

CHAPTER-III

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CHAPTER - III

JUDICIARY, DEMOCRATIC PROCESS AND THE CONSTITUTIONAL FRAMEWORK : THE INDIAN SETTING

(A) FUNDAMENTAL RIGHTS IN THE CONSTITUTION OF INDIA

The Indian Constitution is a social document which provides the objectives to reach the social revolution....” The core of the commitment to social Revolution lays in Part III and Part IV of the Constitution i.e. Fundamental Rights and Directive Principles of the State Policy. Both are incorporated after independence. They are hopes and aspirations of true liberty. Our constitution has adopted the Fundamental Rights from “the American Bill of Rights”.

Part III of the Constitution of India which contains the Chapter on the Fundamental Rights deals generally with the traditional rights of individual liberty traditional because it is confined to the rights which are generally recognised before the First World War, and does not make room for the new range of liberties adopted by the Post War Constitutions of Europe and Latin America. The scheme of Part III is such that the 26 Articles (including 31A and 31B) can be arranged under the following broad categories: (1) Article 12 and 13 are the core Articles establishing the superiority of Fundamental Rights to legislative enactments. (2) Right to Equality, involving Articles 14-18, of which Article 14 is the basis. (3) Right to Freedom, comprising, Article 19-22 of which 19 & 21 constitute the granite foundation, (4) Right against exploitation, involving Article 23 & 24. (5) Right to freedom of Religion found in Article 25 and 28, intended for the minorities. (6) Cultural and Educational Rights, spread over Article 29 & 32. (7) Right to Property incorporated in Article 31, and afterwards Article 31A and 31B and (8) Right to Constitutional Remedies, guaranteed in Article 32-35 of which Article 32 is the most vital,

seeking to make the Supreme Court, the protector and guarantor of the other Rights and custodian of their enforcement through appropriate writs.¹

Alongwith tables there are Positive Rights and negative Rights of the Individuals. Positive Rights are subject to regulation of the State such as Freedom of speech, protection of life and personal liberty while negative rights are in form of Constitutional limitations upon the authority, such as prohibition of discrimination or denial of equal protection etc.

(1) Article (12) and Article (13); (2) Right to Equality (article 14 to 18); (3) Right to Freedom (Article 19 to 22); (4) Right against Exploitation (Article 23 & 24); (5) Right to freedom of Religion (Article 25 to 28); (6) Right to Property (Article 31); (7) Right to Constitutional Remedies (Article 32 to 35).² Alongwith this, there are positive rights and negative Rights of the Individual. Positive rights are subject to regulation of the state such as Freedom of speech, protection of life and personal liberty while negative rights are in the form of constitutional limitation, upon the authority Such as prohibition of discrimination or denial of equal protection etc.

Article 12 and Article 13(3) have made Fundamental Rights more effective. Article 12 includes the state which means the government and Parliament of India specially, the Legislature and the Executive; Secondly, it also includes the Local authorities like Municipalities, District Boards, Panchayats, Trustees etc. Thirdly, the authorities which comes within the territory of India and directly controlled by the government. Fourthly, "the other authorities includes all those authorities created by the statutes ~~which~~ of the constitution. The authorities like Life Insurance Corporation, Finance Commission and The Oil and Natural Gas Commission are to be held under Article 12. With regard to judiciary the state can be used in the

case of High Court article 12 can not be issued in the term of writ jurisdiction against the High Court since it do not violate the Fundamental Rights.

Article 13 in several cases, has been and conflicting issue the decision of Supreme Court. Article 13(3) defines, a law which includes “ordinances – which is exercised by the legislative powers of the executive. (ii) an order, bye laws, rule, regulation having the forces of law. (iii) customs and usages having the force of law. The expression ‘law in force’ is used in Article 13(1) and also in Article 372. The expression “existing Law” – is used in Article 19(2) and 19(6). There is a wide difference between the existing law and the law in force. The ‘law in force’ means the law which is not in operation. The law in force includes the ordinance, order, bye law, rules regulation, notification, custom and usage. In Shankari Prasad Vs. Union of India,³ the Supreme Court has held that “the amendment of the Constitution is not a law” which comes within article 13(3) of the constitution. The decision which was taken in Golak Nath Case⁴ was overruled in Keshava Nanda Bharati Case (AIR 1973, SC-1461; (1973) 4SCC 225. Even in Keshava Nanda Bharati Case, the Supreme Court declared that the expression law in Article 13⁵ did not include amendment of the Constitution. In Keshava Nanda Bharati Case – it was laid down that the amending power of the constitution cannot alter the basic structure of the constitution. The Clause (4) and (5) of Article 368 of the Constitution inserted by 42nd Amendment Act 1976 have declared that there are no limitations expressed or implied upon the amending power of the constitution under article 368(1) which is a Constituent power and that a constitution Amending Act shall not be subjected to judicial review in any court or any ground. In Minnerva Mill’s Case Vs Union of India⁶ the Constitutional bench of the Supreme Court has declared Clause (4) and (5) of Article 368 of the Constitution invalid on the ground that these provisions introduced by 42nd Amendment Act

1976 sought to exclude judicial review which was a basic feature of the constitution as held in Keshava Nanda Bharati's Case⁷ and that so long as the decision stands all Constitution Amendment Act shall be open to judicial review by the Supreme Court or High Court to see whether such Amending Act affected any of the basic features or other procedural safeguards in Article 368. The enforcement of Fundamental Rights by the Courts is part of the administration of justice. In guaranteeing Fundamental Rights and in providing the means for enforcement through the courts of law, our Constitution has not abrogated condition relevant to the administration of justice. To secure justice, is one of the objectives of our constitution. Fundamental Rights are guaranteed under the constitution and are incorporated in Part-III.

Right to Equality : (Article 14)

Article 14 of the constitution of states the "equality before the law". "The state shall not deny to any person equality before the law or equal protection of laws' within the territory of India. The quality before the Law is an expression of English Common Law' or "equal Protection of Laws" - who has its origin in the 14th Amendment of the Constitution of United states of America.

Equality before law and equal protection of the laws may seem identical but in fact, it means different meanings – while equality before the law is a negative concept and equal protection of law is a positive concept. The former declares that everyone is equal before law that no one can claim special privilege and that all classes are equally subjected to the ordinary law of the land while latter postulates that an equal protection under like situation and under like circumstances. "The equal protection clause strike down the hostile discrimination – or oppression of inequality. In Dalmia Vs Tendolkar Case⁸, the Supreme Court, declares that Article 14 condemns

discrimination not only by substantive law but also by procedural law. Though it forbids classification and that permissible classifications shall satisfy two conditions –

- a) It must be founded as an intelligible differentia which distinguishes persons or things which are grouped together from other left out groups.
- b) The differentia must have a rational relation to the object sought to be achieved by the statute in question. In Anwar Ali Sarkar's Case (1952 SCR-34), Supreme Court has mentioned that differentia and object are two different element and it follows that objects by itself cannot be the basis of classification.

In Dalmia's Case, the Supreme Court has laid down that the classification may be found on different basis – namely geographical or according to the objects, occupation and the like.

Applicability of Article 14:-

Article 14 of the Constitution can have no application where the some of authority of the Parliamentary and state legislation are different. [Bar Council Vs State⁹ AIR, 1973, SC 231, (1973) SCC 261] Article 14 is applied to both citizens and noncitizens. The principle of discrimination laid down under Article 14 of the constitution should not be applied to a case under Article 19 unless it involves identical situation, factual, and legal. What was once a perfectly valid legislation may, in course of time, become discriminatory and liable to challenge, on the ground of its being violative of Article 17 of the Constitution. The expression 'equal protection of laws' means the right to equal treatment in similar circumstances. Article 14 ensures equality among equals protecting persons similarly placed against discriminatory treatment. A person challenging an act as discriminatory must establish that between person similarly placed

some were treated to their prejudice and the differential treatment has no reasonable relation to the object sought to be achieved by the law in UP Electric Co. Vs State of UP¹⁰.

Prohibition of Discrimination :

Article 15 of the Constitution of India states as follows – prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth. It is only a citizen who is entitled to the benefit of this article. Article 14 on the other hand is available to all persons. The mandate of Article 15 clearly extends to political as well as other rights. Therefore, the law of election on the basis of separate electorates for members of different religious communities violates Article 15. State cannot make classification of the socially and educationally backward classes only on the consideration of Caste, e.g Nanda Kishore Sharma Vs State of Bihar.¹¹ But the reservations of the members of a caste being class of citizen can be made if the caste as a whole is socially and educationally backward in view of clause (4) of Article 15.¹² Discrimination based on place of birth does not extend to provision on the basis of residence, so discrimination on the ground of residence does not attract Article 15.¹³ Reservation of seats in a medical college for candidates of rural areas contravenes Article 15, but reservation of candidates for the hill areas does not, but where reservation is made for candidates residing in a geographical area, socially and educationally backward, the same does not violate Article 15 because of clause (4).

In Indira Isawhrey Vs Union of India,¹⁴ the Supreme Court has held a special provision contemplated by article 15(4) is an emphatic reference to the affirmative action which the state may adopt to improve the conditions of the disadvantaged members of the backward classes of citizens, and that it significantly does not specifically speak

about reservation, but it has been generally understood to include that power.

The object of protective discriminate on (article 15(4) is to integrate the socially and educationally backward classes into the national mainstream so as to establish an integrated social order with equal dignity of person in which justice – social, economic and political, is engaged by them in equal measures with general members of the society. For e.g. Post Graduate Institute of Medical Education and Research Vs K.L. Navasimhan (1997) 6 SCC 283. Dalits (SCs) and tribals are the victims of social injustice, such as practice of untouchability and segregation from the mainstream of normal life.

Equality of opportunity:-

Article 16 of the Constitution states as follows – Equality of opportunity in matters in public employment.¹⁵

- (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 ground 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 the Article shall prevent the state from making any provisions for 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.
- (4) Nothing in this article shall prevent the state from making any provision 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. Article

16(4) - Nothing in this Article shall prevent the state from making any provisions for reservation in matters of promotion to any class or classes of parts in the services under the state in favour of the scheduled castes and the scheduled tribes which in the opinion of the states are not adequately represented in the services under the state.

