

CHAPTER - 4

I

When the opportunity to frame their own constitution came, the Indians were really placed at a very happy position; because, after hard struggle, they got an opportunity to give

Gandhian Influence
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Rights -
Introduction

expression to their dreams of a new order. They sharply responded to the call, and united themselves in a common adventure of building up a new

nation which would ensure justice in every sphere of life. This was, in essence, the rebirth of a nation. Under the imperial rule, India remained subjugated not only politically, but her independent economic growth was crippled and the society was steeped in traditional moorings, shackled by old customs and prejudices. The framers of the Constitution were conscious of these facts, and as such, they intended to utilise the emerging Constitution as the vehicle or agency through which the social revolution and the national renaissance could be effected. As we have already seen in the previous chapter, although the entire Constitution was aimed at national renaissance, the "core of the commitment to the social revolution" lies in Part III and IV, in the Fundamental Rights and in the Directive Principles of State Policy which are, in the words of Austin, "the conscience of the constitution" .
(1)

II

The Fundamental Rights and the Directive Principles,

as we have seen in the earlier Chapter, had their roots deep in the struggle for independence. As such, a climate of hope and

Scheme of Fundamental Rights in the Constitution of India

expectation had already been created that the constitution of free India would ensure certain rights for the

realisation of which the Indians had striven and suffered so long. Therefore, apart from giving strength to the pursuit of the social revolution, the inclusion of the Rights in the Constitution was aimed at creating an atmosphere of trust and confidence which was deemed most valuable at that time.

Jawaharlal Nehru observed, while moving for consideration the Constitution (First Amendment) Bill in the Lok Sabha on 16th May, 1951, that "the whole conception of the Fundamental Rights is the protection of individual liberty and freedom". According to Nehru, this conception was derived from the European history, especially from the days of the French Revolution. It remained as the dominating idea of the 19th century and as the 20th century went ahead, other additional ideas came into the field which are represented by our Directive Principles of State Policy (2)

The Cabinet Mission laid down, in its 16 May Plan, that the Constituent Assembly should have an Advisory Committee, whose duty it would be to report to the Assembly on the list of Fundamental Rights, the clauses for the protection of minorities (3) and the administration of the tribal areas . The Cabinet

Mission's recommendations and the intentions of the Congress coincided; the Working Committee of the Congress drew up a resolution establishing the Advisory Committee at the meeting of 8 December, 1946⁽⁴⁾, the day before the Constituent Assembly was convened. The resolution was to be moved during the early days of the first session, but was delayed for some time in the hope that the Muslim League might enter the Assembly⁽⁵⁾. It was on 24 January 1947, that the Assembly voted to create the Advisory Committee. The Committee initially consisted of fifty members with Patel as the Chairman, and it was proportionately represented by the religious minorities, scheduled castes and the backward tribes⁽⁶⁾.

Acharya Kripalani became the Chairman of the Fundamental Rights Sub-Committee⁽⁷⁾. The membership of the Fundamental Rights and other sub-committees was set up, as had been the whole Advisory Committee, by the leadership of the Congress in consultation with the leaders of the minority groups themselves. Members of the Rights Sub-Committee were: the two ladies, Rajkumari Amrit Kaur and Hansa Mehta, Acharya Kripalani, Minoo Masani, K.T. Shah, Alladi Krishnaswamy Ayyar, K. M. Munshi, Sardar Harnam Singh, Maulana Azad, B.R. Ambedkar, J. Daulatram and K.M. Panikkar.

Among them, three of the members already had some familiarity with the formal consideration of the rights issues. K.T. Shah and K. M. Munshi had both been members of the Congress

experts committee, which had drafted a list of rights for the Assembly's guidance. Ambedkar had attended the Round Table Conference and had taken strong interests in rights issues. When the Fundamental Rights Sub-Committee met for the first time on 27 February 1947, it had before it draft lists of rights prepared by B. N. Rau⁽⁸⁾, Shah, Munshi, Ambedkar, Harnam Singh and the Congress experts committee, as well as miscellaneous notes and memoranda on various aspects of rights⁽⁹⁾.

Drawing on this mass of precedent, the Sub-Committee drafted the rights during ten meetings held in March and April 1947. Early in April, it passed its tentative conclusions to the Minorities Sub-Committee of the Advisory Committee for suggestions, and on 4 April completed a draft report. After considering the Sub-Committee's recommendations, and reconsidering their own draft report, the Rights Sub-Committee members submitted their report on 16th April to the Advisory Committee as a whole. Five days later, the Advisory Committee met and made certain changes in it. Patel, as Committee Chairman, presented the Interim Report of the Advisory Committee, on the subject of Fundamental Rights, to the Constituent Assembly on 29th April 1947⁽¹⁰⁾. The Assembly debated it for the remainder of the Third session, and considered the rights a second time in November 1948 during the debate on the Draft Constitution. Except for several controversial provisions, the drafting of the rights was completed by December, 1948.

Nehru initiated on 12 December, 1946 the resolution on Aims and Objectives which was discussed during first two sessions of the Constituent Assembly. While introducing the resolution, Nehru said, "we have met here today because of the strength of ~~the strength of~~ the people behind us and we shall go as far as the people - not of any party or group but the people as a whole - shall wish us to go. We should, therefore, always keep in mind the passions that lie in the hearts of the masses of the Indian people and try to fulfil them" (11) .

At this time he remembered Gandhi with high regards and said, "there is another person who is absent here and who must be in the minds of many of us today - the great leader of our people, the father of our Nation - who has been the architect of this Assembly and all that has gone before it and possibly of much that will follow..... his spirit hovers over this place and blesses our undertaking" (12) .

There were members who at the time of extending their support to the resolution initiated by Nehru, either remembered in general, the contribution of Gandhi or put emphasis on specific aspects of Gandhi's aspirations.

Shri Purushottam Das Tandon acclaimed Gandhi and credited him for vanguarding the Indian national movement. In his opinion, Gandhi's appearance in the field of politics had changed the methods of the freedom struggle. Prior to his emergence, our leaders had confined themselves within prayers and petitions.

Gandhi rejected the politics of persuasion and openly defied the British laws without minding the dire consequences (13) .

Mr. M. R. Masani spoke in favour of democratic decentralization in order to ensure the freedom of the individual, and in this connection he referred to Gandhi's ideas (14) .

Seth Govind Das declared satyagraha as the greatest contribution of Gandhi to the world (15) .

Prof. Ranga also offered homage to Gandhi as the creator of the unique and aspiring weapon, satyagraha. He considered it to be the most useful means for safeguarding individual rights (16) .

