Chapter-6 Fundamental Rights

Chapter · February 2018

CITATIONS
0

READS
603

1 author:

Joginder Singh Khatra
Akal Degree College Mastuana
2 PUBLICATIONS **0** CITATIONS

SEE PROFILE

Chapter-6
Fundamental Rights

The fundamental rights were included in the Constitution of India with lot of enthusiasm, as the American idea of the 'Bill of Rights' was one of the inspiring factor while the Indians were struggling against the Britishers for freedom. Even during an alien rule the Indian nationalists were making demands for inclusion of a Bill of Rights in the Government of India Act of 1935. But their demand could not get fulfilled as the concept of a written list of rights was not popular among the Britishers. They believe that the rights are created by the Parliament. Sir John Simon, the chairman of the Simon Commission opposed the idea of inclusion of a bill of rights in the constitution. He was of the view that the concept of the British Constitution implied the sovereignty of the Parliament. All rights in Britain originates therefore, from Parliament. Secondly, the necessity of fundamental rights arises only where autocracy rules. But where there is a parliamentary system of government there is no necessity of fundamental rights. Thirdly there can only be two possibilities with regard to fundamental rights; either they are justiciable or non-justiciable'[1]. Similar were the views of other Britishers. But there was a fundamental difference between the British constitutional system which has evolved itself in the span of a period of centuries, and the Indian system which was not a well established system, and social structure was a fragmented structure. Finally the Government of India Act, 1935 was passed without any mention of the fundamental rights.

As the Indian nation got its Constituent Assembly in 1946, there was a strong demand for inclusion of a chapter on fundamental rights in the proposed constitution. A separate committee was formed under the chairmanship of Sardar Patel along with some other members particularly representing the minorities. This Committee submitted its report to the Drafting Committee, which prepared the Part on fundamental rights on the recommendations of the fundamental rights Committee. Though there were so many constitutions in the world having the fundamental rights, and the UN was also at the same time busy in preparing the list of inalienable rights of the man, yet the framers of the Indian Constitution carefully selected the rights to confer the status of fundamental rights on those rights. Peculiar social fabric of India, having typical problems like untouchability, caste based rankings in society, diversities based on diverse factors like language, religion, culture, level of development etc. were kept in mind while preparing the list of the fundamental rights. Part III, which deals with these rights was given the place of prominence in the Constitution. This Part was made not only 'justiciable' but also immune from any encroachment by the Government in future (Article 13). The makers of our Constitution tried their best to clarify the provisions of the fundamental rights and the limits for the enjoyment of these rights. The distinction was also made between the residents of India as the citizens and the non-citizens as the two words 'citizens' and 'persons' has been used in different rights. The Right to Constitutional Remedies in

case of any infringement on these rights is made itself a fundamental right (Article 32). This Article was considered as heart and soul of the Constitution. The importance of this Article can be measured from the views expressed by the chairman of the Drafting Committee before the Constituent Assembly about its importance. Dr. Ambedkar said, "*if I was asked to name the particular Article in this Constitution as the most important without which this Constitution would be a nullity, I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance. Hereafter, it would not be possible for any legislature to take away the writs which are mentioned in this Article*[2]*".*

At the dawn of independence these rights were adopted by the Constitutional Assembly as the Fundamental Rights after a lot of discussion. But the fact remains that these rights were adopted, and had not grown in the Indian polity and society. Naturally after the commencement of the Constitution, at so many times these rights had developed contradictions with its social structure and political goals. That is the reason that the Part on fundamental rights has faced a large number of amendments. The very first amendment of the Constitution, which was enacted by the same Constituent Assembly (working as the Provisional Parliament of the Union) was also a result of these contradictions. On the other hand it may be assumed that this is the liveliest part of the Constitution, that is why it always remained prone to judicial interpretations and amendments. Following is the Article wise journey of this part from the commencement of the Constitution, till date.

PART III

FUNDAMENTAL RIGHTS

The Third Part of Indian Constitution begins with the definition of the word 'State'. It includes the Government and Parliament of India, Governments and Legislatures of the States and other authorities under the control of the Government. This Article stands intact till date and no alteration has been made in it. This Article stands as following.

Art.12- Definition.

In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

This Article which defines the meaning of the word 'State' for the purpose of the Part III, (dealing with the fundamental rights) remained intact since the commencement of the Constitution. The scope of this Article was kept flexible by including the words 'other authorities' in the definition of the word 'State'. Various judgments of the courts have interpreted it according to the nature of these 'other authorities'. Some of the 'other authorities' were declared as 'State' and others declared as 'not the State'. The test applied by the Judiciary to determine the

question is mainly based on financial assistance by the Government, control of the Government in the administration of the body, monopoly status conferred on the body, and nature of functions of the body etc. The authorities declared as 'State' in various judgments included the Rajasthan Electricity Board, Nationalized Banks, and Delhi Transport Corporation etc. The other authorities declared as 'not the State' included the Board of Control for Cricket in India[3] etc.

These are different interpretations of the courts based on the nature and functions of the various bodies involved in the cases. Otherwise the structure of the Article 12 has not seen any change till date.

Art.13- Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,

(a) "law" includes any Ordinance, order, byelaw, rule, regulation, notification, custom or usage having in the territory of India the force of law ;

(B) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

This Article was given the responsibility of safeguarding the fundamental rights. It has to insure the paramountcy of the fundamental rights. In clause (1) it provided for the inapplicability of all the laws in force to the extent of inconsistency with the fundamental rights. In clause (2) it had forbidden the State from making any law in the future, which is inconsistence with the fundamental rights. The third clause was meant to make it clear that a 'law' includes all the possible forms of law by naming these as Ordinance, order, bye-law, rule, regulation, notification, custom or usage etc. There was no mention of the term 'amendment' in this Article in the original Constitution. It had led to the confrontation between the Judiciary and the Parliament on several occasions. The first amendment inserted Article 31A and Article 31B in the Part III, along with the addition of the 9th Schedule. The amendment was challenged in the Supreme Court, on the ground that the Parliament has no power to make an amendment in this Part. But the Supreme Court upheld the validity of the first amendment on the ground that Article 13 forbids the State from making any 'law' against the fundamental rights, but this amendment does not fall under the term 'law' used in that Article, as it is within the scope of Parliament due to the constituent power conferred on the Parliament under Article 368. This decision was again upheld in the *Sajjan Singh V. State of Rajasthan* Case

in 1965. In this case the Court observed that the non inclusion of the word 'amendment' in Article 13 is not a result of omission by mistake, rather it was deliberately kept out of the scope of this Article, so an amendment of this Part cannot be challenged on grounds of inconsistency with the fundamental rights.

But this decision of the Supreme Court was overruled by the Court itself in 1967 in the famous *Golak Nath Case*[4]. In this case the Supreme Court held that an amendment is also covered under the term 'law' in the Article 13. There is no fundamental difference between the enactment of a law and of a constitutional amendment. Requirements as to 2/3 majority in Parliament and ratification by half of the State Legislature are provided only as additional protective measures to check a hasty decision by a thin majority in Parliament. Existence of such additional safeguards does not make a constitutional amendment anything else than a law. Term 'law' used in Article 13 includes a constitutional law also, and a constitutional amendment is nothing else than a constitutional law. The Court also held that Article 368 does not confer any constituent power on Parliament. It provides for procedure only to amend those parts or Articles of the Constitution, which are amendable. As Article 13 had forbidden the State from making any law against fundamental rights, so naturally no amendment can be done by the Parliament in these rights. If Parliament thinks it necessary it can summon a Constituent Assembly again for which it is empowered under residuary powers. This decision led to a serious clash between the Parliament and the Judiciary. To negate the effect of this decision, Parliament passed twenty fourth amendment in 1971. It amended Article 13 and Article 368 providing for the amendment of the Constitution. In Article 13 it inserted clause (4) making an express provisions that the bar of this Article would not be applicable to an amendment, made under the constituent power of the Parliament. The newly inserted clause (4) was as under;

Art. 13*(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.*

This amendment was again challenged in the *Kesavananda Bharati Case*[5]. But the Supreme Court upheld the validity of 24th amendment and held that an amendment does not fall within the meaning of the term 'law' as used in Article 13. As a result of judicial decisions, and amendment of this Article, now the Parliament has power to amend the Constitution including the fundamental rights. As a result of this judgment a new concept had taken birth in the Constitutional Law of India. The Supreme Court declared that Parliament has power to amend the Constitution including the part on fundamental rights, but it could not change the *basic structure* of the Constitution.

Right to Equality

Art.- 14. Equality before law.

