SPECIFIC FUNDAMENTAL RIGHTS

The Fundamental Rights which are enumerated in the Indian Constitution are as follows: *(i)* Right to equality, *(ii)* Right to freedom, *(iii)* Right against exploitation, *(iv)* Right to freedom of religion,

(v) Cultural and educational rights, *(vi)* Right to property *(vii)* Right to constitutional remedies.

Right to Equality (Arts. 14 to 18). This right provides for equality before the law, social equality and equality of opportunity in public employment. The right to equality guaranteed by the Indian Constitution is essentially negative in character and has no socialist implications. This right prohibits any discrimination against any citizen or grounds of religion, race, caste, sex or place of birth. It aims at mitigating the cruder forms of social inequality.

According to Article 14, "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 means equality of rights and duties because perfect equality of all the individuals is impossible. Broadly speaking, this means that all are equal before the eyes of law. All persons are equally subject to the ordinary law of the land administered by the ordinary law courts. Like the British Rule of Law it also declares that all citizens including the officials are subject to the same laws and the same courts. According to this Article, no person is to be denied the equal protection of the laws within the territory of India.

The two phrases "equality before the law" and the equal protection of the laws" have been taken from the British and the American Constitutions respectively. Equality before the law is one of the three interpretations of the Rule of Law of Dicey who defines it as, "the equal subjection of all classes to be ordinary law of the land administered by ordinary law courts". According to the interpretation of Sir Ivor Jennings, equality before the law means that, "among equals the laws should be equal and should be equally administered, that like be treated alike".

Equality does not mean absolute identity. In the general interest of the society people and their property need to be differently classified. This distinction and the classification, however, should not be arbitrary. It must be based upon just and proper differences

which should form the basis of such classification, Justice Mukherjee of the Indian Supreme Court in a judgement has explained the true meaning and scope of the right to equal protection of laws in these words: "It must be admitted that the guarantee against the denial of equal protection of the laws dos not mean that identically the same rules of the law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America, 'equal protection of laws is a pledge of the protection of equal laws', and this means 'subjection to equal laws applying alike to all in the same situation'. In other words, there should be no discrimination between the one person and another if an regards the subject matter of the legislation their position is the same. There can be certainly a law applying to one person or to one group of persons and it cannot be held to be unconstitutional if it is not discriminatory in its character. It would be bad law if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations and visits a penalty upon them, which is not imposed upon others, guilty of like delinquency. The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made, and classification made without any substantial basis should be regarded as invalid". Right to equality also provides that no citizen can be subjected to any disability on the ground of race, religion, caste, sex or place of birth in such matters as access to place of public entertainment, use of public wells, tanks, roads, etc. This right provides for equal opportunity. All citizens of India shall enjoy equal opportunity in matters of employment or appointment to any office under the State.

According to Article 17, "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".

Lastly, according to Article 18(1), "No title, not being a military or academic distinction, shall be conferred by the state". Thus the state is prohibited to confer titles other than military and academic distinction. Citizens of India are prohibited to accept any titles from foreign states without the permission of the President of India.

However, it may be noted that the Parliament has got the power to prescribe residential qualification in regard to employments within particular states or local areas. It also has the power to reserve posts for the backward classes, Equality of access to public places shall not prohibit the state from making special provision for women and children.

In the year 1951, the first amendment of the Constitution provided that right to equality will not prevent the state from making special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Tribes. This amendment became necessary because the Madras High Court declared a circular of the Madras Government, reserving seats in certain technical educational institutions for the students belonging to certain castes and communities, *ultra vires*.

By way of criticism it may be pointed out that the grant of special privileges to some backward communities for almost an indefinite period would create psychological barriers in the society. This would aggravate the class consciousness of different communities and hamper the efforts for social cohesion. As a result of this the integration of the different social classes and communities would become increasingly difficult. Further, the indefinite dependence on special privilege, financial grants and reservation of posts would adversely affect individual initiative and efficiency. Employment of special privileges has a tendency for perpetuation.

Right to Freedom (Arts. 19 to 22). The usual liberties of the individual are embodied in Article 19, which lays down: "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 practice any profession or to carry on any occupation, trade or business" (Article 19(1).