Rev. J. J. M. Nichols - Roy wanted that the Assembly, in the holy task of constitution-making, be guided by the ideals of Gandhi, with a view to establishing a strong and united India (17) .

Dr. P. K. Sen also wished that the spirit of Gandhi be felt at every moment of constitution-making (18) .

Mrs. Hansa Mehta pleaded the cause of Indian women, and at this time, with extreme gratitude, she remembered the contribution made by Gandhi in the upliftment of the status of Indian women (19) .

Mr. P. R. Thakur sought adequate safeguards to be provided for the Depressed-Classes for their political salvation and in this connection he said that ".... the Poona Pact is

Mahatma Gandhi's creation, and his writings in the 'Harijan' amply prove that the interests of the Depressed Classes must be carefully looked after" (20) .

While speaking on behalf of the Harijan Community, Shrimati Dakshayani Velayudan also paid humble homage to Gandhi (21) .

Sir S. Radhakrishnan expressed his hope that the Assembly would work for the establishment of 'swaraj' for all the Indian people and to bring about real satisfaction of the fundamental needs of the common man of the country (22) .

Shri R. V. Daulekar supported the resolution, since in his view it was based on the twin principles of truth and non-violence, for which Gandhi stood (23) .

After examining the tune and sentiments reflected through the speech delivered by the members, we can further point out that, the Resolution states as its source that ".....(4) all power and authority of the Sovereign Independent India are derived from the people. It also declares as its objectives (5) that wherein shall be guaranteed and secured to all the people of India - justice, social, economic and political, equality of status, of opportunity and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action..... (6) wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes....." (24)

All these amply demonstrate that the Resolution contained many such items which were the tenets of Gandhi's Programme and that Gandhi's legacy remained very much alive at least/^{at}that time.

The objectives in this Resolution which ultimately took the form of the Preamble and guided a long way in framing the Fundamental Rights and Directive Principles of State Policy, were all at least superficial vibrations of Gandhian concept of free India. His desire that the Constitution framed by the free will of the Indians should provide social equality, economic and political justice and freedom of religion was well reflected through this Resolution. Shri Alladi Krishnaswami Ayyar, during the debate on this Resolution, said, ".... more than any argument, as the Resolution before the House has received the blessings and support of Mahatma Gandhi, the architect of India's political destiny I trust that it will be carried with acclamation by the whole House without dissent....." (25)

The 1937 Constitution of Ireland made a distinction between the "Fundamental Rights", strictly so called, and the "Directive Principles of Social Policy." Justiciable and non-Justiciable Rights In our case the division of rights into justiciable and non-justiciable rights was for the first time envisaged in the Report of the Sapru-Committee in 1944-45 (26)

In one of the pamphlets issued for the use of the members of the Constituent Assembly, B. N. Rau, the Constitutional Adviser, referred to the Irish Constitution and to Lauterpacht's International Bill of Rights. He commended the classification of this right into two parts, one dealing with Fundamental Principles of State Policy and the other with Fundamental Rights as such.

The proposal relating to the incorporation of non-justiciable rights in the Constitution did not initially find favour with some members of the Sub-Committee on Fundamental Rights. To this group belonged men like Alladi Krishnaswami Ayyar, Masani, Ambedkar and K. M. Munshi.

The opposition to the proposal did not however, remain formidable for long. Alladi Krishnaswami Ayyar supported it in a note submitted on March 14, 1947, in which he stressed the distinction between justiciable rights and rights which were merely intended as a guide and directing objectives of state policy ⁽²⁷⁾. Gradually, most other members of the Sub-Committee also came round to this view realising that it was not practicable to categorise declarations of social and economic policies as justiciable rights.

The principles of social policy set forth, were intended for the general guidance of the legislatures and governments in India. The state shall take all possible care to implement these principles which shall not be cognizable by any court.

The Fundamental Rights Sub-Committee recommended that

the list of Fundamental Rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process, and the second consisting of Directive Principles of Social Policy which, though not enforceable in courts, are nevertheless to be regarded as fundamental in the governance of the country.

Sardar Patel, while presenting the Interim Report on Fundamental Rights, in his report to the President of the Assembly, stated that great importance was attached to the Constitution, making these rights justiciable. The right of the citizen to be protected in certain matters was a special feature of the American Constitution and the more recent democratic constitutions. In the part of the constitution Act, dealing with the powers and jurisdiction of the Supreme Court, suitable and adequate provision would have to be made to define the scope of the remedies for the enforcement of these Fundamental Rights. "We recommend that the rights set out be incorporated in the Constitution so as to be binding upon all authorities whether of the union or the units" (28)

Gandhi never dreamt of political freedom only. To him social and economic emancipation was more important. His struggle was aimed at emancipating the individual from bondage and suffering in every sphere of life. To him political freedom was necessary because social and economic equality cannot be materialised if the state is not free.

When the Interim Report on Fundamental Rights was

placed before the Assembly, it was seen, to the utter surprise and dismay of many members, that the economic and social rights, which were more important to the common man, and for which Gandhi had spoken and written so extensively, had been placed at the second part of the Report and were made non-justiciable -- a distressing evidence of the double-standard in the role of politicians and leaders in paying lip service to the ideals and programmes of the 'Father of the Nation', while showering glowing tributes in words.

During the proceedings of the Assembly, an important matter which attracted the attention of a large number of the members and which was also subjected to a great deal of criticism, was the justiciability and non-justiciability of the Rights.

Mr. Promatha Ranjan Thakur wanted that greater importance should have been given to the economic rights, and they should have been made justiciable (29) .

Mr. Somnath Lahiri characterized this distinction as 'arbitrary' (30) . In his opinion "..... it is rather difficult to make a fine distinction between what are justiciable and what are not....." (31)

Again, during the general discussion of the Draft, Shri Krishna Chandra Sharma wanted specific provisions within the Constitution for the enforcement of work for able-bodied citizens,

and he further supported legal obligation imposed on the state to fulfil the rights given in the Constitution⁽³²⁾ .

Mr. Naziruddin Ahmed compared the Directive Principles with pious wishes and superfluities in the absence of their being enforced in a court of law. In his opinion "..... every constitutional principle should give a right, and every right should be justiciable in a court of law....."⁽³³⁾

Kazi Syed Karimuddin expressed his displeasure in the absence of a bold and clear economic policy in the Draft. He said ".....not to have a definite economic pattern in the constitution of Free India is a great tragedy"⁽³⁴⁾

He also moved, in the later stage when debate on the Draft was going on, an amendment to the effect that the Directive Principles should be treated more emphatically and be made Fundamental Principles of State Policy. In his view the word 'Directive' was unnecessary and meaningless⁽³⁵⁾ .