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

This Article has not seen any changes by the way of amendment of the Constitution. Till ninety eighth amendment it remained intact as it was in the Constitution at its commencement. In various cases the Judiciary has interpreted it that equality provided under this Article is not an absolute equality, rather it is contextual equality. Treating unequals as equals is not equality, it is denial of equality for the weakers. Unequals should be treated as unequals, and the weakers may be conferred some sort of reasonable relaxations for this purpose.

Though this Article has not seen any structural change, but some of the amendments have resulted into some changes in the status of the fundamental right provided under this Article.

Insertion of Article 31A;

Article 31A was inserted in the Part on fundamental rights with the first amendment. This Article was related with the power of the State to make laws to acquire the estates in order to abolish the Zamindari. It had also declared that any such law providing for acquisition of estates etc. cannot be challenged before the courts on grounds of inconsistency with any of the rights conferred by Part III. With the fourth amendment the scope of this power of the State was extended to companies and corporations also. But the primacy of such laws was narrowed down. After this amendment Article 31A has provided that no law making a provision for acquisition of estates, or taking over of management of any corporation, or for termination of any licence or lease for searching minerals etc. can be challenged before the courts on grounds of inconsistency with the rights conferred by Article 14, Article 19 or Article 31.

Insertion of Article 31C;

Twenty-Fifth amendment has inserted Article 31C in Part III of the Constitution. It had undermined the status of Right to Equality, as it has made this right subordinate to the directive principals enshrined in Clauses (b) and (c) of Article 39. Article 31C had provided that any law which is enacted for the purpose of giving effect to any of the provisions of Clauses (b) or (c) of Article 39, shall enjoy the primacy over the fundamental rights provided under Articles 14, 19 and 31. This overriding power of the State was further extended by the forty-second amendment (1976). This amendment altered this provision, and provided that no such law which aimed at to secure any of the directive principals can be challenged in the courts on grounds of its inconsistency with the rights conferred by Article 14, Article 19 or Article 31. But this alteration was declared as 'invalid' by the Supreme Court in Mineral Mills v. Union of India Case in 1980. Now as an effect of this decision the State can make a law to give effect to the directive principals enshrined in Clause (b), and Clause (c) of Article 39, and such law cannot be challenged on grounds of inconsistency with the fundamental rights conferred by Article 14 or Article 19.

Art.-15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment ; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

This Article was amended by the first and the ninety- third amendments. Originally this Article had prohibited the State from discriminating against any citizen on grounds only of religion, race, caste, sex or place of birth. But the third clause enabled the State to make special provisions for women and children. In Part IV (directive principals) the State was also directed under Article 46 to take special care of the educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections of the society. In response to this social responsibility provisions for reservation of seats were made by various State Governments. The Madras Government reserved the seats in the State Medical and Engineering Colleges among the different communities. This move of the State Government was challenged by Champakam Dorairajan on the grounds of violation of Article 15. The State Government insisted that the decision to divide the seats was taken in order to implement the directive principles. But this plea of the State Government was rejected by the Supreme Court. The Court held that the directive principles which were kept non justiciable by the Constitution itself cannot override the fundamental rights which are expressly made justiciable. The G.O. of the Madras Government was found volatile of the provisions of Art. 15 and Art. 29(2), hence declared void[6].

First Amendment, 1951

As a reaction to the judgment in *Champakam Dorairajan* case, the first amendment was enacted by the Parliament (originally the Constituent Assembly itself working as the Parliament of the Union till the first general election) in 1951. It added an enabling provision in Article 15 in the form of clause (4), which enabled the State to make special provisions in favour of socially and educationally backward classes of the society. The newly added clause (4) was as under;

Art.15(4) 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.

Ninety-Third Amendment, 2006

This Article was also amended with the 93rd amendment in 2005. This amendment added another enabling provision in this Article in the form of clause (5). Its main objective was stated as to provide access to the socially and educationally backward classes and Scheduled Castes and Scheduled Tribes to the seats available in the private educational institutions, as the number of seats in the Government institutions and the aided institutions was limited. The Government had felt that the principle enshrined in the Article 46 cannot be logically achieved by utilizing this limited number of seats[7]. But as the minority educational institutions established under Article 30 have also a special responsibility to protect the interests of minorities, so these institutions were not covered under this reservation. The newly inserted clause (5) is as following;

Art. 15(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, 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.

The Central Educational Institutions (Reservation in Admission) Act was enacted by the Parliament in 2006. This Act has provided for reservation in admission into central educational institutions for the SCs (15%), the STs (7.5%), and the OBCs (27%)[8]. This Act was challenged before the Supreme Court, along with 93rd amendment. But the Court upheld the validity of 93rd amendment and this Act providing reservation in admissions into Central Educational Institutions[9]. The Court also ruled that the 'creamy layer' must be excluded from enjoying the benefit of this reservation.

Right to Education Act was passed by the Parliament in August 2009, which came into force on April 1, 2010. This Act has fixed the responsibility of private unaided schools to admit 25% of children belonging to the weaker sections and disadvantaged groups of the society. This provision of the Act was challenged before the Supreme Court by *Society for Unaided Private Schools of Rajasthan*. But the Court upheld the validity of this provision of the Act, and declared that this provision shall be applicable to government-controlled schools, government-aided schools (including minority schools), and private unaided schools except the unaided minority schools. After both of these amendments this Article now contains five clauses instead of original three. Clause (4) had enabled the State to provide for special provisions for the advancement of the down trodden, and clause (5) was added for enabling the State to extend the reservation for the backward sections of society even in the private and unaided educational institutions.

Equality of opportunity

At the commencement of the Constitution Article 16 providing equal access to the public employment had contained five clauses, touching different aspects of the issue. Clause (1) guaranteed to all the citizens equality of opportunity in public employment. Clause (2) forbids the State from discriminating among the citizens, on grounds only of religion, race and caste etc. in the access to public offices. Clause (3) empowers the State to provide for the condition of residence within the State concerned to get an employment in the State. Clause (4) provided for the power of the State to make reservation for the weaker sections in the appointments to the services under the State. Clause (5) provided for some exceptions from the provisions of this Article to certain laws providing for some posts in some of the denominational or religious institutions to be manned by the persons related to a particular religion. Text of this Article was as following;

Art.-16. Equality of opportunity in matters of public employment.

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) 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.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment

(4) Nothing in this article shall prevent the State from making any 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.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Major areas covered by this Article, which led to a lot of litigation and then resulting in constitutional amendments are reservations permitted under clause (4) on the one hand and the guarantee of equality and prohibition of discrimination on the other hand. The question of inclusion of reservation in promotion in the scope of Article 16 (4) has also remained a controversial issue in the working of the Indian polity. The Judiciary has pronounced some Judgments upholding reservations and some judgments for correlating its implementations with the right to equality in general and maintenance of administrative efficiency, as required under Article 335. A number of judgments regarding reservations have been made ineffective subsequently by Indian parliament through various constitutional amendments.

The first case in this regard came before the Supreme Court in 1951 as Venkataraman v. State of Madras, where the Court declared that reservations may be made for the backward sections of society, but the Court held that the division of vacancies on a basis other than backwardness are unconstitutional. In this case the vacancies of 83 District Munsifs were divided by Madras Government (on the basis of a communal G.O. which was in force in the State since before the commencement of the Constitution) as following;

Harijans-	19
Muslims-	5
Christians-	6
Backward Hindus-	10
Non-Brahmin (Hindus)-	32
Brahmins-	11

Petitioner Venkataraman had held that he would has been selected had the vacancies were not divided among different communities. The Apex Court held that as there is a question of reservations for the Harijans and backward communities, it is valid as Art. 16(4) provides for it. But as there is another question of division of vacancies on a ground other than the backwardness, the Communal G.O. is void and illegal. The ineligibility of the petitioner created by the Communal G.O. does not appear to be sanctioned by Clause (4) of Article 16. It is an infringement of the fundamental right guaranteed to the petitioner as an individual citizen under Clause (1) and Clause (2) of Art.16. In another case in 1963 *(M R Balaji v. Mysore)* the Supreme Court ruled that the reservations should not exceed the upper limit of 50%. In General Manager, Southern Railway v. Rangachari (1962), State of Punjab v. Hiralal (1970) and some other cases the Supreme Court had held that the reservations under Article 16 (4) also included promotions. But this was overruled by the Court itself in Indira Sawhney v. Union of India in 1993. The Court declared that the reservations cannot be applied in case of promotions and the provisions of Article 16(4) are applicable only in case of initial appointments.

Seventy-Seventh amendment, 1995

Decision of the SC in Indira Sawhney case led to the passing of the 77th amendment by Parliament, in 1995. By this amendment decision of the Court was made ineffective by insertion of Clause (4A) in Article 16. This is an enabling clause, empowering the State to make provisions for reservations in the matters of promotion for the Scheduled Castes and the Scheduled Tribes. This provision is also applicable only in case of services under the State like the provision of Clause (4). The newly inserted clause was as following;

Art. (4A) 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.