A number of restrictions have been imposed on the rights enumerated above. In the interest of morality, decency, public order and security of the state, these rights can be restricted. These limitations are enumerated in Clauses (2) to (6) of Article 19. The state has the right to make laws relating to slander, defamation, libel and contempt of court. The first Amendment Act of 1951, has empowered the state to impose certain restrictions on the freedom of speech and expression in the interest of public order and the maintenance of friendly relations with foreign countries. It also empowers the state to carry on trade, business or industry whether to the total or the partial exclusion of citizens. Freedom of association and assembly is subjected to the right of the state to impose reasonable restrictions. These restrictions are considered essential for checking the abuse of freedom.

The original provision of the Constitution regarding the freedom of speech was exceptionally wide. This may be attributed to the American influence on the framers of the Constitution. The circumstances in which freedom of speech could be curtailed has been explained by Justice Brandeis. According to him, "to justify suppression of freedom of speech there must be reasonable ground to fear that serious evil will result if freedom of speech is practised. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground that the evil to be prevented is a serious one". An equally broad interpretation

of the right of free speech under the original provision has been given by the Indian Supreme Court in the case of Romesh Thappar V. The State of Madras. It was observed that the Constitution has "placed in a distinct category these offences against public order which aim at undermining the security of the state or overthrowing it and made the prevention of the sole justification of legislative abridgement of the freedom of speech and expression, that is to say, nothing less than endangering the foundations of the state or threatening its overthrow could justify the curtailment of the freedom of speech and expression".

The first Amendment Act of 1951, has considerably reduced the scope of the right to freedom of speech. It provides that "reasonable restriction" may be imposed by the state on the right to freedom of speech in the interests of the security of the state, the maintenance of friendly relations with foreign states, public order, decency, morality or contempt of court, defamation or incitement to an offence. Thus, the scope of state interference in the right to freedom of speech has been widened. If the courts are satisfied about the reasonableness, the legislature and the executive are free to impose any number of restrictions on the individual's right to freedom of speech.

In several cases the Supreme Court has interpreted the phrase reasonable restriction. It has been held that, "the phrase 'reasonable restriction' connotes that the limitation imposed on a person should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public...Legislation which arbitrarily or excessively invades the rights cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art. 19(1) (g) and the social control permitted by Cl. (6) of Art, 19 it must be held to be wanting in quality." It was observed that, "the determination by the Legislature of what constitutes a reasonable restriction is not final or conclusive, it is subject to supervision by the court". In the matter of fundamental rights the Supreme Court watches and guards the rights guaranteed by the Constitution and in exercising its functions, it has the power

to set aside an Act of the Legislature if it is in violation of the freedoms guaranteed by the Constitution. The Indian Constitution gives due emphasis to personal liberty and the principle Rule of Law. In its narrower sense personal liberty means freedom from arbitrary arrest and imprisonment or deprivation of life or detention of conviction. Right to freedom provides that no person shall be convicted of an offence except for a definite breach' of the law in force at the time of its commission. The operation of the criminal law in an expost facto manner is forbidden by the Constitution. It also provides that no punishment grater than that provided by the law at the time of commission of the offence can be inflicted. No person accused of any offence will be compelled to be a witness against himself and no person will be prosecuted and punished twice for the same offence. It is laid down that no person shall be deprived of his life or personal liberty except "according to the procedure established by law".

The use of the phrase procedure established by law requires elaborate discussion. The framers of the Indian Constitution preferred the phrase procedure established by law as against the due process of law of the fifth and the fourteenth amendments of the American Constitution because the former is more defined in its scope than the latter. The entire edifice of judicial supremacy in the U.S.A is built upon the concept of the due process of law. This phrase has never been defined by the American Supreme Court. This means nothing but an ideal standard which is there in the minds of the judges according to which they determine the constitutionality of a particular legislation. "Whatever it means to the present time, it is what the Supreme Court says it means". The purpose of the due process clause has been to give the power to the Supreme Court to determine the constitution did not like that the legislature should be thwarted by the judiciary. It was apprehended that, as in the U.S.A. the phrase due process would prove a serious handicap to progressive social legislation.

