misuse of power, and to safeguard individual freedom.
“Centralization of power naturally leads to exploitation. Always the poor are
the exploited. Further centralization leads to the misuse of power and hence it
could not be maintained without adequate force. Gandhiji recommended
decentralization as a necessary political measure to safeguard individual
initiative and freedom”.27

Article 40 of the Indian Constitution obligates to the State for
“organization of village Panchayats. The Article 40:“The State shall take steps
to organise village Panchayats and endow them with such powers and
authority as may be necessary to enable them to function as the units of self-
government.”28

According to Gandhiji, “Democracy is that form of government in which people are in power. Gandhiji wrote, “In democracy the people’s will must rule.” In other words power resides in the people. Even the parliament has no
power or even existence independently of the people”.29

The village Panchayat the basic unit of administration provides scope
for direct popular participation. It gives relief to the undeveloped sections of
the community. The village Panchayat functions along democratic lines.
Gandhiji envisaged a three tier system of rural and local self government
namely-the village, the block, the district level Panchayats so as to ensure the
participation of the adult female and male members of the village. Gandhiji
insisted that the democratic structure of the local institutions should be decentralized to the grass root level so that the lowest and the last is empowered by participating in the decision making process”.

“Thus, Gandhiji worked out meticulously for the details of a wide variety of practical things which are vital to build a graceful village life. His conception of the village was not anchored on the modern notion of development but on the post-modern perspective of quality of life. His main emphasis was on the quality of life”.

**Restricted Individualism**

Gandhiji has given value to the individual freedom, but he did not forget that man is essentially a social being. He fully understood that the unrestricted individualism is the law of the beast of the jungle. He was the opinion of compromising between individual freedom and social restraint. He conceded to the social restraint for the well-being of the whole society.

Like a ‘Liberal Democrat’ Gandhiji held the balance between individual freedom and social restraint. For him unrestricted individualism is the law of the beast of the jungle. He considered the man is a social being. This type of ‘Democratic Liberalism’ seems reflected in the Indian Constitution.

In the Constitution Fundamental Right conferred on the Citizen and some reasonable restriction laid on in public interest. The Constitution does not confer on the unrestricted Rights to the citizens.

Example of the restricted Rights on Citizen, **A right of a film maker to make and exhibit** his film is a part of his **Fundamental Right of Freedom of speech and expression under Art. 19 (1)(a)** and the restrictions imposed under Section 4 and 5B of the **Cinematograph Act, 1952** relating to **certificate by Censor Board** by applying the guiding principles set out in Section 5B is a **reasonable restrictions** contemplated under Article 19(2).

In the Constitution the phrase ‘speech and expression’ used in Article 19(1)(a) has broad connotation. The **right to paint or sing or dance of to**
write poetry or literature is also covered by Art. 19(1) (a) because the common basic characteristic of all these activities in freedom of speech and expression. National Anthem, National Flag and National Song are secular symbols of the nationhood. Our national flag cannot suffer any indignity.

The Constitution emphasizes on the development of scientific temperament and feeling of humanism. The philosophy and principles underlying sub clause (h) of the Article 51A of the Constitution which envisaged the development of a scientific temperament, a feeling of humanism and a spirit of inquiry and reform as well as the fundamental Right to freedom of speech under Article 19(1) (a).

Right to Silence

The right to speech implies the right to silence. It implies freedom, not to listen, and not to be forced to listen. The right comprehends the freedom to be free from what one desires to be free from.

Right to Receive Information

The expression “freedom of speech and expression” in Article 19(1) (a) has been held to include the right to acquire information and to circulate the same. It includes the right to communicate it through any available media whether print or electronic or audio-visual, such as, advertisement, move, article or speech, etc. This freedom includes the freedom to communicate or circulate one’s opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.

The Supreme Court has given a broad dimension to Art. 19(1) (a) by laying down the proposition that freedom of speech involves not only communication, but also receipt, of information. Communication and receipt of information are the two sides of the same coin. Right to know is a basic right of the citizens of a free country and Art. 19(1)(a) protects this right. The right to receive information, which is basically founded on the right
to know, is an intrinsic part of the right to freedom of speech and expression enshrined in Art. 19(1) (a).³⁵

**Freedom of the press**

In India, **freedom of the press is implied from the freedom of speech and expression** guaranteed by Art. 19(1)(a). There is no specific provision ensuring freedom of the press as such. The **freedom of the press** is regarded as a “**species of which freedom of expression is a genus**”. Administration actions which interfere with the freedom of the press contrary of the constitutional mandate.³⁶

**Freedom of speech cannot be curtailed in ‘interests of the general public’.** But the freedom to carry on business can be. “The state cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom” Understanding the importance to the **freedom of the press** in democratic society, the court has stated that in to-day’s free world, the **freedom of press is the heart of social and political intercourse**.