Eighty-First Amendment, 2000

Apart from forbidding the State from extending the scope of reservation to in the matters of promotions the Supreme Court in Indira Sawhney Judgments has also touched so many other facets of the issue of reservation. The 'backlog vacancies' were included in the total number of vacancies to fulfill the criteria of 50% limit of reservation. A year was taken as a unit to determine this limit of 50%. In this manner it forbids the special recruitment drives by the Government to fill the 'backlog vacancies' in the services, as the reservation had already reached 49.5%. The Government considered it harmful for the interests of the Schedule Castes and Scheduled Tribes as the number of these categories in the services under the State has not reached upto the required level. 81st amendment was passed by the Parliament in 2000. It inserted another Clause (4B) in the Article 16. It is also an enabling provision, which has empowered the State to consider the 'backlog vacancies' as a separate class of vacancies and not to be included in the ordinary vacancies of the year for the purpose of ceiling of 50%. Now as a result of this amendment the unfilled reserved vacancies of a year, which were not filled due to the non availability of candidates can be filled in the next years without facing the bar of the ceiling of 50%. The newly inserted Clause (4B) in the Article 16 is as following;

Art. 16(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

Matter of Seniority and Reservations in Promotions, and 85th Amendment, 2001

In Ajit singh Januja & others Vs State of Punjab (SC 1996) it was held by the Court that the roster point promotees getting the benefit of accelerated promotion would not get consequential seniority and the seniority between the reserved category candidates and general category candidates in promoted category shall be governed by their panel position. This was overruled in Jagdish Lal and others v. State of Haryana and Others (1997), it was held that the date of continuous officiation has to be taken into account and if so, the roster- point promotees were entitled to the benefit of continuous officiation. This position was again overruled in Ajit Singh Januja & others Vs State of Punjab & others (1999). The Court repeated the decision taken in Ajit Singh case (1996) and in Union of India v. Virpal Singh case (1996) that the State may make provisions for the reservations in promotions. But if a junior candidate is promoted due to reservation prior to a senior candidate, such senior candidate shall regain his seniority over the reserved category candidate

notwithstanding that he is promoted after the promotion of the reserved category candidate *(catch-up rule).* The Court held that roster promotions were meant only for the limited purpose of due representation of backward classes at various levels of service and therefore, such roster promotions did not confer consequential seniority to the roster point promotee. It led to the passing of 85th amendment by the Parliament in 2001. This is one of the smallest amendments of our Constitution as it added only three words in it. But in matters of reservation in promotions its consequences are far reaching. It nullified the decision of the Supreme Court that the accelerated promotions by virtue of reservation in promotions did not confer the consequential seniority on the junior members. It has empowered the State to make provisions for reservation in promotions with consequential seniority. After this amendment the Article 16 (4A) becomes as following;

Art.16(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, ***with consequential seniority,*** *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.*

This is the Article which remained a cause of a huge number of litigations, leading to the interpretation of this Article in different ways according to the merits of the different cases. So many cases relating to the interpretation of this Article has travelled up to the apex court of the country. Various decisions of the court were made ineffective by the Parliament by amending the Constitution. Now after all this tug-of-war between different sections of society at the one hand and between the Judiciary and the Parliament on the other hand this Article makes the following provisions;

1. In matters of public appointment there is an equality of opportunity among the citizens of India.
2. No citizen can be discriminated on the only grounds of religion, race, caste, sex, descent, place of birth, and residence in the matters of employment in the public offices.
3. The Parliament may provide for the condition of residence within the concerned State to obtain certain offices in the States.
4. The State may make provisions for reservations in the favour of any class, which is not adequately represented in the services under the State.
5. The State can make provisions for reservations in the matters of promotion for the Scheduled Castes and the Scheduled Tribes with consequential seniority.
6. The unfilled reserved vacancies may be carried forward by the State to be filled in next year or years, and these vacancies are not to be counted as vacancies of that year for the purpose of determining the 50% ceiling on the reservations.
7. For the governing of a religious or denominational institution the condition of professing a particular religion by any member of the governing body may be prescribed by law.

8. Provision for reservation can be made by the executive order, legislation is not a pre-condition for it.
9. It is the Government which has to identify the communities, which are not adequately represented in the services under the State. The court has not to prescribe any criteria for the inclusion in or exclusion from the list of backward classes. But any such list prepared by the Government or a commission appointed by it is not immune from judicial scrutiny.
10. Reservations cannot be provided only on economic basis.
11. Caste is a fact of Indian society, and to ignore the caste is to ignore the facts of life.
12. Backward Classes can be further divided into Backward and More Backward classes for the purpose of reservations.

Art.- 17. Abolition of Untouchability-

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

This Article had not seen any structural change by the mode of an amendment in the Constitution. But as this Article has declared that “Untouchability” shall be an offence to be punishable in accordance with law, to implement this provision the Parliament has enacted *the Untouchability (Offences) Act, 1955*. This Act was amended in 1976 and renamed as the *Protection of Civil Rights Act, 1955.* In 1989 *the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act* was passed by the Parliament to provide for the special courts for the trial of offences against the Scheduled Castes and the Scheduled Tribes, and rehabilitation of the victims.

Art. 18- Abolition of titles-

(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

This Article forbids the State from conferring any title, and forbids the citizens from accepting any title from any foreign State. For the persons who are not the citizens of India, but are under the service of the State, this Article prohibited the accepting of any title or any of the other benefits from any foreign State without the consent of the President. Since the commencement of the Constitution this Article

had not seen any structural change by the way of an amendment. In 1996 in Balaji Raghavan case[10] , the five- Judges Bench of the Supreme Court held that the Awards- Bharta Ratna, Padma Vibhusan, Padma Bhushan and Padma Shri are the National Awards and does not fall in the category of 'titles' within the meaning of Article 18 (1). But they are not to be used as suffixes or prefixes and if this is done the defaulter has to forfeit the National Award conferred on him or her.

Right to Freedom

Art.- 19. Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right

(a) to freedom of speech and expression
(b) to assemble peaceably and without arms ;
(c) to form associations or unions ;
(d) to move freely throughout the territory of India ;
(e) to reside and settle in any part of the territory of India ;
(f) to acquire, hold and dispose of property ;and
(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(4) Nothing in sub- clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub- clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right

conferred by the said sub-clause, and, in particular, nothing in the said sub- clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

This Article has provided the rights to the citizens which are required for the free and full development the personality of an individual. But these rights were considered something like as the accessories to the personality of the citizens. While these were regarded as necessary for the full expression of the personality, attention was also given to the fact that these rights did not hinder the construction of a peaceful and egalitarian society, and protection of the security of the State. This is the only Article in the Part III which was made subject to the automatic suspension (Article 358) in case of the proclamation of an emergency under Article 352. As the Constitution started working, some of the provisions of this Article were found as obstructive in the path of construction of a peaceful and egalitarian society. This Article was amended on a number of times, and this process started from the very first amendment. Subsequently the 16th, 44th and 97th amendments has also made some changes in this Article. The major changes made by these amendments are as following;

1st amendment

Though the provision was made in the Constitution to impose restrictions on the rights conferred by this Article, if these freedoms hamper the collective freedom of the society, but in the judgments on the chapter on fundamental rights the courts had extended the scope of these rights to their fullest extent. The right to speech and expression had been held by some of the courts to be so comprehensive as not to render a person culpable even if he advocates murder and other crimes of voilence[11]. The right to practise any profession or to carry on any occupation, trade or business was also brought under some other restrictions so that it could not hamper any scheme in favour of construction of an egalitarian society. Both of the clause (2) and clause (6) were changed by this amendment. Clause (2) provided the protection to certain laws even if those laws were contradictory with the provisions of right to freedom of speech and expression. These laws were mentioned as relating to libel, slander, defamation, contempt of court or any other matter which offends against decency or morality or which undermines the security of the State. The protection of this clause includes the laws made before the commencement of the Constitution, and the laws made by the State after the commencement. By this amendment this protection was extended to the laws made for the friendly relations with foreign States and maintenance of public order. This clause stands as following after the 1st amendment;

Art.-19(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence;

Another provision which was changed by this amendment was clause (6). This clause was related to the restrictions on the right to freedom of profession, trade or business etc. The existing laws and the laws made by the State after the commencement of the Constitution which imposes reasonable restrictions in the interest of the general public on this right were provided protection in case of contravention with this right. The laws prescribing for the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, were also protected in case of contravention of the same with the right to carry on any occupation, trade or business. But to build an egalitarian society, the Government wanted to make it expressly clear that it can nationalize or monopolize a business. So the need to strengthen this provision was felt by the Parliament. By this amendment the State was empowered to carry on any trade, business, industry or service, either exclusively or otherwise. By this provision the State got the right to monopolize a trade, business, industry or service etc. Now after this amendment this clause became as following;

