CHAPTER - 4
ENFORCEMENT OF SOCIAL JUSTICE UNDER THE CONSTITUTION OF INDIA:
OR
OTHER PROVISIONS OF SOCIAL JUSTICE UNDER THE CONSTITUTION OF INDIA
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Social justice and preamble of the constitution of India.

✧ Social justice and fundamental right of the citizen of India.

Social justice and directive principles of state policy.

✧ Social justice and other provision of the constitution of India.
CHAPTER -4
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A picture of the constitution will give us the right perspective for Appreciation of the scope and place of Social Justice as an aspiration of the Nation. Its objects and the machinery to achieve those objects. The objective sought to be achieved by the constitution of India echoes in its preamble which reads that the people of India have solemnly resolved to constitute India into a Sovereign Democratic Republic, Secular in secure to all its citizens, Justice, Social, economic and political and liberty of through, expression, belief, faith and worship and equality of status and of opportunity. 226

**Golak Nath v. state of Punjab** 227 it is an error to view our constitution as it was a mere organizational document by which the people established structure and mechanism of their Government. Our constitution is intended to be much more, because it aims at being a, Social Document in which the relationship of society to the Individual and of Government to both and the rights of the minorities and the Backward classes are clearly laid down. This social document is headed

227 AIR 1967 SC 1643
by a preamble which epitomizes. The principle on which the Government is intended to function and these principles are later expanded into Fundamental Rights in part III and the directive Principles of state policy in part IV. The former represent the limits of state action and the latter are the obligations and the duties of the Government as good and Social Government.

The constitution of India is a historic Socio-Legal document embracing the aspirations of the people belonging to a multifaceted heterogeneous society undoubtedly; it is the volkgeist, the spirit of the people of India. The aim of the Grund norm in the constitution is social justice Hence, the aim of the Grund norm, The Constitution is establishment of an egalitarian policy well entrenched in Social Justice as engrained in the preamble. 228

The Indian republican constitutions based it on four principal pillars:

The Indian republican constitution based itself on four principal pillars. A sovereign parliament with parliamentary democracy, social Justice, Federalism and secularism and we have been continuously witnessing an attack on each of these foundations since Independence, perhaps more so as and when the factors which led to these gains get weakened.229

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228 Venkatram Narasimha Reddy "Article 21, has The Supreme Court Google Gone Tooyar AIR 2001 Vol. 88 Journal p.289.
229 Basu Nilotpal "peoples democracy Vol. XXX Note 44 Act 29 2006 p. 4
Social Justice A fruit of Revolution:

Social Justice was initially a doctrine of Social philosophy but now it has entered into statecraft and has captured. The constitutional field. The process has been historical. Social Justice Secured equality whereas Political Justice secured liberty. The revolutions have lent this concept majesty that human relations and associations in all their social, political and economic forms are now clasped within its fold.230

Earlier, in the same judgment, Subba Rao, C.J., had said that the preamble of our Constitution contains, in a nutshell, its ideals and it's as privation worked out in detail in the Constitution. The different constitutional entities, namely, the Union, the States and the Union Territories; and the three major instruments of power, namely, the Legislature, the Executive and the Judiciary, have their spheres and respective jurisdiction demorcated and the scope and the manner of the exercise of their respective powers regulated by law. No authority created under the Constitution is supreme; the constitution alone is supreme231.


Gajendragadkar, J. (as he then was) had observed that social and economic justice have been given a place of pride in our Constitution. The Preamble to the Constitution, a basic postulate of the nation's

231 Foot note No.. 227
232 State of Mysore v. Workers of Gold miners. AIR 1963 S.C
founding faith, expressly articulates the vision of the nation as a Social Justice State with a dynamic, democratic, egalitarian order. Indeed, Parts III and IV is plainly Fabian socialist.

1. Social justice and preamble of the constitution of India;
2. Social justice and fundamental rights of the citizen of India;
3. Social justice and directive principles of state policy.

4. Other provisions of the constitution of India

1. Social justice and preamble of the constitution of India: Justice, Social, Economic and Political are a triune phenomenon inscribed as a pledge in the Preamble glory of our Constitution. Economic democracy has a crimson material complexion and expressively emphasizes a socialist democracy. But overlapping this leftist ideology, yet with independent features and dimensions is social democracy. India, abandoning the social justice values enshrined in the Preamble, commenced a neo-colonial voyage, making head way steadily backwards. A total turn-around, a volte face, a diametrical contradiction eclipsed the objective, subverted the policies and shot down the socio-economic paradigm for which Gandhi Nehru era stood. 233

The Indian Constitution turned to this democratic commitment begins it Preamble thus: WE, THE PEOPLE OF INDIA, are having solemnly resolved to constitute India into a (SOVEREIGN SOCIALIST

SECULAR DEMOCRATIC REPUBLIC) and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief,

EQUALITY of status and of opportunity;

And to promote among them all

FRATERNITY assuring the dignity of the individual and

The (unity and integrity of the Nation);

IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.\(^{234}\)

**a. The Preamble secure social justice to all the citizens of India**-

Justice - Social, economic, and political.

Liberty - Of thought, expression, belief, faith and worship

Equality-Of status and of opportunity. The constitution of India professes to secure to the citizens social, economic and political justice. Social justice means the abolition of all sorts of inequities which may result from the inequalities of wealth, opportunity, status, race, religions, caste, title and the like. To achieve this ideal of social justice, the Constitution lays down the Directives for the State in Part IV of the Constitution"\(^{235}\)

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\(^{234}\) Preamble of the constitution of India

\(^{235}\) John Rowls - Theory of Justice p. 60
The court is independent, as it should be, uninfluenced by extraneous forces or internal pressures. The Judges, high and low, transform the social order and give justice-social, economic, political and cultural, in such manner that the people secure what was promised to them by the noble Preamble. The access to justice, the faith in fundamental rights and social justice and the maintenance of the rule of law turn on judicial integrity. In the Constitution which aims at elimination of inequality in income and status and standards of life and may enable the courts to lean more and more in favour of nationalization and State ownership of industry. The court has also used the word socialist in the preamble for evolving a concept of social democracy which comes closer to the concept of social welfare state expressed as 'social state' for example in the Constitutions of France and Germany.236. The word "socialism" in the Preamble of the Constitution was expressly brought in the constitution to establish an egalitarian social order through rule of law as its basic structure.

In Minerva Mills Ltd. v. Union of India.237 The Constitution Bench had considered the meaning of the word "Socialism" to crystallize a socialistic State securing to its people socio-economic justice by interplay of the Fundamental Rights and the Directive Principles.

237 A.I.R. 1980 SC 1789
The social, economic and political justice as a three folds classification of justice. It is difficult to conceive the latter two as independent and apart from society. Conceived generically social Justice includes economic and political Justice Social Justice as the name indicates must conform to Justice in all in its social aspects. The deeper roots of Social Justice are to be found in economic Justice. The social welfare theory the state which takes a comprehensive view of the state activities includes both social and economic Justice\textsuperscript{238}

Philosophers had recognized such social rights as natural Rights" Fundamental Rights are infects, the modern name for what have been traditionally known as The Natural Rights. It has been held by authors that they are moral Rights which every human being everywhere at all times ought to process and enjoy simply because of the fact that in contra distinction with other being. The human being is Rational and moral. They are the primordial rights necessary for the development of human personality.\textsuperscript{239}

2. Social Rights through the Fundamental right of citizen: 

a. Social Rights Subject to Social Control as Charted out in part III of the constitution: 

Social Rights Subject to social control, as charted out in part III of the constitution of India. Social Justice Concerns with such Rights only as a

\textsuperscript{238} Valsamma paul v. Cochin University AIR 1996 SC p. 14  
\textsuperscript{239} D.S.Nakara\,union of India AIR 1983 SCC.305
have a social impact which can be controlled from wider social perspective. Speaking broadly, every right has a social element man being a creature of the society social justice concerns itself with the rights of social rather than of a personal nature.\textsuperscript{240}

**Keshavanand Bharti v. state of Kerala\textsuperscript{241}**

The fundamental Rights and directive principles are supplement each other and aim at the same goal of about a social revolution and the establishment of a welfare state. The fundamental rights of our constitution are social justice. It is mentioned in the preamble itself-Justice: Social, Political, and Economic. It the ideas of social justice were not to remain on paper, how do we give them concrete shape? How do citizens realize that it is through governance they ought to get social Justice?