Mr. Naziruddin Ahmed strongly supported the amendment of Syed Karimuddin and believed that these pious principles should not be enunciated unless there was the backing of the law and they were also made justiciable⁽³⁶⁾ . He compared these non-justiciable principles with resolutions made on New Year's day which are broken on the very next day⁽³⁷⁾ .

Shri H. V. Kamath moved an amendment to the

effect "that in the heading under Part IV, for the word 'Directive', the word 'Fundamental' be substituted" (38)

Prof. K. T. Shah also expressed his deep concern in this regard, and, while moving an amendment to article 29 of the Draft (article 37 of the present constitution) he demanded that the provisions contained in this part should be treated as the obligations of the state towards the citizens, and should be enforceable in appropriate manner (39). To him this part looked ".....like a cheque on a bank payable when able... in the absence of any mandatory direction to those who may have the governance of the country hereafter....." (40)

During the debate on article 30 of the Draft (article 38 of the present) Mr. Hussain Imam also expressed similar views (41)

However, when the Interim Report came out on 23 April, 1947, it was found that Gandhi's ideas and wishes had been accommodated within this Report although mainly in the shape of non-justiciable rights.

During the proceedings of the Second Round Table Conference, Gandhi circulated a memorandum, in the second session of the Conference, which, inter alia, demanded that the new Constitution should include a guarantee to the communities concerned, of protection of their culture, language, script, education, profession and practice of religion and religious endowments, per-

sonal law, political and other rights of minority communities. His views found their place in the rights relating to religion and in the Cultural and Educational Rights, the relevant part of which read as follows:- [Rights relating to religion - (13) All persons are equally entitled to freedom of conscience, and the right freely to profess, practice and propagate religion.....

(14) Every religious denomination shall have the right to manage its own affairs in matters of religion and, subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

(15) No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

(16) No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in any religious institution that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

(17) Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

[Cultural and Educational Rights -

18(1) Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority, whether based on religion, community or language, shall be discriminated against in regard to the admission into state educational institutions, nor shall any religious instruction be compulsorily imposed on them.

3(a) All minorities, whether based on religion, community or language, shall be free in any unit to establish and administer educational institutions of their choice.

(b) The state shall not, while providing state aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

In fact, Gandhi's whole concept of secularism which, according to him, was an essential aspect of the 'non-violent state', found expression in the Advisory Committee's Report on Fundamental Rights.

Again, Gandhi's advocacy for social equality and his life-long campaign for abolishing untouchability, exploitation in the name of castes, racialism and communalism and exploitation of children and women, found expression in this report under the caption - Rights of Equality and Rights of Freedom.

☐ Rights of Equality - 4(1) The state shall make no discrimination against any citizen on grounds of religion, race, caste or sex. (2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to -

(a) access to trading establishments including public restaurants

and hotels,

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

(5) There shall be equality of opportunity for all citizens in matters of public employment and in the exercise or carrying on of any occupation, trade, business or profession.....

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, or any of them, be ineligible for public office, or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business or profession within the union.

(6) "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

(7) No heritable title shall be conferred by the Union⁷

┌ Rights of Freedom-

8(a) The right of every citizen to freedom of speech and expression.....

(b) The right of the citizens to assemble peaceably and without arms.....

(c) The right of citizens to form associations or unions.....

(d) The right of every citizen to move freely throughout the union.....

(e) The right of every citizen to reside or settle in any part of the Union, to acquire property and to follow any occupa-

tion, trade, business or profession.

11(a) Traffic in human beings, and

(b) forced labour in any form including begar and involuntary servitude.....are hereby prohibited and any contravention of this prohibition shall be an offence.....

(12) No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment⁽⁴²⁾

Nevertheless, it cannot be said that this Report could satisfy all the members of the Constituent Assembly. Some of them wanted seriously, and endeavoured hard to make the constitution more Gandhian, but they were outnumbered and out voted by other more prominent, more vocal members who were in no mood to incorporate Gandhian principles.

Mr. Promatha Ranjan Thakur was not satisfied with Clause 6 of the Report, on untouchability, which, according to him, was unable to root out the evil of untouchability, if abolition of the caste system was not simultaneously introduced. In his view "..... untouchability is nothing but the symptom of the disease, namely, the caste system"⁽⁴³⁾. Dr. S. C. Banerjee supported the view of Mr. Thakur, expressed similar opinion and wanted that the word untouchability should be clearly defined⁽⁴⁴⁾. Srijut Rohini Kumar Chaudhury moved an amendment and said that the word 'untouchability' should be clearly and properly defined⁽⁴⁵⁾. Mr. Dharendra Nath Dutta supported the arguments put forward by Mr.

Rohini Kumar Choudhury and Mr. Thakur, and also expressed his view in favour of a uniform definition of the term 'untouchability' .
(46)

Shri V. C. Kesava Rau narrated before the House the woeful picture of the Harijans or the untouchables and moved an amendment to the Sub Clause 2 (b) of Clause 4, to the effect that after the word 'roads' the words schools, temples or places of worship be inserted .
(47)

Serious discussion was held on the subject of abolition of titles. However, Sardar Vallabhbhai Patel, in his concluding speech, observed that this abolition of titles did not mean that the people were prevented from conferring a title, nor did it mean taking away a title conferred by the people. "They are not titles really. They are attributes of virtues, which people see in them. If Mahatma Gandhi is called 'Mahatma Gandhi'; it is not because people want to confer any title on him, but they see in him something divine, some virtues they see in him which they admire and respect and therefore, the state has nothing to do with it...."
(48)

The Constituent Assembly met for considering the Draft Constitution on 4th November 1948. Before the Draft Constitution was placed, the members paid their tribute of homage to Gandhi. The President, in his speech, expressed their willingness to be guided by the spirit, life and teaching of Gandhi .
(49)

— another clear instance of divergence among leaders between precept and practice, pious homilies and concrete action.

The Drafting Committee was appointed by the Constituent Assembly on 29th August 1947. Dr. Ambedkar, as the Chairman of the Committee, placed before the House the Draft Constitution which contained 315 Articles and 8 Schedules.

As soon as Dr. Ambedkar's speech, which was a bid to discard the criticisms levelled against the Draft Constitution ended, many members raised their voice at its being borrowed largely from foreign Constitutions and its departure from Gandhi's ideas.