Art. 19(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to-

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Sixteenth Amendment, 1963-

Sixteenth amendment was enacted in 1963 to give effect to the recommendations of the Committee on National Integration and Regionalism appointed by the National Integration Council[12]. The above mentioned committee had recommended that article 19 of the Constitution should be suitably amended, to empower the Union Government so that the integrity and sovereignty of the Union could be maintained by it. Due to the effect of this amendment the laws made in the interest of sovereignty and unity of the nation were also provided protection in case of their contravention with the right to speech and expression of the citizens. For this

purpose the clauses (2), (3) and (4) of Article 19 were amended and the words *the 'sovereignty and integrity' of India* were inserted therein. After this amendment these clauses became as following;

Art. 19(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of ***the sovereignty and integrity of India*** *the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.*

Art. 19(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of ***the sovereignty and integrity of India or*** *public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.*

Art. 19 (4) Nothing in sub- clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of ***the sovereignty and integrity of India or*** *public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.*

Forty-Fourth Amendment, 1978

The 44th amendment has also effected some changes in this Article. Right to property (Article 31) was omitted by this amendment. there was a corresponding right in Article 19 under sub- clause (f) of clause (1). After removing the right to property from the list of fundamental rights, and making it only as a legal right under Article 300A, there was no logic for the right conferred under sub- clause (f) of clause (1) of Article 19. So this sub- clause providing the *right to acquire, hold and dispose of property* was also omitted from Article 19.

Another significant change made by this amendment was amendment of Article 358. This Article is related to the suspension of the provisions of Article 19 while a Proclamation of an Emergency is in operation. This amendment had imposed a limitation on this suspension, that the provisions of Article 19 shall not restrict the State from making any law or any executive action while the Proclamation of an Emergency is in operation declaring that security of India is threatened by war or external aggression. During an emergency declared on the third ground (*armed rebellion)* the provisions of this Article would not go under automatic suspension under Article 358 after this amendment. Though these provisions can be suspended by an order of the President made under Article 359 even in the emergency declared on grounds of armed rebellion.

Ninety-Seventh Amendment, 2011

After 44th amendment this Article was not amended till 97th Amendment Act in 2011. This amendment was enacted to promote the co-operative societies. This amendment has inserted a full Part IX B in the Constitution dealing with the methods of formation and of and administration of co-operative societies. State was also directed to promote the voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies under the newly inserted Article 43B. Article 19 was also amended by this amendment by including the 'right to form co-operative societies' under this Article. For this purpose in sub-clause (c) of clause (1) of this Article which provides for the right to form associations or unions, the words "or co-operative societies" were inserted. Now the text of this sub-clause is as following;

Art.- 19 (1)(c) to form associations or unions or co-operative societies;

Apart from the above mentioned formal amendments, the application of this Article has seen so many changes due to the effects of various judicial decisions in different cases pertaining to the interpretation of this Article. Some of the judicial decisions which have either extended or restricted the scope of this Article are as following;

'*Bandh*' do not fall within the fundamental right of speech. A 'Bandh' is a warning to a citizen that if he goes for work he would be prevented[13].

Freedom of expression also includes the freedom of silence[14]. No person can be compelled to sing the National Anthem if he has genuine objections in this regard based on his religious sentiments.

The hawkers have a right to carry on their business, but subject to control in narrow streets, sensitive areas for security reasons and near the hospitals etc[15].

Article 20. Protection in respect of conviction for offences-

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

This is the right available to all the persons, not only the citizens. This right provides the protection to people, and imposed a restriction on the State that no person can be convicted unless breaking of a law which has existed at the commencement of the act. No person can be punished more than once for the same offence, and no person can be compelled to be a witness against himself. This

Article has not seen any structural change since the commencement of the Constitution by the way of a Constitutional amendment. But various judicial decisions have thrown light on various facets of the right available under this Article. Like the accused has a right for not to be a witness against himself, but he has no right to conceal any objects which stands as witness against him. No accused person can deny to give his fingerprints required for as evidence[16]. Further the right of not to become a witness is available only to become a 'witness against himself' and not to the other person who is a witness to an act of offence.

Though the Article 20 has not been amended by any amendment, yet there is an amendment which has provided the place of primacy to this right along with the right to life and personal liberty. 44th amendment was enacted in 1978 as a reaction to the excesses committed by the parliamentary majority, led by the executive during the emergency and as an antidote to the imbalance created by the 42nd amendment. It has made changes in so many Articles like the 42nd amendment. Article 359 has empowered the President to suspend the enforcement of all or any of the rights mentioned in Part III, when a Proclamation of Emergency is in operation. But recognizing the worth of the right mentioned under Article 20, the 44th amendment excluded this right from the power of the President to suspend it even during the Proclamation of Emergency. Consequently, now after this amendment all the rights except the rights mentioned in Article 20 and Article 21 can be suspended by the President under Article 359, while a Proclamation of an Emergency under Article 352 is in operation.

Art.- 21. Protection of life and personal liberty-

No person shall be deprived of his life or personal liberty except according to procedure established by law.

This is the most sacrosanct right guaranteed by Indian Constitution. Smallest in text, but guarantying the biggest right to all the persons, this Article was never amended by our Parliament by the formal method of amendment. But so many decisions has been delivered by the Judiciary with respect to the scope and application of this right, which has effected far- reaching changes. Some of the decisions of the courts are as following;

Right to life is not only right to physical existence-

In so many cases the courts have declared that the right to life does not constitute right to mere physical existence. It is something much more than it; it includes the right to a humane life, and a right to a dignified life. This Article assures the right to live with human dignity free from exploitation[17].

Right to livelihood-

In some of the cases the right to livelihood has also been included under this right by the courts[18].

Right not to live-

In P. Rathinam v. Union of India the Supreme Court declared that the right to live does not include right to a forced life. Section 309 of Indian Penal Code providing for a punishment for an attempt to suicide violates Art 21, and so it is void and unconstitutional[19]. But in another case the Supreme Court held that the right to life is a natural right as enshrined in Article 21, but suicide is an unnatural extinction of life, so the right to life does not include the right to die[20].

Euthanasia (mercy killing)-

In a case of *euthanasia* the Supreme Court has recommended to Parliament to consider the feasibility of deleting Section 309 of IPC from the statute, as according to it a person attempts suicide in depression, and hence he needs help, rather than punishment[21].

The court also lays down norms for passive euthanasia (withdrawal of life support) in case of a person in permanent vegetative state, according to which a High Court could pass suitable orders on the application filed by the near relatives or next friend or the doctors/hospital staff praying for permission to withdraw the life support of a person who is not competent to give his consent for withdrawal of life support.

A Public Interest Litigation was filed by an NGO 'Common Cause' before the Supreme Court to declare 'dying with dignity' a fundamental right for terminally ill patients. The NGO has argued that a terminally ill person should be given the right to refuse the life support system when a medical expert has declared that she/he has reached a point of no return. On February 25, 2014 taking into account of the inconsistent opinions rendered in the Aruna Shanbaug case and the importance of question of law involved the case it was referred to a Constitution Bench for consideration[22].

Suspension of right to life and personal liberty, and 44th Amendment-

At the commencement of the Constitution the right to life and personal liberty was subject to suspension by a Presidential Order made under Article 359, when the Proclamation of an Emergency was in operation. This provision came before the courts on several occasions, particularly when internal emergency was in operation. Various High Courts had held that a writ of habeas corpus can be issued on some grounds even during suspension of enforcement of provisions of Art 21. Nine High Courts ruled in favour of the petitioners. Government brought the case before the Supreme Court in the form of an appeal what is known as A.D.M. Jabalpur v. Shivakant Shukla case. During the arguments Niren De, the Attorney General pleaded that since the right to move any court has been suspended, by the Presidential Order made under Art 359, the detenue had no *locus standi* under Art 21 and their writ petitions would necessarily have to be dismissed. Justice H. R.

Khanna asked the Attorney General that 'life' is also mentioned in Art. 21, and would the Government. argument extend to it also? The Attorney General replied, "even if life was taken away illegally, courts are helpless".

The Supreme Court had held by a majority of 4:1 that when enforcement of Article 21 was suspended by the Presidential Order made under Article 359, the person detained lost his right to move the court to regain his liberty, and writ of *habeas corpus* cannot be issued by a court as it would amount to the enforcement of Article 21 which is under the suspension for the time being. This judgment shocked the conscience of the entire nation. This judgment was criticized worldwide and Justice H.R. Khanna, who alone gave his dissenting judgment was admired by the media throughout the world as an apostle of independence and impartiality of judiciary in India.