The constitution of England is written and the supremacy of parliament is its dominant characteristic of social justice “Rule of Law” explains that an individual in England has the right and freedom to take whatever action he like, so long as, he does not violate any rule of the ordinary law of the land. The Americans Constitution framed in 1787 and brought into force in 1789, did not contain any fundamental rights for Americans. It was met with serious condemnation. Consequently, the first ten amendments were enacted in 1791, incorporating the fundamental

\textsuperscript{240} Golk Nath v. State of Punjab University AIR 1967 SC 1643
\textsuperscript{241} AIR 1973 SCC 225
rights. These amendments have been described as the American "Bill of Rights". The Rights are binding on the Executive as well as the Legislature. 242

b. Fundamental Rights in India - Nature and Scope:

Part - III of the Constitution is said to contain the bill of Rights for the people of India. They have been said to be the very foundation and the corner-stone of the democratic way of life ushered in this country by the Constitution. These rights have been declared as sacrosanct, inalienable and inviolable. It has been emphasized that Fundamental Rights are not to be read in isolation. They have to be read along with the Chapter on Directive Principles of State Policy and the Fundamental Duties enshrined in Article 51A. The Rights are to be kept in conformity with the changing socio-economic conditions. For the purpose, the Constitution confers power on the State, the constituent power, the power to amend the Constitution including the Fundamental Rights. For example, the Constitution 1st Amendment, 1951, amended the provision relating to Fundamental Rights. 243

C. Social justice through the Fundamental rights of citizen.

The Fundamental Rights, which are secured by the Constitution of India, are grouped under the following heads-

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242 Dicey, AV "Introduction to Law of Constitution 1991 P. 198
243 State of Madras v. Champak am Dorairajan. AIR 1951 SC 226
(i) Right to Equality (Articles 14 to 18)
(ii) Right to Freedom (Articles 19 to 22)
(iii) Right to Education (Article 21-A)
(iv) Right against Exploitation (Articles 23 and 24)
(v) Right to Freedom of Religion (Articles 25 to 28)
(vi) Cultural and Educational Rights of minorities (Articles 29 and 30)
and
(vii) Right to Constitutional Remedies (Article 32)244

**D. Fundamental Rights are Available against the State:**

According to the philosophy behind Fundamental Rights, they are available only against the State, for they are limitations upon the powers of the Government, Legislative as well as Executive. It is against the might of the State that an individual needs constitutional protection. Conceptually, the fundamental rights are available only against the State, however, there are provisions in part III of the Constitution, which impose limitations upon the action of private individuals as well, for example, Articles 15(2), 17, 18(2), 23(1), and 24. As regards these provisions, the Supreme Court in People's Union for Democratic Rights v. Union of Indian ruled that it was the constitutional obligation of the State of takes necessary steps for the purposes of interdicting such

violation and ensuring observance of the fundamental rights by the private individual who was transgressing the same. 245

The first Fundamental Right secured to the people of India is the "Rights to Equality". It is contained in Articles 14 to 18. These provisions are discussed under the following heads-

1. Equality Before Law or Equal Protection of Laws (Article 14)
2. Prohibition of Discrimination Against Citizens (Articles 15)
4. Abolition of "Unsociability" (Article 17)
5. Abolition of Titles (Article 18)

The concept of equality has been held basic to the rule of law:
the majority of the Supreme Court has held that the right to equality conferred by Article 14 is a Basic Structure of the Constitution and an essential feature of democracy or rule of law246.

Article 14 provides: The state shall not deny to any person equality before the law or equal protection of laws within the territory of India. Article 14 uses two expressions namely-

1. Equality before Law
2. Equal protection of laws

1. Equality before Law The phrase "equality before law" is English in origin. It is a familiar feature of what Dicey called the "Rule of Law".

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245 People's Union for Democratic Rights v. Union of India AIR 1982 SC 1473
246 Indira Nehru Gandhi v. Raj Narayan AIR 1975 SC 2299
"Rule of Law" means that no man is above the law and that every person whatever be his rank or condition, is subjected to the ordinary law of the land is amendable to the jurisdiction of the ordinary tribunals. He observes: "With us every official, from the Prime Minister down to a constable or a Collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen.

2. Equal protection of laws the phrase "equal protection of laws" is based on Section 1 of the Fourteenth Amendment of the Constitution of the United States of America adopted on July 28, 1868, which runs as: "nor shall any State-deny to any person within its jurisdiction the equal protection of laws". This phrase is interpreted to mean "subjection of equal laws applying to all in the same circumstances". It means that all persons have the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed by laws. It requires that equal laws should be applied to all in the same situation and that there should be no discrimination between one person and another. Thus, the phrase "equal protection of laws" lays down the rule that "like should be treated alike and not that unlike should be treated alike". Article 7 of the Universal Declaration of Human Rights, proclaimed on December 10, 1948, uses
both the expressions. It says: "All are equal before the law and are entitled without any discrimination to equal protection of the law".\textsuperscript{247}

3. **Who may claim under Article 14- Protection:** The obligation imposed on the state by Article 14, is for the benefit of all persons, within the Territory of India. The Benefit of Article 14 is, therefore not limited to citizens. Every person whether natural or Artificial whether he is a citizen or an alien is entitled to the protection of this Article. It may however be noticed that an alien (a foreign national cannot claim equal rights Under Article 14, with of the Indian Nationals, So for as the grant of citizenship of India.\textsuperscript{248}

4. **Article 14 permits Reasonable Classification:**

   The principle of equality embodied in *Article 14*, thus, permits classification. But, the classification permitted by *Article 14* must rest upon reasonable grounds of distinction. It must not be "arbitrary, artificial or evasive". It must be a reasonable classification.\textsuperscript{249}

5. **Article 14 Prohibits Class Legislation.**

   *Article 14* prohibits *class legislation*, "*Class legislation*" means legislation differentiating between the same classes of persons. When persons belong to the same class or that they are equal among themselves

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\textsuperscript{247} Article of the Universal Declaration of Human Rights Proclaimed on Dec. 10, 1948

\textsuperscript{248} Satish Nambiar v. Union of India AIR 2008 Bom p. 158.

\textsuperscript{249} State of west Bangal v. Anwar Ali AIR 1952 SC 75
in certain respects, they have to be treated equally in such matters. Law would be volatile of Article 14 if it treats these persons differently.

6. **Social justice and to test for Reasonable Classification:**

(I) that, the classification must be founded on an *intelligible differentia* which distinguishes persons of things that are grouped together from others left out of the group and

(ii) that, the differentia must have a rational relation to the object sought to be achieved by the Statute in question.

After laying down the above two broad tests, the Court propounded the following principles which were to be borne in mind by the Court in determining the validity of a Statute on the ground of violation of Article 14.250

7. **Article 14 Strikes at Arbitrariness-A Dynamic Approach to save social justice:**

The Supreme Court in **E.P. Royappa State v. of Tamil Nadu** 251 has given a dynamic connotation to the *equalizing principle*. The Court declared this *equalizing principle* contained in Article 14 as a "*founding faith*, a way of life" must not be subjected to "a narrow pedantic or lexicographic approach. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view,

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250 Ram Krishnan Dalmia v. Justice Tendalkar AIR 1958 SC 538
251 AIR 1974 SC 555.
equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belong to the rule of law in a republic while the other, to the whim and caprice of an absolute monarchy.