Sharp attack came from Maulana Hasrat Mohoni. He said "..... look at our new Constitution drafted by Dr. Ambedkar. There is nothing new in it. He has mostly copied out either the Government of India Act of 1935 or, as admitted by himself, has drawn from the Constitutions of other countries. A bit from here and a bit from there - it is a Pandora's Box....." (50)

Shri Damodar Swarup Seth pointed out the same thing. He expressed his displeasure at the slavish imitation of the Constitutions of America, Britain and many other foreign countries (51)

While commenting on the general observation on the Draft Constitution, made by Dr. Ambedkar, Shri H.V.Kamath said

that with some pride Dr. Ambedkar had informed the House, that the Constitution was borrowed largely from the Government of India Act and considerably from the Constitutions of the United Kingdom, United States, Australia and Canada. But, he (Shri Kamath) had expected Dr. Ambedkar to tell the House what had been borrowed from the political past of India and from the political and spiritual genius of the Indian people (52) .

According to Seth Govind Das, since the opportunity to frame their own Constitution came after centuries, the members ".....must use it well and frame a Constitution that is suited to the genius of our land (53) .

Shri Ramnarayan Singh said emphatically that the Constitution was not what was wanted by the country. He criticised Dr. Ambedkar and said that "..... he (Dr. Ambedkar) was not ashamed to admit that many things have been borrowed from other constitutions....." (54)

Dr. P. S. Deshmukh differed from the view of Dr. Ambedkar that the ancient Indian civilisation was not worth utilising for the future building up of the Indian nation. Since India is a land of agriculturists, Dr. Deshmukh suggested that adequate amendments should be made to accommodate the aspirations of the common man, so that they could feel that they were the real masters of the nation, and that their Raj and Kingdom were going to dawn (55) .

Shri Arun Chandra Guha pointed out that in the whole Draft Constitution there was no trace of Congress outlook, and no trace of Gandhian social and political outlook . (56)

He further criticised the Draft Constitution on the ground that it took much pain to protect the right to property and there by tried to safeguard the rights of those who had already got something, and remained silent about those who were dispossessed and who had got nothing . (57)

Shri T. Prakasam, a staunch supporter of Gandhism, criticised the Draft because of its complete departure from Gandhi's ideas and wishes. Shri Prakasam expected that the Drafting Committee would ".....bring out a constitution that will give food and cloth to the millions of our people and also give education and protection to all the people of the land....." (58)

He suggested that the members should take particular care to see that the Draft Constitution of Dr. Ambedkar was so amended that it would really become a constitution for the benefit of the masses for whose sake the battles had been fought . (59)

He could not expect a better constitution from Dr. Ambedkar, since "he (Dr. Ambedkar) had been attacking the whole system and the programme of Gandhi and the Congress all his life time....." (60)

According to Pandit Thakurdas Bhargava, the real soul of India was not represented by this Constitution and this camera (Draft Constitution) could not give a true picture of what many people would like India to be. The Drafting Committee had not the

mind of Gandhi, had not the mind of those who thought that India's teeming millions should be reflected through this camera....." (61)

Shri Himmat Singh K. Meheshwari alleged that the Draft would only encourage litigation. He termed it (Draft) as the lawyer's paradise, and this was because of the fact that the raw materials out of which this Draft had been made were all foreign (62) .

Shrimati Dakshayani Velayudhan deplored the Draft on the ground, that there was nothing democratic in it, and decentralisation was also absent. She termed it as a tragedy that a country like India with large population, great culture and teachings of the greatest man of the world could produce such a constitution which was foreign to the people (63) .

Prof. Ranga alleged that the Draft Constitution did not appreciate the great services rendered by Gandhi and countless martyrs which virtually made the Constituent Assembly possible (64) .

Shri Mahavir Tyagi said that he was highly dissatisfied seeing nothing Gandhian in this Constitution. In his view, the members must examine the Draft from the point of view of Gandhi and should see to it that the Gandhian outlook did not vanish from the country so soon after his death (65) .

The above attitudes and sentiments expressed by some members of the Constituent Assembly sufficiently demonstrate

that the impact of Gandhian ideals was very much alive in their minds at that time. The members were quite firm on their stand not to allow things go without due consideration of the legacy left by Gandhi. But as already pointed out, these members constituted only a fractional minority in the Constituent Assembly, and what is more, they did not constitute the so-called 'leadership' in the decision-making process.

Gandhi's arrival on the political scene had not only strengthened India's demand for written civil rights but had also added a new dimension by demanding 'Positive right'. Mrs. Besant's Commonwealth of India Bill of 1925 and Nehru Report of 1928 emphasised the state's negative obligations. But the Karachi Resolution of March 1931, along with political freedom had laid stress on economic freedom and social equality and demanded positive contribution by the state. Pt. Jawaharlal Nehru, while drafting the Resolution, included many of Gandhi's suggestions. Several clauses of the Resolution, for example, safeguarding by suitable legislation the interest of industrial workers, securing for them a living wage, healthy conditions of work, protection from the economic consequences of old age, sickness and unemployment, and special protection to women and children, clearly reflected the Gandhian "eleven points" which, he said, would provide the main essence of swaraj.

The Chapter on Fundamental Rights guaranteed seven categories of rights: Right to Equality, Right to Freedom, Right

against Exploitation, Right to Religion, Cultural and Educational Rights, Right to Constitutional Remedies.

Four articles, namely, articles 9, 10, 11 and 12 of the Draft Constitution dealt with Right to Equality. Their corresponding Rights in the present Constitution are articles 14 to 18, article 14 being a new incorporation which was absent in the Draft.

Article 14 declares that "the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India". This article stands for the establishment of a situation under which there shall be complete absence of any arbitrary discrimination by the laws themselves or in their administration. In the struggle for social and political freedom Indians, under the leadership of Gandhi, had always tried to move towards the ideal of equality for all. The urge for equality and liberty had been the motive force of our revolution. In the latter stages, our constitutional fathers also felt that real and effective democracy could not be achieved unless equality in all spheres of life was realised in a full measure. This article prevents the legislature and the executive from exercising power in a discriminatory manner. Article 14 lays down an important fundamental right which has to be closely and vigilantly guarded.

Article 9 of the Draft (article 15 of the present Constitution), as modified, states that (1) the state shall not

discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainments; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the state from making any special provision for women and children.

Not content with a more general declaration of the right to equality, and fully conscious of the types of discrimination prevalent in the country, the framers went a step further in article 15, which is more illustrative in character. The proviso to this article permits the state to make special provision for the benefit of women and children. The special treatment meted out to women and children is in the larger and the long-term interest of the community itself. It also recognises the social customs and background of the country as a whole.