(5) Nothing in this Article 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 there of shall be a person preferring a particular religions or belonging to particular denomination. The Supreme Court in Indra Sawhney Vs Union of India (AIR 1993, SC-477 (1993)1 SCJ 352) known as Mandal Case has laid down the guiding principles for reservation of backward classes in Government services in writ petition seeking proper implementation of Mandal Commission on Report. The Mandal Commission recommended 27% reservation for backward classes. The Supreme Court decided on 6th November 1992 by a 6 to 3 majority that 27 percent reservation of posts for socially and educationally backward classes would serve the end of social justice.

The Supreme Court held that creamy layer of backward classes shall cease to have the right of reservation in employment. The Supreme court in Ashok Kr. Thakur Vs State of Bihar¹⁶ case, has struck down the criteria for identification of creamy layer set out in Bihar Reservation of Vacancies in Posts and services for Scheduled Castes and Scheduled Tribes and the other Backward Classes (Amendment) Ordinance 1995 and S 3(b) of UP, Public Service Reservation of Scheduled Castes and Scheduled Tribes and Other Backward Classes Act 1994 as arbitrary and illegal and has approved

the test laid down by the Central Government in office memorandum dated the 8th September, 1993.

Equal Pay for Equal Work:

The principle of equal pay for equal work has not been specifically declared to be a Fundamental Right under the Indian Constitution. But it is certainly a constitutional goal. The principle of equal pay for equal work would be an abstract doctrine not attracting Article 14, if sought to be applied to them. But equality clause will have some substance if equal work means equal pay and such right, is deduced from Article 14 and 16 in the light of Preamble to the Constitution and Article 39(d) of the Directive Principles of the Constitution. There can not be any emerged scale of pay on the basis of no classification or irrational classification when they do identical work under the same employers, (Randhir Singh Vs Union of India).¹⁷ Thus the court makes a liberal use of the equality clause to make the directive of equal pay for equal work more authentically Constitutional than what it is.

Abolition of Untouchability :

Article 17 of the Constitution states as follows : 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.”

Protection of Civil Rights Acts and Article 17 :

While interpreting Article 17 and the provisions of protection of civil rights Act, the Supreme Court has held that the constitution has removed the disabilities to which ‘Dalit members of Scheduled Castes’ are subjected and subjecting them again to such disabilities would be crime against the constitution as well as violation of the protection of

civil right act. It has also been observed that the thrust of Article 17 Protection of Civil Rights Acts is to liberate the society from blind and ritualistic adherence to traditional beliefs which lost all legal or moral base and that it seeks to establish a new ideal for society, that is equality to the Dalits on part, with general public, absence of disabilities, restriction and prohibition on grounds of caste and religion, availability of opportunities and the sense of being a participant in mainstream of the national life. It has also been held that the disabilities to which the Dalits have been subjected have been outlawed and denial thereof offends the right to equality of Article 14 of the Constitution, that the scheme of Part III, namely the Fundamental Right is to remove disabilities to which the Dalits are subjected to and provide positive discrimination in their favour and Part IV namely, the Directive Principle fosters on the state to render socio-economic and political justice and protect them from all forms of exploitation and injustice by the operation of Article 38 and Article 46 of the Constitution.

Union Legislature : Functions of the Parliament

Our Constitution has adopted the Parliamentary system of government which effects a harmonious blending of the legislative and executive organs of the state in as much as the executive power wields by a group of members of the legislature who command a majority in the popular chamber of legislature and remain in power so long as they retain the majority.¹⁸ The functions of Parliamentary as the legislative organ follows from the above feature of the Parliamentary system:

- (i) **Providing the Cabinet** – It follows from the above that the first function of Parliament is that of providing the Cabinet which is a popular Chamber. The membership of the Cabinet is not

necessarily restricted to that Chamber and some of the members are usually taken from the upper Chamber.

- (ii) **Control of the Cabinet:** It is necessary corollary, from the theory of ministerial responsibility that it is a business of the popular Chamber to see that the Cabinet remains in powers so long as it retains the confidence of the majority in that those House. This is expressly secured by Article 75(3) of our Constitution.
- (iii) **Criticism of the Cabinet and of Individual Ministers:** In modern times both the executive and legislative policy are initiated by the Cabinet and the importance of the legislative function of Parliament has to that extent diminished from the historical point of view. But the critical function of Parliament has increased in importance and is bound to increase if Cabinet Government is to remain a responsible form of Government instead of being an autocratic one. In this function, both the Houses participate and are capable of participating, though the power of bringing about a downfall of the Ministry belongs only to popular Chamber, [Art-75(3)].

While the Cabinet is left to formulate the policy, the function of Parliament is to bring about the discussion and criticism of that policy on the floor of the House, so that not only the Cabinet can get the advice of the deliberate body and learn about its own errors and deficiencies but the nation as a whole can be apprised of an alternative point of view on the evaluation of which representative democracy rests in theory.

Legislation : Legislature is a law making body which comes under (Art.107-245).The Parliament has the sole power not only to authorise expenditure for the public services and to specify the purposes to which that money shall be appropriated but also provide the revenue required, by means of taxes and other impositions and

also to ensure that money that was granted to be report for authorised purposes. The Parliament of India consist of President and two Houses. The Lower House is called the house of People while the Upper House is known as the Council of States (Art.79). The President is a part of the Legislature like the English crown.

The Accountability of the Executive:

Under the parliamentary term of government, the Executive is responsible to Parliament for all its acts of omission and Commission.¹⁹ Therefore, an important function of Parliament is to ensure and enforce accountability. In India, the Executive power are formally vested by the Constitution is the President, the Head of the State, who acts on the aid and advice of the Council of Ministers, which is collectively responsible to Lok Sahba. It implies that the Council of Ministers is answerable to the House for all its actions and remains in office so long as it enjoys its confidence. The need of maintaining the majority support in Lok Sabha always acts as a check on government, keeping the accountability factors in the forefront. There are two aspects to Executive responsibility. (a) The Council of Ministers is collectively responsible to Lok Sabha and the Ministers are individually, responsible to Parliament for the work of ministers under their charge. Under the ministerial responsibility, the Ministers owe moral responsibility for all matters and performance of the Department, they had. The accountability of the council of Ministers involves a constant control of the Parliament over the Government as Central and accountability go together. (b) The accountability of the Executive is particularly to the popularly elected House of Parliament. The Control over the Executive by the Parliament has the Parliament has several objectives. Its aim is to ensure that government of the day delivers and performs to the best of its ability for public good. Parliamentary surveillance is essential to ensure that power is not misused or abused and to prevent mal-governance. One of the basic

objectives of a representative democracy is to see that governance is carried out according to the wishes of the people and it strives to meet their needs and promote their welfare.

(c) The Question Hour is an important occasion to ensure Executive accountability. It provides an opportunity to the members to scrutinize almost every aspect of the functioning of the Government. The efficacy of this procedural device has been well acknowledged. Certain matters preserved by the members in the part led to enquiries by the government or parliamentary committees. Such enquiries included the Mundhra Deal, Dalmia-Jain enquiry and Import licence case etc. Parliamentary Control over the Executive is exercised through various other procedural devices like motion, resolutions half an hour discussion. The discussion on the Motion of Confidence or No Confidence may provide an opportunity to members to evaluate the performance and decide the fate of the Government.

The Parliamentary way committee has also emerged as useful instruments for facilitating greater administrative accountability to Parliament. There are three Financial Committees - 17 Departmentally – Related – standing Committees like the Committees on government assurances – the committees on petitions and the committee on sub-ordinate Legislation on whose scrutiny the administration is subjected to.

The opposition plays a crucial role in performing certain functions of Parliament, especially surveillance over the administration. The opposition role is performed by the opposition effectively in the House criticizing the government for its former inefficiency ineffective policy.

B. CONSTITUTIONAL FRAMEWORK

(a) Law Making :

The characteristic function of a Legislature as the name itself suggests – the making of the law. Under the constitution of India, Parliament is the supreme legislature body at the national level. The scheme of distribution of powers between the union and state are enumerated in the Union list, state list and concurrent list, under the Seventh Schedule of the Constitution. The power to legislate on residuary matters i.e. subjects not mentioned in any of the three lists is invested in Parliament.

The Parliament as the national legislature embodies the collective will of the people and the law making process in Parliament provides opportunity to the members to express their opinion as to what a bill should or should not contain. In India, members of Parliament have always shown keen interest in legislations.²⁰

The policies of the Government for socio-economic development, welfare of the people and for regulatory functions are implemented through legislation. The Parliament had a heavy burden of legislative work immediately after independence. It lays down the legal framework essential for the operation, several areas which has become absolute and archaic as India became Independent and embarked upon achieving the avowed goal of national development and building a progressive civil society. The Representation of the people Act, 1952. The Industrial Dispute Act, 1955, The Dowry Prohibition Act 1961, The Payment of Bonus Act 1965, the Abolition of Privy Purse Constitution 26th Amendment Act 1971, the Bank Nationalisation Act 1969. The Anti Defection Law (constitution 52nd Amendment Act) 1985, The Commission of Sati (Prevention Act) 1987, the Protection of Human Right Act 1993. The Information Technology Act 2000, are some of the important landmark legislations of Indian Parliament

which sought to achieve some basic goals and purposes and had far reaching influence on the working of our polity and economy. It is remarkable that some of these legislations were made by amending the Constitution.

Parliament does not enjoy the legislative supremacy engaged by the British House of Commons. In our country every law made by Parliament is to be in conformity with constitution. The judiciary, by exercising the power of judicial review, can strike down any law on the ground of unconstitutionality.

The Indian Parliament does not enjoy the legislative supremacy engaged by the British House of Commons. In our country, every law made by the Parliament is to be in conformity with the constitution. The Judiciary by exercising the power of judicial review can strike down any law on the ground of the constitutionality.