In *Maneka Gandhi v. Union of India*, the Supreme Court reiterated the majority view in *E.P. Royappa v. State of Tamil Nadu* and emphasizing on the content and reach of the great equalizing principle enunciated in Article 14, stated. Article 14 Strikes at arbitrariness in State action and ensures fairness and equal of treatment.

**8. Article 14 and Admission to Educational Institutions:**

The Court held that the scheme had the effect of nationalizing education in respect of important features, viz., and the right of a private un-aided institution to give admission and to fix the fee. It was held neither fair nor reasonable. The Apex Court observed that the private unaided educational institutions imparted education and that could not be the reason to take away their choice in matters, *inter alia*, of selection of students and fixation of fees. Reservation of seats for persons belonging to areas, which are socially & educationally backward, is constitutionally permissible. Allotment of seats in view of the historical background is permissible under *Articles 14*

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252 Maneka Gandhi v. Union of India AIR 1978 SC 597
253 Uhnikrishan v. State of Andra Pradesh AIR 1993 SC 10
and 15. Rural element does not make it a class and provision for rural areas cannot be sustained.\textsuperscript{254}

The Apex Court in \textit{R.K.Daria v. Rajasthan Public Service Commission}\textsuperscript{255} ruled that reservation for women in the State Judicial Services, being \textit{horizontal (special) reservation}, would be counted within the vertical reservation. Thus women selected on merit within the vertical reservation quota would be counted against the \textit{horizontal reservation} for women.

\textbf{No Discrimination against Citizens Article 15(1):}

Clause (1) of Article 15 provides: "The State shall not discriminate against any citizen on ground only of religion, race, caste, sex, and place of birth or any of them". Discrimination, in the context of Article 15 also means classification among persons or things and also reservations for some of the members of a group or a class. If any such classification or reservation is based on any of the grounds mentioned in Article 15(1), i.e., religion, race, caste, sex or place of birth, it would be violative of Article 15(1).\textsuperscript{256}

\begin{flushleft}
\textsuperscript{254} Narayan Sharma v. Pankaj Krlehal AIR 2000 SC 72
\textsuperscript{255} AIR 2007 SC 3727
\textsuperscript{256} General Manager v. Rangchari AIR 1962 SC 36
\end{flushleft}
9. No Discrimination as to Use or Access to Public Article 15(2):  
Clause (2) of Article 15 provides: "No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any them, be subjected to any disability, liability, restriction or condition with regard to-
(a) Access to shops, public restaurants, hotels and places of public entertainments; or
(b) The use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of State funds or decided to the use of general public".

While the prohibition under Clause (1) is against State only Clause (2) prohibits not only the State but also private individuals from violating the direction contained therein

10. Special Provision for Women and Children Article 15(3): Clause (3) of Article 15 provides: Nothing in this article shall prevent the State from making any special provision for women and children". This Clause is an exception to the rule against discrimination embodied in Clause (1) as well as Clause (2). While, both these Clauses prohibit discrimination on the ground of sex, Clause (3) enables the State to confer special rights upon women, since women are a well defined class.  

11. Special Provision for Backward Classes Article 15(4): Clause (4) of Article 15 contains another exception to Clauses (1) and (2). It

provides: "Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes". This Clause was added by the Constitution (First Amendment) Act, 1951, as an equal to the decision of the Supreme Court.

**Scope of Clause (4) of Article 15 and social justice:** Clause (4) of Article 15 enables the State to make special provisions. "Special Provision for advancement" is a wide expression and should not be construed in a restricted sense as meaning only social and educational advancement. The expression may include many more things besides mere reservation of seats in colleges.

**Socially and Educationally Backward Classes:**

**Caste may be the Sole Basis:**

**In M.R. Balaji v. State of Mysore,** the Supreme Court held that backwardness under Clause (4) of Article 15 must be both, socially and educationally. The caste of a group of persons, the Court said could not be the sole or even predominant basis to ascertain whether that class should be taken to be backward for the purpose of Article 15(4). The Court held that as regards social backwardness, the main determining

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258 State of Madaras v. Champak am Darairajan AIR 1951 SC 226
260 AIR 1963 SC 649
factor would be the result of poverty. In *State of U.P. v. Pradeepandon*[^261], the Uttar Pradesh Government made reservation of seats for admission to the medical colleges in the State in favour areas. The Supreme Court held that the reservation in favour of candidates coming from rural areas was unconstitutional.

12. Reservation for Backward and More Backward Classes:

In *Indira Sawhney v. Union of India*,[^262] the Supreme Court has held that classification of Backward Classes into "Backward" and "More Backward" not only permissible but essential. The Court explained that the object of the special provision contained in the constitution was not to uplift a few individuals and families in the Backward Classes, but to ensure the advancement of the Backward Classes as a whole.

Transplant in Backward Caste by Adoption or Marriages or Conversion/Migration:

In *Valsamma Paul v. Cochin University*,[^263] the Supreme Court explained that the Dalits (SC) and Tribes (ST) had suffered social and economic disabilities recognized by Articles 17 and 15(2) and as a consequence, they had become socially, culturally and educationally backward. The object of reservation permissible under Article 15(4) and

[^261]: AIR 1975 SC 563
[^262]: AIR 199 SC 477
[^263]: AIR 1996 SC
Article 16(4), the Court said, was to remove these handicaps. The court, however, cautioned that acquisition of the status of Scheduled Caste, etc. by voluntary mobility into these categories, would play fraud on the Constitution and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution. The Court, thus, ruled that a candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but was transplanted in backward caste by adoption or marriage or conversion, would not become eligible to the benefit of reservation, either under Article 15(4) or 16(4), as the case might be.\textsuperscript{264}

13. Special Provisions Relating to Admission to Educational Institutions for SCs S.Ts and OBC in Article 15(15):
The Constitution (Ninety-third Amendment) Act, 2005 has inserted a new Clause (5) law, special provisions, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes, in so far as, such special provisions relate to their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions, referred to in Clause (1) of Article 30.\textsuperscript{265}

\textsuperscript{264} S. Pushpa v. Slvachan mugavelu AIR 2005 SC 1058
\textsuperscript{265} The constitutional 93rd Amendment act 2005
Held that 93 constitutional amendment has declared valid


Another particular application of the general principle of equality or protection clause enshrined in Article 14 is contained in Article 16. Clause (1) of Article 16 guarantees to all citizens, equality of opportunity, in matters relating to employment or appointment to any office under the State. Clause (2) further strengthens the guarantee contained in Clause (1) by declaring that "No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State". Clauses (3), (4) and (5) of Article 16 contain exceptions to the rule of equality of opportunity, embodied in Clauses (1) and (2). Article 16 prohibits discrimination only in respect to one particular matter, i.e., relating to employment or appointment to posts under the State, Article 15 lays down a general rule and prohibits discrimination in respect to all or any matters. In one respect, Article 16 is wider than Article 15, i.e., the grounds on the basis of which discrimination is prohibited, i.e. religion, race, caste, sex or place of birth; Article 16

266 2007 SC88
267 Artical of the constitutionalof India
contains seven prohibited grounds of discrimination. However, both these Articles can be invoked by citizens only.\textsuperscript{268}

**Equality of Opportunity-State may lay down Qualifications or Conditions Article 16 (1): .Educational Qualifications As basis of Classification:**

Educational qualifications can justifiably be made a basis of classification for purposes of promotion to higher post.