It is precisely for this reason that the framers of our constitution have discarded the term due process of law and have used its

substitute, procedure established by law, which was borrowed from the new Japanese Constitution. This has considerably weakened the safeguards of personal liberty because the powers of the legislature in prescribing any procedure cannot be challenged. The phrase 'procedure established by law is also subject to multifarious interpretations. In the case of A.K. Gopalan *V.* State of Madras the Chief Justice of India held a that 'law' in Article 21 means, 'Law enacted by the State' or law in force at the time". The majority view in this case asserted that the procedure established by law cannot be interpreted to lay down a vague standard such as the principles of natural law. Mr. Justice Fazl Ali, however, gave his dissenting opinion that this includes, "certain fundamental principles of justice which inhere in every system of law".

Article 22(1) lays: "No person who is arrested shall be detained in custody without being informed as soon as may be, of the ground of such arrest nor shall be denied the right to consult, and to be defended by a legal practitioner of his choice". Every person who is arrested and detained must be produced before the nearest magistrate within twenty four hours of his arrest (excluding the time necessary for the journey) and cannot be detained in custody longer than that without the authority of a Magistrate.

The state, however, has the power of preventive detention in case of enemy aliens and even citizens. Such detainees do not enjoy the safeguards against arbitrary arrest mentioned in Article 22(1). Certain other safeguards are laid down for such cases. No person can be kept under detention for more than three months if it is not approved by an advisory committee consisting of persons of the status of High Court Judges. Parliament is empowered to fix the maximum period of detention in any class or classes of cases. The procedure to be followed by the advisory committee may also be prescribed by the Parliament. Parliament may also fix the maximum period beyond which detention cannot be continued. The person under detention has a constitutional right to be informed, as soon as may be of the grounds of his detention and he must be given the

earliest opportunity to represent against the order of detention. The authority issuing the order, however, may refuse to disclose any acts which it does not consider to be in the public interest.

The provision of preventive detention has been subjected to severe criticism. In the Constitution Assembly it was denounced in unreserved terms Pandit Thakur Das Bhargava described these articles as, "the crown of our failures". It was described as a chart of oppression and denial of liberty" by Dr. Bakshi Tekchand. The initial period of three months was considered to be too large and it was argued that the period of detention should be reduced to one month or 15 days. A.K. Gopalan criticised it on the ground that, 'it is designed to crush political rivals of the Congresis'. In the Constituent Assembly it was pointed out that the rights guaranteed by the Constitution are worthless and that "the provison abrogate the freedoms" granted.

The framers of the Constitution probably realised that personal liberty is not only menaced by the state authority but also by the individuals and groups who seek to impose their will upon others by secretive and violent methods. The security of the state and the freedom of the individual will be jeopardised if the hands of the government are not strengthened against the anti-social elements and their obnoxious activities. There is no government in the world which does not enjoy such powers and hence it would have been unfair not to grant such powers to the Indian Government. The provision of the rights in the Constitution and the limitations strike a balance. The Constitution has achieved "a fairly reasonable enumeration of our rights and a reasonably conservative abridgement of the same" which was essential under the existing conditions.

At the same time, it is to be noted that the power of preventive detention is a dangerous weapon which can be used for political victimisation. The people, therefore, have to be alert and they must check the arbitrary use of this power. Public opinion has to be roused against the loop-holes in the provisions regarding detention without trial.

Right Against Exploitation (Arts. 23-24). According, to Article 23, traffic in human beings and bagar and other similar forms of .forced labour are prohibited and any violation of this provision shall be an offence punishable in accordance with law. But nothing in this Article shall prevent the state from imposing compulsory service for public purposes without making any discrimination on grounds only of race, religion caste or class or any of them. The state can impose compulsory service for public purposes.

This provision became necessary because in 1984, the practice of forced labour and some sort of traffic in human beings was prevalent in some parts of the country. The framers of the constitution wanted to end these shameful practices. But the Rights against Exploitation are almost useless platitudes, According to Dr. K.V. Rao these Articles in the group of rights entitled, "Right against Exploitation" confer no right on anyone nor an enforceable punishment. It is criticised that phrases like 'traffic in human beings', begar and hazardous have not been defined. Whether 'these are to be defined by the courts or the Parliament and who shall enforce them and against whom are some of the important points which have been left undecided. In order to be enforced the violation of these rights must be made cognizable offences in which case Article 32 becomes meaningless. Another thing which is to be noted is that prostitution is not prohibited. Only living on the prostitution of other is prohibited. Similarly, employment of children is not prohibited, only their employment in hazardous work is prohibited. According to Dr. Jennings, right against exploitation is more in the nature of imposing duties on private persons than laying down a right.

