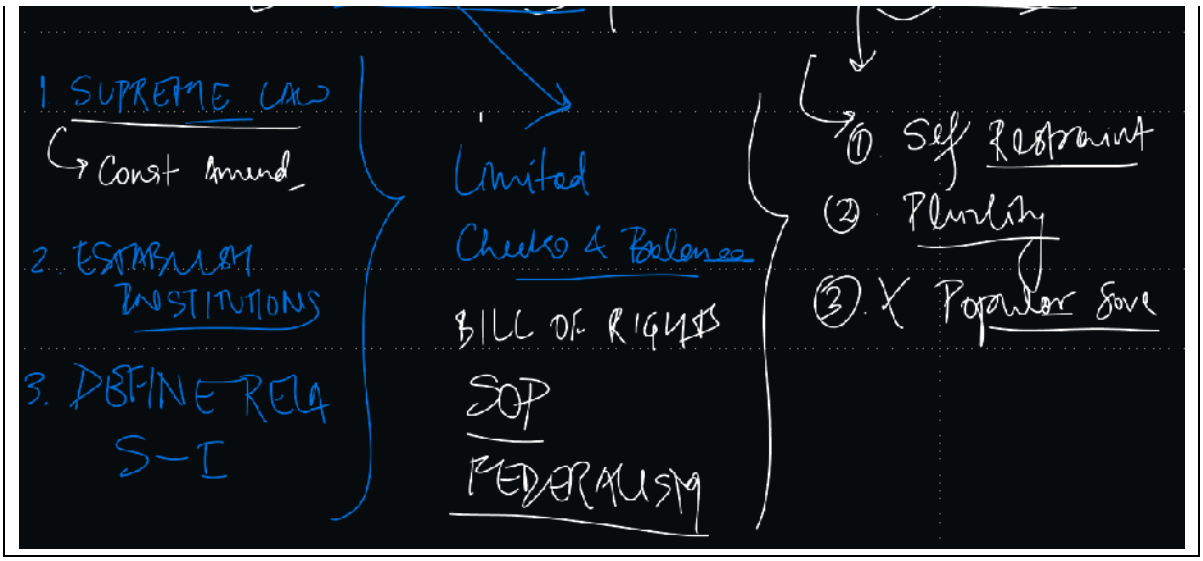
1. **Making of the Indian Constitution**: Legacies of the British rule; different social and political perspectives.
2. **Salient Features of the Indian Constitution:** The Preamble, Fundamental Rights and Duties, Directive Principles; Parliamentary System and Amendment Procedures; Judicial Review and Basic Structure doctrine.
3. **(a) Principal Organs of the Union Government:** Envisaged role and actual working of the Executive, Legislature, and Supreme Court.

   (b) Principal Organs of the State Government: Envisaged role and actual working of the Executive, Legislature, and High Courts.
4. **Grassroots Democracy:** Panchayati Raj and Municipal Government; Significance of 73rd and 74th Amendments; Grassroot movements.
5. **Statutory Institutions/Commissions:** Election Commission, Comptroller and Auditor General, Finance Commission, Union Public Service Commission, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Women; National Human Rights Commission, National Commission for Minorities, National Backward Classes Commission.
6. **Federalism:** Constitutional provisions; changing nature of center-state relations; integrationist tendencies and regional aspirations; inter-state disputes.
7. **Planning and Economic Development:** Nehruvian and Gandhian perspectives; Role of planning and public sector; Green Revolution, land reforms and agrarian relations; liberalization and economic reforms.
8. **Caste, Religion, and Ethnicity** in Indian Politics.
9. **Party System:** National and regional political parties, ideological and social bases of parties; Patterns of coalition politics; Pressure groups, trends in electoral behavior; changing socio-economic profile of Legislators.
10. **Social Movement:** Civil liberties and human rights movements; women's movements; environmentalist movements.

PREVIOUS YEAR QUESTIONS

1. **2021:** The constitution of India is a product of historical process, rich with constitutional antecedent. Comment (10)
2. **2018:** Comment on: Indian Constitution is a "Lawyers' Paradise'. - Ivor Jennings
3. **2010:** Comment on: "The Constituent Assembly was a one party body in an essentially one party country. The Assembly was the Congress and the Congress was India." (Granville Austin)

Constitution, Constitutionalism, Constitutional Morality



What is a constitution?

A constitution is, broadly, a set of rules, written and unwritten, that seek to :

- Establish the duties, powers and functions of the various institutions of government.
- Regulate the relationships between them.
- Define the relationship between the state and the individual.

It constitutes the highest law in the land.

Note:

- The balance between written (legal) and unwritten (customary or conventional) rules varies from system to system.

Is constitution a "modern phenomenon"?

The idea of a code of rules providing guidance for the conduct of government has an ancient lineage.

- Egyptian pharaohs acknowledged the authority of Ma'at or 'justice',
- Chinese emperors were subject to Ti'en or 'heaven',
- Jewish kings conformed to the Mosaic Law and
- Islamic caliphs paid respect to Shari'a law.

However, such ancient codes did not amount to constitutions in the modern sense, in that

- They generally failed to lay down specific provisions relating to the authority
- Responsibilities of the various institutions
- Rarely established authoritative mechanisms through which provisions could be enforced and breaches of the fundamental law punished

Constitutionalism:

Constitutionalism, in a narrow sense, is the **practice of limited government** ensured by the existence of a constitution.

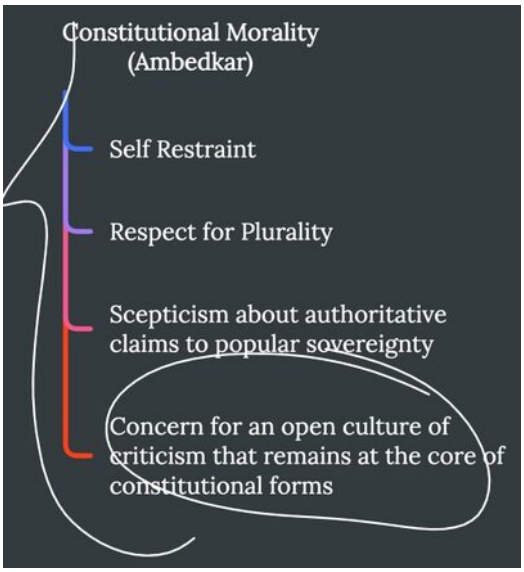
Constitutionalism can, thus, be said to exist when **government institutions and political processes are effectively constrained** by constitutional rules.

More broadly, constitutionalism is a set of political values and devices that **fragment power, thereby creating a network of checks and balances.**

Examples of such devices include codified constitutions, bills of rights, the separation of powers, bicameralism, and federalism.

Constitutional Morality

Ambedkar: Constitution survives because of adherence to constitutional morality



Constitutional Morality

George Grote (Quoted by Ambedkar)

The diffusion of 'constitutional morality', not merely among the majority of any community, but throughout the whole is the indispensable condition of a government at once free and peaceable; since **even any powerful and obstinate minority may render the working of a free institution impracticable,** without being strong enough to conquer ascendance for themselves.

By constitutional morality, Grote meant "**a paramount reverence for the forms of the constitution, enforcing obedience to authority and acting under and within these forms**, yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined, too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of constitution will not be less sacred in the eyes of his opponents than his own".

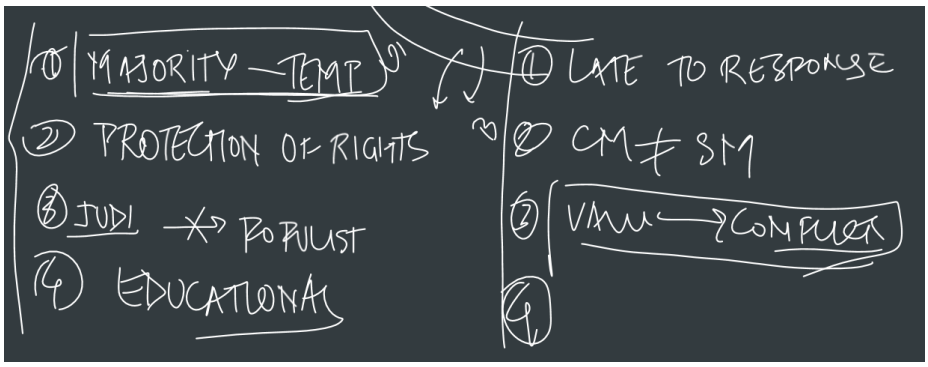
Freedom and self-restraint were the two main tenets of constitutional morality in Ambedkar's view. Ambedkar stated that we must "**hold faithful to constitutional methods of achieving our social and economic goals**" in order to maintain democracy. **We must give up the "bloody methods of revolution," surely.** It implies that we must give up the tactics of satyagraha, non-cooperation, and civil disobedience. Even though the government is the target of harsh criticism, this criticism must be in some ways "pacific."

The acceptance of diversity is the second component of constitutional morality. For Ambedkar, reaching some level of agreement on a constitutional procedure—a type of adjudication that may mediate difference—is the only way to settle the disagreements.

The **"suspicion of any claims to singularly and to uniquely reflect the will of the people**" is the third component of constitutional morality. Ambedkar was adamantly opposed to any organ of government, even the Constituent Assembly itself, being able to assert authoritatively that it represents popular sovereignty and has the authority to speak in that body's name. Any argument for popular sovereignty must be balanced by the awareness that demands for the future may be at least as legitimate as those for the present.

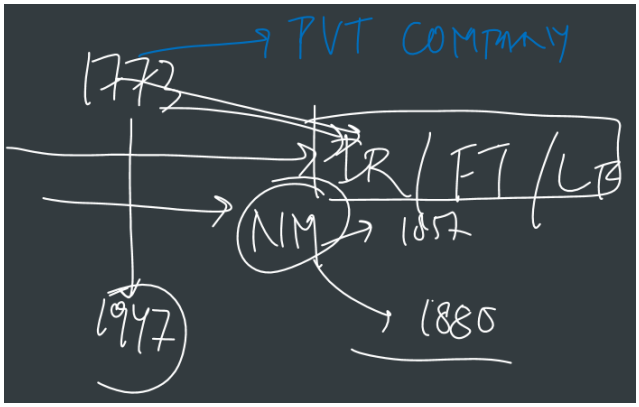
According to Ambedkar, the role of parliament is not so much to uphold popular sovereignty as it is to debate and continually challenge the executive branch and prevent it from asserting exclusive control over the will of the people. The parliament offers a venue for "everyday assessment," whereas elections provide a "periodic examination."

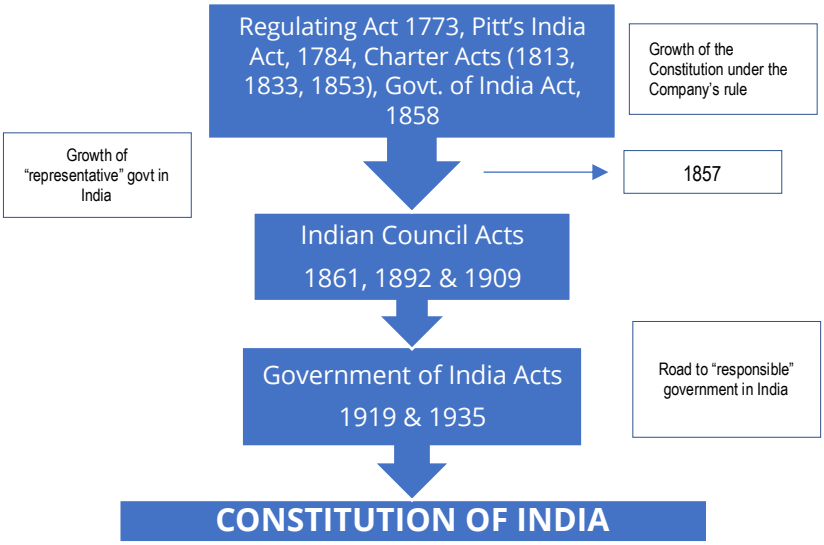
A codified constitution: Strengths and Weaknesses



A codified constitution: strengths and weaknesses	
Major tenets and crucial constitutional provisions are firmly established, protecting them from tampering by the current administration.	A codified constitution is more rigid and may therefore be less responsive and adaptable than an uncodified one.
The power of the legislature is constrained, cutting its sovereignty down to size.	Government power may be more effectively constrained by regular elections than by a constitutional document.
Non-political judges can police the constitution to ensure that its provisions are upheld by other public bodies.	With a codified constitution, constitutional supremacy resides with non-elected judges, rather than with publicly accountable politicians.
Individual liberty is more securely protected, and authoritarianism is kept at bay.	Constitutional provisions enshrined in custom and convention may be more widely respected because they have been endorsed by history and not 'invented'.
The codified document has an educational value, in that it highlights the central values and overall goals of the political system.	Constitutional documents are inevitably biased, because they endorse one set of values or principles in preference to others, meaning that they may precipitate more conflicts than they resolve.

Constitutional Development during British India





Regulating Act, 1773

1. Territorial
2. Corruption
3. Judiciary

- It designated the **Governor of Bengal as the 'Governor General of Bengal'**
    - Created an **Executive Council** of 4 members to assist him and was given a **casting vote but no veto.**
    - The first such Governor General was **Lord Warren Hastings.**
- It made the Governors of the Bombay and Madras Presidencies **subordinate to the Governor General of Bengal.**
- It provided for the establishment of a **Supreme Court at Calcutta (1774)**, comprising one Chief Justice and 3 other judges.
- It **prohibited the servants of the Company from engaging in any private trade**, or accepting presents or bribes from the 'natives'.
- It **strengthened the control of the British Government over the Company**, by requiring the Court of Directors (the governing body of the Company) to report on its revenue, civil and military affairs in India.

Pitt's India Act, 1784

- It provided for **sharing of government control** between the East India Company and the British Government.
    - It **distinguished between the commercial and political functions** of the Company.
- It allowed the Court of Directors to manage the commercial affairs, but created a new body, called the **Board of Control**, to manage the political affairs on behalf of British Government.
- **Secretary of State** was appointed as the President of Board of Control. Thus, it established a system of double government.
- It empowered the **Board of Control to supervise and direct all operations of the civil and military government**, or revenues of the British possessions in India.
- The Act was significant for two reasons:
    - The Company's territories in India were, for the first time, called the 'British possessions in India';
    - The British Government was given the supreme control over the Company's affairs and its administration in India.

Charter Act, 1833

- It made the Governor-General of Bengal as the **Governor-General of India** and vested in him all civil and military powers. **(Executive Centralization - Unification)**
    - It unified country's administration and the government was referred as Government of India for the first-time having **authority over the entire territorial area possessed** by the British in India.
    - **Lord William Bentick** was the first Governor-General of India.
- **It deprived the Governor of Bombay and Madras of their legislative powers. (Legislative Centralization)**
    - The Governor-General of India was given exclusive legislative powers for the entire British India.
    - The laws made under the previous acts were called as Regulations, **while laws made under this act were called as Acts.**
    - All laws made in India were to placed before British Parliament and hence called an "ACT".
    - Added a law member to the Council.
- **Company lost its monopoly over China trade** and instructed to wind up its commercial business
    - Company's territories in India were held by it **'in trust for His Majesty, His heirs and** successors'**.**
- **It introduced a system of open competition for selection of civil servants** and stated that the Indians should not be debarred from holding any place, office and employment under the Company.
    - However, this provision was negated after opposition from the Court of Directors.

- It **abolished slavery** in all British possessions.
- It established the first Law Commission and Lord Macaulay was made its Chairman.
- **Section 87:** No Indian or natural born subject of the crown resident in India should be by reason only of his religion, place of birth, descent, color or any of them, be disqualified for any place of office or employment under the company.

Charter Act, 1853

- Separate Governor for Bengal.
- It **separated the legislative and executive functions** of the Governor-General's council.
    - Law member was made full member of the council and while sitting for law making would be called **Governor-General's legislative council** which came to be known as the Indian (Central) Legislative Council.
        - Questions could be asked, policies could be discussed
        - Bills were referred to select committees
        - Executive council had the veto over bills.
    - Six members were added for the purpose of Legislations.
    - The Charter marks the **beginning of Parliamentary System** in India due to separation of Legislative Council from the Executive Council.
- **Court of Directors could create a new presidency or province** due to difficulty in administration.
    - They could also appoint Lieutenant Governor for the provinces.
- It introduced an open competition system of selection and recruitment of civil servants.
    - Accordingly, the **Macaulay Committee** on the Indian Civil Service was appointed in 1854.
- It extended the Company's rule and allowed it to retain the possession of Indian territories on trust for the British Crown without specifying any particular period.
    - This indicated that the Company's rule could be terminated at any time by the British Parliament.

Government of India Act, 1858

It abolished the East India Company and transferred the powers of the Government, territories and revenues to the British Crown.

- Absolute Imperial Control
- Powers of Crown exercised by Secretary of State
- Secretary of State assisted by group of 15 people – Council of India
- Governor General or Viceroy – agent of Secretary of State
- Viceroy was assisted by his Executive Council
- At Provinces, Governor was aided by his Executive Council
- Provinces used to function as per superintendence, direction & control - GoI

Indian Council Act, 1861

- Act empowered the governor general to make **rules for the convenience of business** in the council.
    - This power was used by lord Caning to introduce **Portfolio system in India.**
    - Departments were divided among the members of the council.
    - Laid the foundations of Cabinet government of India (Each branch of the administration having its official head)
- Governor general was empowered, in cases of emergency, to issue, without the concurrence of the legislative council, **ordinances** which were not remain in force for more than six months
- **Viceroy's executive council was expanded** by the addition of not less than six and not more than 12 "additional members (nominated)
    - Half would be non-officials
    - Some non officials' seats were offered to **Indian of highest ranks.**
    - Only Legislation – no control over finance or administration, no right of interpellation.
    - To counter the tendencies of 1853 to turn itself into "an Anglo-Indian house of commons"
- Initiated decentralization process by **restoring the legislative powers** to the Bombay and the Madras Presidencies. (No real Decentralization)
    - Assent of governor General a must.

Indian Council Act, 1892

- Expanded opportunities for Non-officials & native elements of Indian Society.
    - 2/5 of the total members were to be non-official.
- **Principle of election was conceded to a limited extent:**
    - Non-official members to be nominated in Central Legislative Council by Bengal Chamber of Commerce & for Provincial Councils by universities, dist. Boards, municipalities
    - **Term used was "recommended for nomination" and not election.**
- **Central Legislative Council was given power to discuss Budget & address questions to Executive**
    - Presentation Annual Financial statement on the floor.
    - Members were allowed to express their opinions on statement.
    - Not allowed to move resolutions regarding these matters
    - Members could put questions within certain limits to the govt. on matters of public interest after giving a six days notice.

Indian Council Act, 1909

- Increased the size of the legislative councils - Centre and provinces – through elected Non-Official Members.