**15. No Discrimination on the ground of region, Race, Caste,Sex,Desent ,Place of Birth, Residence or any of them etc Article 16(2):**

Where discrimination is based, partly on the grounds contained in Article 16(2) and partly on other consideration, there will be no contravention of this Clause. Also, where discrimination is based on grounds other than those mentioned in Clause (2), it would not attract this Clause, but the case will have to be weighed and judged in the light of the general principle laid down in Clause (1) of Article 16.\textsuperscript{269}

**16. Requirement as to residence in state Article 16(3): Reservation of Posts for Backward Classes Article 16(4):**

Clause (4) of Article 16 expressly permits the State to make "provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State". The expression "backward class of citizens" in Article 16(4) includes the Scheduled Castes and the

\textsuperscript{268} Union of India v. Vinod Kumar AIR 2008 SC 5

\textsuperscript{269} Kailash Chand Sharma v. State of Rajasthan AIR 2002 SC 2877
Scheduled Tribes. This Clause, however, cannot be extended to persons acquiring SC/ST status by voluntary mobility. Further, children of inter-caste married couples, of which one is SC/ST, have been held not entitled to claim reservation benefit. However, such children can claim relaxation of marks.

17. Reservation in promotion-seventy seventh, Amendment, 1995

Article 16(4-A):

The Court observed that while it was certainly just to say that a handicap should be given to backward classes of citizens at the stage of initial appointment, but it would be a serious and unacceptable inroad into the rule of equality of opportunity to say that such a handicap should be provided at every stage of promotion throughout their career. That above rule has been modified as regards the members belonging to the scheduled Castes and the Scheduled Tribes, by the Constitution (Seventhly-seventh Amendment) Act, 1995, which has added a new Clause (4A) to Article 16 which provides: Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the
opinion of the State are not adequately represented in the services under the State

18. Reservation in promotion, catch-up rule negated 85th amendment 2001:
The Apex Court further observed that the rule of reservation gave accelerated promotion, but it did not give the accelerated consequential seniority. The Court explained that a reasonable balancing of the rights of general candidate and roster candidate would be achieved by following the catch-up rule. According to this rule if "in case any senior general candidate at level 3 goes further up to level 4, in that case the seniority at level 3 has to be modified by placing such a general candidate above the roster promote reflecting their inter se seniority at level."

Equal pay for Equal Work: In Randhir Singh v. Union of India the Supreme Court enunciated the principle of "equal pay for equal work". The Court observed that it was true that the principle of "equal pay for equal work" was not expressly declared by the Constitution to be a fundamental right. But, it certainly was the Constitutional goal. The Court held that this principle could be deducted from Article 14 and 16, when these provisions were construed in the light of the Preamble and Article 39(d) of the constitution. The Court further laid down that the principle

270 Article 16 of the constitution of India
271 Article 16-(4-A)85th amendment act 2001
272 AIR 1982 SC 879
could be properly applied to cases of unequal scales of pay based on no classification or irrational classification.

19. Abolition of Untouchability: Article 17 abolished "Unsociability" and forbids its practice in any form. It further declares that "the enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law. It contains another specific application of the principle of equality before the law.\textsuperscript{273} Article 17 places the term "Untouchability" in inverted commas. Accordingly, the subject-matter of this Article is not Untouchability in its literal or grammatical sense, but the practice as it has developed historically in India. So understood, it was a product of the Hindu Caste System, according to which particular section amongst the Hindus had been looked down as untouchables by the other sections of that society.\textsuperscript{274}

A. Who are Dalits: India's caste system involves a social hierarchy and is often understood to be a feature of Hinduism. Individuals are considered to be born into a particular caste and remain in that caste throughout their lives. Broad caste categories (Varna's) separate caste groups according to occupation (although mobility between occupations does not lead to changes in caste identity). Outside these caste categories are the "untouchables", now commonly known as dalits whose

\textsuperscript{273} Article 35 Empowers parliament to make laws Inter alia prescribing to be offence under part III of the constitution p. 110

\textsuperscript{274} Shastri Yana Purusdali v. Muldas Bhudradas Vaish AIR 1996 SC 1119
occupations -- sweepers, tanners, sanitation workers, etc -- were viewed as "polluting" the community.275

B. Protective Discrimination-Substantive Equality:

"Protective discrimination" may be defined as, 'discrimination permissible under the Constitution'. The object is to ensure "substantive equality", to secure "real equality". It is to provide for an egalitarian society woven into the ideal of "social justice" enshrined in the Preamble to the Constitution. The Constitution, Therefore, while securing "equality before law" and "equal protection of laws", enables the State to made special provisions for the upliftment of the socially and educationally backward classes of citizens, in particular for the citizens, to complete with the advanced sections of the people.276

20. Right to Freedom: The Fundamental Right to Freedom is guaranteed under Article 19 to 22 of the Constitution. These Article deal with the following different aspects of the right to freedom-

1. Six Fundamental Freedoms (Article 19)
2. Protection in Respect of Conviction for Offences (Article 20)
3. Protection of Life and Personal Liberty (Article 21)
4. Right to Education (Article 21-A)
5. Protection against Arrest and Detention in Certain Cases (Article 22).

275 State of M.P. v. Ram Kishan Balothia. AIR 1995 SC 1198
276 Dramdutt v. Union of India AIR 2004 SC 1295
A Six fundamental freedoms: Article 19 guarantees to every Citizen of India the following six basic, fundamental freedoms-

A. Freedom of speech and expression;
B. Freedom of assemble peaceably and without arms;
C. Freedom of form associations or unions;
D. Freedom of move freely throughout the territory of India;
E. Freedom of reside and settle in any part of the territory of India; and
F. Freedom of practice and profession, or to carry on any occupation, trade or business.

B. Importance of Freedom of Speech and Expression: Freedom of speech and expression has been held to be basic and indivisible for a democratic polity. It is said to be a cornerstone of functioning of the democracy. It is the foundation of a democratic society.

C. Scope and Content of the Freedom of Speech and Expression:
The different facets constituting the scope and content of the freedom of speech and expression are discussed below-

D. Right to know and to obtain information:
The right of information is indisputably fundamental right, a facet of "speech and expression" as contained in Article 19(1)(a). It has been said that in a government of responsibility like ours, it is elementary that citizens ought to know what their government is doing. They have the
right to know every public act, everything that is done in a public way, by their public functionaries. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government.\textsuperscript{277}

Article 19(1) (d) guarantees the right to move freely not merely from one State to another State, but also from one place to another, within the same State. The right is not absolute in the sense that Clause 5 of Article 19 enables the State to impose reasonable restrictions on the freedom on the following grounds-

(a) In the interest of general public; or

(b) For the protection of the interests of any Scheduled Tribe

Freedom of Residence Article 19(1) (e):

Article 19(1)(e) guarantees to every citizen of India, the right to reside and settle in any part of the territory of India. This right is subjected to reasonable restrictions which may be imposed by the State, by law, under Article 19(5), in the interests of general public or for the protection of the interests of any Scheduled Tribe.\textsuperscript{278}

\textbf{In Vishaka v. State of Rajasthan,}\textsuperscript{279} the Supreme Court observed that sexual harassment of working women in work places would be violation

\textsuperscript{277} Peoples Union for civil Liberties v. Union of India 2004 SC 1442
\textsuperscript{278} Article 19 (1) (d) Right to move and Residence free p. 132
\textsuperscript{279} AIR 1997 SC 3011
of the victims', fundamental right under Article 19(1) (g). In this case, a social worker was brutally gang raped in a village of Rajasthan. The Court took a serious note of the matter and issued binding directions for the prevention of such incidents. The interests of general public in Article 19(6) has been held to be of wide import comprehending public order, public health, public security, sanitation, morals, education or economic welfare of the community and the objects mentioned in Part IV of the Constitution

E. Article 20 provides protection in respect of conviction for offences. The protection contained in Article 20 is available to all persons, citizens or non-citizens. The term "person" in Article 20 also includes a corporation and unincorporated body which is accused, prosecuted, convicted or punished for an offence. Article 20 provides protection against-

A. Ex-post facto laws [Article 20(1)]
B. Double jeopardy [Article 20 (2)]
C. Self-incrimination [Article 20(3)]

Likewise, in Soni Devrajbhai Babubhai v. State of Gujarat, it was held that Section 304B inserted in the Indian Penal Code, 1860, on November 19, 1986, creating a district offence of dowry death and providing a minimum sentence of seven years' imprisonment, could not be applied to such death caused before the insertion of the Section, i.e.,

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280 M.P. Sharma v. Satish Chandra AIR 1954 SC 300
281 AIR 1991 SC 217
before November 19, 1986, because of the prohibition contained in Article 20(1).