Article 24, provided that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Labour laws prohibiting the employment of children in factories or mines have been passed. But the state must make provision for poor houses or work houses for providing suitable work of children coming from very poor families to enable them to earn their livelihood.

Right to Freedom of Religion (Arts 25–28). India is a milti-religious state inhabited by people of almost all the religious' faiths. The framers of the Constitution could not forget the historic role of religion in the politics of the country and therefore, it was necessary for them to face squarely the question of the role of religion in the new republic. The leaders of India were wedded to the concept of a secular state. Jawaharlal Nehru was opposed to a caste ridden society and wanted "a national state which includes people of all religions and shades of opinion and is essentially secular as a state." Religious freedom was considered essential in India for divesting from the minds of the citizens any fear of state interference. Gandhiji, the apostle of truth and non-violence, was deeply convinced about the merit and truth in all religions and strongly felt that "any form of political association based exclusively on adherence to a particular religion was worse than undemocratic".

Article 25, aims at the establishment of the secular character of the Indian polity. According to this Article all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion subject to public order, morality and health. Positively, this right safeguards the free exercise of religion by everybody subject to public order morality and health; and negatively, it prohibits the state from compelling by law any person to practice any particular creed or religion. Again, it may be noted that the recognition of the right to freedom of conscience and the free profession, practice and propagation of religion shall not affect the operation of any existing law or prevent the state from making any law regulating or restricting any economic financial, political or other secular activity which may be associated with religious practice. Nothing in this Article shall affect any provision of social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 26, is a necessary concomitant of Article 25. Without the freedom to maintain and establish religious institutions, the mere freedom to religion and religious propaganda would have become

absolutely meaningless. Article 26, provides that, subject to public order, morality and health, every religious denomination or any section thereof shall have the right *(i)* to establish and maintain institutions for religious and charitable purposes, *(ii)* to manage its own affairs in matters of religion, *(iii)* to own and acquire movable and immovable property, *(iv)* to administer such property in accordance with law.

Article 27, provides that no person shall be compelled to pay any taxes which would be spent for the promotion or maintenance of any particular religion or religious denomination. This Article is a further step ahead in the emphasis of the secular character of the Indian polity. The state cannot make any special financial provision for the development of any particular religion.

Article 28: "*(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 the 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 consent there to."

Cultural and Educational Rights, (Article 29-30). India is a multi-lingual state. It comprise a very wide tract of territory consisting of people with different cultures and traditions. In ethnic origin and culture a Punjabi has greater affinity with a Pathan from Afghanistan than with an Indian from Tamilnadu. Besides the fourteen recognised languages, apart from English, there are more than two hundred spoken dialects in India. Unless we remember this it will be difficult to realise the significance of culture and educational rights guaranteed by the Indian Constitution.

Article 29(1) : "*(i)* Any section of the citizen 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. *(ii)* No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds or grounds only of religion, race, caste, language or any of them".

Article 30(1) : "*(i)* All minorities whether based on religion or language shall have the right to establish and administer educational institution of their choice. *(ii)* 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".

Thus, the minorities have the constitutional right to establish educational institutions of their choice which they think suitable to conserve their own language and culture. The State has to adopt an impartial attitude at the time of granting aid to the institutions run by the minorities.

By way of criticism it may be pointed out that the words 'culture' and 'conserve' in the Article mentioned above have not been defined. In the words of Dr. K.V. Rao, they are not only delightfully vague but dangerously so". Culture may be interpreted as a moral and social order based upon religion. Article 29, (ii) confers the right on the monorities to seek admission in any educational institution. But how far the right is effective? When teaching in mother tongue becomes vogue the minorities will be barred automatically from seeking admission into the educational institutions. Moreover, on grounds of minimum educational qualifications, age, health, character and previous conduct admission into educational institutions can be refused. The degree of one university may not be recognised by another university. In the words of Dr. K.V. Rao, if the Makers thought they had conferred any right by Article 29, they were mistaken".