“**Right to know is a basic right** which citizen of a free country aspire in the broaden horizon of the right to live in this age on our land under Art.21 of the Constitution”.³⁷ The fundamental principle involved here is **the people’s right to know**.

**Commercial Speech**

Reading *Hamdard Dawakhana and Indian Express* together, the Supreme Court has concluded in Tata Press³⁸ that ‘commercial speech’ cannot be denied the protection of Art. 19(1)(a) merely because the same is issued by businessmen. “**Commercial speech**” is a **part of freedom of speech guaranteed under Art. 19(1)(a)** The public at large has a right to receive the “commercial speech” guaranteed under Art. 19(1)(a) protects the **rights of an individual “to listen, read and receive” the commercial speech”** The
protection of Art. 9(1) (a) is available both to the speaker as well as the recipient of the speech.

**Advertising is a ‘commercial speech’** which has two facets:

1. In democratic economy, free flow of commercial information is indispensable. Therefore, any curtailment of advertisement would affect the Fundamental right under Art 19(1) (a) on the aspects of propagation, publication and circulation.

2. The Public at large has right to receive commercial information. Art 19(1)(a) protects the right of an individual to listen, read and receive said speech. The protection of Art. 19(1)(a) is available to the speaker as well as the recipient of the speech.\(^{39}\)

**But yellow pages** only contain *commercial advertisement* and Article 19(1) (a) guarantee freedom to publish the same.

Over the last decades, press and electronic media have emerged as major factors in our nation’s life.

One principle which the court did lay down is that the **State or its officers cannot impose any prior restraint or prohibition on any publication** because they apprehend that they may be defamed their remedy, if any, would arise only after the publication.\(^{40}\)

The **Supreme Court** said that **government servant does not, by accepting government service, lose his Fundamental Rights under Art. 19.** A demonstration, held the Court, is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communications of one’s ideas to others and is in effect of a form of speech or expression, because speech need not be **vocal since signs made by a dumb person** would also be form of speech and expression. Accordingly, **certain forms of demonstration would fall under Article 19(1) (a).**
S.3 of the **Essential Services Maintenance Ordinance, 1960,** authorized the Central Government to prohibit any strike in any essential service in the public interest; **Going on a prohibited strike became illegal and punishable** with imprisonment. The provision was declared valid as it did not curtail freedom of speech and **there was no Fundamental Right to go on a strike.**

**Bandh-** In landmark decision in *Bharat Kumar*, full Bench of the Kerala High Court has declared “**Bandhs” organized by political parties from time to time as Unconstitutional being violative of the Fundamental Rights of the people.** The court refused to accept it as an exercise of the freedom of speech and expression by the concern party calling for the bandh. When a bandh is called, people are expected no to travel, not to carry on their trade, not to attend to their work. A threat is held our either expressly or impliedly that any attempt to go against the call for bandh may result in physical injury. **A peaceful strike which does not interfere with the rights and properties of the people is however not illegal.**

In the instant case, the High Court did award **compensation against the State Government** for loss of property and death of a person during the **band for failure** of the authorities to take appropriate action and provide **adequate protection to the people’s life, liberty and property.** The Government failed to discharge its public duty protect the people during the bandh.

**To take away the freedom of speech-**there may be such cases where the restriction imposed is apparently only on the **right to go abroad** but the direct and inevitable consequence of to interfere with the freedom of speech and expression or the right to carry on a profession. **A musician may want to go abroad to sing, a dancer to dance, a visiting professor to teach and a scholar to participate in a conference of seminar.** If in such a case his **passport is denied** or impounded, it would directly interfere with his **freedom of speech and expression**…Examples can be multiplied, but the point of the...
matter is that *though the right to go abroad in not a Fundamental Right to denial of the right to go abroad may, in truth and in effect, restrict freedom of speech and expression or freedom to carry on a profession…*”

**Telephone Tapping**- When a person is talking on telephone, he *is exercising his* right to freedom of speech and expression. Telephone tapping, accordingly, infract (violate) Art. 19(1)(a) unless it falls within the ground of restrictions falling under Art.19(2). The Court also treated it as an *aspect of privacy* and invoked (appeal) Art. 21 against telephone tapping.