Clause (2) of Article 20 provides protection against "double jeopardy". The Clause provides: "No person shall be prosecuted a punished for the same offence more than once". The Clause is based on the Common Law Maxim "**Nebo debet bis vexari**", which means that a man must not be put twice in peril for the same offence.

The protection contained in Article 20(2) is narrower than that under the English and the American law. Article 20(2) would be invoked only if the following essentials are complied with-

(I) the person must be accused of an "offence"

The term "offence" mans "any act or omission made punishable by any law for the time being in force.

(ii) The person must have been prosecuted before a Court or a judicial tribunal.²⁸²

**F. Right to life and personal liberty:**

Article 21 reads as "No person shall be deprived of his life or personal liberty except according to procedure established by law". This right has been held to be the heart of the constitution,²⁸³

Article 21 secures two rights-

A. Right to life; and

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²⁸³ I.R. Coelho v. State of Tamilnadu AIR 2007 SC 84
B. Right to personal liberty.

Article 21 prohibits the deprivation of the above rights except according to procedure established by law. Article 21 can be claimed only when a person is deprived of his "life" or personal liberty" by the "State" as defined by Article 21. Violation of the right by a private individual is not within the purview of Article 21.

**The court, explaining the scope of the "right to life". Lay down:**

The right to life includes the right to livelihood. If the right to livelihood is not treated as a part of the constitutional right to right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Deprive a person of his right to livelihood and you shall have deprived him of his life. 284

**In Apparel Export Promotion Council v. A.K. Chopra,**285 **the Supreme Court** took a serious note of the incidents of sexual harassment of women at work places. Such an incident, the Court said, resulted in violation of the Fundamental Right to Gender Equality and the Right to life and Liberty - the two most precious Fundamental Rights.

**(A) Right to shelter**

**In Chameli Singh v. State of U.P.**286, the Supreme Court emphasized on the importance of the right to shelter as one of the basic human rights

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284 Bombay Dyning v. E.A. Group AIR 2006 SC 1489
285 AIR 1999 SC 625
286 AIR 1996 SC 1050
designed to ensure all facilities to the man to develop himself as a member of a civilized society. The Court said that shelter for a human being is not a mere protection of his life and limb. It is a home where he has opportunities to grow physically, mentally, intellectually and spiritually.

**(b) Right to Education:** Having regard to the significance of education in the life of individual and the Nation, the majority of the Supreme Court

*In Unni Krishnan v. A.P.*,287 State of held that the right to education was a fundamental right under Article 21 and that "it directly flows from the fight to life", that its content and parameters have to be determined in the light of Articles 41 and 45, the Court said

**(c) Right to personal liberty:** Later, in *Kharak Singh v. State of U.P.*,288 the Court did not follow the above restrictive interpretation of the term, and held that "personal liberty" was on only limited to bodily restraint or confinement of person only. The Court held: **(f) a new dynamic dimension - facts of personal liberty.**

**(d) Right to privacy:** It is 'the rightful claim of an individual to determine to which he wishes to share himself with others and control over the time, place and circumstances to communicate with others.

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287 AIR 1993 SC 2178  
In *R. Rajgopal v. State of Tamil Nadu*, the Supreme Court held that the "right to privacy" meant a "right to be let alone", explaining the scope of the "right to privacy" which was held to be implicit in the right to life and personal liberty guaranteed under Article 21. The Court observed that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.

**(e) Right to free legal aid:** The Court further laid down that right to free legal aid at the cost of the State to an accused, who could not afford legal services for reasons of poverty, indigence implicit in Article 21. Free legal aid to the indigent has been declared to be "a State's duty and not government charity".

**(f) Right to Speedy justice:** It was brought to the notice of the Supreme Court that an alarming large number of men, women, children including, were kept in prisons for years awaiting trial in courts of law. The Court took a serious note of the situation and observed that it was a crying shame on the judicial system which permitted incarceration of men and woman for such long periods of time without trials.

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289 Raj Gopal v. State of Tamil Nadu AIR - 2005 SC 15
290 M.H. Hoskote v. State of Maharashtra AIR 1978 SC 1548
291 Hussainarakhatoon v. State of Bihar AIR 1979 SC 1360
(g) Rights to fair trial/fair investigation:

The Supreme Court in Nirmal Singh Kahlon v. State of Punjab observed: 292 fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. Holding that the State had a larger obligation, i.e., to maintain law and order, public order and preservation of peace and harmony in the society, the Court said that a victim of a crime was equally entitled to a fair investigation.

The Apex Court in Zahira Habibullah Sheikh v. State of Gujarat,293 said that right to fair trial be available not only to the accused but also to the victims, their family members and relatives, as also, the society at large. The right has been held to be a part rule of law which is an important facet of Article 21 and 14.

(h) Right to bail: Having regard to the above consideration, the Court held that "right to bail" was included in the "personal liberty" under Article 21 and its refusal would be deprivation of that liberty which could be authorized in accordance with the procedure established by law. However, recently in Rajesh Ranjan Yadav v. C.B.I.,294 the Apex Court has ruled that there is no absolute rule that a long period of incarceration,
by itself, would entitle the accused to obtain bail. It depends on facts and circumstances of each case.

(i) Right against Inhuman Treatment - Third Degree Methods

The incidents of torture, assault, injury and deaths in police custody, have been said to be worst form of human rights violation.

**In Nilabati Behera v. State of Orissa,\textsuperscript{295}** the Supreme Court granted Rs. 1, 50,000/- to the petitioner for the death of her son in police custody. The Court also relied on Article 9(5) of the International Covenant on Civil and Political Rights, 1966, which indicated that anyone who had been the victim of unlawful arrest or detention should have an enforceable right to compensation.

Supreme Court overruled **A.K. Gopalan case** and held that in order to comply with the mandate of Article 21, the mere prescription of some kind of procedure was not enough. But, the procedure must be just, fair, and reasonable and not arbitrary, fanciful or oppressive\textsuperscript{296}. The Apex Court ruled that Articles 14, 19 and 21, represented the foundational values, which formed the basis of judicial review apart from the rule of law and separation of powers. This Article, the Court ruled, "is the golden triangle, the basic feature of the Constitution, as it stands for equality and rule of law".\textsuperscript{297}

\textsuperscript{295} AIR 1993 SC 1960

\textsuperscript{296} Maneka Gandhi v. Union of India AIR 1978 SC 597

\textsuperscript{297} I.R. Coelho v. State of Tamilnadu AIR 2007 SC 861
(j) Right to Education (Article 21-A): Article 21A provides: "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine".