- Central legislature – additional members now upto 60 (37 to be official and 32 non-official)
- **Allowed Provincial Legislative Councils to have non-official majority**
- Out of 32 Non-official
  - 5 nominated by the governor general
  - 27 to be elected**. (No territorial representation but "representation by class and interests")**
  - **Elections- General electorates and class electorates**

- **Increased deliberative functions of Legislative Council**
  - Rights of discussion and asking supplementary questions.
  - Moving resolutions on certain portions of budget
  - Any matters of Public Interest Except – Armed Forces, Foreign Affairs & Indian States
- Provided for limited franchise based on qualifications
- It allowed entry of Indians to Executive Councils of the Viceroy and Governors.
- **Separate electorate**

Government of India Act 1919

- Executive
  - 3 Indians in the Governor general's Executive Council of 8
  - Division of subjects into (some Faint Federalism)
    - Central (Admin by GGIC): matters of national importance – Foreign affairs, Defence, Post and telegraph, civil and criminal procedure, Public debt.
    - Provincial list : Public health, Education, local govt, land revenue admin.
    - Any thing not mentioned→ central (Residuary)
- Legislative
  - Set up a bicameral legislature at the centre – (Concurrent Powers)
    - Council of State – upper house (60)
      - ✓ 26 (nominated) + 34 (elected) - > elected majority
      - ✓ Franchise very limited (17,364 eligible voters out of 24cr population)
    - Central Legislative Assembly - Lower House (145)
      - ✓ 41 (nominated) + 104 (elected)
      - ✓ 52 by general electorates, 32 by communal electorates and 20 by special constituencies.
      - ✓ Franchise limited (around 9 lakh voters)
  - Powers: members enjoyed the right of freedom of speech
    - Members were given right to move resolutions and motions of adjournment of the house
    - To consider urgent questions of public importance.
- **Provincial Subjects were divided into – Dyarchy**

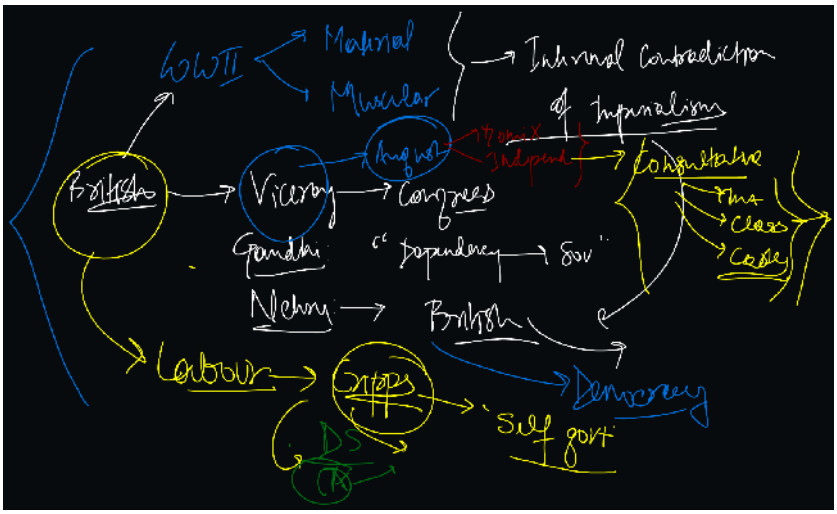
- **The reserved subjects Admin by Governor and his executive council**
  - Justice, Police, Courts, Irrigation etc. - **administered by the Governor and his Executive Council** without being responsible to the legislative Council.
- **The transferred subjects** admin by Governor with the help of Indian ministers.
  - included local self-government, education, public health, public works and agriculture, forests, and fisheries - **administered by the governor with the aid of elected ministers** responsible to the legislative Council.

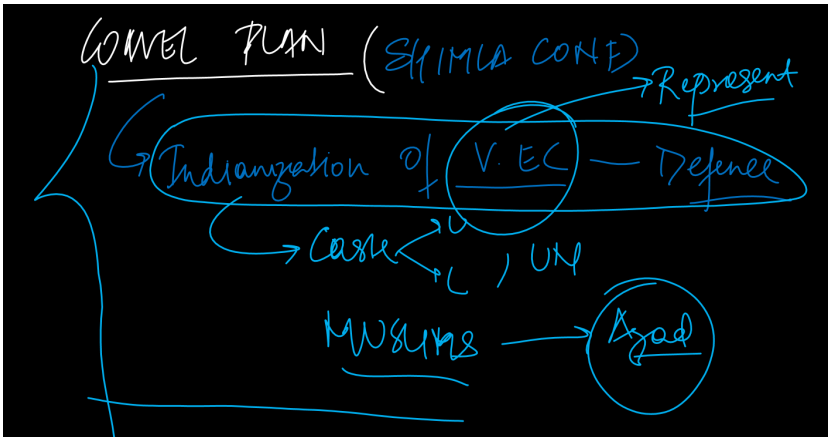
- **Extended the principle of communal representation** by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.
- **It created a new office of the High Commissioner for India in London** and transferred to him some of the functions earlier performed by the Secretary of State for India.
- **Provided for Establishment of Public Service Commission –** leading to setting up of Central Public Service Commission in 1926 for recruiting civil servants.

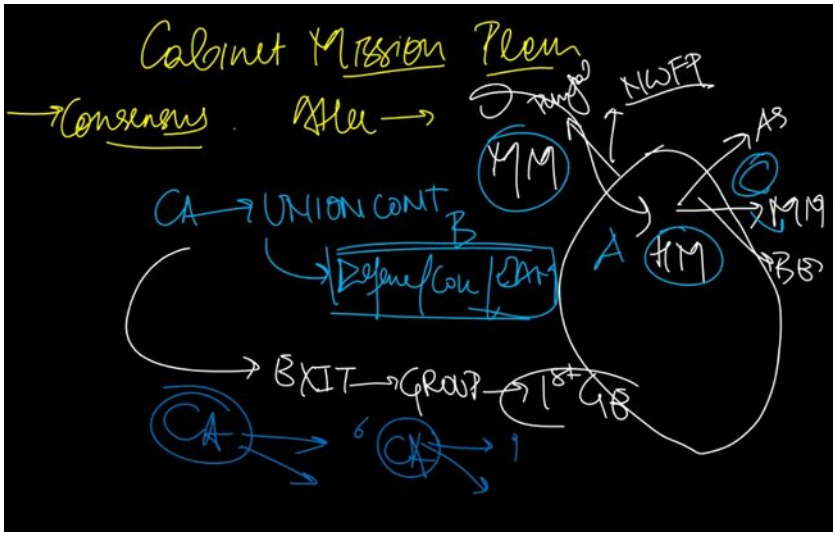
Government Of India Act 1935

- **All India Federation**
  - Voluntary for states
  - Federation would come into effect only after **unless half the seats of Council and Half the population of states was covered.**
  - It provided for **Federal List** (exclusive jurisdiction of Centre), **Provincial List** (exclusive jurisdiction of Provinces), Concurrent List (both Centre & Provinces had jurisdiction), **Residuary Powers to viceroy**.
  - **Federal Court –** headed by CJI had original jurisdiction in any dispute between Federation, Provinces or Federated States.
- **The Federal Government**
  - **The Federal Executive**
    - **Dyarchy –** Defence, Ecclesiastical Affairs, Tribal Affairs reserved for Governor General.
    - Rest. Of **the matters to be administered by Governor general with the assistance and advice of a Council of ministers.**
  - **Federal Legislature**
    - **The council of state**
      - ✓ To be a permanent body with one third being vacated and renewed Triennially.
      - ✓ Elected directly.
    - **Federal Assembly**
      - ✓ 5 years term
      - ✓ 250 (British India, Indirectly) + 125 (Indian States, nominated)
- **Provincial Government**
  - Provinces freed from the "Superintendence and control" of GoI.
    - **Except for very specific cases**

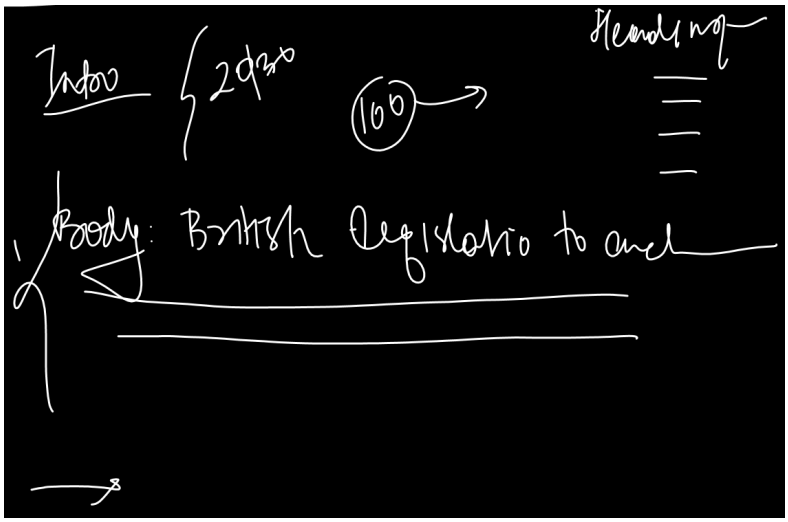
- They now derived their power directly from the crown
- Introduction of full responsible government (With certain safeguards)
- Bicameral legislatures were introduced in 6 provinces
  - **United Provinces, Bihar, Bombay, Madras, Assam and Bengal**
- Governor – head of the executive
  - To work on aid and advice of popular ministers
  - Had arbitrary powers to act in his own discretion
    - ✓ Withholding assent to bills
    - ✓ Summoning of legislature
    - ✓ Appointment of ministers







PYQ 2021: The constitution of India is a product of historical process, rich with constitutional antecedent. Comment. *(10)*



Developments after GoI, 1935

WW-II (September 1939)

- India declared a belligerent state (against Indian public opinion)

Congress Working Committee

- Strongly protested the decision.
- Indians could not offer assistance for a war on the lines of imperialism and its consolidation.
- Prove that the war aims are "**defence of democracy**" by applying those principles on the Indian People.

Dominion status after the war

- Lord Linlithgow: Dominion status of the Westminster variety as soon as possible after the war was the goal of British India.

August Offer (August 1940)

- The following proposals were put in:
    - After the war, a representative Indian body would be set up to frame a constitution for India.
    - Viceroy's Executive Council would be expanded without delay.
    - The minorities were assured that the government would not transfer power "**to any system of government whose authority is directly denied by large and powerful elements in Indian national life**."
- Recognized the rights of Indian people to frame their own constitution.
- This was not enough to satisfy either the Congress or the Muslim League, who both rejected the offer in September, and shortly afterwards Congress launched a fresh campaign

Cripps Mission (1942)

Entry of Japan by the side of Axis ➔ Resolution of Indian Deadlock became priority.

- Provisions of dominion status after the war.
- Laid down plans for CA.
- Declared that making of the constitution would now solely be in Indian hands.
- **Right of secession for the provinces for the possible partition of the country.**
- Treaty providing transfer of power.
- Safeguards for minorities.
- Defence was to be sole concern of British until then.

Congress

- **Gandhi: It was a post-dated cheque on a failing bank**
- Objections on “Defence” Clause.
- No assurances on Governor general acting just as a constitutional head.
- Principle of Non-Accession – Axe applied to the very roots of the conception of Indian Polity.

Muslim league

- Opposed to the creation of single union.
- It **did not unequivocally concede Pakistan** and seemed to deny the right of self determination to the Muslims.

Wavell Plan, 1945 (Shimla Conference)

- The **Viceroy’s Executive Council would be immediately reconstituted**, and the number of its members would be increased.
- In the Council there would be equal representation of high-caste Hindus and Muslims.
    - The Viceroy would convene a meeting of Indian politicians including the leaders of Congress and the Muslim League at which they would nominate members of the new Council.

- All the members of the Council, **except the Viceroy and the Commander-in-Chief**, would be Indians. The defense of India would remain in British hands until power was ultimately transferred to Indians.
- An Indian would be appointed as the member for Foreign Affairs in the Council.
    - However, a British commissioner would be responsible for trade matters.
- If this plan were to be approved for the central government, then similar councils of local political leaders would be formed in all the provinces.
- None of the changes suggested would in any way prejudice or prejudge the essential form of the **future permanent Constitution of India.**

The League felt that since the objectives of other minorities—depressed classes, Sikhs, Christians, etc.—were the same as those of the Congress, this structure would make the League a one-third minority. Therefore, the League wanted all Muslim members to be League nominees.

The Congress objected to the plan as "an attempt to reduce the Congress to the status of a purely caste Hindu party and insisted on its right to include members of all communities among its nominees"

The Wavell Plan, in essence, proposed the complete Indianization of the Executive Council, but instead of asking all the parties to nominate members to the Executive Council from all the communities, **seats were reserved for members based on religion and caste**, with the caste Hindus and Muslims being represented on it based on parity.

While the plan proposed immediate changes to the composition of the Executive Council **it did not contain any guarantee of Indian independence,** nor did it contain any mention of a future constituent assembly or any proposals for the division of power between the various parties of India.

Cabinet Mission Plan, 1946

- There should be a **Union of India**, embracing both **British India and the States** which should deal with the following subjects:
    - Foreign Affairs, Defence, and Communications; and should have the powers necessary to raise the finances required for the above subjects.
- All subjects other than the Union subjects and all residuary powers **should vest in the Provinces.**
- Grouping of existing provincial assemblies into three sections
    - Section A – Hindu Majority provinces, Section B & C – Muslim majority provinces
- Provinces **should be free to form groups with Executives and Legislatures**, and each group could determine the Provincial subjects to be taken in common.
- The **Constitutions of the Union** and of the groups **should contain a provision,** whereby any Province could by majority vote of its Legislative Assembly could call for a reconsideration of the terms of the Constitution after an initial period of ten years and at ten-yearly intervals thereafter.
- A constituent assembly would be set up for writing a new constitution for the country.

- An interim government would be established until a new government was formed on the basis of the constitution written by the constituent assembly.
- Rejection of the demand for a full-fledged Pakistan.
- Princely states were no longer to be under paramountcy of the British government.
    - They would be free to enter into an arrangement with successor governments or the British government.
- The Congress Party wanted a strong centre with minimum powers for the provinces.
- The Muslim League wanted strong political safeguards for the Muslims like parity in the legislatures.

Constituent Assembly

The total strength of the Constituent Assembly was to be **389**. Of these, **296** seats were to be allotted to **British India** and **93** seats to the **princely states**. Out of 296 seats allotted to the British India, 292 members were to be drawn from the eleven governors' provinces2 and four from the four Chief Commissioners' provinces3 , one from each.

Each province and princely state (or group of states in case of small states) were to be allotted seats in **proportion to their respective population.** Roughly, one seat was to be allotted for every million population.

Seats allocated to each British province were to be divided among the **three principal communities–Muslims, Sikhs and General** (all except Muslims and Sikhs), in proportion to their population.

The representatives of each community were to be elected by **members of that community in the provincial legislative assembly** and voting was to be by the method of proportional representation by means of **single transferable vote.**

The representatives of the princely states were to be nominated by the heads of the princely states.

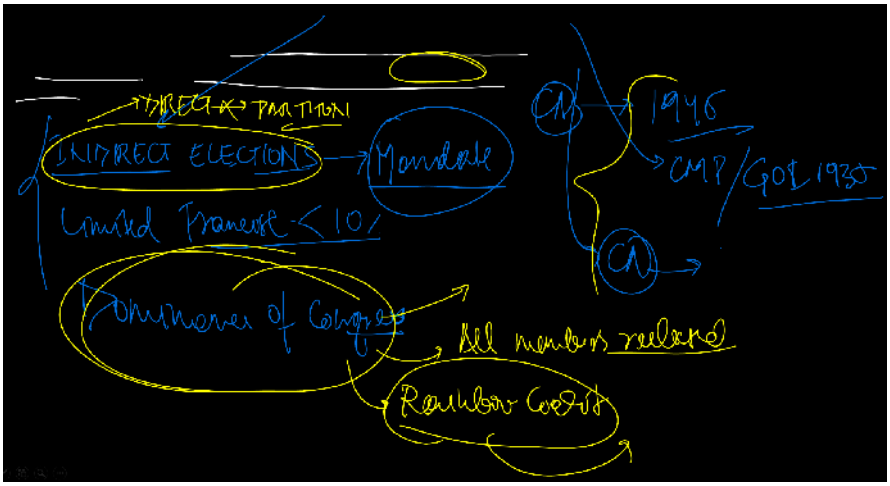
Indian Independence Act of 1947 (Mountbatten Plan)

- It declared India as an **independent and sovereign state**
- It provided for partition of India and **creation of two new dominions- India and Pakistan**
- It abolished the position of secretary of state for India
- It abolished the office of viceroy and provided for each dominion, a governor-general, who was to be appointed by the British King on the advice of the dominion cabinet
- It empowered the **constituent assemblies of the two dominions to frame and adopt any constitution for their respective nations and to repeal any act of the British parliament, including the independence act itself**
- **The constituent assemblies were empowered to legislate for their respective dominions till the new constitutions were drafted and enforced**
- **It granted the princely states the freedom to join either of the dominions or to remain independent**
- Governance of each dominion was to be conducted based on the provisions of the GOI act, 1935

- **British monarch could no longer ask for bills or veto them.** However, this was reserved for Governor-General.
- Governor-General of the dominions were made to act on the aid and advise of the council
- The Indian Independence Act of 1947 made the following three changes in the position of the Assembly:
- The **Assembly was made a fully sovereign body**, which could frame any Constitution it pleased. The act empowered the Assembly to abrogate or alter any law made by the British Parliament in relation to India.
- The **Assembly also became a legislative body**. In other words, two separate functions were assigned to the Assembly, that is, making of the Constitution for free India and enacting of ordinary laws for the country. These two tasks were to be performed on separate days.
- Thus, the Assembly became the first Parliament of free India (Dominion Legislature). Whenever the Assembly met as the Constituent body it was chaired by Dr. Rajendra Prasad and when it met as the legislative body, it was chaired by G.V. Mavlankar.
- The **Muslim League members (hailing from the areas included in the Pakistan) withdrew from the Constituent Assembly for India.** Consequently, the total strength of the Assembly came down to 299 as against 389 originally fixed in 1946 under the Cabinet Mission Plan. The strength of the Indian provinces (formerly British Provinces) was reduced from 296 to 229 and those of the princely states from 93 to

Constituent Assembly: Representativeness and Legitimacy

It has been argued that Indian constitution is neither the product of the will of the people, nor it represents the views of all sections of the society.



Constituent Assembly: Representativeness and Legitimacy

In 1922, Gandhi promised that Swaraj will not be 'the free gift of British'. Swaraj will be the expression of Indians. In 1934, Congress working committee adopted a resolution that constituent assembly will be elected based on universal adult franchise. '

It is also said that it was not a "sovereign body" as it emerged from a British Act and plan

It has been argued that Indian constitution is 'Congress Constitution'.

Constituent assembly was a one-party assembly and to quote Churchill *'the assembly of Brahmins'.*

Assembly was neither elected by the people, nor people determined its structure and mode of the functioning.

Questions raised on Representativeness and Legitimacy

- It was **based on the Cabinet Mission plan** approved by the parliament of Britain and hence the **'gift of the British'.**
- Members of the constituent assembly **were not directly elected;** they were indirectly elected by the members of provincial legislative assemblies.
- In 1945-46, elections for the provincial assemblies took place, **in the elections, there was no mandate** that these persons will also be electing the members of the assembly.
- The **entire assembly was not even indirectly elected.** The members from the princely state were nominated.
- We should not forget that at that time **only five percent of Indians had right to vote**.
- Unlike other countries e.g. France**, the constitution of India was not put to referendum to know the will of the people.**
- In terms of **social representativeness**, 80% of the members were from upper caste, 25% were Brahmins.
- In around 70 years of its existence, constitution has been amended for more than 100 times
    - (USA 27 times)

Although the reasons are factually accurate, they do not prove that the Indian constitution does not reflect the will of the people. Because:

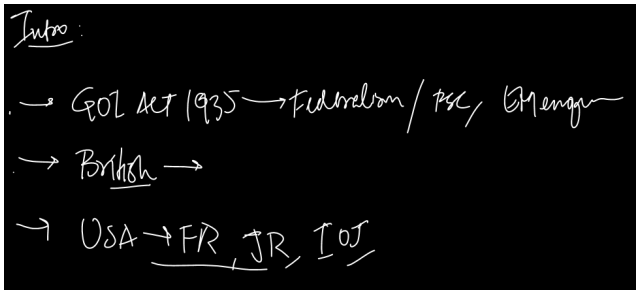
1. Elections could not be held at the time.
2. Though dominated by Congress, but as suggested by 'Granville Austin' who is treated as the best authority on Indian constitution – **'Congress was India and India was Congress'.**
    a) Performance of other parties (Hindu Mahasabha and RPI-not even one seat)
    b) In the words of Granville Austin, it was one party assembly in one party state.
    c) **Congress co-opted the members of other parties** so that constitution becomes a consensus document. It is to be noted that majority of the provisions were adopted by **consensus rather than by majority**.
3. Supreme Court in **Keshavanand Bharati case has settled the matter** with respect to the will of the people. According to the Supreme Court, there is no point examining the factual correctness of the phrase 'we the people'. We have to accept it as correct.
4. If we examine the **outcomes of the initial general elections**, we can observe that the makeup of the membership remained unchanged. This shows that even when election had taken place, composition would not have been different.
5. **NCRWC** which was set up by non-congress govt. led by NDA **did not recommend any far reaching changes** or the need to call for the new assembly.

Comment on: "The Constituent Assembly was a one party body in an essentially one party country. The Assembly was the Congress and the Congress was India." (Granville Austin)

Constitution of India- Charges

- **A Borrowed Constitution**
- **A Carbon Copy of the 1935 Act**
- **Un-Indian or Anti-Indian**
- **Paradise of the Lawyers**

Constitution of India: A Borrowed Constitution



- **Government of India Act of 1935:** Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
- **British Constitution:** Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
- **US Constitution:** Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice president.
- **Irish Constitution:** Directive Principles of State Policy, nomination of members to Rajya
- Sabha and method of election of president
- **Canadian Constitution: Federation with a strong Centre**, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
- **Australian Constitution** Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.
- **Weimar Constitution of Germany** Suspension of Fundamental Rights during Emergency.
- **Soviet Constitution (USSR, now Russia)** Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
- **French Constitution** Republic and the ideals of liberty, equality and fraternity in the Preamble.
- **South African Constitution** Procedure for amendment of the Constitution and election of members of Rajya Sabha.