(b) Constituent Functions:-

Under Article 368 of the Constitution of India the Parliament is empowered to award the constitution, according to the procedure laid down, which is different from the procedure for ordinary legislature.²¹ The process for amending the constitution can be initiated only by the introduction of a bill for the purpose in any of the two Houses of Parliament. There are three categories of provisions in the constitution as far as the amendment procedure is concerned. Amendments of certain provisions require a special majority in each House, namely, a majority of not less than two thirds of the members present and voting and the majority of the total membership in each House. Some provisions require only a simple majority, while a limited number of provisions need an additional requirement i.e. ratification by the Legislatures of not less than one half of the states. Under Article 368, Parliament can thus make new Constitutional provisions alter or repeal any existing provision subject to the Constitutionality of such

amendments and without effecting the “basic structure” of the Constitution. The matter relating to the scope and extent of power of Parliament to ensure that the Constitution has been subjected to judicial review on many occasions in the past and has seen the tilting balance in favour of the Judiciary and the Parliament.

So far, out of 93 Constitution Amendment Bills introduced by various Governments in Parliament, 85 Amendments have been enacted by the Parliament in the last 50 years and the high number is often cited as a reason for the demands for reviewing of the Constitution. A National Commission to Review the working of the Constitution was appointed on 22nd February 2000. The Commission has submitted its Report to the Union Government on 31st March 2002 with its proposals and recommendations for the changes to be brought in the Constitution of India.

(c) Representation Role:-

The representational role of Parliament is a fundamental one. The people want progress in their life, more employment opportunities, infrastructure, facilities like roads, health care facilities, etc. for which assistance from the Government is essential. The needs and difficulties of the People are taken up and presented to the government and the concerned ministries by the members in all possible ways on the floor of the House and outside. Parliament is thus a forum for grievance, redressal of the people. The members of Indian Parliament have always shown a great devotion to their representational role and responsibilities like Constituency work, promotion of the welfare of the people and developmental matters.

(d) Educational Role:-

It is significant that the proceedings and deliberations in Parliament are recorded history and are available for future reference. Parliamentary debates are preserved in printed volumes and

constitute a rich source of information about the state of affairs, the policies, the issues and political climate in the country at a particular time. Members of Parliament constitute the cream of the political elite, the most experienced leaders and committed public servants.²²

(e) Information Role:-

Parliament has an important informational role. Being the Supreme legislative and deliberate forum of the nation, it has the unique distinction of having and receiving the most authentic information from government on a whole range of issues and activities, which get disseminated to the media and the public. The Parliament consists of potential leaders with well trained and leadership skills. If we look at the performance of the parliament, in the last fifty years, the parliamentary work is highly commendable. To run the democratic process, the rule of law, political leaders and national integration are well nurtured by the parliament.

(C) DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution (Article 36-51) contains the Directive Principle of the State Policy. In order to establish the "Welfare State" by the state, certain Directives are been incorporated in the preamble. The framers of the Constitution emphasized on the economic and the social democracy. Jawaharlal Nehru pledged for a Socialistic Pattern of Society. Directive Principle of the state policy, is been adopted from Irish Constitution. Some of the Directives are implemented by the Legislation. Neither the state nor the individual can violate any law which covers the Directives. Directives are not enforceable by the court but they are fundamental in governing the country and state would apply the principles in making laws.

Classification of the Directives Principles of State Policy (Article 31-51) of the Constitution deals with Directive Principles.

- 1) Article 43 of the Constitution, enjoins the state to secure living wage to all workers, no workers can secure a living wage by means of an action in a court so long as it is not implementation by appropriate legislation.
- 2) Article 37 provides that “the provisions contained in Part IV of the constitution dealing with Directive Principles shall not be enforceable by any court but the principles therein laid down nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.”²³
- 3) Article 38 lays down that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may be a social order in which justice, social economic and political shall inform all the institutions of the national life. The state shall in particular, strive to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst the groups of the people residing in different areas or engaged in different societies.
- 4) Article 39 as amended by Forty Second Amendment in 1976 provides that the state shall in particular, direct its policy towards securing –
 - (a) That the citizens, men and women equally have the right to an adequate means of livelihood.
 - (b) That the ownership and control of the material resources of the community are so distributed as best as to serve the common goods.

- (c) That the operation of the economic system does not result in the concentration of wealth and means production to the common detriment.
- (d) That there is equal pay for equal work for both men and women.
- (e) That the health and strength of workers, men and women and the tender age of the children are not abused and that the citizens are not forced by economic necessity to enter evocations unsuited to their age or strength.
- (f) That the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- (g) Article 39A was added by the Forty Second Amendment of the Constitution in 1976. It provides that state shall become that the operation of the legal system promotes the justice on the basis of equal opportunity for securing justice and shall in particular provides for a free legal aid by suitable legislation or schemes or as any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic disabilities. Article 40 lays down that state shall take steps to organize village panchayats and endow them with such powers and authorities as may be necessary to enable them to function as units of self government. Article 41 provides that state shall within the limits of its economic capacity and development, make effective

provisions for securing the right to work, to education, to public assistance in case of unemployment old age, sickness, disablement and other cases of ~~desert~~ undeserved want. Article 42 lays down that state shall make provisions for securing first and human conditions of work and maternity itself. Article 43 provides that the state shall endeavour to secure by suitable legislation or economic organization or in any other way to all workers, agricultural, industrial or alternative work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular the state shall endeavour to promote cottage industries on individual or cooperative basis in rural areas. Article 43(A) was added by 42nd Amendment in 1976. it lays down that the state shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishment or other organizations engaged in any industry. Article 44 provides that the state shall endeavour to secure for the citizens a uniform code throughout the territory of India.

Article 4, lays down that the state shall endeavour to provide within a period of two years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of 14 years.

Article 46 provides that state shall promote with special care that the educational and economic interest of the weaker sections of the people and in particular of the schedule castes and scheduled tribes and shall protect them from the social injustice and all forms of exploitation.²⁴ Article 47 lays down that state shall regard the raising

of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties and its particular the state shall endeavour to bring about the prohibition of the consumption, except for medicinal purposes of intoxicating drinks and drinks which are injuring to health.

Article 48 provides that state shall endeavour to organize agriculture and animal husbandry on the modern and scientific lines and shall in particular take steps for preserving and imposing the breeds and prohibiting the strangers of cows and calves and other milk and drought cattle.

Article 49 provides that it shall be the obligatory of the state to protect every movement or place or object of artistic or historic interest, declared by or under law made by the Parliament to be of national importance from spoliation, disfigurement, destruction, removal, disposal or export as the case may be.

Article 50, lays down that the state shall take steps to separate judiciary turn the executive in the public services of the state. Article 51, provides that the state shall endeavour to promote international peace and security, maintain just and honourable relation between nations foster respect for international law and treaty obligatory in dealing of organized peoples with one another and encourage settlement of the international disputes by arbitration.²⁵

Implementation of the Directive Principles :

Though these Directives are not enforceable by the courts like the Fundamental Rights. Yet the people judge the performance of the party in the light of implementation of the Directive Principles. According to MC Sctalvad, the Attorney General of India, Directive Principles confer no legal rights or create no legal remedies, they appear to be like a Instrument of Instruction or General recommendations address to all the authorities. The Directives

Principles of State Policy is embedded in the Preamble where the authority of the Constitution have solemnly resolve to secure to all its citizens justice in the social, economic and political fields, liberty in all spheres, equality of status, opportunity and the promotion among them all of fraternity assuring the dignity of the individual and the unity of the nation. The Directives are considered as the ideals of the "Preamble". Some of the implementations of the Directive Principles are to be noted during Congress Government. The (i) abolition of the Zamindary system is considered to be the first step for the Welfare State. (ii) Nationalization of Certain industries to prevent the concentration of wealth. (iii) Five Year Plans were launched to raise the standard of living by establishing the modern industries. (iv) Increasing the Per Capita Income. (v) The Community Development Schemes were extended to the Harizons to remove the social and economic inequalities. The Congress aimed for a socialistic pattern of society. Both the centre and the state government promoted the Cottage Industries and establish village panchayat.

Although they strive for "Sarvadaya" of Gandhian technique The Finance Minister Shri C.D. Deshmukh have opined that for a nation's development industrialization is necessary along with the improvement in small scale and cottage industries. To remove the economic inequalities, Congress aimed at "Socialistic Pattern of Society".

Janata Party, after assuming the power in 1977 gave emphasis on the protection of Harizons and Minorities. The Union Government appointed a Commission to provide institutional safeguard of the minorities and ensure effective implementation. The Janata Party also promoted the National Integration with the joint venture of both the state and the centre. Elevating inequalities and racial discrimination were the commitments of the Janata Party. Various Tribal Welfare Schemes have been undertaken by the Union Home Ministry in 1978.

With the goal of making the Country, a welfare state, the Janata Party made some economic policies according to which large number of employment would be agricultural and industrial sector.

Both the Public sector and the Private sector were also been encouraged to increased the production. 44th Amendment of the Constitution – Clause '2' of Article 38 was implemented. Clause '2' of the Article states that 'State shall strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst the individuals, but also amongst the groups of people residing in different areas or engaged in different vocations. The Right to property (Article 31) has been eliminated since it has become a stumbling block on the path of development of a nation. MISA is being repealed under the Janata Government. Abolition of the Zamindary, Equalising the Salaries and wages for the different vocations. Some more Directives have been added during "Mrs. Gandhi's" period, she had formulated 20 Point Programme for the welfare of village communities, scheduled castes and scheduled tribes. Various programmes have been taken for the welfare state. Panchayati Raj was established in each state. Cottage industries were encouraged in the villages and loan facilities was provided to the villagers. Community Programmes has been launched under Five Year Plans elimination of Poverty, ensuring Employment, to the people living below the poverty line, social and economic justice was the aim of the Congress Government under the Prime Ministership of Mrs. Gandhi.