Article 21A added by the Constitution (86th Amendment) Act, 2002 makes education from 6 to 14 years old, fundamental right, within the meaning of part III of the Constitution. It is popularly known as "primary education".

Article 21A may be read with new substituted Article 45 and new clause (k) inserted in Article 51A by the Constitution (86th Amendment) Act, 2002

While the new Article 45 obligates the State "to Endeavour to provide early childhood care and education for all children until they complete the age of six years", Clause (k) inserted in Article 51A imposes a fundamental duty on parent/guardian "to provide opportunities for education to his child or, as the case may be, ward, between the age of six and fourteen years".298

The 86th Amendment has been enforced from a date to be notified by the Department of Education in the Ministry of Human Resource Development.1 Apr 2010.

(G) Protection against arrest and detention under article 22. Article 22 does not apply to cases where arrest or detention is under a warrant of a Court. The safeguards contained in Article 22 are available in the following two cases:-

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298 Article 45 Contains Directive principles of state policy.
A. Where the arrest or detention is made under the ordinary law relating to commission of offences.

B. Where the detention is made under a law providing for preventive detention.

Safeguards against Arrest or Detention made under the ordinary law relating to commission of offences [Article 22(1)]

Article 22 guarantees the following safeguards against arrest or detention made under the ordinary law relating to the commission of offences—

(a) Right to be informed, as soon as may be, of the grounds for arrest or detention.

(b) Right to consult and to be defended by a legal practitioner of his choice.

(c) Right to be produced before the nearest Magistrate within 24 hours of arrest.

(d) Right not to be detained in custody beyond 24 hours without the authority of the Magistrate

Safeguards against Arrest or Detention made under Law Providing for Preventive Detention [Articles 22(4) to 7]299

Clauses (4) to (7) of Article 22 contain the following procedural requirements which are to be complied with when a person is detained under a law providing for preventive detention. These are as follows—

299 Article 22 of the constitution of India
(a) No detention beyond three months unless such detention is approved by the Advisory Board;
(b) The detaining authority must communicate, as soon as may be, to the detainee, the grounds for such detention;
(c) The detainee must be afforded the earliest opportunity of making a representation against the order of detention;
(d) No detention beyond the maximum period prescribed under a law made by Parliament under Clause 7(b).

**H. Right against exploitation under article 23. 24:**

Article 23 and 24 guarantee "the fundamental right against exploitation". This right is secured to every person, whether citizen, non-citizen or an alien. The protection contained therein, is available not only against the State but also against private individuals. These provisions are to be protection of children and youth against exploitation and against moral and material abandonment.

Article 23(1) provides "Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be on offence punishable in accordance with law. In the State of Uttar Pradesh, the barbers and dhobis (washer men) used
to refuse rendering their personal services to harijans. To abolish this practice of untouchability

(I) Employment of Children [Article 24]:

Article 24 provides: "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 where children below 14 years should not be employed.

The Supreme Court in Labourers Working on Salal Hydro Project v. J. & K. State o held that building construction work was such hazardous employment where children below 14 years should not be employed.

(J) The Right to "freedom of religion":

is contained in Articles 25 to 28 of the Constitution. Various rights which go to constitute the "right to freedom of religion" are-

A. Freedom of conscience and the right to freely profess practice and propagate religion (Article 25);

B. Right of a religious denomination to manage religious affairs (Article 26);

C. Freedom from payment of taxes for promotion of any particular religion (Article 27); and

D. Freedom from attendance at religious instructions in certain educational institutions (Article 28).

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300 Article 23-24 of the Indian constitution
301 AIR 1994 SC 177
Articles 25 to 28 use the term "person". Therefore, freedom of religion, so secured, is available to every person. It is made explicit in the very Preamble that India is a "Secular State". The concept of secularism, merely explains that in the matters of religion, the State is neutral. It either promotes or practices any particular religion, nor does it interfere with any religious practice. It ensures equal freedom to all religions. The Constitution, thus, secures right to Freedom of Religion. The right to freedom of religion, its scope and significance however, is to be studied in view of the Secular Democracy established under the Constitution.  

(K) Right to cultural and educational right under article 29.30 of the constitution of India:

Article 29(1) secures to every section of citizens, residing in the territory of India, the right to conserve its own language, script or culture, Article 30(1) guarantees to every religious or linguistic minority, the right to establish and administer educational institutions of their choice.

(a) Right to conserve Language, Script or culture (Article 29(1))

Clause (1) of Article 29 provides; "Any section of the citizens residing in the territory of India or any part thereof having a district language, script or culture of its own shall have the right to conserve the same. Article 29(a), thus, guarantees the right to conserve one's own language, script or culture.
The right contained in Article 29(2) is available to every citizen of India, whether belonging to a minority or majority group. It is a right of a citizen as a citizen and not as a member of any community or class. \(^{303}\)

**In State of Bombay v. Bombay Education Society,\(^ {304}\)** the Government's Order banning admission of all those whose language was not English into schools having English as medium of instruction was struck down as violative of Article 29(2). Article 29(2) also, would not prevent the State from making any special provision for the advancement of any educationally and socially backward classes of citizens or for the Scheduled Castes and Scheduled Tribes".

**(B) Right of Minorities to Establish and Administer Educational Institutions [Article 30(1)]**

Article 30(1) provides: "All minorities whether based on religion or language, shall have the right to establish and administer educational institutions. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language\(^ {305}\). The right contained in Article 30(1) is available only to minorities whether based on religion or language. The word 'or' in Article

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\(^{303}\) Article 29 of the constitution of India  
\(^{304}\) S.R. Bommai v. Union of India AIR 1994 SC 1918  
\(^{305}\) Article 30 of the constitution of India
30(1) indicates that a minority, for the purposes of this Article, may either be linguistic or religious and that it does not have to be both. In so far as Article 30(1) is concerned, religious and linguistic minorities have been put at par.306

**Minority:**

The term 'minority' is not defined in the Constitution. Literally, it means a non-dominant group. It is a relative term and is referred to, to represent the smaller of two numbers, sections or groups. In re the Kerala Education Bill, the Supreme Court observed that while it was easy to say that the minority meant a community which was numerically less than 50% the important question was 50%, of what-the entire population of India or of a State or of a part thereof?307

Countries that have special provision for minorities include China, Canada, Germany, India, Russia and U.K. or the Frisians in the Netherlands. The word minority has not been defined in the Constitution. The Motilal Nehru Report (1928) showed a prominent desire to afford protection to minorities, but did not define the expression. The Sapru Report (1945) also proposed, inter alia, a Minorities Commission but did not define Minorities Commission but did not define Minority. The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has defined minority as under:

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1) The term 'minority' includes only those non-documents group of the population which possesses and wish to preserve stable ethnic, religious or linguistic traditions or characteristic markedly different from those of the rest of the population;

2) Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and

3) Such minorities should be loyal to the State of which they are national.

Constituent Assembly Debates on Minority Rights

In the Assembly's deliberations, the minorities question was regarded as encompassing the claims of three kinds of communities: religious minorities, Scheduled Castes, and 'backward' tribes, for all of whom safeguards in different forms had been instituted by the colonial period. The representatives of most group claiming special provisions in some form emphasized that the group was minority of some kind. So close was the identification of the term 'minority' with the notion of special treatment for a group that even those opposed to continuation of the colonial system of minority safeguards employed the same to justify their stand. For instance, it argued that the 'real minorities'. Not all representatives of the Scheduled Castes claimed minority status for the

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308 Re-Kerala Education bill AIR 1958 SC 956
community and the concomitant 'political safeguards'. Some argued, in keeping with dominant nationalist opinion, that the reserved quotas in legislatures and public employment were undesirable, and that the solution to the problems of these groups lay in the removal of economic disabilities.309

(L) Saving of Laws Providing for Acquisition of Estate, etc. Article 31a is aimed removing social and economic disparities in the agriculture sector.