- **Japanese Constitution** Procedure established by Law.

While answering the above criticism in the Constituent Assembly, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, said:

*One likes to ask **whether there can be anything new in a Constitution formed at this hour in the history of the world.** More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. **Similarly, what are the fundamentals of a Constitution are recognized all over the world.** Given these facts, all Constitutions in their main provisions must look similar. **The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country.** The charges of producing a blind copy of the Constitutions of other countries is based, I am sure, on an **inadequate study of the Constitution".***

According to Pratap Bhanu Mehta:

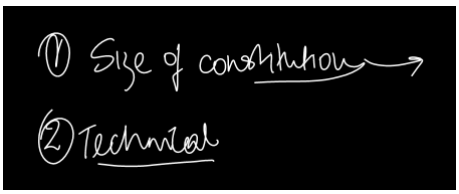
- Indian constitution is a unique experiment in the field of constitutionalism.
    - Unlike other countries, **where revolutions led to the formation of the constitution, Indian constitution is itself revolutionary.** In India revolution started after independence. India is an example of social revolution through the constitution. We have put the entire faith on the constitution to transform a highly traditional society into a modern society.
- **Indian constitution is cosmopolitan constitution.**
    - It means our constitution is based on universalist values like Liberty, Equality, Fraternity. It also means that it is drawn from multiple sources.
- It is situated at **major cross currents of the global constitutional law**.
    - Indian judiciary while interpreting the constitution takes precedence from different constitutions and judicial traditions. Like Indian culture, it is syncretic and eclectic.

Sandipto Dasgupta

- The challenge for CA was how to carry out a revolution (through the Constitution) to avoid a revolution (on the ground).

Constitution of India: Paradise of the Lawyers

2018: Comment on: Indian Constitution is a "Lawyers' Paradise'. - Ivor Jennings



According to the critics, the Indian Constitution is too legalistic and very complicated. They opined that the legal language and phraseology adopted in the Constitution makes it a complex document. The same Sir Ivor Jennings called it a "Lawyer's paradise".

According to Jennings, a constitution should be understandable by the general public, but the extremely complicated Indian constitution is difficult for them to comprehend. Every provision of this constitution is open to interpretation by the higher judiciary, and lawyers' interpretations of other parts make the document even more complex.

Reasons:

- Domination of lawyers
- Difficult Language
- Excessive detailing
- Lack of definition

It must be realized, too, that such a complex and detailed constitution was required to protect the rights and aspirations of India's diverse population.

Constitution of India: Un-Indian or Anti-Indian

According to the critics, the Indian Constitution is 'un-Indian' or 'anti-Indian' because it does not reflect the political traditions and the spirit of Indian.

They said that the foreign nature of the Constitution makes it unsuitable to the Indian situation or unworkable in India. In this context**, K. Hanumanthaiya,** a member of the Constituent Assembly, commented: **"We wanted the music of Veena or Sitar, but here we have the music of an English band.**

That was because our Constitution-makers were educated that way".

Similarly Loknath Misra, another member of the Constituent Assembly, criticized the Constitution as a "**slavish imitation of the west, much more –** a slavish surrender to the west'.

Further, Lakshminarayan Sahu, also a member of the Constituent Assembly, observed: "The ideals on which this draft Constitution is framed have no manifest relation to the fundamental spirit of India. This Constitution would not prove suitable and would break down soon after being brought into operation".

Legacy of the British Rule

The Curzonian imprint on Indian foreign policy

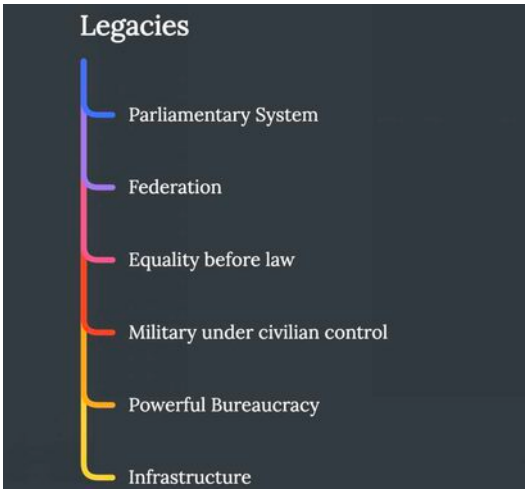
Opinion

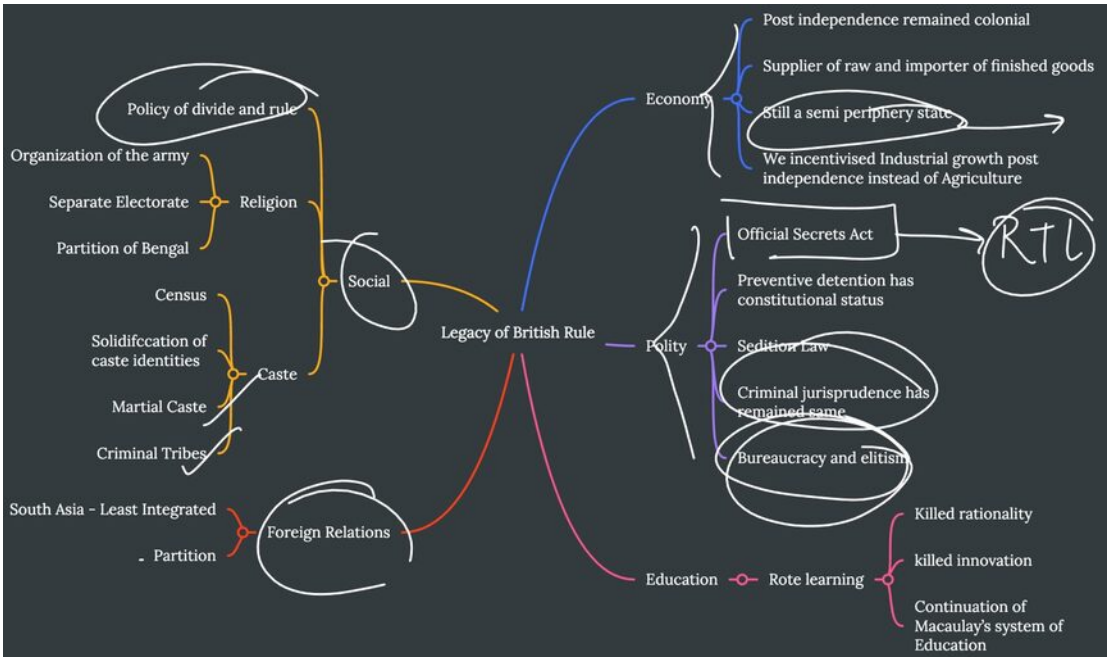
Published on Jun 12, 2021 07:22 PM IST

Lord Curzon's conceptualisation of India's neighbourhood and emphasis on frontiers and integration is still relevant and can serve as a template for both India and India-US partnership

Curzon recognised that India's security depends upon its ability to exercise influence over a geopolitical space beyond its own shores. He also recognised that India's main landward attention must be directed to its frontiers. And he understood that building influence in neighbouring spaces required India to offer an attractive commercial and strategic alternative to the charms of its rivals (Getty Images)

Legacy of the British Rule – Positives





Legacy of the British Rule in Economy

- The economy of India **remained colonial** even after independence.
- India remained a **source of raw materials** and a marketplace for western nations' products.
- India continues to exhibit the characteristics of the colonial economy in the global economy and is seen as a peripheral or **semi-peripheral state.**
- Despite its more than 50% population dependent on agriculture, **India chose industry** as prime moving force for its economy after independence.
- Besides agriculture all other sectors of economy except for service sector show that there is no distinct break from colonialism.
- **Lack of inclusive growth**
- The **continuing regional imbalance** show that we have not been able to overcome the impact of colonialism.

Rural backwardness, rural poverty, lack of public investment in agriculture, failure of land reforms, agricultural crisis show the continuation of the colonial approach towards the development.

Legacy of the British Rule in Polity

- **GoI Act, 1935 became the foundation of India's political system**
    - The nature of Indian federation
    - The institution of governor
    - Ordinance making powers
    - Emergency provisions
    - These were drawn from colonial constitution which has been framed with the objective to maintain the hold of the raj.
- **It is surprising that there has been extreme protests Simon commission.**
    - Recall that Govt. of India Act 1935 is based on the recommendations of the Simon Commission.
- GOI Act has not been framed with the objective of shifting the political power from the hands of administrators into the hands of the people.
- Hence Jayaprakash Narayan called **for 'Lokniti' against 'Rajaniti'.**

Legacy of the British Rule in legal affairs and administration

Pandit Nehru promised that there will be 'no black laws' in Independent India.

- **Bureaucracy** in India continues to manifest the colonial character.
- **Preventive detention** has constitutional status in India.
- **Sedition** has been upheld by SC.
- **Cloak of Secrecy:** Confidentiality became the norm and disclosure the exception,
- Indian penal Code 1860, Civil procedure Code 1908

If any change has come, it has come because of civil society working in coordination with judiciary.

- Many laws based on Victorian norms had been continued.
- Only recently SC had decriminalized
    - Homosexuality (Art 377),
    - Adultery 497.

Legacy of the British Rule in social sphere

The continuing social conflicts, the politics of caste, religion, language can be seen as the legacy of the British Raj.

Many contemporary problems have been because of the divide and rule policy of the British. Unfortunately Indian elites preferred continuity over change.

[Communal identities were emphasized by British to create division in society and suppress feeling of nationalism. In contemporary times, same strategies are applied with purpose of electoral gains. This renders society divided on various lines e.g. Religion, caste, region (language) etc.]

The birth of caste is directly linked with the census operations in colonial India. Beginning around the middle of the 19th century, the census – because of its methodology and agenda – was a unique project. It was a direct survey of population; instead of surmising or using textual references, the enumerators went to the people with questionnaire to know about their number and attributes.

Legacy of the British Rule in Education

The purpose of the British educational system is to generate clerks. Memorization was heavily emphasised, which actually hindered the development of creative and rational ideas. One of the worst consequences of British rule has been the continued use of Macaulay's educational system.

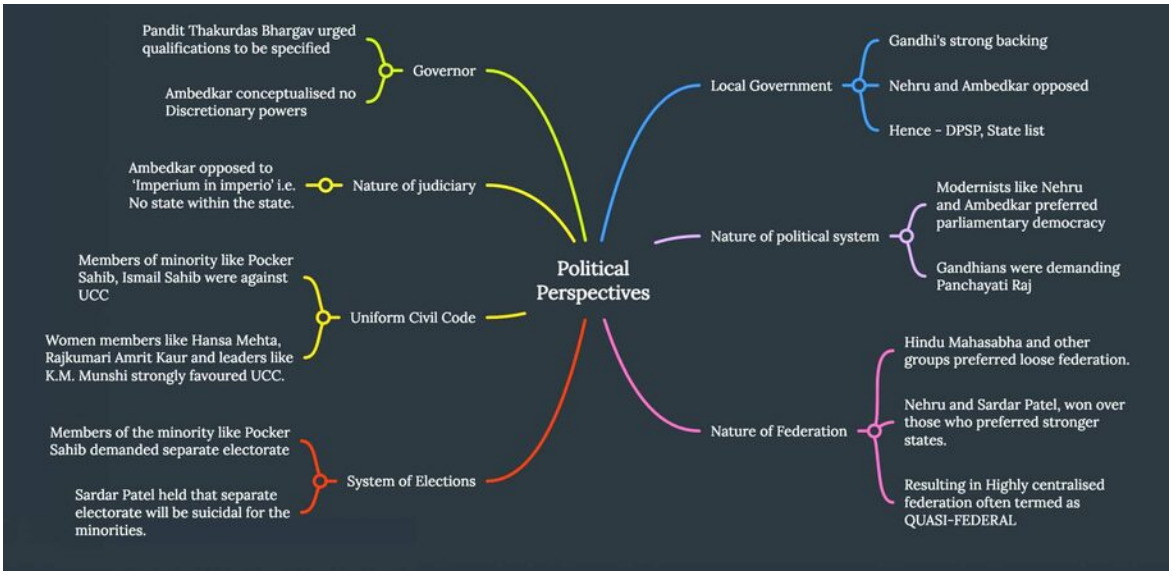
Legacy of the British Rule on Foreign Policy

One of the worst consequences of British rule has been the **division of the subcontinent**. Second only to the Middle East in terms of regional integration is South Asia. The ruling class in South Asia has moved the region dangerously close to nuclear conflict. They continue to be used as a toy by neo-imperialist power.

C Rajamohan claims that **Curzon's policies served as the foundation for Nehru's approach** to his neighbors.

Treaty modifications made by Nehru with South Asian neighbours like Nepal and Bhutan are merely a surface level alteration of agreements made by the British with these Kingdoms. Indian neighbors still think of India as having a colonial attitude.

Different social and political perspectives.



Ambedkar's advocacy in favor of the Parliamentary system mainly revolved around the concept of **'responsibility versus stability.'** According to him, if there was a guarantee of tenure (as in the Presidential system), the government could be prone to behave arbitrarily as against the

Parliamentary system, wherein the government would behave more responsibly on account of a fear of losing the majority in Legislature.

Dr. B.R. Ambedkar believed that the village represented regressive India, a source of oppression. He argued against Panchayats as he was apprehensive about the **continuation of caste Hindus hegemony** and had little prospects of success as institutions of self-government.

Mahatma Gandhi fervently advocated for the decentralisation of political and economic power. He considered that the best way to effectively decentralise was to strengthen rural panchayats. Local participation is a prerequisite for any development programmes to be effective.

Why was it not adopted?

- **The turbulence caused by the Partition** gave the Constitution a strong unitary leaning. Extreme localism was viewed by Nehru himself as a danger to national integration and unity.
- A strong voice in the Constituent Assembly led by Dr. B.R. Ambedkar believed that the rural society's caste- and faction-ridden nature would undermine the noble goal of local governance at the rural level.

The first thing I would like the House to bear in mind is this. The Governor under the Constitution has no functions which he can discharge by himself: no functions at all.... Even under this article, the Governor is bound to accept the advice of the Ministry.

K Santhanum: 3 Revolutions

1. Political- Independence
2. Social – Change of medieval social structure
3. Economic – Transforming of rural economy into planned agricultural & Indian Economy.

Nehru-'Freedom is not end; but means for ends'

- "India's survival depends upon social revolution otherwise paper constitution is meaningless"
- For him aim of Consti^{n} was not only political, but to give full opportunity to develop and contribute for himself.

Legacies of British rule: -

1. India ≠ Clean State
2. India didn't witness revolution or destruction of order or rise of pure new order.

3. There are continuity of past with elements of charge.

Rabindranath Tagore

"It is certain that British are bound to leave country but it is also certain that they will leave mountain of dirth & fifth in the country"

Legacy

Positive

1. Legal = Equality before law
2. Tradition of keeping military under civilion control
3. Parliamentary System

Political

1. Parliamentary System
2. Federalism
3. Democratic Setup
4. Powerful bureaucracy
5. Rule of law
6. Weak institution of local self govt.

Negative

1. Religious wounds in term of partition
2. Internal political Organisation according to admin but reorganisation according to languages
3. Economic backwardness
4. Casteism – Divide & Rule
5. Poor human development indicator
6. Education of role learning and English
7. Constitution reflects max prov^{n} of GOI ACT, 1935
8. ICS→IAS
9. Corruption

Past Independence India witness the continuity of 'RAJ' in almost all aspects- political, economic, sociocultural A/C Percival spear, britishers were vehicle of western influence on India & provided bridge for India to past from medieval world to new age of science & humanism.
Nehru- British govt. rule had brought political unity in India

Social & Political Perspective of Constitutional

- Different section have different perspectives about
  1. Future goal of Indian Politics
  2. Means to achieve those goals.
- Acharya Narendra Dev
  2 Parallel revolution - Political ended won 1947

- Social revol^{n} is going on.

- K Santhanum
  3 Revolutions
  1. Political- Independence
  2. Social – Change of medieval social structure
  3. Economic – Transforming of rural economy into planned agricultural & Indian Economy.
- Nehru-
  'Freedom is not end; but means for ends'
  "India's survival depends upon social revolution otherwise paper constitution is meaningless"
  Aim of Consti^{n} – Not only political
  – But to give full opportunity to develop and contribute for himself.
- Granville Austin
  1. Indians were looking for alternative setup within democratic setup as totalitarianism/ deposits state were out of question.
  2. 2 revolutions political & social
  3. Earliest issue was which method to be adopted
     Options – 2 methods
     - ❖ Gandhian Panchvati Raj
     - ❖ Westernized parliamentary form of govt.

Gandhian

Village = Unit of Social org^{n}
Panchayat = Unit of Governance
- Lowest level
- Directly elected

3 levels- National- Detency Security
Province – Road, Railways
Local
Goal = 'Sarvodaya', Swaraj

Nehruvian

1. Didn't accept gandhian vision.
2. Social mode of prod^{n}
3. Preferred large industries.
4. Constituent assembly adopted constitution method.

Political Perspectives

1. C.A adopted constitutional methods.
2. Debate over nature of federalism
3. Debate over modes of development – Gandhian/Modern
4. Debate over FR, DPSP
5. Debate over property rights.
6. Debate over unforceable status of DPSP
7. Debate over Parliamentary Vs Presidential system
8. Debate over Nature of judiciary
9. Debate over right of minorities.

Rajiv Dhavan- Book on Indian Constitution. "The constitution of India- Miracle, Surrender, Hope constitution is a product of multiple contestations

Challenge in front of C.A.

1. Lack of representativeness & legitimacy
2. Demand from ML for minority separate electorate.
3. Princely states
4. Arriving at un sensus over differing ideologies – Gandhi / left/ communist/…….
5. Satisfying aspiration of marses
6. Factor- partition

Article 14

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

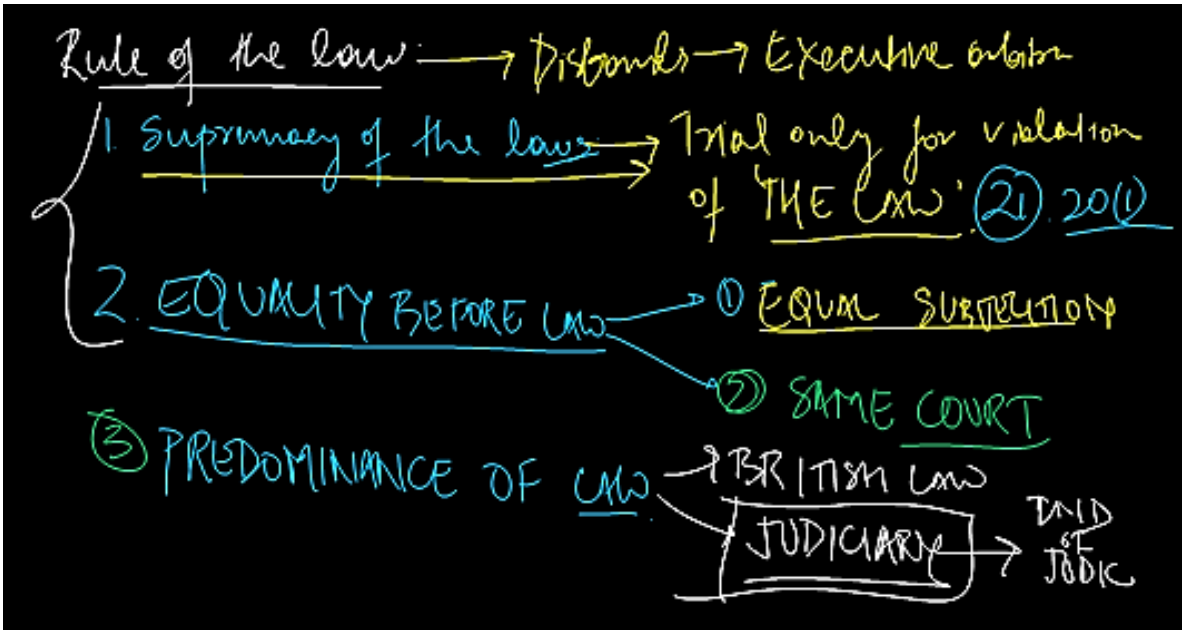
Key Words:

- Any person
- Equality before the law
- Equal Protection of the laws

Political philosophers:

- Aristotle: Main cause of revolution is feeling of inequality
- Alexis de Tocqueville: Evolution of human society is clear understanding of idea of equality

Equality before the law



Equality before the law

Three principles proposed by A.V. Dicey

1. **Absolute supremacy of Law:**
   - It implies that a man may be punished for a breach of law but he can't be punished for anything else.
   - Dicey asserted that discretion has no place where there is supremacy of law.
   - According to him discretion is a link to arbitrariness. Dicey says that wherever there is discretion, there is room for arbitrariness and discretionary authority on the part of the government to jeopardize the legal freedom of the people.
2. **Equality before law:**
   - Equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts.
   - Every man irrespective of his rank or position is subject to the ordinary law and jurisdiction of the ordinary court and not to any special court.
   - According to him special law and special courts is a threat to the principles of equality.
3. **Predominance of legal spirit:**
   - The primacy of the rights of the individual, that is, the constitution is the result of the rights of the individual as defined and enforced by the courts of law rather than the constitution being the source of the individual rights.