44th amendment makes some changes in Article 359, which is related to the suspension of fundamental rights during the Emergency. It makes the provisions of Article 21, along with Article 20 as immune from the power of the President to suspend these fundamental rights, while a Proclamation of an Emergency is in operation. Now after the 44th amendment the provisions of this Article cannot be suspended by the Presidential Order made under Article 359.

Art. 21A- Right to education

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 was inserted in this Part by the 86th amendment, 2002. Prior to it this provision was not a fundamental right. It was a goal set before the Government under Article 45 to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all the children until they complete the age of fourteen years. By this amendment this right got bifurcated into two parts. With respect to the education of the children below the age of six years it remained as a directive principle under Article 45, and for the children within the age group of six to fourteen years it became a fundamental right under this newly inserted Article 21A. 'Right To Education' Act was passed by Parliament in 2009 to give effect to the provisions of this Article. This Act came into force from 1st April, 2010. Following are the main features of this Act;

1. A right to free and compulsory education for all the children between the age of six to fourteen years.
2. Duty of the Government and local authority to establish the schools within the limits of neighborhood.
3. Sharing of financial and other responsibilities by the Central Government and the respective State Governments.
4. Duty of every parent or guardian to admit his or her child or ward to a school for elementary education.
5. All the recognised schools are bound to share the responsibility of providing elementary education. It includes the schools run by the Government, aided

schools, and privately managed unaided schools. Schools in 'specified category' under the Act like Kendriya vidyalaya, Navodaya Vidyalaya, Sainik Schools or any other school specified by notification of the Government are also made to share the responsibility of elementary education. But the privately managed unaided schools, established by the minorities under Art. 30(1) were exempted from this responsibility by the Supreme Court in '*Society for Unaided Private Schools of Rajasthan v. Union of India'* case.

6. No student admitted in a school is to be held back in any class or expelled from school till the completion of elementary education.
7. No physical punishment or mental harassment to children in school.
8. Compulsion on the part of all the non-government schools to obtain the certificate of recognition from the prescribed authorities.
9. An academic authority of the Central Government may prescribe for minimum qualifications for teachers.
10. Teachers shall not be engaged in any of the non-education functions, except for the purpose of elections, census and disaster management.
11. Medium of instructions shall be as far as practicable, the mother tongue of children.
12. No Board examinations till the completion of elementary education.

The privately managed un-aided schools are obliged to admit at least 25% of children belonging to the weaker and disadvantaged section of society in class one in each academic year. Various State Governments has issued notifications to give effect to the provisions of the Act. In lieu of this responsibility a private school is reimbursed the fee. The amount of reimbursement is equal to per child expenditure incurred by the State or the actual fee collected by the school from each of the students, whichever is less.

Art- 22. Protection against arrest and detention in certain cases-

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such nor shall be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply

(a) to any person who for the time being is an enemy alien ;or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration

of the said period of three months that there is in its opinion sufficient cause for such detention :

-Provided that nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7) ; or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4) ;

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention ; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

This Article has provided some safeguards in case of arrest or detention of a person. As regards the amendment of this Article, it was amended with the 44th amendment. But the section 3 (which provided for the amendment of this Article) of the 44th amendment act did not came into force, as the Notification required for the implementation of the above said section has not been yet issued. If came into force it would make the following changes;

(1) The maximum period for which a person can be detained without the recommendation of the Advisory Board shall be two months.

(2) The Advisory Board shall be constituted in accordance with the recommendation of the Chief Justice of the appropriate High Court.

(3) The Advisory Board shall consist a serving Judge as its chairman, and two other members shall be serving or retired Judges of a High Court.

(4) Sub-clause (a) of clause (7) providing for the power of the Parliament to make laws for some cases or some circumstances where a person can be detained for a term of more than three months without the recommendation of the Advisory Board shall be omitted.

Right against Exploitation

Art.- 23. Prohibition of traffic in human beings and forced labour-

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing, in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

This Article providing for prohibition of traffic in human beings and begar has not been amended by any of the Constitutional amendments. But some of the judicial decisions have expanded its scope to child labour, children of prostitutes, devadasi's and the bonded labour etc.

Art.- 24. Prohibition of employment of children in factories, etc.

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.

This Article has not undergone any structural change by the mode of an amendment. The Judiciary while interpreting the provisions of this Article has included the building construction work, Match Industries, and Carpet Industries etc. as not fit for the working of the children below the age of fourteen years. Courts have also directed the Government to make provisions for the education, nutrition and periodical medical checkup of the children who were engaged in these industries.

Right to Freedom of Religion

Art.- 25. Freedom of conscience and free profession, practice and propagation of religion.

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice ;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II- In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Balance between religious and national practices

This Article has provided the rights related to freedom of free profession, practice and propagation of religion to all the persons residing in India. This Article was never amended by the Parliament. But as there are wider differences in religious beliefs, practices and their interpretations, this Article came before the judiciary on several occasions. One of such cases is *Bijoe Emmanuel & Others v. State of Kerala & Others*[23] case. In this case three children belonging to Jehovah's Witness community who worship only Jehovah- the Creator and none else were expelled from school. They had refused to sing the National Anthem because according to them it was against the tenets of their religious faith. But they stands up respectfully when the National Anthem was being sung. They were expelled from school under the instructions of Deputy Inspector of Schools. The children filed a Writ Petition in the High Court for restraining the authorities from preventing them from attending School, which was rejected by the Court. The case reached before the Supreme Court and the Petitioners told the Court that they have no particular objection to the language of the National Anthem of India. They do not sing 'God save the Queen' in England, the 'Star-spangled banner' in the United States and so on. They believe that Jehovah is the Supreme ruler of the universe. Satan was originally part of God's organisation and perfect man was placed under him. But the Satan rebelled against the God and set up his own organisation through which he ruled the world. All the worldly institutions are creation of the Satan to rule the world. So they (the Jehovah's) did not participate in political institutions in any of the States of the world. The Court set aside the judgment of the High Court as against the provisions of Art. 19(1)(a) and 25(1) and directed the authorities to re-admit the children into the school.

Religious Practices- Limitations

Another case related to this Article was '*Church of God (Full Gospell) in India v. K.K.R. Majestic Colony Welfare Association',* which travelled up to the apex court in the form of an appeal against the decision of Madras High Court. The Supreme Court ruled that *"No religion prescribes or preaches that prayers are required to be performed through voice amplifiers or beating of drums and in any case, if there is such practice, it should not adversely affect the rights of others including that of not being disturbed in their activities*[24]*".* The appeal was made before the Supreme Court on the ground that investigating authorities have found that traffic is the main cause behind the noise pollution in the concerned area. But the Court rejected it by stating that because of urbanization or industrialization, the noise pollution may exceed the permissible limits in an area, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers etc. The Court rejected a plea of the Church that the direction issued by the HC in respect of the `church' (appellant) overlooked its fundamental right to profess and practice its religion as guaranteed under articles 25 and 26 of the Constitution.

Every person has the right to perform religious practices, but which practices are integral part of a religion is open to decide by the courts. Like wearing of *kara* by the Sikhs is part of their religious practice[25]. *Kara* being a symbol of the religious wear by the Sikh community, it is a jewellery exempted from the Customs Duty, and it cannot be confiscated. But if the person had admitted that he had purchased gold, converted it into a *Kara* and brought as such, he necessarily used it. Therefore, he is not entitled to the benefit of exemption.

Art.- 26. Freedom to manage religious affairs.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) to establish and maintain institutions for religious and charitable purposes ;

(b) to manage its own affairs in matters of religion ;

(c) to own and acquire movable and immovable property ; and

(d) to administer such property in accordance with law.

This Article providing the right to manage religious affairs had not undergone any change since the commencement of the Constitution. Some cases appeared before courts under this Article. One of such cases was *Sanjib Kumar Chowdhury v. Principal, St. Paul's College*[26]. In this case the College was a Christian College and most of its students were related to Hindu religion. The Hindu students asked the Principal to permit them to celebrate 'Saraswati Puja' inside the College compound, which was rejected by him. The case was filed before The Calcutta High Court by the students. The Court rejected the application on the ground that as Christianity does not permit idol worship, so an institution run by Church Missionary Society cannot be forced to allow the practices contrary to its religious beliefs.

Right to manage its own affairs in matters of religion is extended to all the practices, rites and ceremonies essential for practising of a religion, which are *integral part* of religion. These integral parts of religion has to be determined with reference to its doctrines, practices, and historical background etc. Disciplinary measures like ex-communicating a person who defied the fundamental basis of a denomination are also considered by the courts as essential for the continuity of the denomination[27].