(D) COMPARISON OF INDIAN PRESIDENT WITH AMERICAN PRESIDENT

The position of President is not so strong than the position of President in USA. The American President is the real executive and directly responsible to the people of his country.²⁵ This is because the framers of the constitution have made the office of the President as the figure of the Nation and abroad. He occupies an unique Constitutional position than any other personnel of other constitution. He appoints the Ministers who are the subordinates of the President. They hold office at his pleasure and responsible only to the executive not the Congress. Since there is a separation of power in USA both Executive and Legislative function separately and they are independent from each other. The Executive is not responsible to the Legislature. The President of USA, exercises his veto power on certain grounds – (1) To protect his own office from aggressive legislation, (2) To prevent a particular legislation from being placed on the statute book which the president consider to be very constitutional, (3) To check legislation which he deems practically expedient or which he thinks does not represent the will of the American people. These vetoes exercised by the executive is being classified as absolute, qualified suspensive and pocket veto.²⁶

The Indian president enjoys the three types of vetoes – (1) absolute, suspensive and pocket vetoes. But there is no spoil system in India, so the president has no absolute power to appoint inferior offices of the Union as is to be found in American Constitution. Thus union Parliament, may consult with the President with regard to the appointment of Union Public Service Commission and Public Service Commission of the State.

With regard to the military powers: The President of USA has more powers than the president of India. Under the Constitution at, wartime the president can direct the military operations, establish military government in conquered land and end hostilities by means of an armistice. The President becomes a sort of a constitutional dictator during the wartime.

He makes secret diplomatic agreements with foreign powers, by surpassing in importance many treaties that in peacetime would require senatorial consent. He takes final responsibility for crucial military decisions – as in the case of Roosevelt's decision in Second World War to concentrate their armed forces against Hitler of Germany before finishing off Japan. But the President of India, could not exercise such power as the President of USA.

As a Commander of Chief, the President represents the whole Nation. His military role, his ceremonial function and his national responsibilities combine to make him a powerful chief of state representing the whole nation and rising above the claims of majority or minority groups. The framers of the Constitution are the powers to the President – the judicial duties – that is the power to grant reprieves and pardons for offenses against the United States except in the case of impeachment. The pardoning power leaves the president a good deal of discretion. Neither the congress nor the courts can ever rule such pardon.

The Indian Constitution under the various provisions, vests powers in the hands of the President – but subjected to certain limitations: The Constitution vests the executive power of the Union shall be vested in the President "Article 53". The executive power primarily means the execution of the laws enacted by the Legislative but the business of the Executive in a modern state is not limited. The President has to work under certain restraints. [According to Article

53(i), he must exercise the powers]. The executive powers shall be exercised by the President of India in accordance to, with the advice of his Council of Ministers [Article 74(1)]. Prior to 1976, there was no express provisions in the Constitution, that the President was bound to act in accordance with the advice rendered by Council of Ministers.²⁷ Though it was judicially established, that the President of India was not a real executive but a constitutional head, who was bound to act according to the advice of the Ministers. So long as they commanded the Confidence of the majority in the House of People [Article 75(3)]. The 42nd Amendment of the Constitution Act, 1976, Article 74(1) – Clarify – that “There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall in the exercise of his functions act in accordance with such advice. According to 44th Amendment, one more provisions was added – to Article 74(1) which states that the President may require the council of Ministers to recognize such advice either generality or otherwise the President shall act in accordance with the advice, hardened after such reconsideration.

A.V. Dicey has remarked that the power of the President is equivalent to the Prerogatives of the Crown in Britain. The American President has wide powers in the matters of administration, which Indian President does not enjoy. He has no power to control and supervise any department of Government as the American President passes. Various Departments of the government of the Union are keen controlled by the respective Ministers, where the President is the formal head of the administration.

In the matters of Diplomatic Powers: the President has to take consent of the making treaty and foreign affairs. President represents the International affairs and has the powers of appointing Indian representatives to other countries of receiving diplomatic representatives of other states which is to be recognised by the

President. Legislative powers: Like the Crown of England, the President of India is a component part of the Union Parliament. The position of the President of India is not so strong and real as it appears to be. He is only a figure head of the entire field of administrative in practice. But in theory, he appoints the Prime Minister and distributes the portfolios to the ministers at the different department. While appointing the Ministers and allocating portfolios, he is bound by the advice of the Prime Ministers. During emergency, he cannot act as an autocrat because the Parliament can impeach him due to the unconstitutional actions. Thus, he occupies a pivotal position as an Executive had but his position is similar to Queen of England than the President of America.

The Parliament at Work (Legislative Body):

Though our constitution has adopted the parliamentary form of govt. like Britain but the Parliament in India is not so powerful than the Parliament in Britain. The Parliament is not a sovereign body as the sovereignty lies to the constitution. The constitution provides certain limitation, according to which the Parliament has to work. Since the federal legislature existed in our country the distribution of powers are been divided between the Union and the states. The parliament has the power to make laws on those matters which are in the Union list and the concurrent list. The Union list having 97 items such as defence of India, international relations, war and peace, citizenship, extradition, passport and visa, public debt in India, foreign loans, Reserve Bank of India, Interstate Commerce, Banking, Trade and Commerce.... In the concurrent list, criminal laws and procedures, marriage and divorce, bankruptcy, and insolvency, trust, civil procedure, trade union, social security, legal, medical professions, archaeology etc. Both the union of India and the Parliament can exercise extensive powers of Legislation. In certain cases parliament can pass laws even on these matters which are given

in the statalist. According to Article 249, Parliament can legislate on any matter given in the state list if the council of states passed a resolution by a two third majority declaring that such matter or matters among national importance and interest. Article 250 empowers the Parliament to legislate for the work country or any part of the country on any matter given in the state list during the proclamation of emergency.

Parliament has a complete control over the Union Executive – The Ministers is responsible to the House of the People and it must resign, if a role of no confidence is passed against it in Parliament.²⁸ The Ministers who are in charge of various departments of the government can be questioned by the members of the Parliament. Bill introduced by the Ministry may be rejected by the Parliament. Adjournment motions are moved in the Parliament to criticise the Government. If the minister fails to reply the questions put to him on the member concerned is entitled to put supplementary questions to get the required information. Few days are given, to get the requisite information or the supplementary questions may be put before him. Resolutions are also moved in the Parliament. A course of debate takes place on the Resolutions, several questions may be asked and the amendments are been made on such resolutions. Motions of adjournments are moved immediately after the question hour. The discussion on any matter should be related to public welfare. The Parliament controls the administrative by means of debate.

(ii) **Legislative Powers:** Article 107 to 122 of the constitution deals with legislative procedure in the Parliament. Bills are to two types. Ordinary Bill & the Money bill. Ordinary bill can be originated in either House of Parliament. No ordinary Bill is said to have passed unless it is passed by the two hours of the Parliament. If there is a difference of opinion between two Houses, the President, can summon both the Houses for a joint sitting, it is considered to have been duly

passed. The Bill is then presented to the President for his assent. If the Bill is sent to the President for his assent, he may either give his assent or refuse his assent or delay his assent or return the Bill for the reconsideration by the Parliament.

The rules made by the Parliament provides an identical legislative procedure in both the Houses. Every bill has to be read three times and passed through two steps in each House, before it is considered to have been passed by the Parliament.

After Independence, the Parliament had a heavy burden of legislative work. It had to lay down the legal framework essential for operation of several areas, the laws which were undefined and absolute became useful to achieve the goal of national development and to build a progressive civil society.

The procedure of Financial Matters:

The money bill can be originated only in the House of People and not in the Council of States. When the House of people has passed the Money Bill, it is sent to the Council of states for its recommendation. The recommendation is left to the council of state for 14 days. It is left to the House of People to accept those recommendation if the bill is being passed in an amended form.²⁹ If the house of the people does not accept the recommendation, it is considered to be passed in the same form in which it was originally passed by the House of the People.

Control after the Budget:

The procedures of Indian Parliament with regard to the Financial matter – is similar to the British House of Commons. Madisan who belong to the Federalist of USA had remarked that one who holds the purse holds the power. Though the control of Nation purse, the Parliament can exercise control over the Executive.

The Fundamental Principles governing the financial system comes under the Parliamentary Politics . No tax can be imposed except with the authority of the Parliament - no expenditure can be incurred except with the sanction of Parliament. Every year a annual financial statement called the Budget is presented to Parliament who makes the policies, like proposals on taxation, estimates of receipts and expenditure. A general discussion is made on the budget before they have been sent to the various departments. Some of the demands are examined by the committees and their reports are been presented to House of Lok Sabha. The Constitution lays down that no money bill shall be withdrawn from the Consolidated Fund of India – except under appropriation made by the law.

The matters related to the public finance and the governmental expenditure is carried out through the committees. To ensure parliamentary control over grants made to the government and to supervise and control the central appropriations, parliament exercises close scrutiny of public accounts, is mainly done by two committees (1) Public Account Committee and Committee on Estimates. The Estimate Committee exercise control over the administrative machinery and formulate policies of the various branches of administration. Besides this, the Estimate Committee scrutinize the budget estimates, controlling the expenditure. The Public Account Committee have the power to scrutinize the report of Public Finance. Here the reports of the Comptroller and Auditor General are referred to the Committee for examination.

Besides this the Parliament has the Constitutional Function – Article 368 of the Constitution of India empowers the Parliament to amend the Constitution. The process for amending the constitution can be initiated only by the introduction of a Bill for the purpose in any of the two Houses of the Parliament. When the bill is passed in each House by a majority of the total membership of that house

present and voting it shall be presented to the president for his assent and upon such assent been given to the Bill, the Constitution shall stand amended in accordance with terms of the bill.

Some of the provisions require only a simple majority while a limited member of provision needed an additional requirement i.e. ratification by the Legislatures of not less than one half of the states. Under article 368, Parliament can make new Constitutional provisions or alter any existing provisions subject to the Constituency of such amendments without effecting the basic structure of the constitution. The matters relating to the scope and extent of the power of the Parliament to amend the Constitution has been subjected to judicial review.³⁰

The Parliament also plays a representative role of the people. It acts as a forum for having grievances of the people. The members of the Parliament plays the representative role, putting towards the problems faced by the people, day to day life, (i) Public health & hygienic, sanitation, employment opportunities, education, elevation of the poverty ... when the Parliament is in session. Thus Parliament is link between the Government and the people. Most of the developmental works are been taken by the members of the Parliament like educating the masses confronting them with the nation.