The Court has emphasized that the *executive action* restraining exercising of a right under Art. 19(1) (a) *cannot be* taken without any legislative authority. The Supreme Court has considered the *question of censorship* of films *vis-à-vis* Article 19(1) (a).

The Court said, ‘Our commitment of freedom of expression demands that cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural (hypothetic) or far-fetched. It should have proximate and direct nexus with the expression’.

A film producer is entitled to project his own message through a film which others may not approve of. Everyone has a Fundamental Right to form his own opinion of any issue of general concern. The State cannot prevent open discussion and open expression of views, however critical of its own views.

**The Court in the judgment, observed:**

“In democracy it is not necessary that everyone should sing the same song. Freedom of expression is the rule and it is general taken for granted. **Everyone has a Fundamental Right to form his own opinion** on any issue of **general concern**. He can form and inform by any legitimate means. The democracy is a government by the people via **open discussion**”. 

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The Court has accepted that movies doubtless enjoy the guaranteed under Article 19(1) (a).

“…If the film is unobjectionable and cannot constitutionally be restricted under Art. 19 (2), freedom of expression cannot be suppressed on account of threat of demonstration and procession since it is a liberty guaranteed against the State…”

The fundamental freedom under Article 19(1) (a) can be reasonably restricted only for the purposes mentioned in Art. 19(2) and restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of Government policies and operations is not a ground for restriction expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself”.

Telecasting is a system of communication either audio or visual or both. Organization of an event in India is an aspect of the freedom of speech and expression protected by Art. 19(1) (a) and reasonable restrictions can be imposed thereon under Article 19(2).

A freedom of speech includes the right to propagate one’s views through print media or through any other communication channel, e.g., radio and television. The right to impart and receive information is a species of freedom of speech. No monopoly of electronic media is permissible as Article 19(2) does not permit state monopoly. “The airways or frequencies are a public property and they have to be used for the benefit of the society at large.”

Comes under the right to speech and expression: Right to receive, right to educate, right to inform, right to entertain, right to acquire knowledge, and right to information. Voting at an election is a form of expression.
It can thus been seen that the Supreme Court has interpreted Article 19(1) (a) broadly so as to bring broadcasting and telecasting within its coverage. Also, the Court has taken a very significant step by way of freeing these activities from government monopolistic control. Also, the function of regulating airwaves will henceforth be performed by an autonomous body rather than the Government itself.  

Thus, the above discussion implies the scheme of the restricted or balanced individualism. Gandhiji has not given as this broad connotation.

4.7 State-‘Unavoidable Evil’

For Gandhiji the state is ‘necessary evil’ and the government is the best which governs the least. His ideal is ‘no state’ or state less society. But his ideal state did not come in reality yet. Gandhiji thinks that power corrupts and absolute power corrupts absolutely. He does not want the coercive role of the state. According to him, compulsive nature of the authority of the state damages the moral nature of the individual. He thought the state is a necessary evil. State’s action is based on violence. His concept was ‘non-violent’ state. Gandhiji was the opinion of truth and non-violence.

The Constitution envisages the ‘Welfare State’, and it does not conceive any non-state or stateless society. The Indian Constitution obligates the State to do welfare of all people. The State is not a source of the ‘sovereign power’, but the Constitution envisages the ‘Sovereignty of the people’. Like Gandhiji, the Constitution legitimates the non-violent means to transform society into social and economic democracy.

In Pathumma v. State of Kerala, the Supreme Court has emphasized that the purpose of the Directive Principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution. The Constitution aims at bringing about synthesis between Fundamental Rights and the Directive Principles.
Gandhiji said, “By Ramrajya I do not mean Hindu Raj. I mean by Ramaratya Divine Raj, the Kingdom of God”. The Constitution does not imply any divine raj but, it ensures the ‘democratic, republic, socialist state of the people.

Gandhiji’s Ramarajya literally a ‘Kingdom of God’ but its deep meaning is decentralized socio-economic and political democracy like the Constitution. “Gandhiji’s **economic thought is simplicity and minimizing of wants** coupled with economic equality”.

Gandhiji advocated that the state must be based on Truth and Non-violence. His concept of Ramarajya is a moral authority. It is based on the people’s sovereignty. According in state and society moral will of the individual should be supreme. He advocated the limitation of State power rather than increase of the authority of the State.

The Constitution of India does not increase the coercive power to the State, but it increases for the Welfare State. The Constitution does not concede that the State is necessary evil. Democratic socialism, state socialism, constitutionalism prevails in the Constitution. Rule of law, Basic Structure of the Constitution prohibits the coercive role of the state.