Clause (c) has given the right to own and acquire property to the religious denominations. But the Supreme Court has ruled that it is not an absolute right, and is subject to reasonable regulations by the State. The State can acquire the property of a religious denomination, to give effect to agrarian reforms, if it is not within the ceiling limit[28].

Art.- 27. Freedom as to payment of taxes for promotion of any particular religion.

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses of any particular religion or religious denomination.

With respect to the freedom as to the payment of taxes for the promotion of any particular religion, the Supreme Court in *Jagannath Ramanuj Das v. State of Orissa*[29] case held that a fee is different than a tax. A tax is merged in the general revenue of the State to be spent for general public purposes, while the fee is collected for a specific purpose and the collection is kept separate as a fund for that specific purpose. The specific purpose is also not the promotion of a religion as forbidden under Art. 27, rather it is the better management of the religious endowments within the State. Article 27 forbids the State from imposition of a tax, but a fee can be levied to meet the expenses of the staff working for the better administration of religious endowments.

Art.- 28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds,

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Article 28 which deals with the religious instructions in the educational institutions has came before the courts on several occasions, and has been interpreted according to the facts of the cases. In one of the such cases the apex court has ruled that establishment of an institution for the academic study of the life, teachings or impact of any great Indian saint does not constitute religious instructions or promotion of a particular religion[30].

Cultural and Educational Rights

Art. 29- Protection of interests of minorities.

(1) Any section of the citizens residing in the territory of India or any part' thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

This Article has not been altered by way of an amendment of the Constitution. But it has been interpreted in some of the cases as following;

Right to conserve the language includes the right to political agitation and right to making a promise by a candidate to the electorate to work for the conservation of their language[31].

Conciliation between confronting claims;

In *D.A.V. College Jullundur v. The State of Punjab*[32] *case,* validity of sub section (3) of section 4 of *Guru Nanak Dev University, Amritsar Act* of Punjab was challenged on the ground that it violates the rights of the Arya Samajis of the State, who are a minority. The said provision of the Act has described as one of the objectives of the University "*to promote studies to provide for research in Punjabi language and literature and to undertake measures for the development of Punjabi language, literature and culture*". In the petition before the Supreme Court it was contended that the main object of the Act was to promote Punjabi language in Gurumukhi script and that since their (Arya Samaji's) institutions belonged to a minority based on religion and language their compulsory affiliation to the newly established university violates Articles 29(1) and 30(1) of the Constitution. The Court rejected this notion of the petitioners and held that Sub-Section (3) of Section 4 does not transgress the right granted under Art. 29. The Court held that the linguistic States are a reality of our country, and the purpose of these linguistic States is to provide for the facilities for the development of the people of that area educationally, socially and culturally, in the language of that region. Efforts for the development of a regional language does not mean the strangulation of another language and script of a minority. The impugned provision of the Act does not compel the affiliated Colleges to give instruction in the Punjabi Language so it is not volatile of Article 29.

Art. 30- Right of minorities to establish and administer educational institutions

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice,

(2) 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.

This Article had guaranteed the right to establish and administer the educational institutions by the minorities. These minorities could be determined on the basis of religion or language, both the sensitive issues since the birth of the Republic.

Who are minorities?

Unlike the Scheduled Castes, Scheduled Tribes and the Anglo-Indians, the word 'minority' does not find a definition in the Constitution. Attempts had been made by different sections to claim themselves as minorities on different grounds such as on local level, on State level and on National level. In DAV College Jullundur

v. State of Punjab[33] case it was held by the Supreme Court that religious or linguistic minorities are to be determined only in relation to a particular legislation which is before the court for consideration. If it is a State Legislation, the minorities are to be determined on the basis of figures of population of the State concerned, and if it is a Union legislation, then the minorities are to be determined on the basis of figures of population of the entire Country.

Forty-Fourth Amendment, 1978

The 44th amendment inserted clause (1A) in this Article as a corollary of omission of right to property from the list of fundamental rights. This clause makes an assurance that if the property of an educational institution established by a minority is compulsorily acquired by the State, then the amount fixed for that property shall be as much that the right of the minority to establish and administer an educational institution is not hampered by such an acquisition.

Right to Property

Art. 31- Compulsory Acquisition of Property

(1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or.

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any

other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification ; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provision of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act,1935.

Main provisions of this Article can be find as that a person can be deprived of his property only under the authority of Law. If the property has to be acquired for public purpose then the Law providing for acquisition must also provide for the compensation for the property acquired, and if it was a Law made by the Legislature of a State then the said law must had been reserved for the Presidential assent (Article 200) and had received his assent (Article 201).

Confrontation of this right with Land Reform Laws, and First Amendment, 1951.

The Right to Property started its confrontation with the social legislation programmes of the Government from the very beginning of working of the Constitution. The Land Owners took the shelter of the Judiciary, and in a land mark judgment Patna High Court declared the '*Bihar Land Reforms Act, 1950* as invalid and void on grounds of contravention with Article 14. The Court ruled that the 'compensation' is not the only ground on which the zamindari abolition laws can be challenged, it can be challenged on other grounds also, as for contravention of Article 14 etc. This interpretation of Article 31 by the Court gives a jolt to the social legislation programmes of the Government. To remove this difficulty the Parliament passed the First Amendment Act, 1951.

First of all this Amendment added Article 31A to remove the economic gap in the agricultural sector. It had provided protection to the laws aimed at acquisition of estates in case of contravention of these laws with the fundamental rights. Following was the text of this Article when added;

Art. 31A- Saving of laws providing for acquisition of estates, etc.-

(1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

(2) In this article,-

(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary and any rights or privileges in respect of land revenue.

With respect to the laws made by the Legislatures of the States it provided that the provisions of this Article shall not apply thereto unless that law, having been reserved for the consideration of the President, has received his assent. It also defined the word "estate" used within it as to include any jagir, inam or muafi or other similar grant.

This amendment also added the Article 31B to provide immunity to certain laws from being challenged before courts. This Article provides that none of the Acts and Regulations specified in the Ninth Schedule shall be deemed to be void, on the ground that it was inconsistent with any of the provisions of part III. It also added the 9th Schedule to the Constitution of India having 13 laws in it. Following was the text of this Article while inserted in the Constitution;

Art. 31B- Validation of certain Acts and Regulations-

Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

This amendment was enacted by the Parliament during the pendency of an appeal against the decision of Patna High Court. The zamindars challenged this amendment as being unconstitutional and void. But all these petitions were disallowed by the Supreme Court on the 5th of October, 1951, and it was held that enactment of the amendment is valid.

Fixation of Amount of Compensation, and Fourth Amendment, 1955

In the *State of West Bengal v. Bela Banerjee*[34] case the Supreme Court had held that the amount given in lieu of property taken must be 'compensation', which means that it must be *'just equivalent of what the owner had been deprived of'*. The *West Bengal Land Development and Planning Act, 1948* had a provision that land can be acquired for public purposes, and the amount of compensation shall not exceed the market value of the land on 31st December, 1946. Court observed that there is a wide gap between the market value of a land in the year 1946, and in the years after partition. Moreover the Act under question was a

permanent enactment and lands may be acquired under that Act many years after it came into force. So fixing of the market value on December 31, 1946 as the ceiling on compensation, without reference to the value of the land at the time of acquisition was declared as arbitrary and void of the requirement of Article 31(2).

As a reaction to such interpretations of Article 31, Fourth Amendment was enacted to save the laws providing for acquisition of property on grounds of inadequacy of amount of compensation, and to demarcate with clarity the difference between the acquisition of a property by the State and deprivation of a person of his property otherwise. It substituted the clause (2) of Article 31 and added clause (2A) as under-

Art. 31(2)- No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

Art. 31(2A)- Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

Article 31A clause (a) was amended to empower the State to take over the property for a temporary period, it also empowered the State to amalgamate two or more corporations and premature cancellation of any agreement, lease or licence. In the SOR appended to the 4th amendment, the Government declared that after the abolition of zamindari to a large extent, now the next priority before it was the rational and equitable use of other national resources . For this purpose Article 31A was made more strong and its area of impact was extended from agricultural lands to urban lands, mineral resources, better management of industries and commercial undertakings also. To give effect to the said policy of the Government clause (1) of Article 31A was substituted with a new clause, which was as following;

Art. 31A (1)- Notwithstanding anything contained in article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
(c) the amalgamation of two or more corporations either in the public interest or in

order to secure the proper management of any of the corporations, or
(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

Prior to this amendment, the provisions of Clause (1) were conferred a place of primacy in case of contravention of a law made under it with any of the fundamental rights. But this amendment narrowed down this overriding effect to the laws only which contravene the rights conferred by Articles 14, 19 and 31 only.