Educational Role:

Most of the proceeding and deliberations in the Parliament are recorded so that they may help as a part of reference. Parliamentary debates becomes the source of Information in the state affairs. Parliament also has an important informational role. Most of the information's from the government are disseminated to the mass media and the public. At the same time Parliament is considered to be reasons of political leaders. The procedures and the working for a long

period brings the efficiency of the members of the Parliament. Keeping the view of socio-political and economic position of the country, the parliament, nurtured the National integration with the commitment of political unity, democracy and the rule of law. Thus Parliament performs its function effectively and substantially.

(E) SOME OF THE LAND MARK JUDGEMENTS OF THE SUPREME COURT REGARDING THE AMENDMENTS AND BASIC STRUCTURE OF THE CONSTITUTION

There has often been clashes between the Parliament and Supreme Court regarding "interpretation of provisions of the right to property."³¹ The Constituent Assembly did not allow the courts to hold any law unconstitutional or void with regard to the rights of the property. The High Courts often moved the cases on behalf of the Land Lords whose lands have been taken away with less value than their prevailing market rate. According to Clause (4) and (6) of the Article 31, the validity of such laws could not be challenged on the ground of their alleged violation of right to equality as guaranteed in article 14.

(1) Shankari Prasad Vs Union of India³¹

In Kameswar Singh Vs State of Bihar Case,³² the Patna High Court declared the Zamindari Abolition Act as invalid, the rates of compensation provided under the Land Reform legislation were discriminatory. Supreme Court upheld this view since the adequate compensation were not provided according to the market value of the land. The Parliament responded to that decision and accordingly the first amendment Act been passed in 1951. The Constitution First Amendment Act 1951 inserted the two new articles 31-A and 31-B according to which the judicial review of some types of legislation would be abolished. Article 31-A excluded the laws that dealt with

abolition of certain types of estates and requisite time by the state with reference to the right to equality contained in article 14, rights to various freedoms contained in article 19, and the right to property contained in article 31. Article 31-B confirmed immunity on the laws included in the Ninth Schedules from being challenged with reference to any of the fundamental rights guaranteed by Part-III of the Constitution.

The first Amendment Act of 1951 came to be challenged in the Shankari Prasad's Case. In Shankari Prasad's Case, though the Parliament has the provision to aim the Fundamental Rights, as contain in Part-III of the Constitution, but it should be tested according to the provisions contained in Article 13(2) of the Constitution. The argument was that the law to which Article 13(2) applies would include a law passed by the Parliament by virtue of the Constituent Power to guard the Constitution, and so, its validity will have to be tested by Article 13(2). Article 13(2) prohibit the state from making any law which takes away or abridges the rights conferred by Part III and provides that any law made in contravention of clause (2) shall to the extent of contravention be void. In Shankari Prasad's Case, Supreme Court rejected the question of "validity of the relevant provisions as laid in the First Amendment Act. If the fundamental rights of the citizen are been abridged by the Amendment Act then the party can challenge the validity of such Act and declare it as void. The word "Law" used in Art. 13 must be taken to mean rules and regulations made in exercise of ordinary legislative powers and not amendments to the constitution made in exercise of constituent power with the result that Article 13(2) does not affect amendments made under Art. 368. Article 32 read in the conjunction with Article 13(2) makes Judicial Review as inevitable adjunct of Fundamental Right's provisions.

If the constitution makers had intended that any future amendment of the provisions in regard to fundamental rights should be subject to Article 13(2) they would have taken the precaution of making a clear provision in that behalf.

Article 13 Clause (2) lays down that the state shall not make any laws which takes away or abridges the rights conferred by Part III and any law which contravenes with this clause must be declared as void. The word ‘Law’ used in Article 13(2) – includes a law in relation to the amendment of the Constitution, Fundamental Rights can never be abridged or taken away, if the effect of amendment takes away or abridges the Fundamental Rights, then the portion would be declared as void as under Article 13(2).³³

Since the Constitution is a written, therefore there is a provision for its amendment. The power of amendment is usually vested to a popular representative body. If a constitution is unchangeable then it would be incapable of satisfying the aspirations of a changing society. The Constitution of India contains the provision for its amendment in Article 368. The Amendment of the Constitution is done by the Parliament of a bill of such amendment is passed by the two houses with the support of two-third of its members present and voting and the absolute majority of the total membership of the House. Since the Constitution has a federal character, it can be amended by the amendment bill passed by the two-houses of the Parliament and being rectified by atleast half the legislatures of the states. The controversy regarding amendment between the Judiciary on one hand and the Parliament on the other is been marked in several cases. “The Shankari Prasad Case did not raised such controversies. (It was Golaknath Case). The controversy arose in “Golaknath Vs State of Punjab”³⁴ Case, in 1967, when Supreme Court held that an amendment passed in accordance with the procedure laid down by

the article 368 as 'land' within the meaning of that word as used in the article 13(2) of the Constitution.

A bench of Six Judges – C.J. Kamia, P.Shastri, B.K. Mukherjee, S.R. Das and N.C. Aiyar participated in this case – withheld that the Parliament had no power to pass any amendment that would effect any of the Fundamental rights that the guaranteed by the Constitution.

Justice Shastri urged that he was not aware of Political situation, which may affect the court. The validity of the First, Fourth and Seventeenth Amendment Acts were been challenged by the Petitioner on the ground that it has closed the judicial review of laws, relating to the property. Chief Justice K. Subha Rao spoke in behalf of the five judges – emphasizing the "doctrine of prospective overruling" to save the existing Constitutional Amendments and Parliament can not pass any amendments of Constitution which may take away or abridge any of the fundamental rights. J Hidayutullah, remarked that "the fundamental rights should remain outside the amendatory process, if the amendments takes away or abridges any of rights. He further added that "Instead of prospective overruling" he conceived the principle of acquisition to legitimise the first, fourth and seventeenth Amendment. Golaknath was an example of Judicial activism of the late 1960s. This was the first case, where the Parliament's power of Constitutional amendment has been checked by the Judges. Golaknath case strived a great controversy regarding the scope of judicial review. This is for the first time the judges had openly taken a political position to withhold the power of the Parliament in amending the Constitution.

Sajjan Singh Vs State of Rajasthan Case (1965)³⁵

The validity of the Constitution (Seventeenth Amendment Act) was subsequently challenged before the Supreme Court in Sajjan

Singh Vs State of Rajasthan. The 17th amendment Act (1964) no doubt protected a large number of agrarian statutes from the equality, police power and eminent domain provision of the chapter on Fundamental Rights. Justice Hidayetullah defined the Judicial function in restrictive terms in one, out which of court publish speeches. The Court should concern only with the jurisdiction and Constitutionality. Any changes in the Fundamental Right may increase the powers of the High Courts. The litigants have however limitized the role of the lower courts. The Principle of "Stairre decisis" was imposed by the Superior Court. Besides this, Chief Justice Gajendra Gadkar held on behalf of the majority of the three judges including himself that the Constitutional amendment was not covered by the prohibition of article 13(2), the two judges Justice Mudholkar and Hidayutullah observed that the fundamental rights has to be fundamental. The power of Constitutional amendments should come under judicial scrutiny.

Golaknath Vs State of Punjab Case (1967)³⁶

In 1967, the Supreme Court held that an amendment passed in accordance with the procedure laid down by the article 368 was 'law' with word which has been used in Article 13(2) of the Constitution. The court once again seized the power of the Parliament in amending the Fundamental Rights. The Petitioner had challenged the validity of the First, Fourth and the Seventeenth Amendment Acts. The issue before the court was whether the Parliament Acts amending the constitution curtails the rights of the citizens were declared to be valid. The court however accepted the challenge posed in the 17th Amendment.

Keshavananda Bharati Vs State of Kerala Case³⁷

After the Golaknath Case, the Parliament tried to regain its lost power by making the necessary amendments of the Constitution of

India. When Keshvananda Bharati case was being argued the Political atmosphere in the country has undergone radical change which was somewhat different from Golaknath Case. Though the Congress Party has lost her strength in the centre, various non congress parties became powerful in some of the states. The amendment of the Constitution was quite difficult. Barrister Nai Pai had introduced a bill to amend the Constitution to restore to Parliament, the unlimited power to amend the Constitution. The Supremacy implies the right and authority of the Parliament to amend the Fundamental Right. When Congress Party came to power in 1971, the Parliament got the opportunity to make necessary amendments in the Constitution. The 24th Amendment along with 25 Amendments was challenged in the court in the Keshavananda Bharati Vs State of Kerala. The majority held that the decision of Supreme Court regarding the unamendability of F.R. in Golaknath Case should be declared as rule and void. The Fundamental Rights can be amended. A bench of thirteen judges held that Article 13 and Article 368 can be amended to enlarge the scope of power to amend the Constitution and the provision of Article 13 does not imply the Constitutional amendments. Article 14, 19 and 31 can be implemented alongwith the Directive Principles of state policy. In Keshavananda, the court upheld article 31-C but struck down the last provisions being violative of the basic structure of the Constitution.

Minerva Mill Vs Union of India. AIR, 1980, SC. 1989³⁸

In Minerva Mills's case the validity of that amendment was questioned. The Supreme Court by majority, held that the impugned amendment was destructive of the basic structure of the Constitution. In 1977, 42nd Amendment Act was passed according to which Parliament can amend any part of the Constitution and that the Supreme Court could not declare any Constitution amendment as well and void. By this amendment Fundamental Rights were subordinated to Directive Principles. Thus the relationship between the two was

completely reversed. This amendment was challenged in favour Minerva Mill Case which struck down amended Article 31(3) on the ground that it violated basic structure of the Constitution. Thus Directive Principles got a subordinate position as compared with Fundamental Rights.