- He believed that the courts are the enforcer of the rule of law and hence it should be free from impartiality and external influence. Independence of the judiciary is therefore an important pillar for the existence of rule of law.

The Rule of Law rejects all kinds of arbitrary and discretionary powers of the government or public officials.

Equality before the law in India

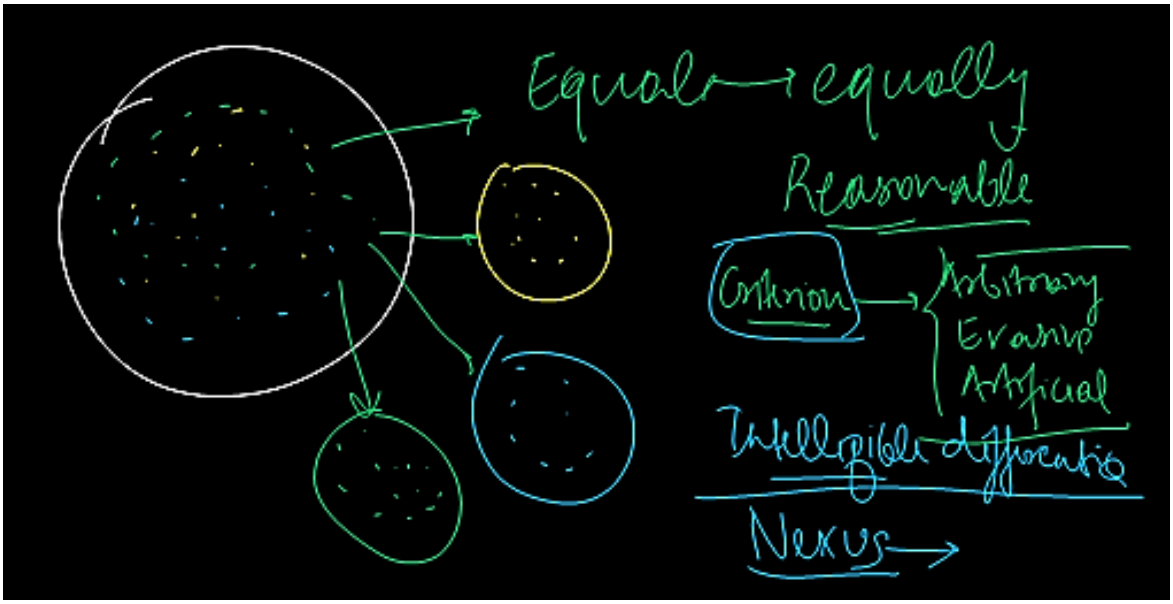
1. Article 14 of the Constitution says that, "The state shall not deny to any person equality before law within the territory of India.
2. According to Article 20 (1) of the Constitution, No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged.
3. Article 21 emphasis that no person shall be deprived of his life or personal liberty except according to the procedure established by the law.

Exceptions:

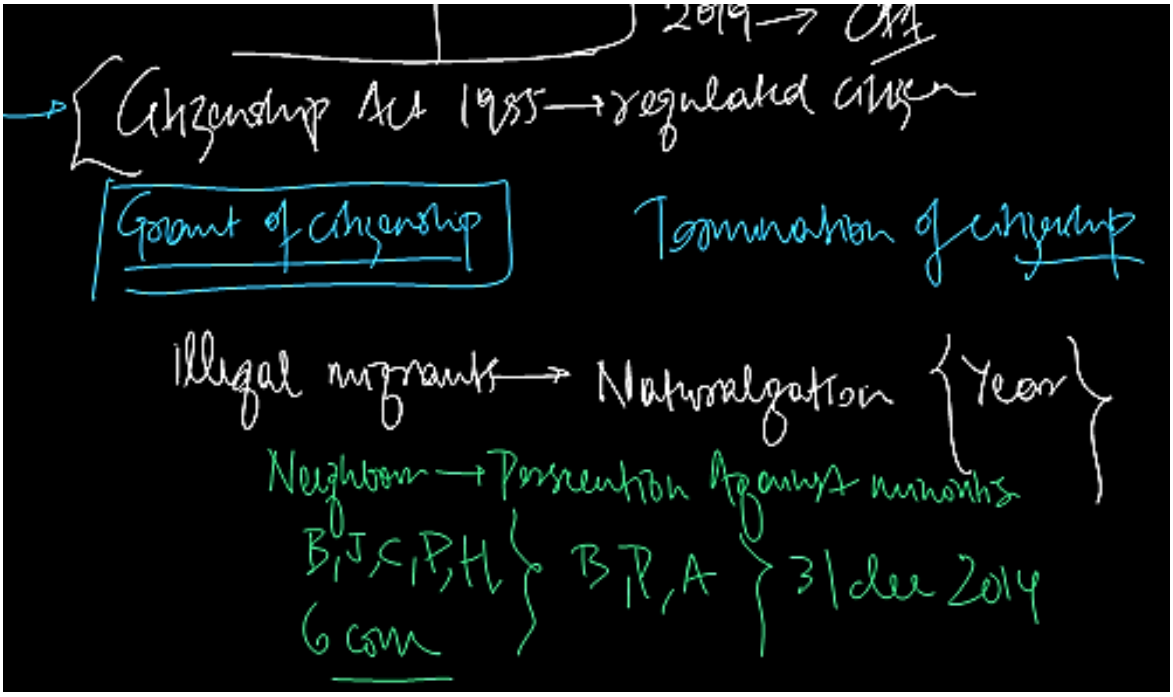
This, however, is not an absolute rule and there are several exceptions to it –

- Foreign diplomats enjoy immunity from the country's judicial process;
- Art. 361 extends immunity to the President of India and the State Governors;
- Public officers and judges also enjoy some protection.

Equal protection of the Laws



Equal protection of the Laws- Citizenship



Equal protection of Law

It means: All persons in similar circumstances shall be treated alike both in privileges and liabilities imposed.

This provision corresponds **to the equal protection clause of the 14th Amendment of the U.S. Constitution** which declares: "No State shall deny to any person within its jurisdiction the equal protection of the laws.

Equal Protection of the laws does not postulate equal treatment of all persons without distinction. What it postulates is the **application of the same laws alike and without discrimination** to all persons similarly situated.

The Legislature is required to deal with **diverse problems arising out of an infinite variety of human relations**. On the other hand, where persons or groups of persons are not situated equally, to treat them as equals would itself be violative of Art. 14 as this would itself result in inequality.

Exhibit: Sanaboina Satyanarayan v. Govt. of A.P

In Andhra Pradesh, they formulate a scheme for prevention of crime against women. In prisons also prisoners were classify in to two categories:

- Prisoners guilty of crime against women and second prisoners who are not guilty of crime against women.
- Prisoners who are guilty of crime against women challenge the court saying that there right to equality is deprived.

Court held that there is reasonable classification to achieve some objective.

Basis of classification under Article 14

Article 14 forbids class legislation; it does not forbid reasonable classification of persons, objects and transactions by the Legislature for the purpose of achieving specific ends.

Classification to be reasonable should fulfil the following two tests:

- **Intelligible differentia:** It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.
- **Nexus:** The differentia adopted as the basis of classification must have a rational or **reasonable nexus with the object sought to be achieved** by the statute in question

Summary of Article 14

Article 14 of the Constitution embodies the principle of **"non-discrimination"**.

In this series of constitutional provisions, Art. 14 is the most significant. It has been given a **highly activist magnitude in recent years by the courts** and, thus, it generates many court cases.

It may be noted that the right to equality has been declared by the Supreme Court as a basic feature of the Constitution.

The case of **M. Nagaraj v Union of India** (2006) recognised that 'formal equality' is not a part of the basic structure but **'proportional equality'** is.

Citizenship (Amendment) Act, 2019

> **11. Parliament to regulate the right of citizenship by law.**—Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Acquisition of Citizenship: (People)

- By Birth
- By Registration
- By Descent
- **By Naturalization**
- By incorporation of territory

Termination of Citizenship:

- By Renunciation
- By Termination
- By Deprivation

INDIA

Panel formed on SC status for Dalit Christians, Dalit Muslims: Centre

Abhinay Lakshman

NEW DELHI OCTOBER 21, 2022 01:28 IST
UPDATED: OCTOBER 21, 2022 11:37 IST

SHARE ARTICLE | 0 | PRINT | A | A | A

The Union government has filed a fresh affidavit before the Supreme Court, through the Ministry of Social Justice and Empowerment, stating its current position on the inclusion of Dalit Christians and Dalit Muslims in the Scheduled Castes list and on the petitions challenging the constitutionality of Para 3 of the Constitution (Scheduled Castes) Order, 1950, which allows only members of Hinduism, Sikhism and Buddhism to be identified as SCs.

In the latest affidavit, the Union government has said the Justice **K.G. Balakrishnan Commission will also be examining whether this "intelligible differentia"** exists and if it concludes so **"after field study and holistic determination of the issue", the classification as it currently exists would be sustainable.**

Further, the Centre has limited the question in this case **to whether Scheduled Caste converts to other religions suffer from the "same degree of oppressiveness as suffered by Scheduled Castes practising Hinduism, Sikhism and Buddhism"** and asserted, "The Commission appointed by the Central government will establish, one way or the other whether the oppressive severity of backwardness remain the same or not, and till the time the same is established, it cannot be said that the impugned classification is discriminatory."

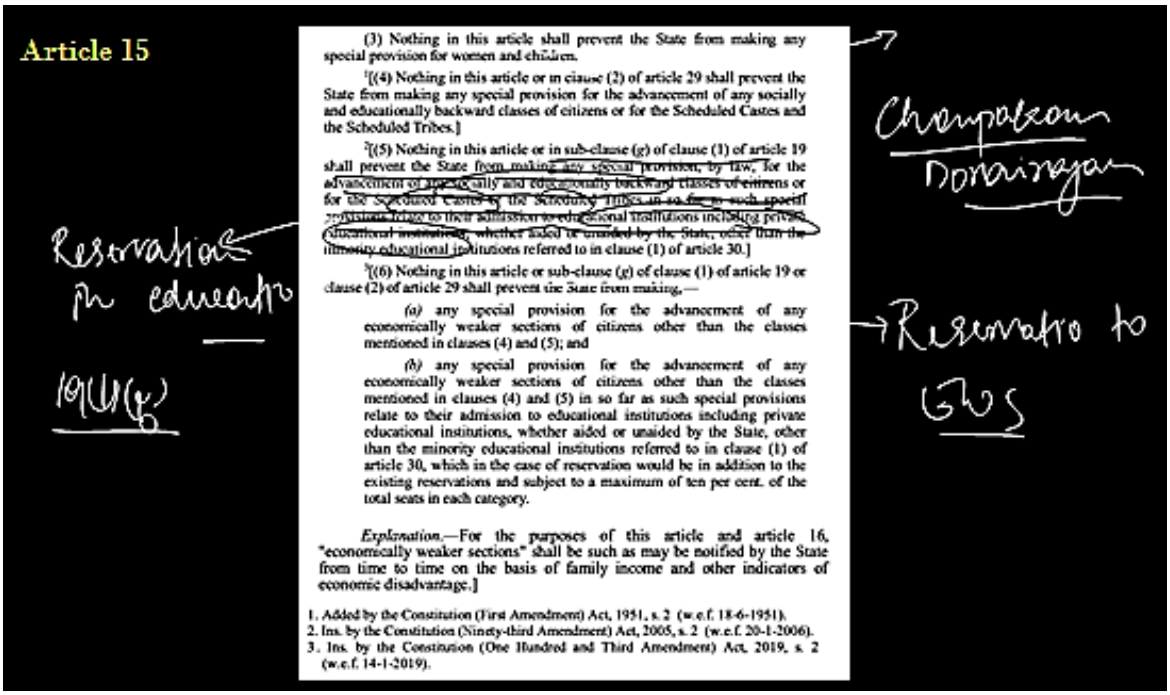
Article 15

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

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

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

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



Article 15

Article 15(1) is an extension of Art. 14. Art 15(1) expresses a particular application of the general principle of equality embodied in Art. 14.

Just as the principle of classification applies to Art. 14 so it does to Art. 15(1) as well. **Art. 14 is the genus while Arts. 15 and 16** are the species. Arts. 14, 15 and 16 are constituents of a single code of constitutional guarantees supplementing each other.

Article 15(2) **contains a prohibition of a general nature and is not confined to the state only.** Based on this provision, it has been held that if a section of the public puts forward a claim for an exclusive use of a public well, it must establish that the well was dedicated to the exclusive use of that particular section of the public and not to the use of the general public.

Articles 15(3) and 15(4) constitute exceptions to Arts. 15(1) and 15(2). According to Art. 15(3), the state is not prevented from making any "special provision" for women and children.

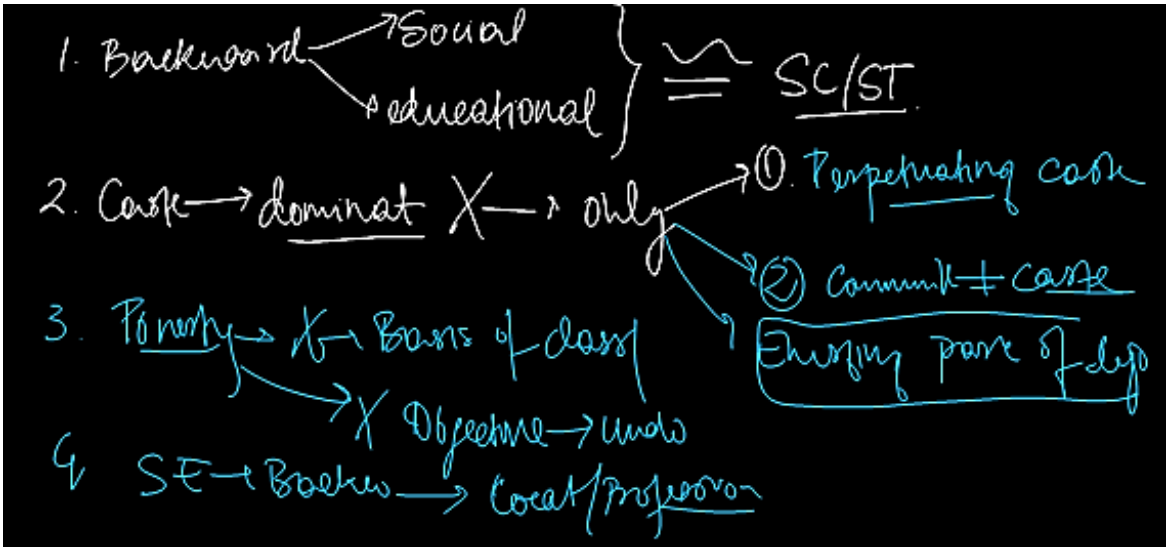
Article 15(4) **confers discretion and does not create any constitutional duty or obligation**. Hence no mandamus can be issued either to provide for reservation or for relaxation

Socially and Educationally Backward Classes

A major difficulty raised by Art. 15(4) is **regarding the determination of who are 'socially and educationally backward classes.'** This is not a simple matter as sociological and economic considerations come into play in evolving proper criteria for its determination. Art. 15(4) lays down no criteria to designate 'backward classes'; it leaves the matter to the state to specify backward classes, but the courts can go into the question whether the criteria used by the state for the purpose are relevant or not.

The question of defining backward classes has been considered by the Supreme Court in a number of cases. On the whole, the Supreme Court's approach has **been that state resources are limited;** protection to one group affects the constitutional rights of other citizens to demand equal opportunity, and efficiency and public interest have to be maintained in public services because it is implicit in the very idea of reservation **that a less meritorious person is being preferred to a more meritorious person.** The Court also seeks to guard against the perpetuation of the caste system in India and the inclusion of advance classes within the term backward classes.

From the several judicial pronouncements concerning the definition of backward classes, several propositions emerge.



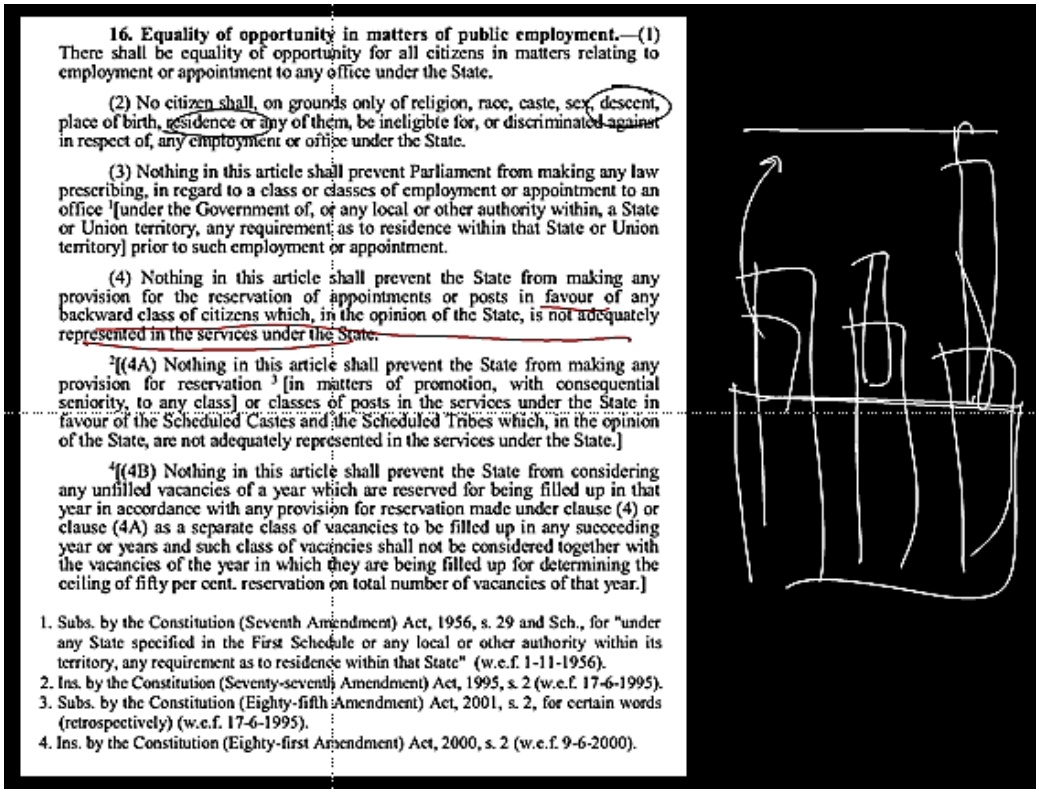
- First, the backwardness envisaged by Art. 15(4) **is both social and educational and not either social** or educational. M. **R. Balaji And Others vs State Of Mysore**, the Court equated the "social and educational backwardness" to that of the "Scheduled Castes and Scheduled Tribes". The Court observed: "It was realised that in the Indian society there were other classes of citizens who were equally, or may be somewhat less, backward than the Scheduled Castes and Scheduled Tribes and it was thought that some special provision ought to be made even for them."
- Secondly, **poverty alone cannot be the test** of backwardness in India because by and large people are poor and, therefore, large sections of population would fall under the backward category and thus the whole object of reservation would be frustrated.
- Thirdly, backwardness should be **comparable, though not exactly similar**, to the Scheduled Castes and Scheduled Tribes.
- Fourthly, **'caste' may be a relevant factor to define backwardness, but it cannot be the sole or even the dominant criterion.** If classification for social backwardness were to be based solely on caste, then the caste system would be perpetuated in the Indian society. Also **this test**

would break down in relation to those sections of society which do not recognize caste in the conventional sense as known to the Hindu society.