Article 15 Clauses (1) and (2), taken together, seeks to fulfil the desire of Gandhi to remove social evils and discriminations prevalent in India.

During discussions, Prof. K.T. Shah moved an

amendment "that in the end of clause (2) of article 9, the following be added -- or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment". He argued that ".... this discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps....." (66)

Shri S. Nagappa felt that this provision was entirely Gandhian, and as such, he expressed his pleasure and wished that the weaker sections would also be made economically free. (67)

Sardar Bhupindar Singh Mann felt that the Fundamental Rights which were conceded would be incomplete, if places of worship were not included in the list. In this connection he also referred to the achievements and expectations of Gandhi in this direction. (68)

Article 10 of the Draft Constitution (article 16 of the present constitution) states that (1) there shall be equality of opportunity for all citizens in matters relating to any office under the state. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.

Shri P. Kakkan expressed his deep satisfaction at the addition of this article which, in his view, would facilitate

the Harijan people to ascertain their proper station and to receive their due privileges in the society (69) .

Shri H. J. Khandekar commended this article because, in his opinion, it gave a great protection to the interests of the Backward Classes and the Harijan community who were hitherto neglected (70) .

Article 11 of the Draft Constitution (article 17 of the present constitution) declared that "untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law.

This article was incorporated into the Constitution mainly because of the climate of opinion created by Gandhi and the leaders of minority groups for eradicating "untouchability" from the Indian body politic. It was the Gandhi's desire / that "untouchability" must be removed by statute without which there could be no real swaraj. It was under this climate that the Draft article 11 was not only welcomed by most of the members as a measure designed to end the great social evil which had been a shame and disgrace to India, but also allowed it an easy passage and adopted the same amidst shouts of "Mahatma Gandhi Ki Jai" (71) .

On this article the House was unanimous, forgetting their various differences.

During the general discussion on the Draft, Shri

V.I. Muniswamy Pillai, as a member of the so called Harijan Community, expressed his pleasure at the inclusion of this provision for the eradication of untouchability which, in his opinion, had eaten into the vitals of the nation⁽⁷²⁾. Again, during discussion on article 11(17), Shri Pillai expressed his belief that "... by the adoption of this clause, many a Hindu who is a Harijan, who is a scheduled class man, will feel that he has been elevated in society and he has now got a place in society....."⁽⁷³⁾

Participating in the debate on the Draft, Dr. Monomohon Das recollected Gandhi's wishes on this issue and expressed his great satisfaction at the inclusion of this provision within the constitution⁽⁷⁴⁾.

Shrimati Dakshayani Velayudhan expressed her satisfaction that all the religious teachers were against the practice of untouchability. Coming to a later period, we found a champion in the person of Mahatma Gandhi and one of the items of the Constructive Programme that he placed before the country was the abolition of untouchability. The change of heart that one found in the people was only due to the work that had been done by Mahatma Gandhi and by him alone⁽⁷⁵⁾.

Article 12 of the Draft (18 of the present constitution) states that (1) no title not being a military or academic distinction, shall be conferred by the state. (2) No citizen of India shall accept any title from any foreign state. (3) No person who is not a citizen of India shall, while he holds

any office of profit or trust under the state, except without the consent of the President any title from foreign state.....

This article also bears close resemblance to Gandhi's ideals. Gandhi believed that in the creation of a society, which sought to establish political, social and economic justice, and aspired to become a truly democratic state, there was no room for some individuals to hold titles, thus creating artificial distinction among members of the same society. In India, the practice of the British Government conferring a number of titles every year mostly on their political supporters and government officers, had already created a peculiar class of nobility among the people. It was not desirable that free India would recognise and accept these titles apart from consideration of the merits of those who held them.

The Right to Freedom consists of four articles, 13, 14, 15 and 15A (of the Draft) corresponding to 19, 20, 21 and 22

Right to
Freedom

of the present constitution.

Article 13 of the Draft (19 of the present constitution) occupies a key position in Part III. It guarantees seven freedoms (a) freedom of speech and expression, (b) to assemble peaceably and without arms, (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; (f) to acquire, hold and dispose of property; and (g) to practise

any profession, or to carry on any occupation, trade or business.

Gandhi, throughout his struggle for freedom, especially before the Minorities Committee of the Second Round Table Conference, had been campaigning for the cause of personal and civic freedom of speech, pen and press. The restrictions placed on these articles cannot be regarded as going against Gandhian ideology. He valued individual freedom but willing submission to social restraints for the sake of well being of the whole society which enriched the individual and the society of which he was a member.

It is impossible to exaggerate the importance of these freedoms in any democratic society. Indeed, the very test of a democratic society which is based on all-round equality, is the extent to which these freedoms are enjoyed by the citizens in general. These constitute the liberty of the individual which is one of the essentials of happiness and progress.

The right guaranteed to form associations or unions is more or less a charter for all working people in this country. Fully recognising the aspirations of the working people who had so long been kept suppressed, the framers of the constitution have made the workers' right a fundamental one.

The importance of the freedom of movement is immense. In fact, the enjoyment of the freedom guaranteed under other rights depends largely on the freedom of movement unhampered

and uncircumscribed. The two restrictions on this right are the interests of the general public and the interests of the Scheduled Tribes.

A society dominated by caste and religion has little to offer for the building up of a community enlivened by social mobility and dynamism. A constitutional guarantee of the right to take up the profession, calling, trade or business of one's choice, is indeed a significant aid to the building up of a dynamic and democratic society. The framers of the Constitution have done well in incorporating these rights and have thereby helped the evolution of a truly democratic society.

Seth Govind Das, participated in the discussion on clause (f) of the article, and suggested change of heart of the capitalists and the rich people through non-violent methods. In order to introduce socialism in the country, he did not favour the blood-and-iron policy; but the rich should be made to think that the welfare of the society and the people demanded this. He said that "humanity can not achieve its welfare except through non-violence, so also.....there cannot be stable peace, unless and until private property is abolished...." (76) . He hoped that "....in time to come the articles concerning property will not find a place in the constitution....." (77)

Shri H. J. Khandekar criticised the restrictions imposed on these rights and reminded the House of the hard days

when Gandhi and other leaders had struggled hard and had introduced Satyagraha to fight out these rights. (78)

Article 14 of the Draft (article 20 of the present constitution) provides for protection against arbitrary and excessive punishment to any person who commits an offence. These provisions guard against retrospective application of a punitive law and double punishment for the same offence. These are, indeed, guarantees of great importance which establish the primacy of law over the passions of man.