The Preamble of the Constitution read with Directive Principles in Arts.38, 42,43,46 and 48A promote the concept of social justice. The aim of social justice is to attain a **substantial degree of social, economic and political equality**. Social justice is a device to mitigate the suffering of the poor, weak, Tribals and the deprived sections of the society and to elevate them so that they can live with dignity. In the course of time, the courts have raised social and economic justice to the high level of Fundamental Right.

Indian Constitution like Gandhian ideas ensures a Swaraj of the people, by the people and for the people. Gandhiji did not accept the parliamentary democracy. He called it “the tyranny of the majority”. But the Constitution laid down the foundation of
Parliamentary Democracy. To him the supreme power of the State rest with the people.

4.8 Gandhiji’s True Democracy

According to Gandhiji true democracy should be based on non-violence. He was against to increase the power of the state for the fear of the violent mean. “The true test of democracy lies in the replacement of force and violence by social will”. 55

“India has to evolve the true type of democracy there should be no compromise with violence or untruth. Non-violent democracy has its basis in self-sufficient village Republics. In the true democracy of India the unit is the village. True democracy cannot be worked by twenty men sitting at the centre. On the contrary it has to be worked from below by the people of every village”. 56

According to him, “My true notion of democracy is that under it the weakest should have the same opportunity as the strongest”.

The Constitution also wants a non-violent democracy there is no doubt about it. Gandhiji did not stand for total opposition capitalism; he rather stood for its reformation. For Gandhiji, labour is far superior to capital. It is immoral for the capitalist to exploit the labourers. In short, Gandhiji’s regulated trusteeship aimed at transforming the present capitalist order of society into an egalitarian one.

“The economic order envisaged by Gandhiji stood for economic equality, trusteeship, equitable distribution over and above a non-violent rural agrarian economic order village as its centre. He stood for village economy, rural and village industries with emphasis on the economics of Khadi paving the way for non-violent rural economy and civilization”. 57

Economic Decentralization

Gandhiji wanted economic decentralization in India. He argued that manual labour should get the adequate opportunity in the society. To him
economic decentralization is important to avoid the economic exploitation and to establish egalitarian society. His aim was to create an unexploited society. To achieve this aim he emphasis on village industries and cottage industries. His dream destination was to strengthen the rural and village life.

There is no difference between the end of Gandhian idea and the Constitution. The governments which are in the powers are free to make their policies to achieve the end. The Indian Constitution also wants the economic democracy and to minimize the economic inequality. But the governments are not bound to the Gandhian Programmes.

**Political Decentralization**

The Indian Constitution envisages the decentralization of its power. The Union list, the Concurrent list, and the State list in the Constitution express the decentralization of power. The center-state relations, Panchayat Raj, Constitutional status of Panchayat Raj, division of powers among the Legislative, Executive and Judiciary imply the decentralization of power of the State. For empowering the downtrodden millions of India, Gandhiji has given emphasis on the decentralization of political power.

Gandhiji wanted to take the democracy at the grass-root level. Only twenty people cannot solve the problems of all country sitting at the centre. According to him every individual should have participate into democratic process. Gandhiji’s political decentralization was for village Swaraj or Panchayat Raj or grass-root democracy for empowering the downtrodden millions of India. 73rd and 74th Amendments of the Constitution are given importance to democratic decentralization by the Panchayat Raj system.

**4.9 Mechanization of Industries**

Gandhiji wanted harmonious relations between capitalist and labourers. He wanted as the Constitution not to concentrate the wealth of nation into a few hands. To prevent exploitation he opposed the heavy mechanization of industries. Gandhiji wanted to bread labour based on simple life. He wanted no labour revolution through the idea of trusteeship into an egalitarian one. The
Indian Constitution also wants an egalitarian society. Gandhiji believed that some key industries are necessary but they have to be state owned so as to benefit not the few but all. Machinery has to be chosen in accordance with need. Further it has to be non-exploitative and it has to benefit every human being along decentralized ways.

4.10 Gandhian Socialism

Gandhiji’s slogan was “back to village”. He wanted to develop village and small scale industries. For him, society should be based on non-violence. According to him, village should be self-sufficient. He wanted humanized method of production and distribution. He did not want centralized production, and wanted decentralized production. He did not want the concentration of the means of production in a few hands as well as the capitalist system of production and distribution. Labour class effective role should be in the administration and management of the factory. And it can be called the spirit of his socialism. Idea of Socialism Fully Reflected in this Article to Constitution of India.

State monopoly- Article 19(6)(ii) enables the state to make laws for creating state monopolies either partially or complete in respect of any trade or business or industry or service.