- Fifthly, **poverty, occupations, place of habitation**, all contributes to backwardness and such factors cannot be ignored.
- Sixthly, **backwardness may be defined without any reference to caste.** As the Supreme Court has emphasized, Art. 15(4) "does not speak of castes, but only speaks of classes", and that **'caste' and 'class' are not synonymous**. Therefore, exclusion of caste to ascertain backwardness does not vitiate classification if it satisfies other tests.

The landmark judgment of the Supreme Court in **NALSA v. Union of India** ushered in the recognition of various civil and political rights of the transgender community. The court inter-alia also directed the centre to **treat transgenders as socially and educationally backward classes** and provide them with the reservations available to OBCs in education, employment etc.

Article 16



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

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [1][under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

[2][(4A) Nothing in this article shall prevent the State from making any provision for reservation [3][in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

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

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for "under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State" (w.e.f. 1-11-1956).
2. Ins. by the Constitution (Seventy-seventh Amendment) Act, 1995, s. 2 (w.e.f. 17-6-1995).
3. Subs. by the Constitution (Eighty-fifth Amendment) Act, 2001, s. 2, for certain words (retrospectively) (w.e.f. 17-6-1995).
4. Ins. by the Constitution (Eighty-first Amendment) Act, 2000, s. 2 (w.e.f. 9-6-2000).

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

[1][(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]

1 . Ins. by the Constitution (One Hundred and Third Amendment) Act, 2019, s. 3 (w.e.f. 14-1-2019).
2. Ins. by the Constitution (Ninety-seventh Amendment) Act, 2011, s. 2 (w.e.f. 8-2-2012).

Ground of 'residence' as a basis of discrimination

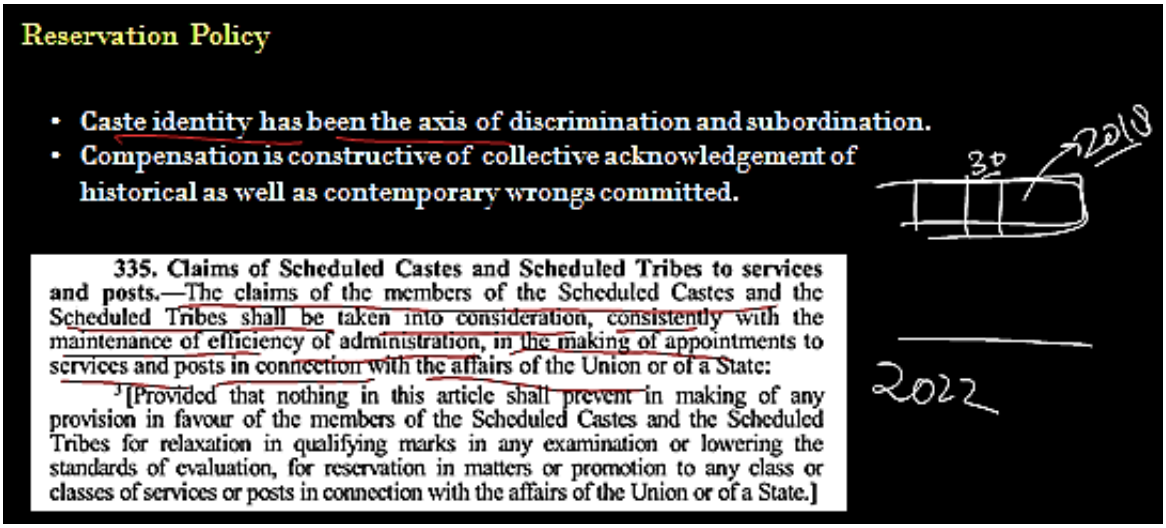
Art. 16(2) which bans discrimination of citizens on the ground of 'residence' only in respect of any office or employment under the state, can be qualified as regards residence, and a 'residential qualification' imposed on the right of appointment in the State for specified appointments.

Article 16(3), therefore, introduces some flexibility, and takes cognisance of the fact that there may be some very good reasons for restricting certain posts in a State for its residents.

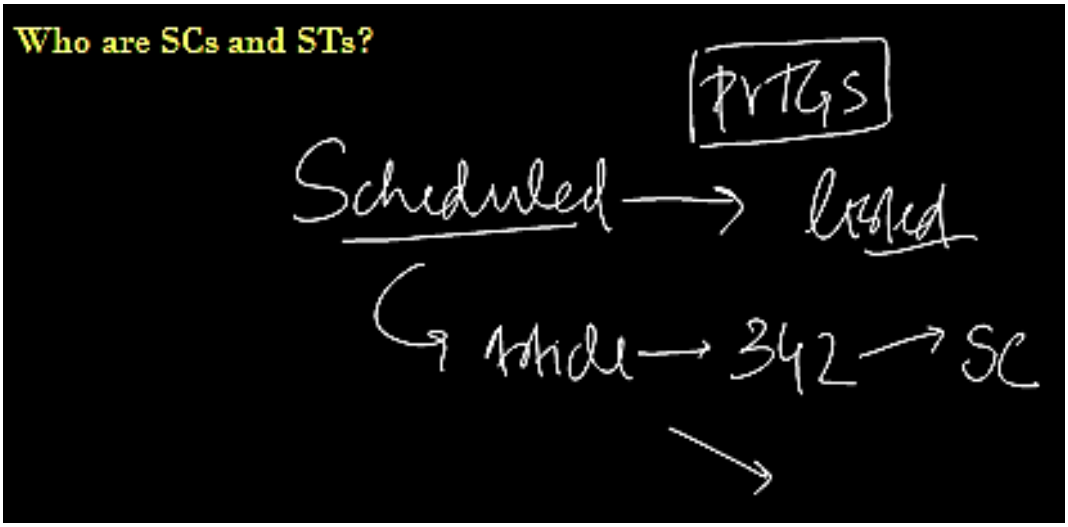
Article 16(3), however, incorporates a safeguard to ensure that it is not abused. Power has been given to Parliament and not to the State Legislatures to relax the principle of non-discrimination on the ground of residence so that only a minimum relaxation is made in this regard. The State Legislatures being subjected to greater local pressures might have been tempted to create all kinds of barriers in the matter of public services.

Under Art. 16(3), Parliament has enacted the Public Employment (Requirement as to Residence) Act, 1957.

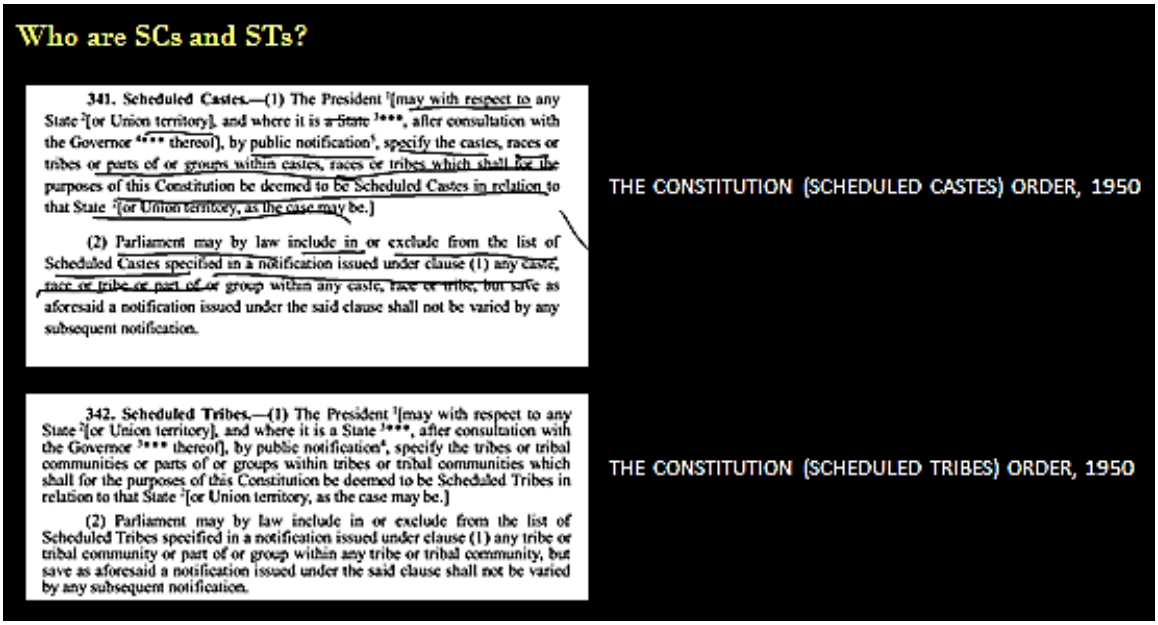
Reservation Policy



Who are SCs and STs?



Who are SCs and STs?

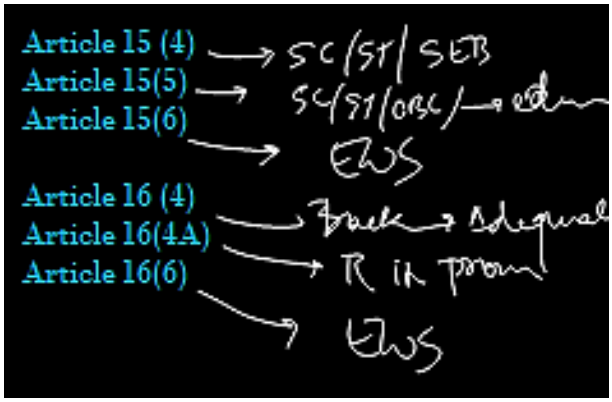


Constitution (Scheduled Tribes) Order, 1950
(PART III.—Rules and Orders under the Constitution)

[1][THE SCHEDULE
PART I. —*Andhra Pradesh*

1. Andh [2][,Sadhu Andh]
2. Bagata
3. Bhil
4. Chenchu, [3]***
5. Gadabas [2][Bodo Gadaba, Gutob Gadaba, Kallayi Gadaba, Parangi Gadaba, Kathera Gadaba, Kapu Gadaba]
6. Gond Naikpod, Rajgond [2][Koitur]
7. Goudu (in the Agency tracts)
8. Hill Reddis
9. Jatapus
10. Kammara
11. Kattunayakan
12. Kolam, [4][Kolawar]
13. Konda Dhoras, [2][Kubi]
14. Konda Kapus
15. Kondareddis
16. Kondhs, Kodi, Kodhu, Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs, Yenity Kondhs, [2][Kuvinga]
17. Kotia, Bentho Oriya, Bartika, [3]*** Dulia, Holya, [3]*** Sanrona, Sidhopaiko
18. Koya, [4][Doli Koya, Gutta Koya, Kammara Koya, Musara Koya, Oddi Koya, Pattidi Koya], Rajah, Rasha Koya, Lingadhari Koya (ordinary), Kottu Koya, Bhine Koya, Rajkoya
19. Kulia
20. Malis (excluding Adilabad, Hyderabad, Karimnagar, Khammam, Mahbubnagar, Medak, Nalgonda, Nizamabad and Warangal districts)
21. Manna Dhora
22. Mukha Dhora, Nooka Dhora
23. Nayaks (in the Agency tracts)
24. Pardhan
25. Porja, Parangiperja
26. Reddi Dhoras
27. Rona, Rena
28. Savaras, Kapu Savaras, Maliya Savaras, Khutto Savaras
29. Sugalis, Lambadis [2][Banjara]
30. Thoti (in Adilabad, Hyderabad , Karimnagar, Khammam, Mahbubnagar, Medak, Nalgonda, Nizamabad and Warangal districts)
31. Valmiki (in the [4][Scheduled Areas of Vishakapatnam, Srikakulam, Vijayanagaram, East Godavari and West Godavari districts)]
32. Yenadis, [2][Chella Yenadi, Kappala Yenadi, Manchi Yenadi, Reddi Yenadi]
33. Yerukulas, [2][Koracha, Dabba Yerukula, Kunchapuri Yerukula, Uppu Yerukula]
[2][34. Nakkala, Kurvikaran
35. Dhulia, Paiko, Putiya (in the districts of Vishakhapatnam and Vijayanagaram)].

Constitutional Provisions regarding Reservation (in part III)



Constitutional provisions (overall)

Reservations in:

- Lok Sabha and State assemblies (SC and ST)
- Panchayati Raj and Municipalities (SC, ST and Women)
- Public employment including in promotions (SC and ST)
- Educational Institutions (SC, ST, OBC)

Art. 15 deals with every kind of state action in relation to Indian citizens. Every sphere of state activity is controlled by Art. 15(1) and, therefore, there is no reason to exclude from the ambit of **Art. 15(1)** employment under the state.

SC judgments

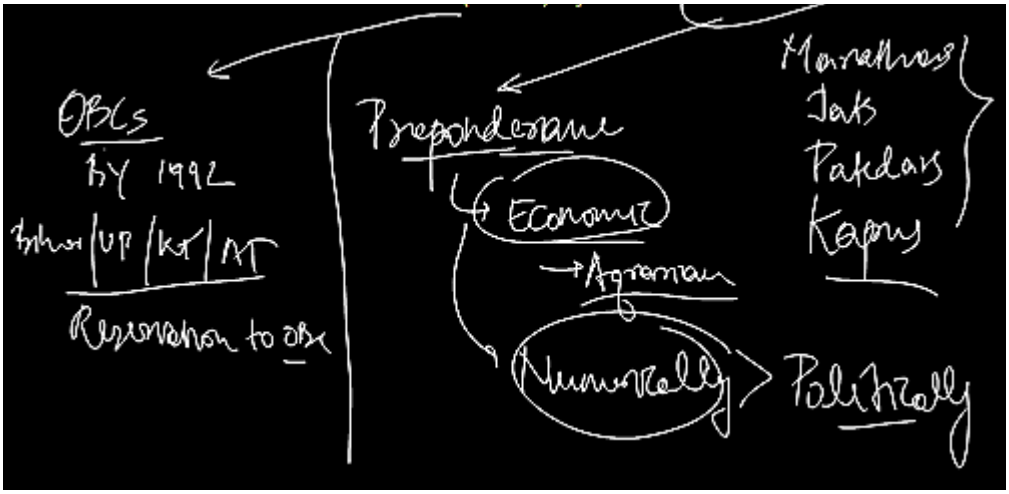
State of Madras vs Champakam Dorairajan (1951):

- The Supreme Court upheld decision of Madras High Court, which struck down a Government Order of 1927 regarding caste-based reservation in government jobs and educational institutions.
- This judgement also made basis of of adding Article 15(4) by the First Constitutional Amendment Act, 1951.

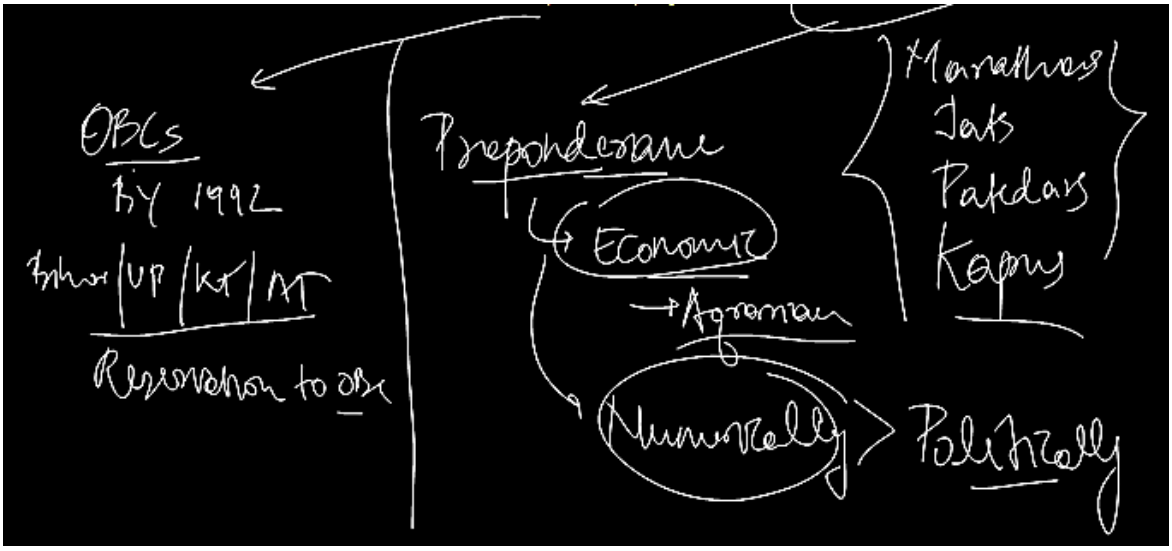
Indra Sawhney vs. Union of India (1992):

- The 9 Judge Constitution Bench of the Supreme Court by 6:3 majority held that the decision of the Union Government to reserve **27% Government jobs for backward classes** – with elimination of Creamy Layer- is constitutionally valid.
- Backward classes under Article 16(4) cannot be identified on the basis of economic criteria but the caste system also needs to be considered.
- Article 16(4) is not an exception to clause 1 but an instance of classification as envisaged by clause 1.
- Backward classes in article 16(4) were different from the socially and educationally backward mentioned in Article 15(4).
- The concept of a creamy layer was laid down and it was directed that such a creamy layer be excluded while identifying backward classes.
- Article 16(4) does allow the classification of backward classes into backward and more backward.
- Reservation shall not exceed 50 percent, moreover, reservation in promotions shall not be allowed.
- Any new disputes regarding criteria were to be raised in the Supreme Court only.