Shri P. Kakkan took this opportunity to express his deep concern in the jail administration. He complained that the prisoners who belong to the Harijan Community do not get fair dealing. With this object Shri Kakkan also gave notice of an amendment to this article which read as follows: "....that no person convicted for any offence shall be compelled to work in jail in respect of religion, caste, race or class" (79)

Article 15 of the Draft (article 21 of the present Constitution) states that "no person shall be deprived of his life or personal liberty except according to procedure established by law".

This article gives protection to life and personal liberty as against the executive as well as the legislature, for the constitution has conditioned its deprivation by the necessity for a procedure established by law made by the legislature.

Article 15A, corresponding to article 22 of the present Constitution, was not present in the Draft Constitution. It has come into being as a result of a move taken by Dr. Ambedkar on 15th September 1949 for a new article (15A). This article guarantees the right to every person, who is arrested, to be informed of the cause of his arrest, his right to consult and to be defended by a lawyer of his choice. Thirdly, every person arrested and detained in custody shall be produced before the magistrate within a period of twenty four hours. These provisions ensure equality in respect of legal treatment and save the poor and ordinary people from unnecessary harassment.

But the second restriction of this article, namely, "any person who is arrested or detained under any law providing for preventive detention" could not escape the attention of the members who were not satisfied when Dr. Ambedkar attempted to justify it. Dr. Bakshi Tek Chand went to the extent of saying that "... similar provisions existed even under the notorious Rowlatt Act passed in 1919, as a protest against which our revered leader, Mahatma Gandhi, started the great movement which ultimately culminated in the liberation of the country from foreign yoke" (80)

Articles 17 and 18 of the Draft (articles 23 and 24 of the present Constitution) deal with the Right against exploitation.

Gandhi's advocacy for social equality found vocal

expression among the members of the Assembly. Since, in the eyes of God, he declared, all men are equal, they should also be legally and politically equal. His experience of South Africa instilled in him the desire for racial and social equality. During his leadership of the Indian National Movement, he did enough spadework for crucifixion of 'untouchability', exploitation in the name of castes, racialism and communalism and exploitation of children and women.

Article 17 of the Draft (article 23 of the present Constitution) prohibits traffic in human beings and beggar and similar forms of forced labour. Though the national freedom movement, since the twenties of this country, had been a rallying force against such practices, there were many areas of the country where the 'untouchables' were being exploited in several ways by the higher castes and richer classes. Evils like the Devadasi system had been prevalent in certain parts of India. Vestiges of such evil customs and practices were still there in many parts of the country. The framers of the Constitution were eager to proclaim a war against them through the constitution, as these practices could have no place in the new political and social concept that was emerging with the advent of independence.

Shri S. Nagappa, while supporting this clause and commending it, placed before the House a very painful picture of the worst negligence and cruelty the Harijan people were subjected to, and he hoped that the evil systems and practices would now be abolished with the inclusion of this article .

Shri V. J. Muniswami Pillai expressed his satisfaction on the provision for the abolition of forced labour (beggar). He referred, in this connection, to the wishes cherished by Gandhi (82) for elevating the Harijan community .

According to article 18 of the Draft (article 24 of the present Constitution) no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This article is intimately related to a Directive Principle of State Policy which calls upon the state to enforce universal compulsory and free primary education to all children in the country upto the age of fourteen years. This comes of the realisation that children should prepare during this period for the task of the future as useful and responsible citizens and employment of children is an uncivilised and inhuman practice. It is exploitation, it stunts their growth, corrupts their morals and often drives them to delinquency.

Right to freedom of religion, and cultural and educational rights may be termed as minority rights. The special significance of these provisions is that while other rights (rights discussed so far) in Part III of the Constitution are meant for the people of India as a whole, irrespective of religion, caste, race or language, these rights on the other hand are meant for the minorities only.

It is a paradox that while almost every religion stands for, and preaches the universal brotherhood of man, it has been a

constant source of conflict in human history. India has been most unfortunate in this respect, particularly during the last thousand years of her history. The British did not desist from exploiting this situation for their own advantage and to continue their rule in India as long as they could. The country was partitioned on a religious basis. Yet the problem of religious minorities in independent India was not solved and remained as difficult as ever.

The right to freedom of speech and expression, and the right to form associations and unions are also rights which guarantee religious speech and expression and the right to form religious associations and unions. But the Constituent Assembly was not satisfied with such provisions alone in its bid to infuse complete confidence in the religious minorities. It went a step further and adopted a separate group of articles dealing solely with the right to freedom of religion. The freedoms provided in articles 19,20,21 and 22 of the Draft Constitution (articles 25,26,27 and 28 of the present constitution) are conceived in most generous terms to the complete satisfaction of religious minorities. They were, in fact, the result of an agreement with the minorities, almost unanimously arrived at in the minorities Committee constituted by the Constituent Assembly. Such unanimity created an atmosphere of harmony and confidence in the majority community. Moreover, these provisions embodied in detail one of the objectives of the Constitution declared in the Preamble: "to secure to all its citizens.....liberty of faith,

belief and worship".

Again, among these four articles, article 19(25 of the present constitution) is most significant. It states that (1) "..... all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the state from making any law - (a) regulating or restricting any economic, financial, ^{political} /or other secular activity which may be associated with religious practice, (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus".

During the proceedings of the Second Round Table Conference, Gandhi circulated a memorandum in the second session of the Conference which, inter alia, demanded that the new Constitution should include a guarantee to the communities concerned, of protection of their culture, language, script, education, profession and practice of religion and religious endowments, personal law, political and other rights, of minority communities.

For Gandhi, the universal element of all religions and creeds was the ethical one, and it was because of the universality of the ethical elements that made all religions one in spirit - so many pathways to the same ultimate reality - the sovereign God of Love and truth - the creator of the universe.

During the general discussion of the Draft, Shri S.V. Krishnamurthy Rao opposed that part of this right which guaranteed freedom to propagate religion. He said that in a secular state, such a provision, especially with the guarantee for the free exercise of religion and freedom of thought, was out of place in our constitution (83)

During the debate on the Right to Religion in the Assembly, Shri H.V.Kamath made a unique demand. He intended to draw attention of the House ".....to the value and importance that all our teachers, from time immemorial.....down to Mahatma Gandhi, Netaji Subhas Chandra Bose have attached to spiritual training and spiritual instruction..?" (84) With these words, Shri Kamath sought to impart spiritual instruction and training to the citizens of the union.