Article 31-A added by the Constitution 1st Amendment in 1951 provides that a law which comes under any of the Sub-clauses of Clause (1) of this Article shall not be open to challenge on the ground of infringement of Article 14 or Article 19. But, when such law is a law has been assented to by the President. Article 31-A is aimed at removing social and economic disparities in the agriculture sector.

Article 31-B was added by the Constitution (First Amendment) Act, 1951. It is to be read with Ninth Schedule to the Constitution which was also added by the Constitution (First Amendment) Act 1951. Article 31-B is a constitutional device to place the specified Statutes beyond any attack on the ground that they infringe Part III of the Constitution. For example, the Foreign Exchange Regulation Act, 1973, added to the 9th Schedule by the 39th Amendment, 1975, was held protected from challenge by

Article 31-B. Recently, a nine-judge Bench of the Apex Court, in I.R. Coelho v. State of Tamil Nadu, explained that the object behind Article 31-B was to remove difficulties and "not to obliterate Part III in its entirety or judicial review". The original intent seemed to be to protect a limited number of laws. But, "the unchecked and rampant exercise of this power, the number, having gone from 13 to 284", showed that "it was not longer a mere exception". The Court ruled that addition of law to 9th Schedule would be reviewed on the touchstone of basic structure doctrine in each case.

Article 31-C was amended by the Constitution (Forty-second Amendment) Act, 1976 and the protection of Article 31-C was extended to the laws giving effect to all or any of the principles contained in Part IV. However, this change was struck down by the Apex Court in Minerva Mills Ltd. v. Union of India,

(M) Right to move the Supreme Court and high court for the enforcement of fundamental right regarding social justice:

Article 32 confers one of the "highly cherished rights". It is the right to move the Supreme Court for the enforcement of the fundamental rights. This right has been held to be an important and integral part of the basic structure of the Constitution", and it cannot be abrogate by any Act. The power under Article 32 has been described as the "heart and soul" of the

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310 Article 31 of the constitution of India
311 AIR 2006 SC 20
312 AIR 1980 SC 1789
Constitution. It is because of this Article that the Supreme Court should be declared "as the protector and guarantor of fundamental rights".\textsuperscript{313} Clause (1) of Article 32 declares: "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". Thus, the right to move the Supreme Court for the enforcement of the fundamental rights is itself declared to be a fundamental right. In some cases, the Courts have even taken sue motu cognizance of "news" published in the newspapers and treated them as petitioners. Public interest legation involving question of rescue, rehabilitation, etc. of fallen women/prostitutes and their children has been treated not adversarial in nature. It was held that the Supreme Court was entitled and empowered, under Article 32, to adopt such procedure as was expedient in a given fact situation and deal with the matter appropriately.\textsuperscript{314}

\textbf{In Dattaraj Nathuji Thaware v. State of Maharashtra,}\textsuperscript{315} the Apex court observed where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganized labour, etc.)Where judicial law-making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes) where judicial intervention is necessary for the protection of the sanctity of

\footnotesize{\textsuperscript{313} Article 32 of the constitution of India \\
\textsuperscript{314} Gaurave Jain v. Union of India AIR 1997 S. 302 \\
\textsuperscript{315} AIR 2005 SC 540}
democratic institutions (independence of the judiciary, existence of grievances redressal forums). Where administrative decisions related to development are harmful to the resources such as air or water. These parameters have been said to be merely descriptive and not exclusive.

**In Rupa Ashok Hurra v. Ashok Hurra,** a five-judge Constitution Bench of the Apex Court was referred to the questions that: (I) whether a curative write petition could be entertained under Article 32 to question the validity of a judgment of the Apex Court after the petition for review of the said judgment had been dismissed; and (ii) whether an aggrieved person was entitled to an relief against a final judgment after dismissal of its review petition. The Court ruled that the jurisdiction of this Court under Article 32 could not be invoked to challenge the validity of a final judgment/order passed by this Court, after exhausting the remedy of review under Article 137, read with order XI Rule 1 o the Supreme Court Rules,

**3. Directive principles of state under 35 to provid social economic and political justice:**

Part IV of the Constitution sets forth the ideals and objectives to be achieved by the State for setting up in India a Social Welfare State, which aims at social welfare and the common good and to secure to all its citizens, justice-social and economic. The inspiration for including in the

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316 AIR 2002 SC 177
Constitution, such Principle is drawn from the Constitution of Ireland, 1937.

**(A)** Object and purpose Behind the Directive Principles: is to bring social welfare state:

The founding-fathers were aware of the drawbacks; the country had been suffering from, such as, poverty, unemployment, and lack of education, social, economic, and political backwardness. They, in order to eradicate, these evils, set forth in the very Preamble, the ideals and objectives to be achieved. The intention was to establish in India a democracy-political, economic and social. To achieve this cherished goal, the trainers were unanimous to secure to the people practically all the prevailing political, social and economic rights. The effect of the insertion of Articles 31C was to provide supremacy for Directive Principles contained in Articles 39(b) and 39(c) over Fundamental Rights contained in Articles 14, 19 and 31.

**(B.**) Promotion of social justice order in which social, economic and political justice:

**State of Mysore v. workers of gold mines** 317Gajendragadkar had observed that social and economic justice have been given a place of pride in our constitution.**Article 38(1) and 43 of the constitution:**

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317 AIR 1958 SC 923
**38(1) provides requires**-The state shall strive to promote the welfare of the people by securing and protecting as, effectively as it may, a social order in which justice social, economic, and political, shall inform all the institution of national life.

Clauses (2) article 38—which was inserted by the constitution (44\(^{th}\) amendment) act 1978 further requires—the state shall, in particular, strive to minimize inequalities income and Endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst, individuals, but also amongst groups of people residing in different areas or engaged in different vocations\(^{318}\)—

Article 43—enunciates another directive principal by providing that. The Shall Endeavour to secure, by suitable legislation or economic origination or in any other way, to all workers agriculture, industrial or otherwise, worth a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities supreme court emphasized that the concept of social and economic justice is a living concept of revolutionary import, which gives substances to the **Rule of law** and meaning and significance to the ideal of a welfare state. \(^{319}\)

**3. C) Enforcement of social justice through the economic justice**

Article 39 provides: "The State shall, in particular, direct its policy towards securing-

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\(^{318}\) Article 38 of Indian constitution

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

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

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

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

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by the economic necessity to enter avocations unsuited to their age or strength[^320]. Those children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

(D). Equal Justice and Free Legal Aid (Article 39-A):

Article 39A obligates the State to secure that "the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not

[^320]: Article 39 of the constitution of India
denied to any citizen by reason of economic or other disabilities”. This Directive Principle was inserted by the Constitution (42nd Amendment) Act 1976. Article 39A promotes justice on the basis of equal opportunities. It imposes an imperative duty upon the State to provide free legal aid to the poor.

The court in Rajan Dwivedi v. Union of India ruled that it could issue a writ of mandamus to enforce Article 39-A and the social obligation of equal justice and that free legal aid had to be implemented by suitable legislation or by formulating scheme for free legal aid. In pursuance of this suggestion Parliament passed the Legal services Authorities Act, 1987.

Article 39-A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and

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321 Article 39-A of Indian constitution inserted by the42 amendment 1976
322 AIR 1995 SC 10

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weaker sections of the society. Later the provisions for Legal Aid to the poor in civil matter were also incorporated in the Code of Civil Procedure. These provisions are confined to exemption from Court-fee for filling suits and for appeal by a pauper, subject to the permission of high courts. 304. (1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defiance at the expenses of the State.