Clause (2) of this Article was also amended to extend the scope the word ‘estate’ to another form of land holding in the States of Madras and Travancore-Cochin known as *janman right*. *Raiyats, and under-raiyats* were also included under this clause within the category of persons having any rights over a land.

This amendment also included seven more acts in the Ninth schedule, making the total number of enactments as 20 in this schedule.

Acquisition of Land; Relief to small land holders, Seventeenth Amendment, 1964

It proposed to provide that where any law makes a provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, his land cannot be acquired by the State, unless he is given a compensation at least at the market value of the property. But this condition applies only on that part of land, which is within the ceiling limit. For this purpose another proviso was added after the existing proviso in clause (1) of Article 31A, which was as following;

"Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under

any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

Expansion of meaning of word 'Estate':

This amendment also proposed to amend the definition of word "estate" in Article 31A of the Constitution by including therein, lands held under ryotwari settlement, and forest land etc. the land holdings in India have different natures, and different names in different States. As a result of reorganisation of States in 1956, the problem became more complicated, as transfer of lands from one State to the other. Now the word 'estate' acquired different meanings in different parts of a State. The Parliament enacted this amendment to expand the definition of the word 'estate' to include almost all the forms of landholdings under it. For this purpose sub-clause (a) of clause 2 of Article 31A was substituted for the following;

Art. 31(2)(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-

(i) any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;'.

This amendment also included 44 more acts in the Ninth schedule taking the total to 64.

Twenty Fifth Amendment, 1971;
Obligation to pay 'Compensation' reduced to pay 'Amount'

Though it was provided by the Fourth Amendment that the inadequacy of compensation shall not be a ground for declaration of an act as void, but again in 1970 in the famous Bank Nationalization Case[35] the Supreme Court held that the Constitution guarantees the right to compensation, that is the equivalent of money of the property compulsorily acquired. In this case the petitioner Mr. R.C. Cooper had challenged the validity of *'Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969,* which had provided for the nationalisation of 14 leading Banks of India, allowing them to carry on any of the other business other than banking. The Act had made a provision for compensation which was to be determined by taking into account of assets of the Banks. The Court held that certain important classes of assets like good will of the Bank and the value of unexpired long-term leases were not taken into account while determining the amount of compensation. The method specified for the valuation of lands and buildings was

also not relevant to determination of compensation, so it was an illusory compensation. It was held that the Act was volatile of the guarantee of compensation under Art. 31(2), as it provided for giving certain amounts determined according to principles which were not relevant in the determination of compensation of the undertaking of the named Banks and by acquiring all the assets, undertaking, organisation, goodwill and names of these Banks, these were virtually deprived of even from doing any non-banking business also. The court also gave the reference of Article 19(1)(f), which guarantees the right to acquire, hold and dispose of property. That is why the Government made the Twenty Fifth Amendment to neutralize the effects of the decision of the Supreme Court. The Amendment substituted the clause (2) of Article 31 and the word 'compensation' was replaced with the word 'amount'. Clause (2B) was inserted to make the provisions of Article 19(1)(f) inapplicable to a law made under clause (2). But the right of the minorities to establish their educational institutions was kept intact by adding a proviso to Article 31(2). After this amendment clause (2) and the newly inserted (2B) of Article 31 were as following;

Art. 31(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an ***amount*** *which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash:*

Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1) of article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

after clause (2A), the following clause was inserted :-
Art. 31(2B) Nothing in sub-clause (f) of clause (1) of article 19 shall affect any such law as is referred to in clause (2).

Article 31C was inserted to give primacy to some of the Directive Principles aimed at economic equality and inclusive growth over some of the Fundamental Rights, which also includes the Right to Property. Before this amendment all the fundamental rights enjoyed the primacy over all of the directive principles, as the fundamental rights were made expressly justiciable, while the directive principles were kept as non-justiciable. But after this amendment the directive principles specified in clauses (b) and (c) of Article 39 were given primacy over the fundamental rights provided under Articles 14, 19 and 31. The directive

principles which were given priority over these rights were aimed at distribution of the national resources for the common good of the entire society, and establishment of an economic system where the wealth is not concentrated in a few hands. The newly inserted Article 31C was as following;

Art. 31C- Saving of laws giving effect to certain directive principles.- Notwithstanding anything contained in article13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

In Kesavananda Bharati case[36] the Supreme Court upheld the validity of the insertion of Article 31C as within the preview of the amending power of the Parliament. But the provision of this Article which excludes the power of judicial review by the court (*and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy)* was declared as unconstitutional as it affects the basic structure of the Constitution.

42nd Amendment, 1976;
Conferring precedence to all the directive principles over some of the fundamental rights

Article 31C was amended by the 42nd amendment. This amendment gives primacy to all the directive principles instead of principles contained in clause (b) and (c) of Article 39 on the fundamental rights given under Articles 14, 19 and 31. As a result of this amendment the text of the first part of Article 31C became as following;

Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing ***all or any of the principles laid down in Part IV*** *shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31;...*

But this change effected by 42nd Amendment in Art. 31C was declared invalid by the Supreme Court in Minerva Mills Ltd. v. Union of India case in 1980.

Forty Fourth Amendment, 1978

Right to Property reduced to the rank of a legal right only;

It was only after the Forty Fourth Amendment, that the Right to Property ceased to be a Fundamental Right. It was omitted from Part III and inserted in Part XII, as a legal right only. This amendment makes the following changes-

sub-clause (f) of clause (1) of Article 19, providing the right to acquire, hold and dispose of property was omitted.

Article 31 which had gone through so many amendments and judicial interpretations was omitted, thus the right to property ceased to be a fundamental right.

From the Article 31C the reference of Article 31 was removed because this Article was omitted by this amendment.

Insertion of Chapter IV, Article 300A in Part XII-

This new Article provided the right to property to all the persons as a legal right. The newly inserted Article 300A is as under;

Part- XII, Chapter- IV-Right To Property

Art.-300A- Persons not to be deprived of property save by authority of law.-
No person shall be deprived of his property save by authority of law

Now the right to property is a legal right only, and the various decision of the courts has certified it. Attempts to raise the status of this right as a fundamental right and to declare as a part of the basic structure of the Constitution has been dismissed by some of the High Courts and the Supreme Court. The Supreme Court has held in a case challenging the constitutional validity of *The Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act* of Tamil Nadu State vesting private forests with the State, and its inclusion into the Ninth Schedule by the 34th amendment that did not violate any fundamental right or destroy the basic structure of the Constitution. One of the three judges of the bench Justice Radhakrishnan said: “Right not to be deprived of property, save by authority of law, is no longer a fundamental right but only a constitutional right which has never been treated as part of the basic structure of the Constitution”[37].

Insertion of Article 31D (42nd Amendment)

Enforcing ‘national integration’ on citizens

This Article was inserted by 42nd amendment in 1976. It had provided an exemption from the restrictions of Article 13 to the laws made by the Parliament to curb the anti-national activities. The Parliament was empowered to make laws for the prevention and prohibition of anti-national activities and anti-national associations. The anti-national activities were defined as following;

An activity which supports any claim on any ground the cession or secession of a part of territory of India,

Which questions or threatens the sovereignty, integrity, security or unity of India,

Any scheme to overthrow the lawfully established Government,

Any scheme to create internal disturbances,

Any scheme to disrupt harmony among the various social groups

Any 'Association' which takes part in any of the above mentioned activities was defined as an 'anti-national association'.

Any of the law made by the Parliament for the prevention or prohibition of anti-national activities or anti-national associations was made immune from being challenged before a court on grounds of its inconsistency with the rights conferred by Article 14, Article 19 or Article 31. The relevant text of the newly inserted Article 31D was as following;

Art.31D- Saving of laws in respect of anti-national activities.-

(1) Notwithstanding anything contained in article13, no law providing for-

(a) the prevention or prohibition of anti-national activities; or

(b) the prevention of formation of, or the prohibition of, anti-national associations,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, article 14, article 19 or article 31.

(2) Notwithstanding anything in this Constitution, Parliament shall have, and the Legislature of a State shall not have, power to make laws with respect to any of the matters referred to in sub-clause (a) or sub-clause (b) of clause (1).

(3) Any law with respect to any matter referred to in sub-clause (a) or sub-clause (b) of clause (1) which is in force immediately before the commencement of section 5 of the Constitution (Forty-second Amendment) Act, 1976, shall continue in force until altered or repealed or amended by Parliament.

But as a result of the bitter experience of internal emergency and the way the executive has exercised the ruthless powers against the political opponents and the common masses, this provision proved to be an enemy of fundamental rights within the Part on fundamental rights. As the Government changes in the Centre, the new Government brought the 43rd amendment to remove some of the effects of the 42nd amendment. This Article 31D which was inserted by the 42nd amendment was omitted by the 43rd amendment in 1978.