Right to Property (Article 31.31-A, 31-B). Article 31, "*(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 of 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, compensation is to be determined and given".

Clauses (3) to (6) Art. 31 and Art. 31-A and 31-B, provide exception to the general provisions of acquisition and requisition of property by the state for public purposes and compensation to be paid therefor.

Such exceptions to the right to property are also noticed in other constitutions of the word. In states like U.S.A. and Australia, private property can be acquired for public purposes under the authority of the principle of "eminent domain" subject to payment of fair or just compensation. In the U.S.A the courts are competent to decided whether the compensation is fair or not. Compensation has been made a necessary condition of compulsory acquisition for public purposes. In India the Constitution does not mention about its being fair or just. According to Dr. M.P. Sharma, the omission is deliberate and its intention is to bar out the interference of the courts from the matter and prevent litigation. It was observed by Pandit Pant, the then Chief Minister of U.P., "We wish to pay equitable compensation to everybody but we do not want to be involved in litigation in any case whatsoever". Many members of the Constituent Assembly also asserted that the amount of compensation should be determined by the legislature and the judiciary should not be allowed to challenge the Parliament which embodies the sovereign will of the nation. Pandit Nehru emphasised that, "within limits, no judge and no Supreme Court can make itself a third chamber". But K.M. Munshi was right when he pointed out in the Constituent Assembly that it was not possible to by-pass the courts. If it is said that, "this shall not be questioned in a court of law", then the courts will try to adjudicate on the meaning of

"questioned in a court of law." The apprehensions of K.M. Munshi came true.

Two divergent views were expressed in the Constituent Assembly. One group led by Pandit Nehru insisted that the Parliament's sovereignty should not be challenged by the judiciary and the courts could not become" "a third chamber" Nehru was of the view that the Parliament should fix the compensation. The nature and the Principles of compensation should not be questioned by the judiciary. On the other hand, there was another group which insisted that the judiciary should enjoy the power to determine the reasonableness of compensation. However, there was a compromise. It was thought that the Legislature would fix the principles and the courts could go only into the question of fact whether compensation or principles of compensation were mentioned at all in Act but not into reasonableness of compensation".

The definition of the two words 'public purpose' and compensation has posed the greatest problem and, as a consequence, whether the nationalisation of industry and land reforms are possible within the framework of the Constitution has become a debatable point. Despite the incorporation of clauses (4) and (6) in Article 31, to shield Zamindari Abolition Acts of Bihar, U.P. and Madras judicial interference could not be eliminated. The courts declared these Acts as unconstitutional on the ground that they violated the other Fundamental Rights guaranteed by the Constitution. The Patna High Court declared the Bihar Zamindari Abolition Act unconstitutional. In the initial stage when the Zamindari Abolition Acts were brought before the courts, they began to question the principles of compensation as well as the question whether 'Public purpose' was involved or not. Latter on the courts, however, took a liberal view. The makers of the Constitution deliberately avoided the use of words like 'fair', 'just' or 'reasonable' compensation in order to give the power in the hands of the Parliament to have the final say in the matter. But the courts held that compensation meant the 'equivalent' of the property deprived of and it should be adequate and not discriminatory. Compensation, however, need not be paid in

terms of money. Thus, it was decided that the compensation implies that it should be just and equivalent and was a justiciable issue. This was contrary to the expectations of the framers of the Constitution. They did not want either the compensation to be "just and equivalent" or that the courts should have the final say in the matter.

But it was not possible to keep the land reforms legislation outside the purview of the courts. The legislators wanted to overcome this difficulty, because it was thought to be a great hindrance to the attainment of socialistic pattern of society. Hence, the Constitution was amended twice to put these issues beyond the jurisdiction of the courts and again a third time in 1964, to define estates. The Supreme Court decision in 1961, that 'estate' as used in the Constitution referred only to Zamindari tenures but not to roytwari property and full compensation should be given if surplus land was taken away from the Zamindari, necessitated the amendment of 1964. This amendment defined estate in a more comprehensive way as to include any proprietary right in land.

Article 31A, stated that no law providing for the acquisition by the state of an estate or of any rights therein or for the extinguishment or modification of any such rights or the taking over of the management of any property by the State for limited period either in public interest or in order to secure the proper management of the property shall be held void on the ground that it was in conflict with Fundamental Rights as provided by Articles 14, 19 or 31.