Shrimati Renuka Ray suggested that ".... above all things, it is necessary that the instruction that is given to the citizens of the future shall be such that the idea of a secular state in which all citizens are equal, comes into being, and the provisions for this adopted in our constitution become a living reality (85)

Shri M. Anantha Sayanam Ayyangar, while explaining the concept of secularism, said that it was regrettable that we had not been able to evolve a universal religion, a religion where the religious practice need not cloud the issues (86) . He further

stated that ".... the only thing, under the circumstances that we can do is to avoid religious instructions in state-aided schools....."
(87)

Although Right to Religion involves considerably Right to Education also, nevertheless the framers took another two articles to make it more explicit. These are articles 23 and 23A of the Draft, corresponding to articles 29 and 30 of the present Constitution.

Article 29 (23 of the Draft) (1) guarantees the right of any section of the citizens, residing in any part of the country having a distinct language, script or culture of its own to conserve the same. Section (2) prohibits any discrimination based only on religion, race, caste, language or any of them in the matter of state or state-aided educational institutions. Section (1) of article 30 (23A of the Draft) provides that "all minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

In the matter of safeguarding the rights of religious, linguistic and racial minorities, it will become clear that the sole purpose of these provisions is to reassure the minorities that certain special interests of theirs which they cherish as fundamental to their life, are safe under the

Constitution. One special feature of these provisions is that the term 'minority' has been given a wide connotation. Here a minority is recognised not only on the basis of religion, but also on the basis of language, script or culture.

In the opinion of Shri Mihirlal Chattopadhyay, this particular article 23 of the Draft Constitution was a definite guarantee to the minorities that their language, culture and script would be protected in every way. Different kinds of minorities based on language, script and culture would really find a great protection in this article (88) .

Article 24 of the Draft Constitution (article 31 of the present constitution) deals with Right to Property. This article experienced a great ordeal in the Constituent Assembly. The Assembly deemed fit to have in addition an altogether separate section to deal with property rights, because it realised that in the absence of such a section it would be impossible to solve the conflicts involved in the right of the individual to own property and the duty of the state to enter the economic field with a view to bringing about badly needed reforms. In fact, this article which states that "no person shall be deprived of his property save by authority of law", attempts to reconcile the competing claims of the right of the individual to acquire private property and public purpose or general welfare.

During the general discussion of the Draft, Shrimati Renuka Ray stated that in regard to the economic rights of the

common man, there was a lacuna. In her opinion, even if compensation was necessary, when property was taken by the state for public purposes, this should be under Directives and not under Rights which are justiciable and enforceable in courts of law . (89)

Pandit Jawaharlal Nehru intervened in the discussion and defended the provisions contained in this article. He emphasised the immense need of the time to allow the state to protect the economic interest of the community at large. On the other hand, he also assured the House that complete effect to the policy and pledge of the National Congress would be given . (90)

Shri Damodar Swarup Seth moved an amendment, - part (c) of which stated that - private property and private enterprises were guaranteed to the extent they were consistent with the general interests of the Republic and its toiling masses . (91)

Shri Seth accused that the Draft constitution had failed miserably to deal properly with the question of the economic rights of the people. He considered article 24 of the Draft as a Magna Charta in the hands of the capitalists of India. It had belied the expectation of the toiling masses for a Ram Rajya which was solemnly promised to them in the Quit India Resolution . (92)

Prof. Shibban Lal Saksena opposed this move on the ground that it was a negation of all that Gandhi and the Congress stood for, during all these years, and it had gone against

the various resolutions of the Congress. In order to substantiate his views and to remind the members of the wishes cherished by Gandhi, Prof. Saksena quoted extensively from the speech delivered by Gandhi in the Round Table Conference. He further pointed out that if compensation was to be paid for the acquisition of property for public purposes, then the dream of equalisation by means of legislation would not come into daylight (93) .

Shri Kishore Mohan Tripathi expressed the view that compensation for appropriation of property could not be given at the expense of the interests of the common people. He referred to the name of Gandhi and his concept of Ram Rajya which never meant merely political emancipation but also freedom from economic want. He therefore earnestly desired to see that in our Constitution this freedom from economic want was guaranteed to the common man (94) .

At this stage, Shri H. V. Kamath referred to Gandhi's doctrine of 'Aparigraha' and 'trusteeship' which, in his opinion, could only solve all those trouble about property (95) .

Shrimati Renuka Banerji suggested that this right should be so formed as to avoid hindrance in the way of our economic rights, namely, right to livelihood and earning as embodied in the Directive Principles (96) .

Shri Gopinath Singh opposed compensation on the ground that the property claimed by the propertied people as

theirs was, in the true sense, the gift of the labour of the toiling people .
(97)

Shri Laksminarayan Sahu wanted abolition of capitalism and opposed the provision for compensation . He
(98)
said "..... when many a man accumulates vast wealth, we should
(99)
scarcely be able to shape India in our way....."

The above discussion amply demonstrates that while some members stood their ground in honouring the wishes and aspirations of Gandhi, and did their best to see in this Chapter a fulfilment of his wishes, others, more numerous, more articulate and more prominent in the decision-making process, left a huge gap between their profession and practice, and permitted significant deviations in several substantive spheres of freedom. It was only in the spheres of equality and religious and cultural freedom that traces of Gandhian ideas could be detected to some extent. Other categories of rights, like freedom, liberty and property, or the right to constitutional remedies, were clear echoes of the classical liberties of Anglo - American vintage, and were inspired more by the legal-constitutional systems of the Western democracies.

NOTES AND REFERENCES.

1. G. Austin, The Indian Constitution: Cornerstone of a nation, O.U.P., 1966, p.50 ante. See also p. 118.
2. Parliamentary Debates, Part II.
3. Cabinet Mission Plan, Para 20, Sir Maurice Gwyer and Appadorai A, Speeches and documents of the Indian Constitution - 1921-47, Vol. II, p. 283.

Pt. Govind Ballabh Pant on 24th January 1947 stated that "this Assembly resolves that in pursuance of paragraph 20 of the Cabinet Mission's statement of May 16, 1946, an Advisory Committee be constituted - Constituent Assembly Debates, Vol.II, pp.328-29.
4. Minutes of the meeting, Prasad papers, File, 16-P/45-6-7, cited by Austin, op. cit., p. 61.
5. Constituent Assembly Debates, Vol.II, Reprinted by Lok Sabha Secretariat, New Delhi, 1966, pp. 328-29.
6. For details about the creation of the committees and choosing of the members, see- Constituent Assembly Debates, Vol.II, pp. 328-29
7. There were three Sub-Committees of the Advisory Committee, one on Fundamental Rights, one on Minorities and a third on tribal and excluded areas.
8. Rau's Constitutional Precedents, first series, Parts 8-12, Third series, Parts II-IV, pages 10-24 on rights in the Third Series appeared in Rau's India's Constitution in the making, as Chapter-13.
9. K.C.Markandan, Directive Principles in the Indian Constitution, Allied Publishers, 1966, Appendices.
10. Interim Report of the Advisory Committee on the subject of Fundamental Rights - Report of Committees, First series, pp. 20-34, cited by Austin, op. cit., p. 63.
11. Constituent Assembly Debates, Reprinted by Lok Sabha Secretariat New Delhi, 1966, Vol. I, p. 57.
12. Ibid., p. 60.
13. Ibid., pp. 65-66.