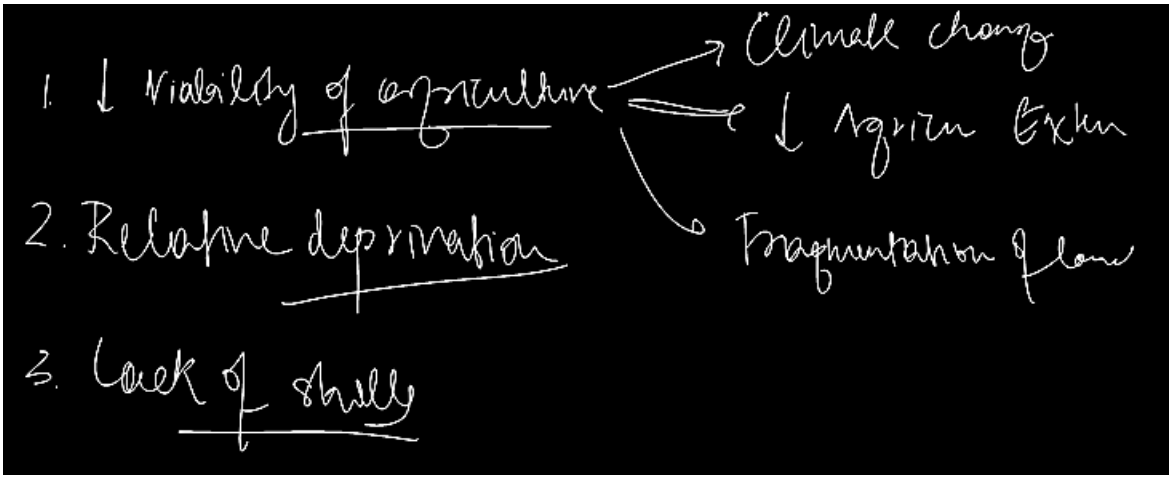
Demands for Other Backward Classes (OBCs) by Dominant castes



Demands for Other Backward Classes (OBCs) by Dominant castes



Demands for Other Backward Classes (OBCs) by Dominant castes

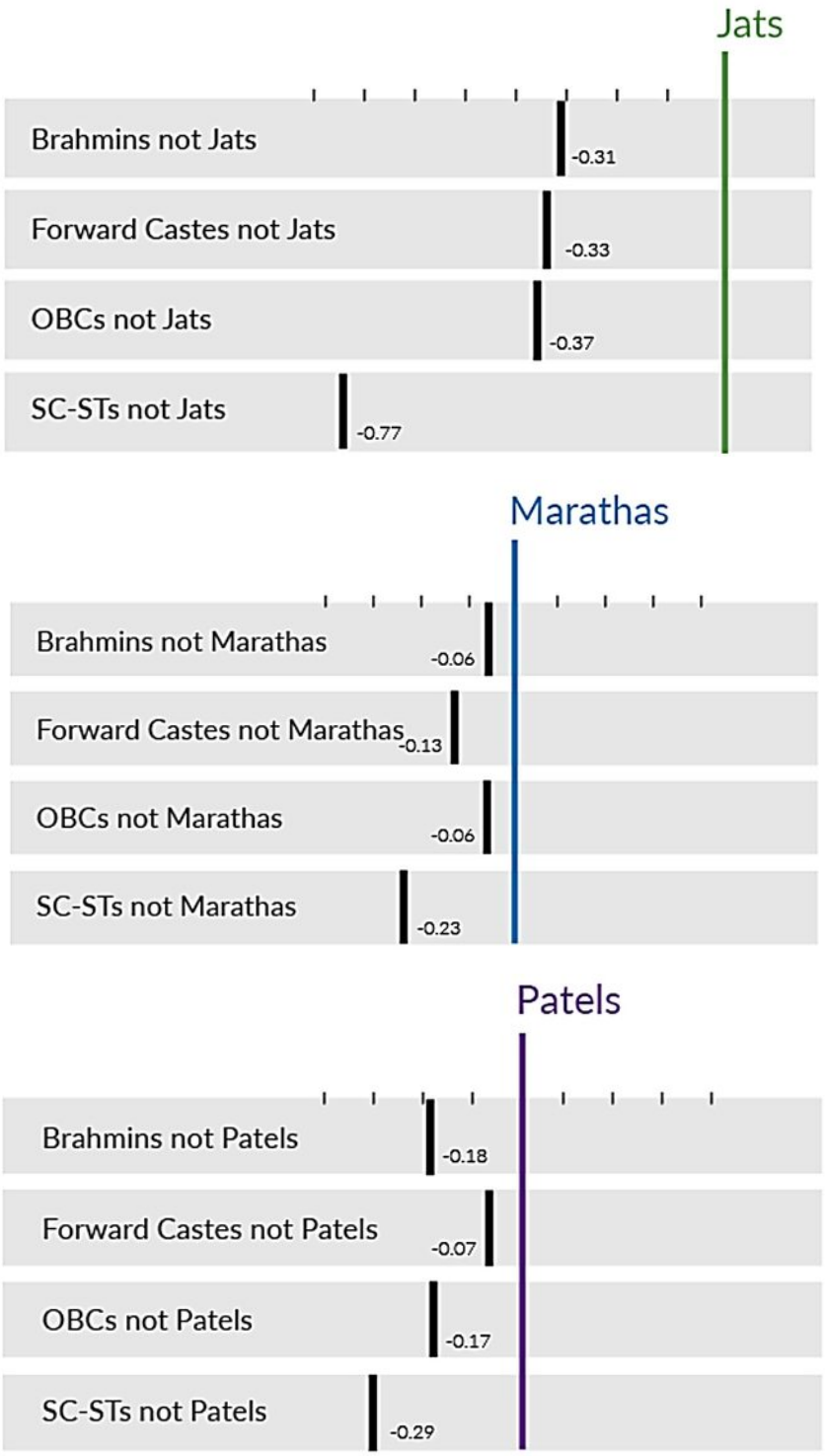


Demands for Other Backward Classes (OBCs) by Dominant castes

Jats, Marathas and Patidars

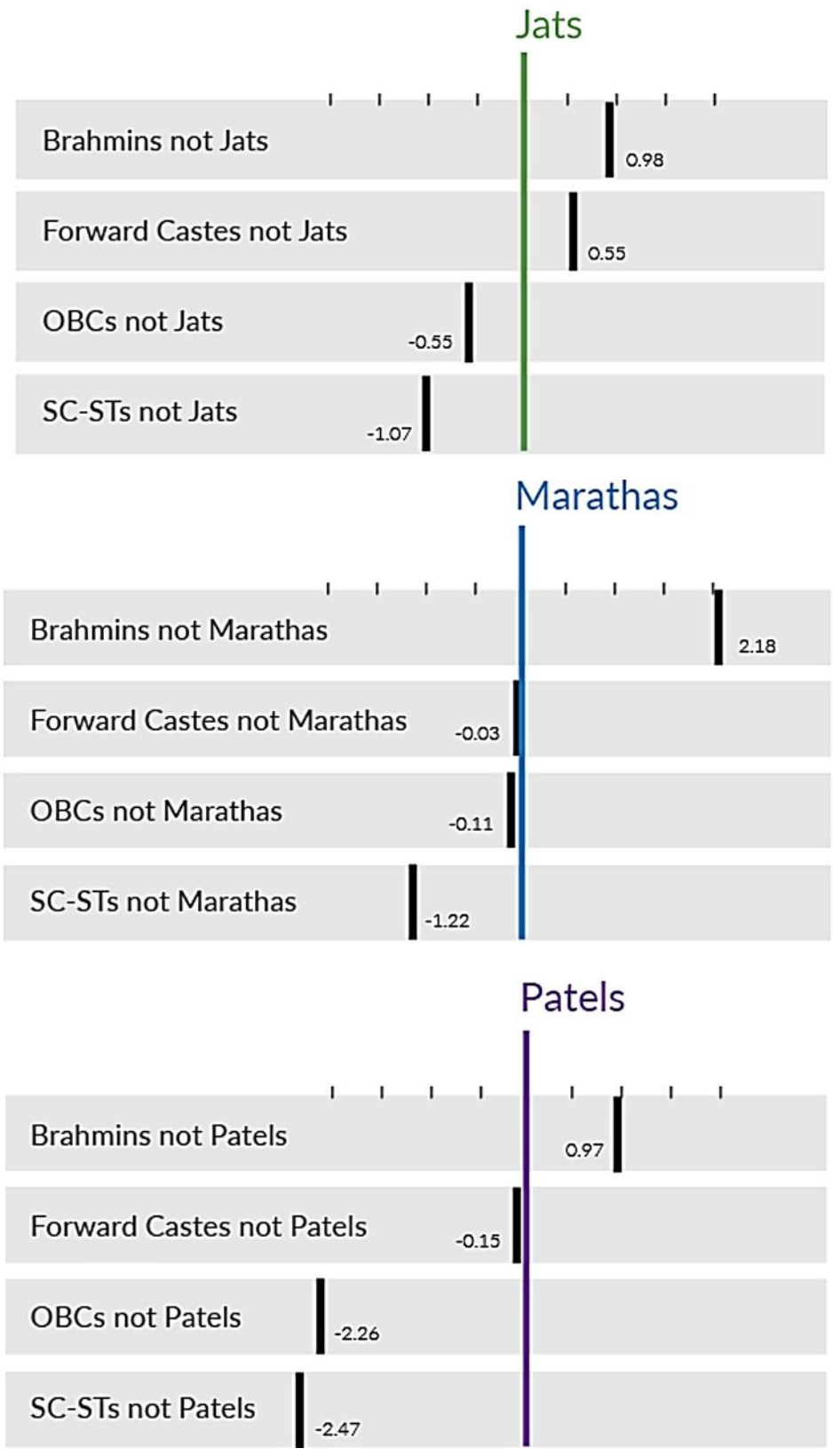
Demands for Other Backward Classes (OBCs) by Dominant castes

Probability of owning/cultivating land



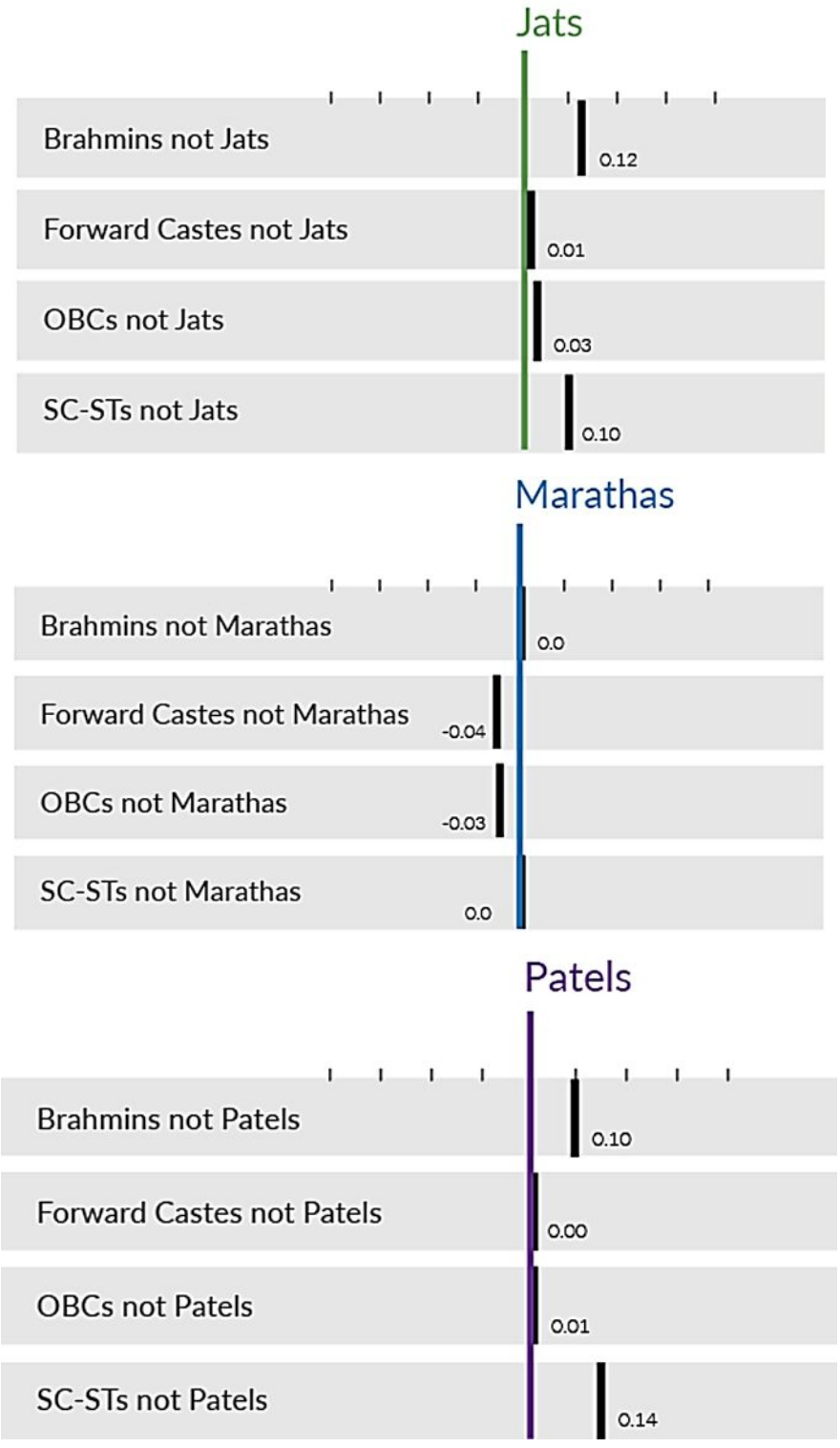
Demands for Other Backward Classes (OBCs) by Dominant castes

Total years of education



Demands for Other Backward Classes (OBCs) by Dominant castes

Probability of holding a government job



Demands for Other Backward Classes (OBCs) by Dominant castes

Jats, Marathas and Patidars

Who are OBCs?

- OBC is a collective term used by the Government to classify castes which are **educationally or socially disadvantaged.**
- OBCs are a vastly heterogeneous group.
    - There are various jaatis or sub-castes which vary significantly in the societal and economic status.
    - For instance, OBCs include land-owning communities in both north and south India alongside poorer sections of the society living on subsistence labour.

Demands for Other Backward Classes (OBCs) by Dominant castes

Jats, Marathas and Patidars

The Mandal Commission:

- In 1990, the then Union government announced that Other Backward Classes (OBCs) would get 27 percent reservation in jobs in central government services and public sector units (under Article 16(4) of the Constitution).
- The decision was based on Mandal Commission Report (1980), which was set up in 1979 and chaired by B.P. Mandal. The mandate of the Mandal Commission was **to identify socially or educationally backward classes to address caste discrimination.**
- The recommendation for OBC reservations in central government institutions was implemented in 1992 while the education quota came into force in 2006 (under Article 15(4) of the Constitution).
- To ensure that benefits of the recommendations of the Mandal Commission percolated down to the most backward communities, **the creamy layer criteria was invoked by Supreme Court in the ruling called the 'Indira Sawhney Judgment' (1992).**
- A household with an annual income of Rs 8 lakh or above is classified as belonging to the 'creamy layer' among OBCs and hence is not eligible for reservations.

Demands for Other Backward Classes (OBCS) by Dominant castes

Jats, Marathas and Patidars

Why?

- Success of affirmative action
- Relative deprivation
- Structural transformations in the economy
- Underperforming agriculture
- Fragmentation of land holdings

- Shrinking opportunities in private sector
- Lack of skills to take advantage

Rejected:

- Violation of 50% limit put by Indra Sawhney
- Not "Socially and Educationally Backward" (Deshpande)
- Their anxieties seem to be based more on perception than on empirical evidence.

SC Observation: "providing reservation for advancement of any socially and educationally backward class in public services is not the only means and method for improving the welfare of backward class", and "the State ought to bring other measures including providing **educational facilities to the members of backward class free of cost giving concession in fee, providing opportunities for skill development to enable the candidates from the backward class to be self-reliant.**

Sub-categorization of Other Backward Classes (OBCs)

Sub-categorisation of OBCs: Govt extends term again without panel asking for it

The commission was set up on October 2, 2017 under Article 340 of the Constitution. It was tasked with sub-categorisation of the OBCs and equitable distribution of benefits reserved for them.

Written by Liz Mathew , Esha Roy
New Delhi | Updated: July 7, 2022 7:28:41 am

NewsGuard

Justice (Retd) G Rohini. (Express photo by Prem Nath Pandey/File)

LIVE BLOG

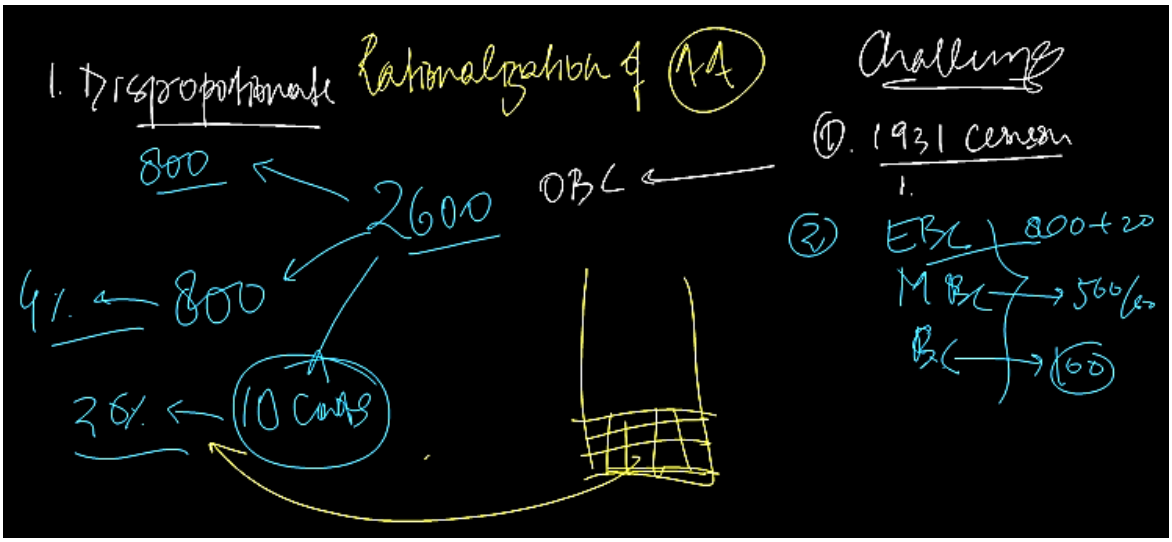
Delhi News Live Updates: Day after Delhi Police FIR, The Wire files complaint against its researcher Devesh Kumar
36 mins ago

Russia Ukraine War Live Updates: NATO calls on Russia to renew Ukraine grain deal; Biden warns of rise in global hunger
1 hour ago

India vs South Africa Live Cricket Score Updates: SA win by five wickets, fifties for Miller-Markram
2 hours ago

Mumbai News Live Updates: PhD student arrested for defamatory remarks against CM, Dy CM; Sharad Pawar to join Bharat Jodo Yatra on Nov 8
2 hours ago

Sub-categorization of Other Backward Classes (OBCs)



Idea of sub-categorization:

- The First Backward Class Commission report of 1955 had proposed sub-categorization of OBCs into backward and extremely backward communities.
- In the Mandal Commission report of 1979, a dissent note by member L R Naik **proposed sub-categorization** in intermediate and depressed backward classes.

In **2015, the NCBC had proposed that OBCs be divided into the following three categories:**

- **Extremely Backward Classes** (EBC-Group A) facing social, educational and economic backwardness even within the OBCs, consisting of **nomadic and semi-nomadic tribes** who have been carrying on with their traditional occupations.
- **More Backward Classes** (MBC-Group B) consisting of **vocational groups** carrying on with their traditional occupations.
- **Backward Classes** (BC-Group C) comprising of those comparatively more forward.

According to the NCBC, **11 states** (Andhra Pradesh, Telangana, Puducherry, Karnataka, Haryana, Jharkhand, West Bengal, Bihar, Maharashtra, Rajasthan and Tamil Nadu) **have subcategorized OBC for reservations in state government-owned institutions.**

Need for sub-categorization – Equal Opportunity

- **Benefits of reservations have reached only limited sections:**
    - The **Rohini commission** highlighted that from about 2,633 central list OBCs, **about 1900 castes have not proportionately benefitted.**
    - **Half of these 1900 castes have not availed the benefits of reservation at all**, and the other half include those that have availed less than 3 per cent share in the OBC quota.
    - **The commission highlighted that 25% of benefits from OBC reservations have been availed by only 10 sub-castes.**

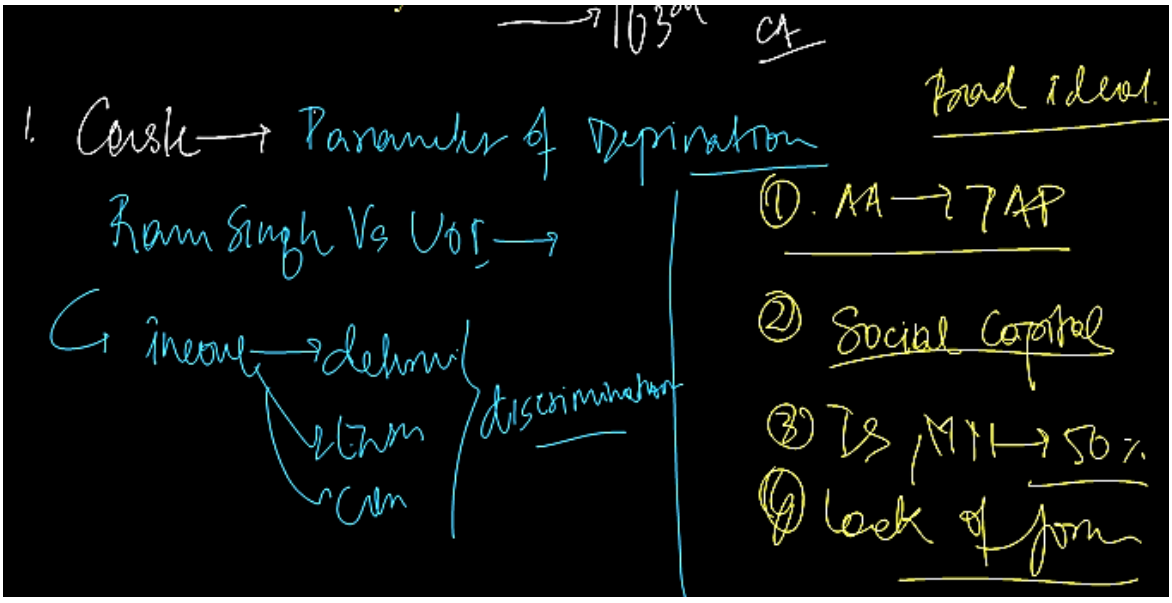
- According to the committee, the communities that have got almost no benefits of reservations include **profession-based castes** such as Kalaigars, a community that traditionally polishes tins; and Sikligars and Saranias, communities that traditionally sharpen knives; apart from several other marginalised groups.