Article 31B, added a new schedule (ninth) to the Constitution, giving a list of 13 Zamindari Abolition laws whose validity could not be questioned by the courts, under the provisions of the previous Article and which would remain valid not withstanding and judgement, decree or order of any court or tribunal to the country. The purpose of this Article was to keep certain land-reform measures beyond the purview of the judiciary.

But the insertion of the new Article 31-A and 31-B, in the Constitution did not solve the real problem. In Sholapur case it was

decided, *inter alia*, that since the ordinance taking over the management of the Sholapur Mills did not make any provision for compensation, it amounted to infringement of Article 31. The Supreme Court of India also declared the Bank Nationalisation Ordinance of 1969, unconstitutional because it was discriminatory. While other banks were not touched, the fourteen nationalised banks were not allowed to carry on banking business without the approval of the government.

On 12th April, 1955 the Constitution (Fourth Amendment), Act was passed to surmount some of the difficulties created by the decisions of the Supreme Court. Pandit Nehru said in the Parliament that while interpreting the laws the Supreme Court and the Country. While explaining the objects of the bill he said, "we are not suggesting any arbitrary confiscatory or expropriatary action. In fact the law provides that acquisition of property be by law and compensation should be paid. But the quantum of compensation will be determined by the legislature".

The amendment of 1955, provided that the adequacy of compensation cannot be questioned in a court. By this amendment the original principle of the Constitution that in matters of social, political and economic policy it is the legislature and the judiciary which is supreme was emphasised. The amendment makes it amply clear that no law which provides 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 can be declared invalid by the court on the grounds of the inadequacy of compensation.

This amendment was vehemently condemned by protagonists of the right to property. They argued that this amendment is a negation of the right to property guaranteed by the Constitution because it has made the right to property non-justiciable. On the other hand, the communists, socialists and the extremists in the Congress ardently supported it.

The right to property requires dispassionate consideration and the extremes are to be avoided. The right to property is brought

under fire no less vigorously at present than it was in the past. After the invalidation of the Bank Nationalisation Ordinance many statesmen, politicians and intellectuals suggested that right to property should no longer be a fundamental right. It should only be a legal right like the other rights, say the right to vote. The most unfortunate thing is the criticism of the Supreme Court as the citadel of the reactionary forces and the obstacle to the attainment of the socialistic pattern of society. The Supreme Court is one of the main pillars of support for a democratic government and it cannot be expected to sail favourably with the fluctuating and transient political opinions of the country. Socialism must function within the framework of the Constitution and there is ample scope for that. What is really lacking is the sincerity of the leaders, if they take recourse to undemocratic and extra constitutional measures of the Supreme Court as the guardian of the Constitution must invalidate such measures. However, one thing has to be noted in this context that large properties in land or means of production are determental to the general interest of the society. Concentration of wealth in the hands of a few people has to be scaled down and there must be equitable distribution of wealth. Hence, the amendment was justified in the context of the dynamics and tempo of the new social forces that had been set in operation to shape India's destiny.

Further, in accordance with the Constitution's Twenty-fifth Amendment Act, 1971, after Article 318, 31C was inserted saying: "Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards. Securing the principles specified in clause (b) or clause (c) of Article 39 span 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 referred for the consideration of the President has received his assent.

According to the Forty-second Amendment of the Constitution Article 31D, has been inserted saying: "Not-withstanding anything contained in Article 13, no law providing for, *(A)* the prohibition or prevention of anti-national activities, *(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 Articles 14, 19 or 31. Further, it is providing that Parliament alone shall have the power to make laws with respect to any of the matters in this, regard".

Right to Property which was amended several times in the past and was severely mutilated was deleted from the category of Fundamental Right, finally, during the Janata Government regime. The Right was responsible for most of the conflicts between the Legislature and the Judiciary. Right to property however, would be given express recognition as a legal right and no person shall be deprived of his property save in accordance with law.