(E) Village Panchayats (Article 40 of the constitution and social justice

Article 40 commands that "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". The Constitution (73rd Amendment) Act, 1992 and the Constitution (74th Amendment) Act, 1992 which have inserted Article 243 to 243ZG are the major steps taken in the direction of implementing the Directive Principles contained in Article 40. The Constitution of India has guaranteed social, economic and political rights to the women in order to promote equality of status and opportunity in all spheres. Equality in all spheres is inseparable from active political participation. The 73rd

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323 Chaudhary Baidynath "Legal Aid Programme as an Instrument for Social Justice’’ I.L. I vol 38/2 1996
324 Dr. A Subramanianm "Distributed Justice Indian Perspective AIR 2004 Journal 19."
Amendment to the Indian Constitution has provided for the reservation of the seats and positions for women in the Panchayati Raj institutions. It was considered as the most effective institution to remove inequality, invisibility and powerlessness among the Indian women. The question of political empowerment of women in rural India had assumed considerable significance with the 73rd Constitutional Amendment. This amendment mandated the minimum one-third reservation for women in Panchayati Raj bodies, which is one of the most important aspects of this constitutional initiative. Along with that it also brought unlimited opportunities for the women to participate in the grassroots level politics to ensure that the voice of the rural women is heard. In this way the role of women at the grassroots level is not limited only to their involvement in the decision making but also in the rural development process.\textsuperscript{325} It is disheartening that even after providing them with 33 percent reservation in the state Panchyats; they are still confined to the four walls of their house. ‘Going by the participation level of these women in the election, one can safely say that majority of them are merely present but they are not participating at all. Their participation in the Panchayati Raj institutions seems to be a farce.’\textsuperscript{326}

It is also necessary that the women functionaries are provided with adequate arrangement for child care and domestic work so that they can

\textsuperscript{325} Prabhjot Kaur "Emergency women Leader Ship In Panchayati Raj pub-Jaipur 2007 p. 245
\textsuperscript{326} Sunder Ram "Panchayati Raj reforms in India 2007 p. 176.
concentrate on their public responsibilities. Women must be encouraged to come out of their families and get exposed to the world as anganvadi worker, teacher etc. It is only through this exposure that women can become free of restriction on their movements, are able to participate in the meetings and participate in discussions. This would prepare the ground for their empowerment by ensuring more effective participation in the Panchayati Raj Institutions. 327

Women when they come to the power in the Panchyati Raj should first try to provide legal literacy to their counterparts. It is only then that they will come to know what they are legally entitled to, and they may come forward to utilize it. The women member with the assistance of the other women of Gram Saba should try to remove discriminatory family laws. They should also see that these cases are speedily disposed. The women should raise their voice against social customs. Those holding office in Panchayat can take up the lead in collective action.

(F) Right to work, to Education and to Public Assistance (Article 41) 328: Article 41 requires that "the State, shall within the limits of its economic capacity and development, make effective provision, for securing the right to work, to education and to public assistance in cases of unemployment, old age sickness and disablement, and in other cases of underserved want.

327 Mohd. Shabber "Quist for women empowerment 73rd constitutional Amendment Act 2008 p. 367
328 Article 41 of the Indian constitution.
(G) Just and Humane Conditions of Work (Article 42)\textsuperscript{329}:

Article 42 requires that "the State shall make provisions for securing just and humane conditions of work and for maternity relief "This Article exhibits the concern of the framers of the Constitution for the welfare of the workers.

(H) Article 43 sets out the ideals to which our Social Welfare State has to approximate in an attempt to ameliorate the living conditions of the workers.

(I) Participation of Workers in Management of Industry (Article 43A): Article 43A obligates: "The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry "Article 43A was inserted by the Constitution (42nd Amendment) Act, 1976. The workers participation may mean sharing in decision-making and policy-making with the management, or it may be described as transfer of decision-making right in the enterprise or undertakings. The Supreme Court held that it was an accepted doctrine today that labour was the backbone of the Nation, particularly in the area of economic self-reliance.\textsuperscript{330}

\textsuperscript{329} Article 42 of the Indian constitution.
\textsuperscript{330} Mumbai Kamgar Sabha v. Abdul Bhai AIR 1976 SC 1455
(J) Common Civil Code (Article 44) Article 44 directs: "The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India." 331

(K) Free and compulsory Education for Children (Article 45) Compulsory Early Childhood Care & Education for Children- the State shall Endeavour to provide early childhood care and education for all children until they complete the age of six years.332 "The State shall Endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years.

(L) Promotion of Educational and Economic Interest of Weaker Sections (Article 46) “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and forms of exploitation333. The expression "weaker sections of the people" is not defined in the Constitution. It includes all sections of the society, who were rendered weaker due to various causes including poverty and natural and physical handicaps.

331 Sarla Mudgal v. Union of India AIR 1995 SC 153
333 Article 46 of the Indian constitution.
(M) Duty to Raise the Level of Nutrition and the Standard of Living
(Article 47): provides: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, 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. 334

(N) Implementation of Directive principles of state policy-Role of Judiciary regarding social justice: It is well settled that both the Fundamental Rights and the Directive Principles aim at the same goal of bringing about a social revolution and the establishment of a Welfare State. It is a mandate of the Constitution not to the Constitution (86th Amendment) Act, 2002, inserting Article 21-A

4. Other provisions of social justice under the constitution of India:

(A) Fundamental duties regarding social justice U\A 51A

To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. Lakes, rivers and wildlife, and to have compassion for living creatures. To develop the scientific temper, humanism and the spirit of enquiry

A parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

334 Article 47 of the constitution of India
These Duties have been added to implement the recommendations of the Swaran Singh Committee reported in 1976. These duties are intended to create psychological consciousness among the citizens and are of merely educative value.\textsuperscript{335}

\textbf{(B) Object and Importance of the Fundamental Duties:}

The fundamental duties have been incorporated in the Constitution with the mere object to remind every citizen that while enforcing his fundamental rights, he must also be conscious of his fundamental duties. These duties, it is said, would help to strengthen our democracy. These provisions are made for Enforcement of Fundamental Duties. In \textit{Surya Narain v. union of India}\textsuperscript{336}. The Rajasthan High Court held that the duties under Article 51A were the duties of the individual citizens. They cast no public duties and, therefore, a mandamus could not be sought against an individual who did not observe his duties under Article 51A.

Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes. Article 244 (1) Regarding administration of scheduled areas and tribal areas - (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled areas and Scheduled tribes in any state other than the state of Assam, Meghalaya, Tripura and Mizoram. (2) The

\textsuperscript{335} The New Caluse (K) was Insurted by the 86 Constitutional Amendment Act 2002

\textsuperscript{336} AIR 1982SC135.
provisions of the sixth schedule shall apply to the administration of the tribal areas in the state of Assam, Meghalaya, Tripura and Mizoram.

a) Article 330: Reservation of seats for the scheduled castes and scheduled tribes in the House of People. Article 332: Reservation of seats for scheduled castes and scheduled tribes in the Legislative Assemblies of the states.

b) Article 334: Reservation of seats and special representation in Legislative Assemblies and House of People to cease after fifty years.

c) Article 335: Claims of scheduled castes and scheduled tribes to service and posts. The claims of the members of the scheduled castes and scheduled tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to service and posts in connection with the affairs of the Union or of a state.

d) Article 338: National Commission for scheduled castes and scheduled tribes.

e) Article 339: Control of the Union over the administration of Scheduled castes and Scheduled tribes.

f) Article 340: Appointment of a commission by the president to investigate the conditions of backward classes.
g) Article 341: Power of the President to specify the castes, races or tribes or posts of or groups within castes, races or tribes as scheduled castes\textsuperscript{337}.