In Minerva Mill's Case, Justice Bhagawati observed that the primarily of the Directive Principles of State Policy over fundamental rights that the impugned article established was an integral part of the basic structure of the Constitution.

Judicial restraint of the basic structure doctrine:

Till 1980, the Supreme Court has exercised maximum restraint in using the basic structure doctrine against constitutional amendments. Since then the government made no changes in the basic structure doctrine.

The court uses the basic structure doctrine to strike down the constitutional amendments. The new Acts were added to the Ninth Schedule and any part which is been added cannot be declared as valid. Till 1973, the court has struck down Constitutional amendments thrice. It struck down Clause (5) of the article 371-D which was inserted by Thirty Seven Amendment Act. The Administrative Tribunal usually settle the disputes regarding the services as confirmed by State Governments, here the jurisdiction of the High Court has been curtailed and so it cannot change the basic structure doctrine. This was seen in the "Case of P Sambamurthy Vs Andhra Pradesh".³⁹ The Supreme Court had upheld articles 323 A and 323B of the constitution inserted by the 42nd Amendment Act, 1976. These articles no doubt have given the power to the Parliament to pass laws for the administrative tribunals, excluding the jurisdiction of the High Court. Supreme Court further felt that the Administrative tribunals would reduce the burden of the High Court, giving special

provisions for the appointment of the members of the tribunals. This decision was however overruled by the Supreme Court in S.P. Sampath Kumar Vs India held in “L. Chandra Kumar Vs India”⁴⁰ case. Where the powers of the administrative Tribunals can never be equal to the High Court. Article 323A 2(d) of the Constitution has however permitted the Parliament to exclude the Jurisdiction of the High Court which comes under Article 226.

Till 1973, the basic structure doctrine has been successfully invoked in five cases –

- (1) *Keshavananda Bharati Vs Kerala* (in which article 31-c was inserted by section 3 of the Constitution, according to the 25th Amendment Act 1972.
- (2) *Indira Gandhi Vs. Raj Narayan Case*⁴¹ where Clause (4) of Article 329-A was inserted by 4(4) of the Constitution according to (Thirty Ninth Amendment Act, 1975).
- (3) *Minerva Mill’s Vs Union of India* – where article 31-C was amended by section 4 of the Constitution, according to Forty Second Amendment Act, 1976.
- (4) *P. Sambarmurthy Vs. A.P. case* – of 1973 where Clause (5) of Article 371-D was inserted by section 3 of the Constitution.
- (5) In *L. Chandra Kumar Vs. India* – 1976, where Clause 2(d) of Article 323-a inserted by Section 46 of the Constitution.

The Supreme Court has used the power derived from the basic structure doctrine. The judicial restraint was imposed in ‘Kihota Hollohan Vs Zachillu and others’ – where the Supreme Court examined the validity of Constitution amending to the 52nd Amendment Act of 1985. The amendment inserted the 10th Schedule – containing the provision against detection of members of the legislature.

(F) CONFLICT BETWEEN DIRECTIVE PRINCIPLES AND THE FUNDAMENTAL RIGHTS

The framers of the Constitution wanted to bring harmonious blending of Fundamental Rights and Directive Principles of State Policy in Part III and Part IV of the Constitution. It is generally believed that the Fundamental Rights being justiciable in character, but Directives are not justiciable so that the principles do not override "the Fundamental Rights of the individuals". The Supreme Court in the case of "Champakam Dorairajan Vs State of Madras⁴²" held that Directive Principles of State Policy under Article 37 cannot override the provisions found in Part III notwithstanding any other provisions are expressly made enforceable by appropriate writs, orders, or directions and under Article 32.

The chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any legislative Act or Executive Order, except to the extent provided in the appropriate Article in Part III. The Directive Principles of State Policy have to conform to and run subsidiary to the chapter on Fundamental Rights. According to Dr. B.R. Ambedkar .. "The Directive Principles are like the Instruments of Instruments which were issued to the Governor General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. According to Sir B.N. Rau, the Directive Principles of State Policy are in "the nature of moral precepts for the state authorities and are open to the facile criticism that the Constitution is not the place for the moral precepts. But they have an educative value and most modern constitution lays down general principles of this kinds. They correspond to the instructions with which we are familiar in Indian Constitution only, instead of being addressed to the Governor General or the Governor they are addressed to all state authorities, legislative or in executive. So long as there is no infringement of any Fundamental Rights to the extent conferred by

the Provisions in Part III there can be no objections to the state acting in accordance with the Directive Principles set out in Part IV but subject again to the Legislative and Executive power and limitations conferred on the state under the different provisions of the Constitution.

In 1971, according to 42nd Amendment Act, Article 31C was introduced, which states the Directive as contained in Part IV shall not be enforceable in the Court if it contravenes the fundamental rights as conferred in Article 14 and 19.

In Minerva Mill's Case⁴³, the Supreme Court struck down Article 31C on the ground that it included the total exclusion of judicial review. Which offended the basic structure of the Constitution.

Sanctions behind the Directives:

Though these Directives are not enforceable. Yet they should be considered to be fundamental in the governance of the country it shall be the duty of the state to apply these principles in making laws "Article 37".⁴⁴

It shall be the duty of the Union to see that every state who implements the Directive as far as possible. It should be competent for the Union to issue directions against particular states to introduce free and compulsory education for children "Article 45...," the Court stressed the importance of the Directive Principles in the case of "The State of West Bengal Vs Subodh Gopal Bose".⁴⁵ Justice S.R. Das and Jagannadha Das declared that the court can not ignore the Directives since they are not against constitutional principles. Besides this, Judiciary has also interpreted the real nature of the Directive Principles and the relationship with Fundamental Right in a harmonious construction of both, since both are incorporated in the Constitution. In the famous "Golaknath case Vs State of Punjab"⁴⁶, the Supreme Court led by Chief Justice Subba Rao declared by a majority

of 6 to 5, that Parliament will have no power in future i.e. from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the Fundamental Rights therein.

Justice Subba Rao also declared that "The Fundamental Rights are given a transcendental position under our Constitution and are kept beyond the reach of Parliament. At the same time Part III and IV constituted an integrated scheme forming a self contained code. The scheme must be made elastic so that all the Directive Principles of state policy can reasonably be enforced without taking away or abridging the Fundamental Right.

Again in the case of Keshavananda Bharati Vs the Union of India, known as the Fundamental Right Case 1973, the Supreme Court upheld the Parliament's right to amend the Constitution including the Fundamental Rights but not the basic structure or framework of the Constitution. Inspite of this in the opinion of the Court, the Directive Principles laid down the ends to be achieved while the Fundamental Right should be taken to means through which goals are to be achieved.

The Executive and the legislative, gave importance to the Directives Principles of State Policy since the basic objectives of the constitution is to promote the Welfare of the people by securing and protecting effectively, the social order which may ensure justice – social, economic and political. According to the "Draft of First Five Year Plan" – the Economic and social pattern to be attained through the Planning as indicated in the Directive Principles of State Policy enumerated in Article 36 to 51 of the Constitution. The state has to endeavour within the certain limits of economic capacity and effective provisions are required for securing right to work, right to education and right to public assistance in case of employment, old age,

sickness, and disabilities. Directive Principles also emphasised on the social order based on equality of opportunity, social justice, right to work, right to an adequate wage and increase of social security for all citizens. They would serve the guidelines of the State Policy. The economic goal has found its place in the "Second Five Year Plan. Which the Second Five Year Plan gave the importance to the "Socialist Pattern of Society". The socialistic pattern of the society should be flexible in nature. Then the 42nd Amendment of the Constitution provides the high ideals of socialism, secularism and the integrity of the nation to make the Directive Principles more comprehensive and give them the precedence over those Fundamental Rights which have been allowed to be relied upon to frustrate "Social economic reforms for implementing the directive principles".

The Changes in Article 368 and the 42nd Amendment Act of 1976:

According to D.D. Basu's observation, "so far as the precedential ground for reviewing the validity is concerned the 42nd Amendment Act sought to do away with this power of the Court where it is not according to the procedure laid down in Article 368, by the use of words or any ground in 'Clause 4' and the word "no limitations" whatever in Clause (5). From the judicial standpoint, the following reasons may be put forward since two clauses inserted by 42nd Amendment Act without amending Clause (1) would be off ineffective to preclude Judicial Review on the procedural grounds, Clause (5) is only a declaratory provisions for "removal of doubts" which by itself can not create new law or after the existing law at any rate it cannot be held to effect on implied repeal of Clause 1(ii). Clause (4) is the more directly rejected since the amendments done for the reconstruction of the Constitution is considered as super flows by the Supreme Court. In Keshavananda Bharati Case, the Supreme Court for the first time exercised the power of judicial review on the following grounds –

By the virtue of the Power to ‘amend’ conferred by Article 368, Parliament cannot alter the basic structure according to Khanna and the word “amend” implied after amendment, has altered some provisions of the original constitution. This is considered to be one of the feature of Judicial Review was first applied.

In Keshavananda Bharati Case the second part of Article 31C was inserted by the Constitution (25 Amendment) Act 1971 was struck on the ground that it made the legislative the final authority to determine whether the law made by itself was law made to give effect to a Directive Principles specified in Article 31C and then totally banned the courts from exercising their powers of judicial review to enquire whether a particular act which was sought to shielded under 31C was exacted for the object of implementation of Directive Principles. The power to amend, inserted by Article 368 in Parliament except the cases referred to provision to Clause (2) there is additional requirement of rectification by State legislatures. Hence, Parliament cannot directly or indirectly delegate the power to some other body if the court strike down that the Constitution Amendment Act as invalid. In Keshavananda Case, the latter part of Article 31C was struck down by the majority on the ground that it not only authorised the legislative to make the law violative of Article 14, 19 and 31, but also conferred on it the power to make it immune from the attack on the ground by itself inserting in that law a declarative. This constituted a delegation to the Legislature. [D.D. Basu has observed that if the doctrine cannot ultra lives, then Court cannot take away “any clause ...” through the Judicial Review].