Right to Constitutional Remedies

Art. 32- Remedies for enforcement of rights conferred by this Part.

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part by this Part, is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2),

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

This is the right which was called as the 'heart and soul' of the Constitution by the chairman of the Drafting Committee, Dr. B.R. Ambedkar. This Article has empowered the citizens to move to the Supreme Court for the enforcement of their fundamental rights. The text of this Article provides the right to move to the Supreme Court by *appropriate proceedings*. But the Supreme Court has ruled that when there is a question of enforcement of the fundamental rights of the poor, disabled and ignorant, by a public spirited person, even a letter addressed to the court or any Judge of the court shall be regarded as the *appropriate proceeding.* A new era has started with the relaxation of the principle of *Locus Standi* and recognising the principle of *Public Interest Litigation* by the Judiciary. But as the courts have made so many brave decisions on the basis of PIL, so it is not much liked by the executive and in the pretext of increasing arrears before the courts due to this tool, has tried to impose restrictions on this practice.

From the commencement of the Constitution no structural change has taken place in this Article by way of an amendment, yet there are some amendments which have tried to change the application of this Article. 42nd amendment has inserted some Articles in various Parts, which had imposed restrictions on the application of this right. A new Article 32A was inserted which had clipped the wings of the Supreme Court. It had provided that the constitutional validity of a law made by the Legislature of a State cannot be considered by the Supreme court under Article 32. This newly inserted Article was as following;

Art. 32A (42nd Amendment); Restricting the jurisdiction of Judiciary-

Art. 32A- Constitutional validity of State laws not to be considered in proceedings under article 32.-

Notwithstanding anything in article 32, the Supreme Court shall not consider the constitutional validity of any State law in any proceedings under that article

unless the constitutional validity of any Central law is also in issue in such proceedings.

The High Courts were also excluded from the power of consideration of constitutional validity of a *'Central Law'*[38]. Even in case of the Supreme Court a special procedure was prescribed under a newly inserted Article 144A. it had provided that the minimum number of Judges to consider the constitutional validity of a law shall be seven, and it could be declared as invalid only with a majority of two-thirds of the Judges hearing the case. Article 144A which was inserted by the 42nd amendment was as following;

Art.144A- Special provisions as to disposal of questions relating to constitutional validity of laws.-

(1) The minimum number of Judges of the Supreme Court who shall sit for the purpose of determining any question as to the constitutional validity of any Central law or State law shall be seven.

(2) A Central law or a State law shall not be declared to be constitutionally invalid by the Supreme Court unless a majority of not less than two-thirds of the Judges sitting for the purpose of determining the question as to the constitutional validity of such law hold it to be constitutionally invalid.

But as these provisions resulted in encroachment on the rights of the citizens, and the powers of the Judiciary, the delicate balance between the various organs of the Government on the one hand and between the State and citizen on the other hand got seriously disturbed. As the validity of a 'Central Law' can be reviewed by the Supreme Court alone, so it resulted in hardships to the citizens living in distant parts of Country[39]. Consequently the 43rd amendment was passed to remove the ill-effects of these provisions. With this amendment Articles 32A, 131A,144A, 226A and 228A were omitted from the Constitution.

Art. 33- Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.

Parliament may by law determine to what extent Any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

This Article has authorised the Parliament to impose restrictions on the fundamental rights of the persons who are the members of the armed forces or other forces which have duty to maintain the law and order. The members of the Armed Forces and the Police Forces directly came under the scope of this restriction. The Parliament has no need to specify the degree of extent to which these rights would be available or curtailed for the members of Forces. The respective acts of the Forces may contain the provisions for maintenance of discipline among the members of the force concerned, and these provisions were held valid by virtue of this Article

by the courts in some of the cases related to the members of Forces[40]. By the 50th amendment the scope of this Article was explicitly extended to the persons employed in the forces charged with the responsibility of protection of public property, employed in activities related to intelligence, and employed in activities related to telecommunication systems for the purpose of any force or any of the above mentioned organisations. This Article was substituted with a new one which is as following;

Art. 33- Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.-

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-

(a) the members of the Armed Forces; or
(b) the members of the Forces charged with the maintenance of public order; or
(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Art.-34. Restriction on rights conferred by this Part while martial law is in force in any area.

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

There is no provision of the Martial Law in the Constitution except under this Article. It stands for a complete failure of law and order and normal working of the judiciary. This Article has not been amended with any of the amendments.

Art. 35- Legislation to give effect to the provisions of this Part.

Notwithstanding anything in this Constitution,

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws-

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament ; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part ; and parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub- clause (ii) ;

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub- clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation. In this article, the expression "law in force" has the same meaning as in article 372.

Article 35 confers the power of legislation with respect to the above mentioned provisions on the Union Parliament, and excludes the State Legislatures from making any law in this respect. This Article was never amended by way of an amendment of the Constitution.

If we study the demands of the nationalist leaders of India during the British rule and the discussions of the Constituent Assembly, it can be inferred that the issue of the fundamental rights was taken with utmost care. But as the Constitution started working, there arose some contradictions between the fundamental rights of the citizens and the rights of the society as a whole. It resulted in the clash between the judicial decisions and the acts of Parliament. Due to these contradictions the Part on fundamental rights was amended from time to time, rather it is the Part which has been amended more frequently than any of the other Part of the Constitution.

References;

1. *M.V. Pylee; "Constitutional Government in India", p.92, S. Chand & Company Ltd, New Delhi, 2003.*
2. *C. A. D. VII, p. 953.*
3. *Zee Telefilms Ltd. v. Union of India (2005) 4 SCC 649.*
4. *Golaknath v. State of Punjab, AIR 1967 SC 1643: (1967) 2 SCR 762.*
5. *Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461: (1973) 4 SCC 225: 1973*
6. *State of Madras v. Champakam Dorairajan 1951 AIR SC 226.*
7. *SOR, 93rd Amendment Act, 2005.*
8. *Section 3, the Central Educational Institutions (Reservation in Admission) Act, 2006.*
9. *The Tribune, Chandigarh, April 11, 2008.*
10. *Balaji Raghavan v. Union of India, AIR 1996 SC 770.*

11. *SOR, 1st Amendment Act, May 10th, 1951.*
12. *SOR, 16th Amendment Act, January 18th, 1963.*
13. *Communist Party of India (M) v. Bharat Kumar, AIR 1998 SC 184: (1998) 1 SCC 201: (1998) 1 MLJ 99 (SC)*
14. *Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615: AIR 1987 SC 748: 1986 KLT 1037.*
15. *Maharashtra Ekta Hawkers Union v. Municipal Corporation Greater Mumbai, AIR 2004 SC 416: (2004) 1 SCC 625.*
16. *Pokhar Singh v. State of Punjab, AIR 1958 Punj 294: 1958 Cri LJ 1084.*
17. *Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.*
18. *Dehli Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101.*
19. *P. Rathinam vs. Union of India, 1994 AIR 1844.*
20. *Gian Kaur v. State of Punjab, (1996) 2 SCC 647.*
21. *The Hindu, Delhi, March 8, 2011.*
22. *The Hindu, Delhi, Feb. 26, 2014.*
23. *Bijoe Emmanuel v. State of Kerala 1987 AIR SC 748.*
24. *Church of God (Full Gospell) in India v. K.K.R. Majestic Colony Welfare Association, AIR 2000 SC 2773.*
25. *Surjeet Singh Chhabra v. Union of India, AIR 1997 SC 2560.*
26. *Sanjib Kumar Chauwdhry v. Principal St. Paul College, 1957 AIR Cal, 524, 61 CWN 717*
27. *Saifuddin Sahib v. State of Bombay, AIR 1962 SC 853.*
28. *Narendra v. State of Gujarat, AIR 1974 SC 2098.*
29. *Mahant Sri Jagannath Ramanuj Das v. The State of Orissa, 1954 AIR 400.*
30. *D.A.V. College Jullundur v. State of Punjab, AIR 1971 SC 1737.*
31. *Jagdev Singh Sidhanti v. Partap Singh Daulta, AIR 1965 SC 183.*
32. *D.A.V. College Jullundur v. State of Punjab, 1971 AIR 1737.*
33. *Ibid.*
34. *State of West Bengal v. Bela Banerjee AIR 1954 SC 170, 1954 SCR 558.*
35. *Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564*
36. *Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461.*
37. *The Hindu, New Delhi, Sep. 15, 2010.*
38. *Section 23, Forty-Second Amendment Act, 1976.*
39. *SOR, 43rd Amendment Act, 1977.*
40. *Prithi Pal Singh v. Union of India AIR 1982 SC 1413.*