The Supreme Court observed,\textsuperscript{58} ‘the law relating to such state monopoly should be presumed to be reasonable and in the interest of general public within the scope of Article 19(6) (ii). The state is not required to justify its trade monopoly as a ‘reasonable restriction and as being in the ‘interest of the general public’.\textsuperscript{59} It is presumed to so. No objection can be taken under Article 19(1) (g) if the state carries on a business either as a monopoly, complete or partial, to the exclusion of all or some citizens only, or in competition with any citizen. This is the one of the principles of the socialistic country.

Thus, the right of the citizens to carry on a trade has been subordinate to the right of the state to create a monopoly is its favour. Reference may also
make in this connection to Art. 298, according to which the Union and each State has power to carry on any trade or commerce.\(^{60}\)

Further, under Art. 19(6)(ii), a State may create monopoly in its own favour but not in favour of third persons for their benefit. The profit resulting from the sale must be for public benefit and not for private gain.’ the test thus is may be valid if it is only for the benefit of the State. It should not serve the private interests of any one person or class of persons. State monopoly ought not got be used as a cloak (clothe mask) for conferring private benefit upon a limited class of persons.\(^{61}\)

He said the socialistic conception of the West was based on violence. **But for him, socialism or communism should be based on non-violence and on harmonious co-operation labour and capital, landlord and tenant.**

**For him, under ideal condition, the barrister and bhangi should both get the same payment. But, it prevails, “equal pay for equal work” in the Constitution.**

If Gandhiji was a socialist then he was a humanitarian socialist and not a “scientific” Socialist in the Marxian sense. Gandhiji was not a socialist who believed in the nationalization of the means of production, exchange, and distribution, or in the establishment of a centralized, socialized state. Gandhi believed in decentralization and in the dispersal of power.\(^{61a}\)

### 4.1.1 Panchayat Raj system

Each village panchayat, in Gandhi’s plan would form a unit; two such panchayats would constitute a working party with an elected leader. Fifty leaders would elect a second-grade leader, who would co-ordinate, their efforts and who would also be available for national service. Second-grade leaders could elect a national chief to regulate and command all the groups’.\(^{62}\)

In the Indian Constitution, **Article 40 is as organization of village Panchayats.** The State shall take steps to organize village Panchayats and
endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Article 43B promotion of co-operative societies- The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.  

Article 47 “…the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health”.  

Article 48 The State shall “…take steps for preserving and improving the breeds, prohibiting the slaughter, of cows and calves and other milch and draught cattle”. In the 22nd January 1946 issue of Harijan, Gandhiji stated that independence must begin at the bottom...Panchayat Raj institution give ‘voice to voiceless’ ‘power to powerless’ people irrespective of caste, creed, sex, and religion living in the villages of India.

“The Panchayat Raj system was an integral part of Gandhiji’s conception of decentralized polity in which every village is to be considered as little Republics’.

Gandhiji has never recommended violent means to achieve a goal. Panchayat Raj system in the Constitution and Gandhiji’s plan of Panchayat Raj is different but the goal is the same.

4.12 Women Empowerment

Gandhiji upheld morality, equality and social justice. He “pleaded for the equality of both the sexes, but not their identity”. He considers women are more superior to men in some aspects like love, suffering, and self-sacrifice. His opinion of women was basically “equality between the sexes and differentiation of their social roles. Both have equal capacities and are equal”. Indian Constitution emphasizes on the gender equality. It does not discriminate on only sex.
He conceived, “India in which there shall be no high class and low class of people...There can be no room in such an India for the curse of untouchability or the curse of the intoxicating drinks and drugs. Women will enjoy the same rights as men.”

4.13 Conclusion

Gandhiji conceived new ideal social order, Sarvodaya, in which the aim of good and welfare of all people and not select few. His concept of Sarvodaya is as an egalitarian society. Egalitarian society fully reflected in the Constitution.

Gandhiji dreamt of building up a non-authoritarian, non-exploitative society. The Indian Constitution through its various doctrines and mechanism such as Constitutionalism, Rule of law, Supremacy of the Constitution, Federal structure, sovereignty of the people, Responsible Government, Judicial Review, ensured Fundamental Rights, Division of the Power among executive, legislative and judiciary, etc. prevented the State to become an authoritarian. So, Gandhiji’s non-authoritarian idea is reflected in the Indian Constitution. The Supreme Court has emphasized that the purpose of the Directive Principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution.

“Religion is not test of nationality, but a personal matter between man and his God. In the sense of nationality they are Indians first and Indians last, no matter what religion they posses.”
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