- **Benefits are tilted towards economically stronger sub-sections:**
  - Research suggests that the Mandal Commission recommendations helped the economically better positioned OBCs more than the most backward castes.
- **Sachar commission:** 40.7% of Muslims are Muslim OBCs, which is 15.7% of the total OBC population of the country. *"The abysmally low representation of Muslim OBCs suggests that the benefits of entitlements meant for the backward classes are yet to reach them."*

Challenges in its implementation?

- **Use of older and unreliable estimates:**
  - The commission has based its recommendations on quota within quota on the population figures from the 1931 Census, and not on the more recent Socio-Economic Caste Census (SECC) 2011.
  - Since the implementation of the Mandal Commission report, over 500 new castes have been added to the Central list of OBCs. The 1931 Census does not have the population for these new additions.
  - The 1931 census also does not have population of princely states that were not ruled by the British.
- Information unavailability on social and educational status: There is lack availability of information regarding the social and educational backwardness of various castes.
- It could be a very difficult exercise statistically due to following reasons:
  - Large number of castes: According to NCBC, there are 2514 OBC castes in the country and scientific sub-categorization by analysing each caste could be challenging.
  - Variation from state to state: There are significant variations within castes from state to state which implies data collection needs to be larger and more robust.
- Political sensitivity of the issue:
  - The move to sub-categorize OBCs may create agitation in some sections of OBCs as the benefits get redistributed.
  - OBC reservations have caused political turmoil in the past.

Reservation to Economically Weaker Section



Reservation to Economically Weaker Section

2. QUANTUM OF RESERVATION

The persons belonging to EWSs who are not covered under the scheme of reservation for SCs, STs and OBCs shall get 10% reservation in direct recruitment in civil posts and services in the Government of India.

Reservation to Economically Weaker Section

The **103rd Constitution Amendment Act 2019** inserted **Article 15 (6) and Article 16 (6)** in the Constitution to allow reservation for the Economically Weaker Section (EWS) among the general category.

Article 15 has been amended to enable the government to take special measures for the advancement of EWS.

- Up to 10% of seats may be reserved for such sections for admission in educational institutions. Such reservation will not apply to minority educational institutions.
- The newly added Article 16(6) permits the government to reserve up to 10% of all posts for the EWS of citizens.
- This reservation of up to 10% for the EWS will be in addition to the existing reservation cap of 50% reservation for SC, ST and OBCs.
- The central government will notify the "economically weaker sections" of citizens based on family income and other indicators of economic disadvantage.

Arguments in favour of reservation based on economic status

- **Need for new deprivation assessment criteria:** While caste remains a cause of injustice, it is not the **sole determinant of backwardness.**

- With LPG, the symmetry between caste and class has broken down to a certain extent.

- **In Ram Singh v. Union of India (2015),** SC asserted that social deficiencies may exist beyond the concept of caste (e.g. economic status / gender identity as in transgenders). Hence, there is a need to evolve new yardsticks to move away from caste-centric definition of backwardness.
- **Increasing dissatisfaction among various sections:** Politically, the class issues have been overpowered by caste issues
- **Extension of affirmative action to Muslims and Christians.** (Sachar Committee)
  - The conditions of the general Muslim category are lower than the Hindu- OBCs who have the benefit of reservation.

Arguments against extending reservations on economic basis

- **In M. Nagaraj v. Union of India (2006),** a Constitution Bench ruled that equality is part of the basic structure of the Constitution.
  - The 50% ceiling is a constitutional requirement without which the structure of equality of opportunity would collapse.
- **Reservation is not a poverty alleviation program:**
  - The primary purpose of reservation was to provide representation to the hitherto marginalized and not as a poverty alleviation program for the economically deprived. The poorer sections among the upper castes could be elevated through different affirmative actions like providing them with scholarships and other financial helps.
  - This amendment runs contrary to this primary purpose of reservation.
  - Poverty is not a permanent thing like the baggage of caste that affects the dignity of a person.
- **Ignores "Social Capital" possessed by non-SC/ST/OBC:**
- **Definition of EWS and allotment of quota:**
  - The issue with current definition of EWS is that it is too broad and would include large sections of population.
  - Further, it also puts families below poverty line and the ones with income of 8 lakh/annum in the same category.
  - Excluding the SEBCs/OBCs, SCs/STs from the scope of EWS reservation

Reservation to Economically Weaker Section

The first issue dealing with the basic structure of the framework reads,

- "Whether the 103rd Constitution amendment Act can be said to breach the basic structure of the Constitution by **permitting the State to make special provisions, including reservation, based on economic criteria"**

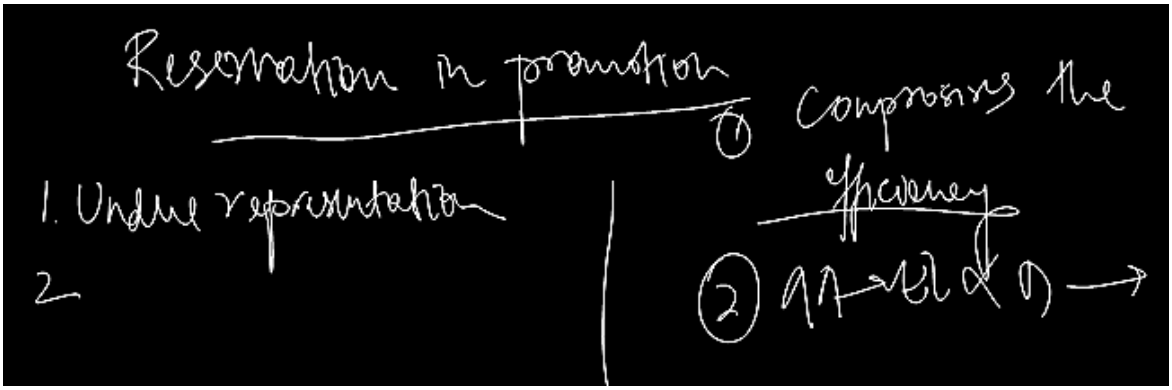
- Whether the constitutional amendment could be said to breach the basic structure by **permitting the state to make special provisions concerning admissions to private unaided institutions.**
- "Whether the 103rd Constitution amendment can be said to breach the basic structure of the Constitution in excluding the SEBCs/OBCs, SCs/STs from the scope of EWS reservation."

Reservation in Promotion

Of 89 secretaries in Modi govt, there are just 3 STs, 1 Dalit and no OBCs

Minister Jitendra Singh told Lok Sabha that higher entry age of SC/ST/OBCs meant they retired before their batches came up for central govt secretary posts.

MOUSHUMI DAS GUPTA 5 August 2019 09:37 am IST



Reservation in Promotion

The Supreme Court has permitted Central government for reservation in promotion to SC/ST employees working in the public sector in "accordance with law". This direction of apex court came in the response to government's complaint that promotions were at a "standstill" due to separate orders passed by various high courts.

The Supreme Court's decision will permit the government to fill a large number of vacancies in various departments. 'In accordance with law' points towards the guidelines laid down in M Nagaraj case 2006 presently applicable as there is no specific law which deals with the reservation in promotions.

The apex court had further that a seven-judge Constitution bench needs to be constituted to look into the Nagaraj judgement.

In Nagaraj judgement, apex court while upholding the previous constitutional amendments regarding this issue put some restrictions on the state that it should:

- **collect quantifiable data** showing backwardness of the class and inadequacy of representation of that class in public employment.
- **ensure that efficiency of administration** is not reduced while giving promotion.
- **not breach the ceiling-limit of 50%** or **obliterate the creamy layer or extend the reservation indefinitely**

M. Nagaraj vs. Union of India (2006)

- A five-judge constitution bench of the Supreme Court validated parliament's decision to extend reservations for SCs and STs to include promotions with three conditions:
    - State has to provide proof for the backwardness of the class benefitting from the reservation.
    - State has to collect quantifiable data showing inadequacy of representation of that class in public employment.
    - State has to show how reservations in promotions would further administrative efficiency.

Jarnail Singh v. Lachhmi Narain Gupta (2018)

- The Supreme Court held that the government **need not collect quantifiable data to demonstrate backwardness** of public employees belonging to the Scheduled Castes and the Scheduled Tribes (SC/STs) to provide reservations for them in promotions.
- Supreme Court asked the government to examine the possibility of introducing creamy layer for Scheduled Castes (SCs) and Scheduled Tribes (STs) by saying that **if some sections bag all the coveted jobs, it will leave the rest of the class as backward as they always were.** The union government has urged the court to reconsider the ruling and refer the issue to a seven judge Bench.

Argument in favour of reservation in promotion

- **For equality of opportunity -** Along with the Constitution the Supreme Court has also, time and again, upheld any affirmative action seeks to provide a level playing field to the oppressed classes with the overall objective to achieve equality of opportunity.
- **Skewed SC/ST representation at senior levels -** The representation of SCs/STs, though, has gone up at various levels; representation in senior levels is highly skewed against SCs/STs due to prejudices. Over the years Institutions has failed to promote equality and internal democracy within them.
    - There were only 4 SC/ST officers at the secretary rank in the government in 2017.
- **Overall efficiency in government is sometimes hard to quantify,** and the reporting of output by officers is not free from social bias.
    - For ex. In Maharashtra, a public servant was denied promotion because his 'character and integrity were not good'.

Argument against the reservation in promotions

- **Provisions under articles 16(4), 16 (4A) and 16 (4B) of the Constitution are only enabling provisions,** and not a fundamental right.
    - In a case the Supreme Court ruled that no reservation in promotions would be given in appointment for faculty posts at the super specialty block in AIIMS.
- **Gaining employment and position does not ensure the end of social discrimination and**, hence, should not be used as a single yardstick for calculating backwardness.

- The reservation in promotion may **hurt the efficiency of administration**

Creamy Layer Criteria For SC/ST In Promotions

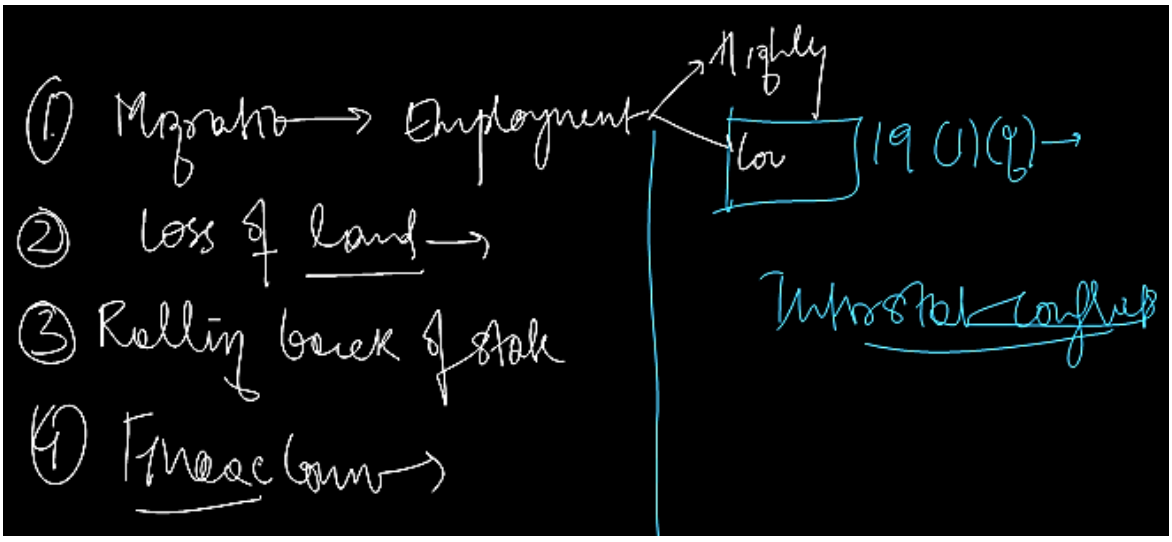
Application Creamy layer is important as:

- **Prioritizing most marginalized:** Supreme Court in Jarnail Singh Case Judgement noted that the benefits, by and large are snatched away by the top creamy layer of the backward caste or class, keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake.
- **Improved income and status:** The creamy layer within the SCs and STs has improved socio-economic mobility and by that virtue does not face discrimination of similar intensity.
- **Article 335:** It states that Affirmative action should be subject to the overall efficiency of Public Administration. Reservation in promotions may affect the merit-based culture of the organization.

Arguments for not applying the Creamy Layer concept to SCs/STs

- **Not Anti-poverty programme:** Reservation for Dalits is not to undo economic backwardness but as a remedy for societal discrimination based on untouchability. Thus, it may not possess a direct correlation with economic status.
- **Discrimination within service:** It is argued that there is widespread discrimination within services.
    - For example, there are about 12,000 cases lying with the SC/ST Commission, complaining about discrimination in service.
- **Difference between OBCs and SCs:** OBCs don't face the kind and extent of discrimination faced by SCs. Generally, if OBCs manage to cross a certain economic threshold, the extent of social discrimination reduces substantially.

Reservation to locals in Private sector



Reservation to locals in Private sector

Haryana Cabinet cleared a draft ordinance that seeks to reserve 75% of the jobs in private enterprises for local residents to address the aspect of unemployment of the local population on a priority basis. Background

A survey done by the Centre for the Study of Developing Societies (CSDS) in 2016 showed that nearly two third of respondents were in favour that people from the state should be given priority vis-à-vis employment opportunities.

Similar demands are being raised in other states like Andhra Pradesh, Madhya Pradesh, Karnataka, Gujarat, Maharashtra etc. o Earlier, similar 75% job reservation to locals was given in Andhra Pradesh but the matter is sub judice and AP High Court has indicated that it may be unconstitutional.

Such moves are considered mainly to promote Inclusive Development. For example, in Germany, every village has a factory. India could also have industries in villages and provide jobs to the local people for an all-round development.

Demand for Reservation to locals in Private sector - For

- **Perception that Central devolution is insufficient:** especially in the southern states, as they feel successive finance commissions accord a high weightage to poverty and population vis-a-vis development thus majority share goes to the northern states. In this context, local reservation provides them a sense of indirect economic justice.
- **Extent of migration:** According to some estimates drawn from 2011 Census, NSSO surveys and Economic Survey suggests that there are a total of about 65 million inter-state migrants, and 33 per cent of these migrants are workers. These migrants increase the labour market competition which fuels the demand for reservation.
- **Agrarian Distress:** The agrarian sector is under tremendous stress across the country, and young people are desperate to move out of the sector, hence seeking local jobs.
- **Displacement of landowners:** Since most of the land requirement is met by acquiring private agricultural lands, the landowners are being displaced and deprived of their occupation and thereby the associated loss of income generates demand for local level jobs.
- **Rising unemployment:** With unemployment figures likely to rise drastically in the backdrop of pandemic and lack of access to skills and low employability, these demands are only going to rise in future.
- **Lack of participation of all sections in the workforce:** Several reports like, the State of Working India 2018 have shown that discrimination is one of the reasons for under-representation of Dalits and Muslims in the corporate sector. Reservation could help these sections overcome this discrimination.

Demand for Reservation to locals in Private sector - Against

- **Violative of Article 16 (Right to equal opportunity):** Article 16 does not empower the state government but rather the Parliament to provide reservation in jobs on the basis of residence but that too is limited to public sector.
- **Violates Article 19(1)(g) of the** Constitution that recognises citizens' right to practise any profession, or to carry on any occupation, trade or business. Article 19(2) provides for reasonable restrictions on these, but reservations in private employment are not covered by any of the reasonable restrictions except remotely
- **Indira Sawhney vs Union of India case capped the reservation limit** in public sector jobs at 50% in 1992.
    - Legal experts have said that one may then contend that the reservation limit in private sector employment should not exceed that prescribed for public services.
- **Can compromise "Fraternity" and hence unity and integrity:** By promoting regionalism it may hinder national integration.
- **Dissuade private sector investment** and harm the economic interests.

Reservation in Private Jobs

Of course, why not?

- Rolling back of the state in employment
- Private sector gets benefits from the state services
- Discrimination persists even in private sector
- Appointments not subject to fairness or values of constitution
- Most states have reserved only unskilled jobs
- Least impact on competitiveness

Bad Idea!

- **Article 19(1)(g):** Freedom to practice profession
- Private sector is not exapted to take the burden of "Social Justice"
- Discourages competitiveness
- Impacts merit
- Principle of hire and fire

Scholars on Reservation policy

Focault and Walzes: were skeptical about state intervention in spheres of social justice **"state institutions cannot acquire the capacity to promote Social goods"**

Supreme Court:

- Reservation is not a matter of right.

- Reservation policies are enabling provisions, can't continue endlessly.

Pratap Bhanu Mehta:

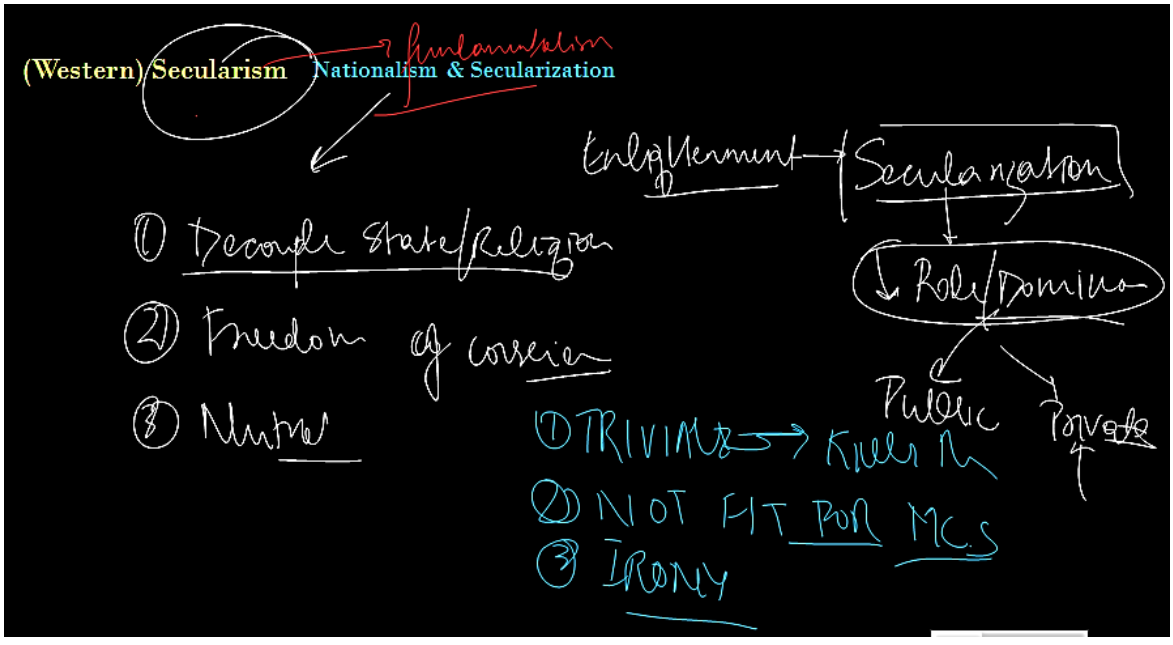
- Reservation has been limited to counting heads than ending discrimination.

Suhrith Parthasarathy:

- There is unquestionable value in a general policy of reservation because it attacks caste-based inequities that have proved so damaging to our society; but through an ever-expanding scheme of reservation, we have lost sight of what our aims were in the first place.

Yogendra Yadav:

- Till now, reservation policy was not a wasteful journey entirely
- Needs to be streamlined
    - Should be intellectually sound
    - Administratively and financially viable
    - Politically defensible
    - Morally justifiable



Western Secularism

The Christian protestant movement resulted in the exclusion of religion or God from the public sphere and its confinement to the private sphere.

Thus secularism (Western) denotes:

1. The separation of personal and political.
    - The idea of secularism is linked with the idea of sovereignty of the state.
    - It means, in matters of public sphere, the **law made by the state shall be supreme.**
2. Secular state gives freedom of conscience.
3. Secular state adopts religious neutrality.

Secularism is linked to the **rise of nation states**. It was realized that religion has resulted **into 30 years of war in Europe.** Hence the nation states where people belonging to different religions exist; a new secular, rational ideology is needed to keep them united. **Thus Secularism get links with Nationalism.** It was expected that state should not discriminate among the citizens on the ground of religion.