Ever since the inception of the Constitution, the Fundamental Right to Property has been progressively restricted by several Amendment, Acts, namely, the First Amendment Act, 1951, the Fourth Amendment Act, 1955, the Seventeenth Amendment Act, 1964, the Twenty-fifth Amendment Act, 1971 and the Forty-second Amendment Act, 1976. All these successive Amendment Acts have severely eroded the Right to Property to such an extent that there was a genuine doubt, whether this Right was protected in any way from legislative encroachment. This doubt was cleared for all times to come by its total deletion from the category of Fundamental Rights during the regime of the Janata Government.

Right to Constitutional Remedies (Arts. 32—35). This provision is extraordinarily important because it gives meaning and fulfilment to the other fundamental rights guaranteed by the Constitution. A mere declaration and insertion of fundamental rights in the Constitution is useless, unless there is an effective and easy remedy

or machinery provided in the Constitution itself for enforcing these rights, or unless their enjoyment is effectively guaranteed by provision for judicial review". Referring to this provision Dr. Ambedkar said, "If I was asked to name any particular Article in this Constitution as the most important Article without which this Constitution could 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."

Article 32 : *(1)* The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed. *(2)* The Supreme Court shall have power to issue directions or orders or 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 with in local limits of its jurisdiction all or any of the power exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this Article shall not be suspended except or otherwise provided for by the Constitution."

In case of violation of the fundamental rights the individual has the right to move the Supreme Court by appropriate proceeding and the Supreme Court has the power to issue direction, orders or writs as mentioned above whichever may be appropriate for the enforcement of any of the fundamental rights. Justice Mukherjee of the Supreme Court has defined the scope of the power to issue directions, orders or writs in the following words: "Article 32, as its provisions show, is not directly concerned with the determination of constitutional validity of particular legislative enactments. What it aims at is the enforcing of fundamental rights guaranteed by the Constitution no matter whether the necessity for the enforcement arises out of an action of the executive or of legislature. To make out a case under this Article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular legislature as not being covered by

any items of the legislative list, but that it affects or invades his fundamental rights guaranteed by the Constitution of which he could seek enforcement by an appropriate writ or order. The rights that could be enforced under Article 32, must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the court for relief."

Article 32, is a remedial right for the enforcement of the fundamental rights guaranteed by the Constitution and this right has also been made fundamental by its incorporation in Part III of the Constitution. Thus, the Supreme Court is made the protector and the guarantor of the fundamental rights. The Supreme Court, therefore, is duty bound to entertain all applications seeking protection against infringements of fundamental rights. The Constitution has empowered the Supreme Court and the High Courts to issue orders, directions and writs. Parliament also has the power to authorise any other courts in India to issue order or directions in the nature of the above-mentioned writs within the local limits, without prejudice to the powers of the Supreme Court to issue these orders. The jurisdiction of the Supreme Court, the High Courts and other courts will be concurrent. However, apart from these remedies any law can be questioned in a court by any person on the ground that it violates the Constitution.

The right to move the Supreme Court and the power of the Supreme Court to issue writs cannot be suspended except as otherwise provided for by the Constitution. But it is criticised that this right can be suspended under Article 359, which has robbed the vital essence of the fundamental rights. The fundamental rights can be suspended, abrogated when emergency is proclaimed by the President under Article 352. It may be pointed out in this connection that our fundamental rights are not absolute and they strike a balance between the demands of the individual and the needs of the States. It must be realised that the safety of the State is more important than the rights of the individual. When the life of the State is itself in jeopardy, it must take drastic steps to protect itself and under such circumstances the rights of the individual must be subordinated

to the supreme need of the safety of the State. Hence, during emergency the rights remain suspended. Such an order may extend to the whole or any part of the territory of India. The constitutional remedies for the enforcement of the fundamental rights cannot be suspended during normal times without the amendment of the Constitution by the Parliament. But during the emergency the right to constitutional remedies can be suspended by the President by an executive decree. It is true that the nature and the scope of this power is absolute and unlimited and may be open to abuse but in the larger interests of the State such power is deemed necessary."

According to Article 33, Parliament has the power to modify the rights guaranteed to the citizens, which may 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 I of their duties and the maintenance of discipline among them.

Article 34: Notwithstanding the provisions regarding fundamental rights in Part III, "Parliament may be 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, punishments inflicted, forfeiture ordered or other act done under martial law in such area."

Article 35, makes it clear that laws regarding matters relating to fundamental rights are to be enacted by the Parliament alone and the State legislatures have no power to deal with these matters.