The 42nd Amendment Act repeated this theory by inserting Clause (5) to say that there are no limitations whatsoever to the power conferred by Article 368, and Clause (4) to say that a Constitutional Amendment Act shall be immune from Judicial review altogether whether on substantive or procedural grounds.

Some of the Supreme Court Judgements on Fundamental Right's Cases:

"Fundamental Rights are guaranteed under the Constitution as incorporated in Part III. The framers of the Constitution were influenced by the Bill of Rights of the American Constitution, the Declaration of Rights of Man in France, the Irish Constitution of 1935, the Post War Constitution of Japan and Burma and Declaration of Human Rights by United Nation. There are 6 Fundamental Rights guaranteed under Part III of the Constitution. In the words of Chief Justice P.B. Gajendragadkar – Fundamental Rights are legally enforceable right governing the relation between state and the individual. Fundamental rights are considered to be said of the Constitution.

Fundamental Rights, as included in Constitution are:

- 1) Right to Equality (Article 14)
- 2) Right to Freedom (Article 19-22)
- 3) Right against Exploitation (Article 23)
- 4) Right to Property (Article 21-22)
- 5) Right to Freedom of Religion (Article 25-28)
- 6) Cultural & Educational Rights (Article 29)
- 7) Right to Constitutional Remedies (Article 32).

Equality before the law and Equal protection of law although seems identical – but both have different meaning. Article 14 of the Constitution provides that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Equality before the law is some what a negative concept – which means "absence of any special privilege in favour of any individual or

equal subjection of all classes to the ordinary law" – while equal protection of law is merely a positive concept – which implies equal treatment in equal circumstances.

The Equality before the Law – was first expressed in the Common Law of Britain. While Equal Protection of Law had its origin in the 14th Amendment of the Constitution of United States. Nevertheless we have adopted, equality before the law which is taken from Dicey's Rule of Law. Which means that no man's above the law of the land and that every person what ever be his rank or status is subjected to the ordinary law and amendable to the jurisdiction of the ordinary tribunals. In other words right from the King to the ordinary citizen, everyone is equal in the eyes of law. There should not be any discrimination between the person and a person. But in India there is certain exceptions –

- 1) The President or the Governor of the State shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of that powers and duties.
- 2) No criminal proceeding whatsoever shall be instituted or continued against the President or a Governor in any Court during his term of office.
- 3) No civil proceeding in which relief is claimed against the President or the Governor of State shall be instituted during his terms of office in any court in respect of any act done or purporting to be done by him in his personal capacity whether before or after he entered upon his office as President or Governor of such state until the expiration of two months after the notice in writing has been delivered to the President or the Governor as the case may be or left of his office stating the

nature of the proceedings the cause of action therefore, the name, description by when such proceedings are to be instituted and the relief which the claims (article 361).

The Supreme Court and the High Court are been equipped with power to Issue Certain Writs like Habeaus Corpus, Mandamus Prohibition, Certiorary and Quo warrants etc. to protect the “Fundamental Rights” of the Individuals. In Dalmia Vs Tendolkar Case⁴⁷, the Supreme Court, condemns the discrimination by the procedural law and analysed the meaning of Article 14. Article 14 is applied to both citizen and non-citizen of the country. In Dalmia’s Case, Supreme Court first applied the “Classification of the individuals or the group of individuals must be on the basis on occupation or geographical regions. Members of any group can be defined as a class.” Article 14 can not be applicable to the Parliament or the State Legislature. If the individual claims that he is been treated equally by the state or Parliament or any authority, Supreme Court, stated, that under certain reason or circumstances the authority may discriminate which comes under Article 14. In Satish Chandra Vs the Union of India,⁴⁸ the Supreme Court held that all persons and things similarly circumstanced shall be treated alike both in privileges conferred and imposed. Equality before the Law means the laws should be equal and should be equally administered and that the like should be treated alike”. In several cases, we have seen there is a “discriminatory done by the authority on the ground of violating Article 14 of the Constitution is being Challenged” – The Supreme Court in “Kedar Nath Vs State of West Bengal ...”⁴⁹ are stated that the equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all the laws must be general in character and universal in application and that the state is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation”. The equal protection of laws means

the right to equal treatment in similar circumstances. Article 14 ensures equality among equal protecting persons similarly placed against discriminatory treatment. In the state of Bombay Vs Balsara,⁵⁰ the Supreme Court held that if law deals equally with members of a well defined class it is cannot be openly changed for denying the equal protection on the ground that it has not been applicable to other countries.

“Reasonable Classification shall be put forward in certain cases where discrimination may be done but does not infringe the Article 14 of the Constitution. Reasonable classification for conservancy changes – for sale tax, income tax does not violate the Article 14, if the classification is based on historical reasons to geography. In the Sakhwant Vs State of Orissa⁵¹ (1955, the Supreme Court stated that “Legislation enacted for the achievement of a particular object or purpose need not be all embracing”. It is for legislative to determine what categories it would embrace within the scope of legislation and nearly became certain categories would stand on the same footing as there which are covered by the legislation In Biswambhar Vs State of Orissa and Ram Chand Vs State of Orissa the Supreme Court held further, that Article 14 did not prevent the legislative from introducing a reform gradually that is to say at first applying the legislation to same of the institution or objects having common or particular areas only, according to the exigencies of the situation.” If the unreasonable discrimination is made between person and another person in fiscal law, violating Article 14, then the Supreme Court stated that discrimination on such ground is consider to violate Article 14.

If the state has a monopoly power in transport services, it would not infringe Article 14. Minimum wages fixed by the industries in state may be different. Fixing different wages for different industries depend upon the economic and local conditions.

In Biswambhar Vs State of Orissa and Ram Chandra Vs State of Orissa, the Supreme Court further hold that Article 14 did not prevent the Legislature from introducing a reform gradually – at first applying the legislation to some of the institutions or objects having common or particular areas only, according to the exigencies of the situation.

The Classification may not always be discriminatory:

The power of the legislative in making statutes for formation is always found to be flexible. In this case it would not be violative of Article 14, since statute does not transgress the fundamental principles underlying the doctrine of equality. Thus forming statute is not always unreasonable on the ground of discrimination, since there are certain incomes where the taxes are being exempted.

While promoting the members of the Scheduled Castes and Schedule Tribes an universal criteria is followed which may be different in other states. But these may not be violative of Article 14. In the same way the Rajasthani Language has been incorporated in the VIII of Constitution, while Manipuri, Kankani and Nepali have been included in the Constitution, cannot be challenged which is part of basic structure of the Constitution. The Railways by their circular dated 14th October 1980 partly treating temporary statutes service of the open line casual labour on their regularization as qualifying services for pension.

Thus equality clause applies to every person, citizen or non citizen. For the welfare of the individual and for the social good, the court interpret this clause.

Article 15 (Prohibition on grounds of Religion, Race, Caste, Sex, Place of Birth). Article 15 prohibits discrimination on the basis of religion, race, sex, place of birth. Within the scope of Article 15, the Supreme Court has held that the fundamental right conferred by Article 15(1) is conferred on a citizen as an individual is a guarantee

against his being subjected to discriminating in the matter of rights, privilege and immunities put aiming to him as a citizen generally Article 15 states that "State cannot make classification of the socially and educationally backward classes only on the consideration of the castes.

In M.R. Balaji Vs State of Mysore held that though the state was competent to resume the seats for the backward classes, Scheduled Castes and Scheduled Tribes but it should be under certain limits. Reservation of seats has to be reconciled within the broader interest of the community as a whole.

In Indra Sawhney Vs Union of India, the Supreme court has held the special provision contemplated by Article 15(4) – which gave emphasis on the affirmative action of the state to improve the conditions of the disadvantaged members of the backward classes of citizens. In R. Jacob Mathew Vs State of Kerala⁵² "seats in the medical college of Kerala were reserved by a Government GO for (a) Ezharas, Muslims and Latin Catholics on the ground that they belonged to socially and educationally backward classes, (b) in favour of the children of registered medical practitioners and (c) for outstanding sportsman. The court upheld the reservations in favours of Ezharas, Muslims and Latin Catholics valid under Article 15(4). Reservations in favour of outstanding sportsman were also held legal on the ground that it was based on valid classification under Article 14 but the court struck down the reservation in favour of the children of medical practitioners on the ground that it was based on a classification which had no rational relation to the object to be secured." Under Article 15(4), the socially and educationally backward classes should be treated with equal dignity in which justice should be social, economic and political which is enjoyed by majority in the society.

Equality of opportunity :

Article 16 of the Constitution states that “Equality of Opportunity should be in the matters of public employment” There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for a discrimination against in respect of any employment or office under the state. Nothing in the Article shall prevent the state from making any provisions 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.

Under Article 16(4), 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 states are not adequately represented in services under the state.

Devdasan Vs Union of India – case⁵³ the Supreme Court according to the Article 16 – stated the Central Government to regulate “carry forward rule” appointment of persons belonging to backward classes, in public services. According to the resolution taken by the government of India, 12½% and 5% of total seats would be reserved for the Scheduled Castes and Scheduled Tribes. In any particular year the number of seats available is less than the number of reserved posts, the posts in excess, shall be treated as unreserved for that year but in the next year the number of post which have been otherwise reserved for the year should be reserved for the such candidates in a normal course would be augmented by the number which has been converted into non reserved posts in the proceeding

years. The process of carrying over was to operate for a period of two years at one time. On the basis of reservation the “carry forward rule” was permitted out of 45 seats 29 seats, were reserved for the Scheduled Castes and Scheduled Tribes.

In the case of Krishna Chandra Nayar Vs Chairman CTOs⁵³ the court held that in the matter of making application for employment under the state Article 16(1) guarantees to the citizens equal opportunity. In another case, C.K. Achuttan Vs State of Kerala⁵⁴ the court held that it also guarantees right for being considered for the post on merit. In its application to the government servants, Article 16 has eroded the rule of worker and servant giving taken constitutional protection. In Jagadish Lal Vs State of Haryana⁵⁵ the court held that equality of opportunity should be based on ability and opportunity needed for each cadre and grade.