14. Ibid., p. 93.
15. Ibid., p. 107.
16. Constituent Assembly Debates, Vol. II, p. 279.
17. Constituent Assembly Debates, Vol. I, p. 117.
18. Constituent Assembly Debates, Vol. II, pp. 283-84.
19. Constituent Assembly Debates, Vol. I, p. 138.
20. Ibid., p. 139.
21. Ibid., p. 151.
22. Constituent Assembly Debates, Vol. II, pp. 269-70.
23. Ibid., p. 300.
24. Ibid., p. 324.
25. Constituent Assembly Debates, Vol. I, p. 143.
26. Constitutional Proposals of The Sapru Committee December 1945, pp. 256, 257.

The relevant portion of the Report reads as follows: "When the question of fundamental rights has been settled and a list is prepared of those rights provision will have to be made for dividing them into justiciable and non-justiciable rights..... The real difficulty will be in dividing fundamental rights into classes: (1) Justiciable, and (2) non-Justiciable, but this difficulty must be faced. We are alive to the danger of too much interference with the Executive Government on the part of the Judiciary, but we also realise that in the last resort in a Federal Constitution such as we envisage, the Judiciary is the final protector and guardian of the Constitution. Difficult as the task may seem, it should not be impossible for competent and skilful lawyers to divide the fundamental rights in such a way that the breaches of some of them may form the subject of judicial pronouncement, and the breaches of others may be remedied without resort to courts of law. This task obviously cannot be undertaken by us. It will be for the Constitution-Making Body first to settle the list of fundamental rights and then to undertake the division of fundamental rights into justiciable and non-justiciable and then to provide suitable machinery for the enforcement of both...."

27. Note on Fundamental Rights-by Sir Alladi Krishnaswamy Ayyar, as quoted in Markandan, op. cit., Appendix B(ii) pp. 338-39.

The relevant portion of the Note reads as follows:-

"In formulating a charter of fundamental rights, regard must necessarily had to the following points:

1. A distinction has necessarily to be made between rights which are justiciable and rights which are merely intended as a guide and directive objectives to State Policy. This distinction has been maintained and indicated in the recent Eire Constitution. Under the American Constitution, all the guaranteed rights being legal and constitutional in their nature are justiciable and as such enforceable by courts. The rights however having been formulated in very general and comprehensive terms, the American Supreme Court had to necessarily read into these rights implied reservations and exceptions. The Supreme Court has been discharging the trust of drawing the line between personal liberty and the need for social control, delicate as the task is. In the result, the Supreme Court has created new limitations upon social control and has put new limitations upon personal liberty. The due process clause has been largely availed of in either expanding or narrowing the scope of the clauses guaranteeing personal liberty. This has been illustrated in regard to the provisions relating to the freedom of the press, the freedom from censorship, religious liberty guaranteed by the First Amendment, privilege to bear arms, privileges of assembly and petition, in the interpretation given to slavery and involuntary servitude, searches and seizures, public trial, the equal protection guaranteed by the 14th amendment and generally the elastic interpretation put upon 'due process' from time to time by the Supreme Court. The later constitutions framed on the model of the U.S. have tried to expand the working in the U.S. Constitution by compendiously seeking to incorporate the effects of the American decisions. The question before the Constituent Assembly of India is whether to follow the model of the United States or of the later constitutions...."

28. Constituent Assembly Debates, Vol. III, Reprint '66, Appendix, pp.437-38.

29. Ibid., p. 403.

30. Ibid., p. 404.

31. Ibid., p. 403.

32. Constituent Assembly Debates, Vol. VII, Reprint '66, p. 230.

33. Ibid., p. 225.

34. Ibid., p. 244.

35. Ibid., p. 473.

36. Ibid., p. 476.

37. Ibid.

38. Ibid., p. 474.

39. Ibid., p. 479.

40. Ibid.

41. Ibid., p. 491.

42. Constituent Assembly Debates, Vol. III, Annexure (Justiciable Fundamental Rights) pp. 440-43.

43. Ibid., p. 403.

44. Ibid., p. 413.

45. Ibid.

46. Ibid., p. 414.

47. Ibid., p. 429.

48. Ibid., p. 456.

49. Constituent Assembly Debates, Vol. VII, p. 1.

50. Ibid., p. 45.

51. Ibid., p. 212.

52. Ibid., p. 218.

53. Ibid., p. 224.

54. Ibid., p. 249.

55. Ibid., pp. 251-52.

56. Ibid., p. 255.

57. Ibid.

58. Ibid., p. 258.

59. Ibid., p. 256.

60. Ibid., p. 259.

61. Ibid., p. 275.

62. Ibid., p. 293.
63. Ibid., p. 311.
64. Ibid., p. 349.
65. Ibid., p. 360.
66. Ibid., p. 655.
67. Ibid., p. 657.
68. Ibid., p. 658.
69. Ibid., p. 688.
70. Ibid., pp. 691-92.
71. Ibid., p. 669.
72. Ibid., p. 308.
73. Ibid., p. 665.
74. Ibid., p. 666.
75. Ibid., p. 667.
76. Ibid., p. 751.
77. Ibid., p. 752.
78. Ibid., p. 765.
79. Ibid., p. 795.
80. Constituent Assembly Debates, Vol. IX, Reprint '66, p.1528.
81. Constituent Assembly Debates, Vol. VII, pp. 810-811.
82. Ibid., p. 309.
83. Ibid., 382.
84. Ibid., p. 826.
85. Ibid., p. 879.
86. Ibid., p. 882.
87. Ibid., p. 904.

88. Ibid.,
 89. Ibid., p. 357.
 90. Constituent Assembly Debates, Vol. IX, Reprint '66, p. 1195.
 91. Ibid., p. 1199.
 92. Ibid.
 93. Ibid., pp. 1204-1205.
 94. Ibid., p. 1209.
 95. Ibid., p. 1212.
 96. Ibid., p. 1238.
 97. Ibid., p. 1252.
 98. Ibid., p. 1256.
 99. Ibid., p. 1255.
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