Cases relating Conflict between Fundamental Right and Directive Principles :

In the case of Champakam Dorairajan Vs State of Madras, the Supreme Court observed that Directive Principles of State Policy have to conform to and run subsidiary to the chapter on F.R. and so they are enforceable by a court. They cannot override the provisions found in Part III which are not only expressly made enforceable by appropriate writs under Article 32 but once sacrosanct.

In the case of Sheela Barse Vs Secretary of Childrens Legal Aid Society, Mumbai⁵⁶ a writ petition was filed in the High Court under Article 226. The children in the “New Observation Home at Mankund were illegally harassed and detained and forced to take the hazardous work and the society make a huge share of profit. The petition has stated that the decision given by the High Court is inadequate and so the appellant filed a petition in Supreme Court under Article 136.

Chief Justice P. N. Bhagawati directed the Juvenile Courts to presides over this case “with regard to the harassment of the children” and the voluntary organisation should not be considered as state but the society who would regulate the activities according to the provisions laid in Article 24 and 21 alongwith the Directive Principles of State Policy. In D.D. Vyas and other Vs Ghaziabad Development Authority,⁵⁷ the appellant filled a petition against the G.D. Authority on the ground that the open space should be used for public park not for any other purpose. The People's Union for Democratic Right (PUDR) and others Vs Union of India,⁵⁸ the Committee under People's Union for Democratic Right, investigated whether the Labourers for the Construction Projects were recruited through the labour laws. Most of the labours were migrated from the rural areas of Bihar, Orissa, Bengal, Tamil Nadu, Andhra Pradesh, Madhya Pradesh & Rajasthan. Justice P.N. Bhagawati directed the Authority for weekly inspections must be done and minimum wages should be given to the labours implementing the labour laws. The rights of the workers are violated due to poverty, illiteracy and ignorancy. They cannot approach the Court, for redresses, so the judicial redress is beyond the reach of the poor workers, landless labourer. The landmark judgement in People's Union for Democratic Rights became popular and was taken an example – which is cited in many cases. This has widened the scope of Article 23 which is used under Directive Principles of State Policy.

In another case Sachidananda Pandey Vs State of West Bengal⁵⁹, an appeal was filed against, an order of the Calcutta High Court under Article 226 of the Constitution. The petitioner alleged that the land which was allotted for “construction of zoo at Five star hotel by the Taj Groups were constructed on it.” They had violated Article 14,31, 46A and 51A(g) of the Constitution and also the Bengal Public Parks Act, 1904. In the Case of Mathew Lukose Vs Kerala State

Pollution Control Board,⁶⁰ petition was filed under article 226 of the constitution against the Pollution caused by Travancore Electro Chemical Industries. The Electro Chemical Industries have violated Article 21 and 51(g) of the Constitution, the water (Prevention and Control of Pollution) Act 1979 and the Rules Air Prevention and Control of Pollution Act 1981 and the Environment Prevention Act 1986. In another case of George Manpilly and another Vs State of Kerala⁶¹ – petition was filed under Article 226 of the Constitution asking the Court to prevent the sale of arrack in Polythene sockets as it was injurious to health.

From the above cases, it reveals that the directives Principles provide new approach in interpreting the Constitution, enforcing new principles. According to Article 37, State shall have the duty to apply the Directive Principle, whenever necessary. Though there is a conflict between the Directive Principles and Fundamental Rights, both constitute the conscience of the Constitution. According to Supreme Court, the Fundamental Rights and Directive Principles are supplementary to each other and maintain the balance between them is essential for preserving the basic structure of the Constitution of India. Both Fundamental Rights and the Directives should work various efforts with act having the individual or the state.

(G) A COMPROMISE BETWEEN JUDICIAL SUPREMACY AND PARLIAMENTARY SOVEREIGNTY

It is quite difficult to balance the power between the three organs of the Govt. Since the Constitutions of the different countries have been adjusted with the changing situation. Like United States, the Constitution have adopted “the rigid scheme of separation of powers and the checks and balances” which have failed in its actual working and Judiciary has assumed supremacy under the powers of interpretation of the Constitution.⁶² This is known as “safety value” or the balanced wheel of the Constitution. As Chief Justice Huges – has remarked “The Constitution of USA is what the Supreme Court says it is”. It has the power to invalidate a law duly passed by the Legislature not on the ground that it transgress the legislative powers Vested in by the Constitution but by the General Principles such as “due process” – which has been defined only by the Supreme Court. The American Judiciary is known to be the third Chamber or Super Chamber of the Legislature.

Under the English Constitution, the Parliament is considered to be supreme in the words of Black Stone “The Constitution can do everything which is not naturally impossible’ and the courts cannot nullify any Act of the Parliament. But the Indian Constitution adjusted the American system and Judicial Supremacy and English Principle of Parliamentary Supremacy”.

The Sovereignty of Parliament in India is different from the British Model in some aspects:-

The Indian Parliament is of the Constitution of India. Its power, rights, privileges, obligations have been formed in the relevant Articles of the Constitution of India. It is not a sovereign body, having unlimited powers. (Since the Constitution have adopted the federal structure, the powers have been distributed between the Union and

State Government. Since the Indian Constitution is a written constitution, it has adopted federal structure, where the powers have been divided between Union and States Government under Union and State List. The Constitution has been considered as the Supreme Law of the Land so every power – the executive legislative or judiciary whether it belongs to the federation of the component states is subordinate and controlled by the constitution.

Both the centre and the state derives their power from the constitution. The constitution has given specific powers to the Parliament and the Parliament has to work within its boundary. It can not amend the provisions of the Constitution. Some of the Provisions can be amended only when the state legislature approves it.

Parliamentary sovereignty in India is limited below because of the jurisdiction of the Supreme Court. The authority of the court acts as a balance between the three branches of the govt. It restrains the laws enacted by the Parliament. The Supreme Court as a final interpreter can examine the “Constitutionality of laws enacted by the Parliament and can declare any law un-constitutional if they contravene any provisions of the constitution. But there is such restriction imposed upon the Parliament in Britain.

Fourthly the Incorporation of Chapter III of Fundamental Rights has limited the power of the Parliament in India. While enacting laws the Parliament has to ensure that they do not infringe the Fundamental Rights of the citizen as they are protected by the constitution itself.

All these limitations and restrictions clearly reveal that Indian Parliament can not claim to be a sovereign body. Laws made by the Parliament of India are limited through the various administrative details as laid in the constitution. Thus, constitution of India has established the Judicial supremacy instead of Parliamentary

supremacy. The Chief Justice C.J. Kannia expressed in “Gopalan Vs Madras Case” – it is difficult upon any general principles to limit the omnipotence of the sovereignty legislative power by judicial interposition except so far as the express words of a written constitution give the authority such powers. The Constitutional provisions deliberately limits the legislative power and controls the temporary will of majority by the Parliament.

While enacting laws the Parliament has to ensure that they do not infringe the Fundamental Rights of the citizens. Article 32 guarantees the citizens the right to move the Supreme Court to issue orders on writs for the enforcement of Fundamental Rights contained in Part III of own constitution. Under Article 226, the High Courts can issue necessary writs for the enforcement of Fundamental Rights. Article 13 of our Constitution declares that any law which contravenes any of the provisions of the part on Fundamental Rights shall be void. The “Case Law” though by Article 14, 12 it is binding or have the only law” is enforced by court. “Constitutional” Is what the courts say is constitutional and that is judicial supremacy”.

Though in our Constitution, Parliament is supreme in enacting laws and amending the constitution, but the Supreme Court is supreme in dealing whether the laws enacted and the amendments made by the Parliament are within the ambit of the constitution. The courts in India have the power to decide whether a fundamental right has been infringed or not Article 32 and 226 give the supreme court and the High courts power to grant most.

Although the Constitution of India imposed a limitations of both the Parliament and the Supreme Court, the Conflict started to arise between the two specially with A.K. Gopalan Case.

The importance of Article 32 of the Constitution was emphasized by Dr. Ambedkar in the Constituent Assembly – where he

had expressed that this particular Article in this constitution is the most important without which this constitution would ... nullify..... It is the very soul of the Constitution and which the house of the Parliament has to realise its importance. Article 32(1) provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights conferred in Part III of the Constitution is guaranteed.

Article 32(2) lays down that the Supreme Court shall have the power to issue directions or orders writs, including writs in the nature of habeas, corpus, mandamus, prohibition, quo-warranto, certiorari for the enforcement of the fundamental rights. Article 32(3) authentic Parliament to empower any other court to exercise within the local limits of its jurisdictions all or any of the powers exerciseable by the supreme court under Article 32(2). The conflict between Supreme Court and the Parliament arose in the case of Golaknath Vs State of Punjab. The Supreme Court held that fundamental rights were outside the amending process and the Parliament will have no power in future to amend the provisions of Part III in order to abridge or take away any fundamental rights.

This view was challenged by the Parliament in the Keshavananda Bharati Case and the Supreme Court reversed the primary decisions that Parliament could amend any part of the constitution but it could not destroy the basic structure of the constitution. The 24th Amendment however gave the supremacy to the Parliament.

According to the 25th Amendment, compensation made by the state for acquiring the private property is non-justiciable. The govt. tried to strengthen the Supremacy of the Parliament against the judicial review of the court and to establish importance of Directive

Principles over the Fundamental Rights. But the court tried to struck down parliamentary legislation and amendments.

The real nature and the significance of the Directive can best be understood from the stand point taken by the Judiciary in various cases – Directive Principles of state policy is considered to be non-justiciable in character. Sometimes Directives became subservient to Fundamental Rights.

In certain cases, Directives are realised to be quiet important in the broad constitutional setting. This was clear in State of Madras Vs Champakan Dorairajan Case. The Supreme Curt held that “Directive Principles of State Policy which by Art 37 cannot override the provisions found in Part III of the Constitution. It should not encroach upon the writs – orders as laid in article 32. The Chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislature or Executive.

Changes brought about by the 42nd Amendment in the Directive Principles of State Policy which has been given more importance than the Fundamental Rights.

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