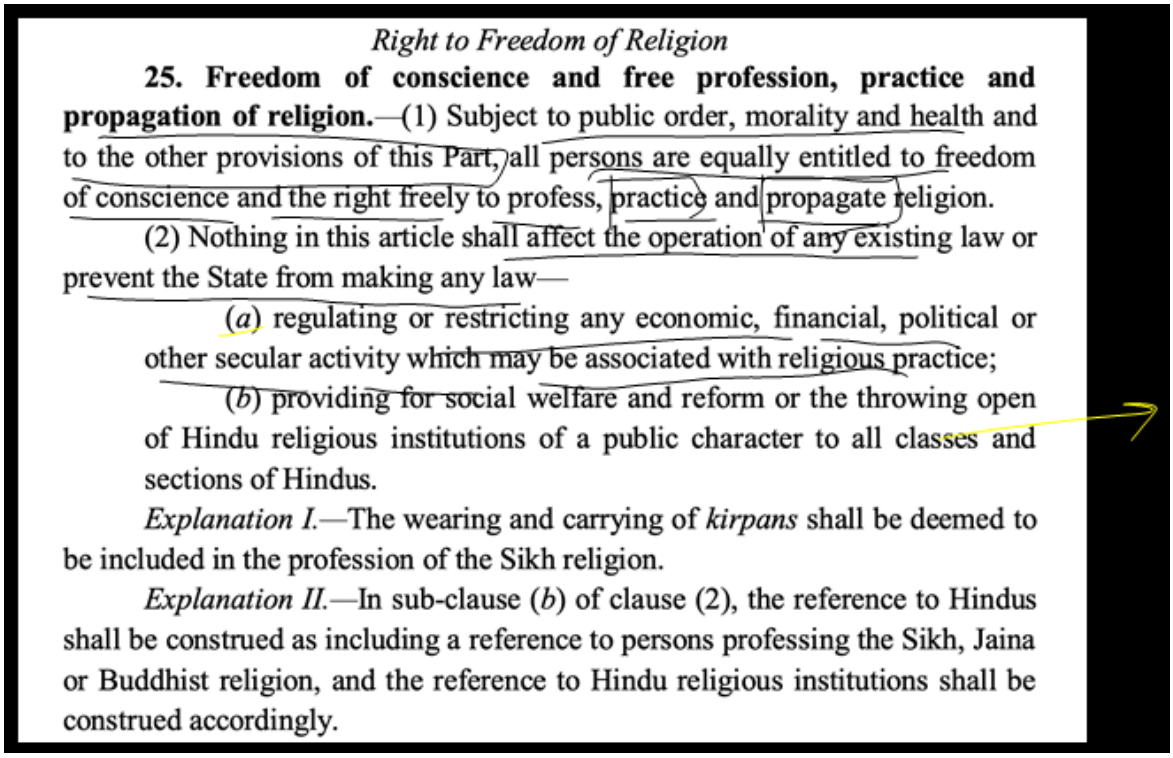
Western Secularism – Criticisms

The idea of secularism is ***contested*** not only by politicians, civil society groups and clerics; it is questioned even by academics.

- By trivializing faith, secularism is hostile to religious believers.
- Inhibits diversity and homogenizes the public domain.
- Modern political secularism is a child of single-religion societies and while it may be suited to Protestantism and religions that are weakly protestantized, it excludes or is actively inimical to other religions.
- It has failed to accommodate **community-specific rights** and therefore is unable protect religious minorities from discrimination and exclusion.
- How can it fight religious hegemony and in the same breath try to establish itself as the sole basis of adjudication in public life?
- Critics even argue that its peace-talk is mere sham because deep down it is a conflict generating ideology that **threatens pluralist democracies.**

Indian model of secularism

Article 25



Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

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

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

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

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

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

Article 25(1)

The guarantee under Art. 25, subject to the exceptions mentioned, confers a Fundamental Right on every person not merely-

- To **entertain such religious beliefs** as are allowed to him by his judgment or conscience, but also
- To **exhibit his beliefs and ideas** in such overt or outward acts and practices as are sanctioned or enjoined by his religion, and further
- To **propagate and disseminate his religious beliefs,** ideas and views for the benefit and edification of others.

A religion, undoubtedly, has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it is also something more than merely doctrine or belief. **A religion may not only lay down a code of ethical rules for its followers to accept, but may also prescribe rituals and observances, ceremonies and modes of worship which are regarded as an integral part of that religion.** These forms and observances might extend even to matters of food and dress.

Therefore, the constitutional guarantee regarding freedom of religion contained in Art. 25(1) extends even to rites and ceremonies associated with a religion

Article 25(2)(a) Regulation Of Secular Activities

A question would, however, arise whether the activity sought to be **regulated is 'religious' or 'secular'. This distinction is important for what is religious cannot be regulated.** This again raises the

question whether the activity sought to be regulated is regarded as **an essential and integral part of the religion in question.** If so, it is religious in nature.

Management of property attached to a religious institution or endowment is a secular activity which can be regulated by the State.

ART. 25(2)(b) social reform and throwing open of temples

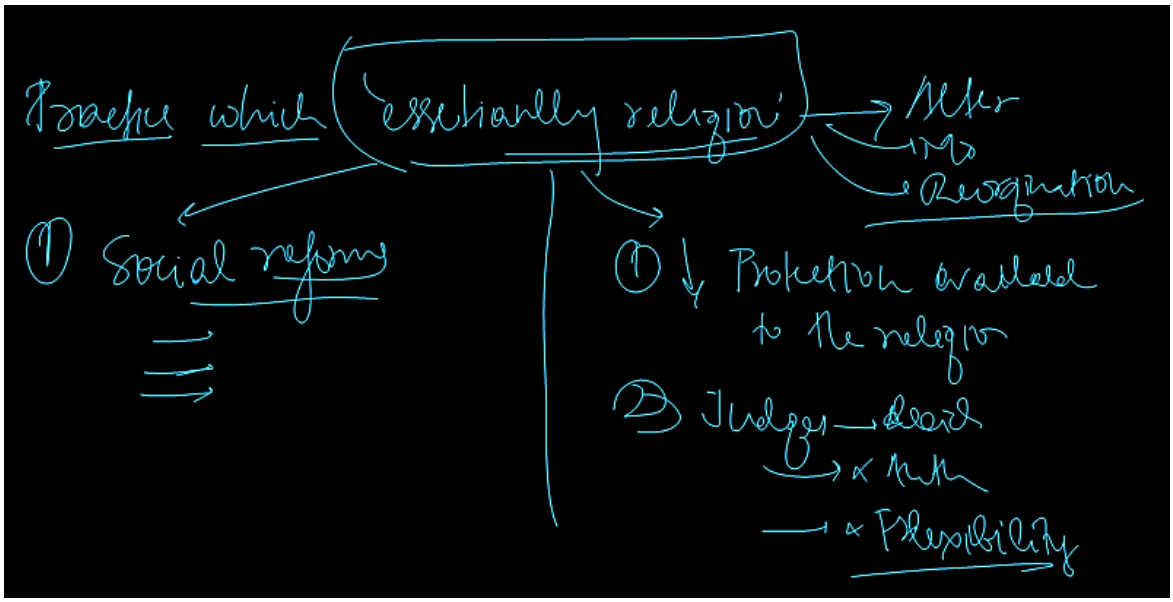
The state can throw open Hindu religious institutions of a public character to all sections of the Hindus. Article 25(2) (b) enables the state to take steps to remove the scourge of untouchability from amongst the Hindus.

The word "public" here includes any section of the public. Public institutions would thus mean not merely temples dedicated to the public as a whole, but even those which are founded for the benefit of sections thereof and denominational temples would thus fall within the scope of this clause.

Article 25(2) (b) protects the right to enter into a temple for purposes of worship. This, however, is not an unlimited right. Thus, for instance, no Hindu can claim, as part of the right protected by Art. 25(2)(b), that a temple must be kept open for worship at all hours of the day and night, or that he should personally perform those religious services in a temple which the archakas or pujaris alone are entitled to perform.

The courts have recognised the need to place some limitations on the right conferred by Art. 25(2)(b), particularly, with a view to harmonize this right with that protected by Art. 26(b).

Essential Religious Practice



Essential Religious Practice

Over the years, the Supreme Court (SC) has evolved a practical test of sorts to determine what religious practises can be constitutionally protected and what can be ignored.

In 1954, the **SC held in the Shirur Mutt case** that the term **"religion" will cover all rituals and practises "integral" to a religion.** The test to determine what is integral is termed the **"essential religious practises"** test. The intent of the Supreme Court up until this point was **to draw a line between religious and secular.** In other words, the test was not meant to distinguish between practices that were essential to a religion and those that were not. It was meant to **distinguish between practices that were essentially religious and those that were secular.** The latter practices could be restricted through law, but the former couldn't.

- In 2016, the Bombay High Court permitted women to enter the sanctum sanctorum of the Haji Ali Dargah. In its judgment, the court ruled that the Trust had failed to place any material on record **to demonstrate that the exclusion of women from dargahs was an "essential feature" of Islam.**
- More recently, in 2017, t**he Supreme Court ruled that triple talaq was not an essential practice of Islam and could not be offered constitutional protection under Article 25.**
- A year **later in 2018, the Supreme Court in the Sabarimala case rejected the claim of 'Ayyappans' (pilgrims) th**at the exclusion of women between the age of 10 and 50 from entering the temple constituted an essential practice. A review petition against this decision is, however, pending in the Supreme Court.

Benefits of Essential Religious Practice doctrine

- The doctrine **protects the "essential practices of religion" from interference of state.**
- It ensured that **constitutional principles gain primacy over religious morality** to give freedom to people in a multicultural society.
- In has **ensured social justice** during the practice of Right to freedom of religion.
- It has ensured balance between fundamental rights.
- For example, in Sabrimala case, SC attempted to strike a balance between the two fundamental rights of the **right to equality and the right to freedom of religion.**
- It ensured that there will be **primacy of rule of law rather than rule of religion.**

The negative effects of Essential Religious Practice doctrine

- It has allowed the **Court to narrow the extent of safeguards available to religious customs** by directly impinging on the autonomy of groups to decide for themselves what they deem valuable, violating, in the process, their right to ethical independence.
- It has also **negated legislation that might otherwise enhance the cause of social justice** by holding that such laws cannot under any circumstances encroach on matters integral to the practice of a religion.
- For example, in 1962, the Court struck down a Bombay law that prohibited excommunications made by the Dai of the Dawoodi Bohra community when it held that the power to excommunicate is an essential facet of faith and that any measure aimed at social welfare cannot reform a religion out of its existence.

- What constitutes an essential practice shall be **decided by the judges or members of the community?** The doctrine lead the court into an area that is beyond its competence.
- There is **no fixed parameter for deciding the essential practices**, in some cases they have relied on **religious texts** to determine essentiality, in others on the **empirical behaviour of followers**, and in yet others, based on **whether the practice existed at the time the religion originated.**

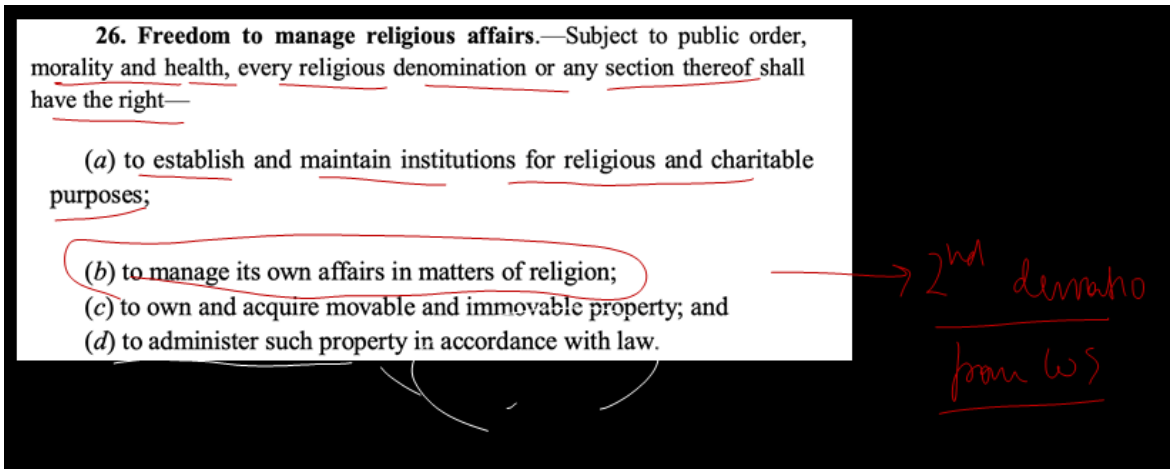
A principle of anti-exclusion: Justice Chandrachudh

The essential practices test is not without alternatives. In his concurring opinion, in the case concerning the ban on entry of women into the Sabarimala temple, Justice D.Y. Chandrachud proposed one such doctrine: a principle of anti-exclusion.

Its application would require the Court to **presume that a practice asserted by a religious group is, in fact, essential to the proponents of its faith.** But regardless of such grounding, **the Constitution will not offer protection to the practice if it excludes people on grounds of caste, gender, or other discriminatory criteria.** As Justice Chandrachud put it, "the anti-exclusion principle allows for due-deference to the ability of a religion to determine its own religious tenets and doctrines. At the same time, the anti-exclusion principle postulates that where a religious practice causes the exclusion of individuals in a manner which impairs their dignity or hampers their access to basic goods, **the freedom of religion must give way to the over-arching values of a liberal constitution".**

But until such time as the essential practices doctrine is overruled by a Bench of more than seven judges, the Court is bound to apply its tenets. Perhaps that reassessment will happen when a nine-judge Bench constituted in the review petitions filed against the judgment in the Sabarimala case passes judgment. For now, any Court hearing a matter touching upon a matter of faith has the unenviable task of acting not merely as an expert on law but also as an expert on religion.

Art. 26 Freedom To Manage Religious Affairs



Art. 26 Freedom To Manage Religious Affairs

While Art. 25 confers the particular rights on all persons, Art. 26 is **confined to religious denominations**, or any section thereof. Art. 26 thus guarantees collective freedom of religion.

The term 'religious denomination' in Art. 26 **means a religious sect having a common faith and organisation and designated by a distinctive name.** The words "religious denomination' take their colour from the word 'religion'. Therefore, in case of a denomination, there must be a common faith of the community based on religion, and the community members must have common religious tenets peculiar to themselves.

To form a religious denomination, three conditions must be fulfilled:

- It is a collection of individuals who have a **system of beliefs** which they regard as conducive to their spiritual well-being;
- They have a **common organisation;**
- Collection of these individuals has a **distinctive name.**

"The righ**t to establish and maintain educational institutions may also be sourced to Article 26(a),** which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health

The words 'establish' and 'maintain' must be read conjunctively. A religious denomination can claim to maintain only those institutions which it has established. Even when a temple is being maintained by a religious denomination, but if it has not established by the same, Art. 26(a) does not apply.

Art. 26 Freedom To Manage Religious Affairs

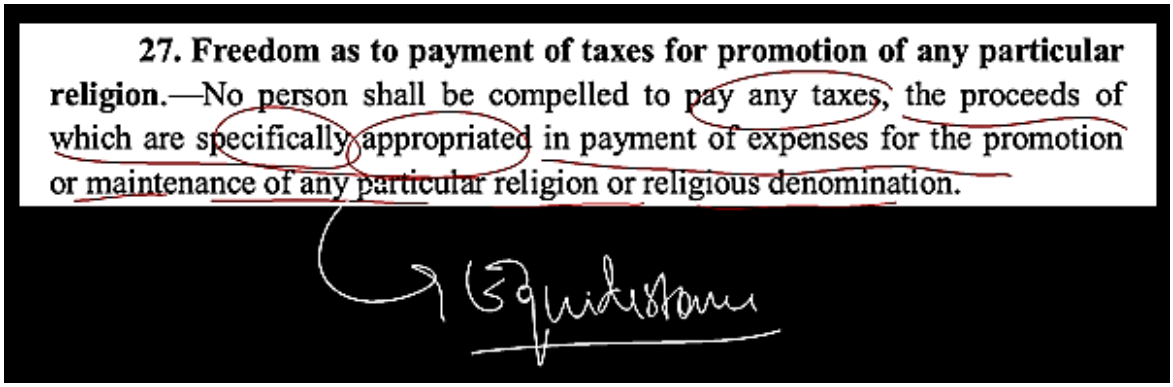
The term **'matters of religion' used in Art. 26(b) is synonymous with the term 'religion' in Art 25(1).** It thus includes not only religious beliefs but also such religious practices and rites as are regarded to be an essential and integral part of religion.

Under Art. 26(c), a religious denomination can acquire property; under Art. 26(d), it can administer such property according to law.

Reading Arts. 26(b) and 26(d) together, it **becomes obvious that a distinction has been drawn between the right 'to manage its religious affairs' by a religious denomination and its right 'to manage its property'.** In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed Fundamental Right which cannot be taken away by any law (except for health etc.--the overall condition). On the other hand, as regards administration of property, which a religious denomination is entitled to own and acquire, it undoubtedly has the **right to administer such property only in accordance with law.**

Any law which takes away the right of administration altogether from the religious denomination and vests it in any other body or a secular authority, would amount to violation of the right which is guaranteed by Art. 26(d).

Article 27


27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 27: No taxation to promote a religion

To maintain the secular character of the Indian polity, not only does the Constitution guarantee freedom of religion to individuals and groups, but it is also against **the general policy of the Constitution that any money be paid out of the public funds for promoting or maintaining any particular religion.** Accordingly, Art. 27 lays down that no person "shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination".

This provision, it has been held, does **not invalidate levy of a fee to provide some services.** Thus, a fee can be levied on pilgrims to a religious fair to meet the expenses of the measures taken to safeguard the health, safety and welfare of the pilgrims. Such a legislation is not invalid even under Art. 25(1) which permits legislation for promoting "health, morality and public order."

Similarly, to meet the expenses of government supervision over the administration of religious endowments, a fee can be levied on them. A State cannot levy a tax for the purpose, as there is no such entry in List II or List III. **Only Parliament can levy such a tax.**

Article 27: No taxation to promote a religion

The Government of India agreed to support a cultural programme for celebrating 2500th Nirvana (Salvation) Anniversary of Lord Mahavir. The Delhi High Court held in Suresh Chandra v. Union of India, that this did not violate Art. 27, as the programme did not promote Jain religion. Art. 27 prohibits favouring of one religion over the other.

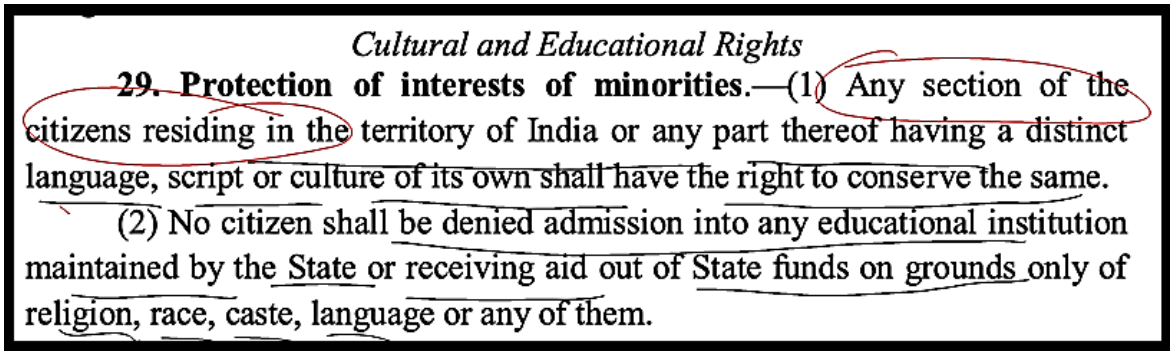
The **Central Government has been consistently honouring the memory of great sons of India** impartially and irrespective of the religion to which they belong. 'Religion' is confined to the essential doctrine and the necessary ceremonies associated with it and it does not include activities of a secular or cultural nature. Publication of books containing the life and teachings of Lord Mahavir and the display of his sayings on monuments do not amount to religious instruction or promotion of Jain religion.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

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

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

Article 29: Protection of interests of minorities



Cultural and Educational Rights

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

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

Article 29: Protection of interests of minorities

Article 29 has the title of "protection of interests of minorities" however, it is to be noted that the term **"minority" is not used in Article 29's body.**

This was the intention of the Drafting Committee of the Constituent Assembly. The Advisory Committee proposed to include the term 'minority' in the body of the provision, but the Drafting Committee had it **changed to "sections of citizens" to enable a wider interpretation**. They wanted the clause to be widely interpreted to include even Maharashtrians in Bengal as a minority if a case in point begs of it.

In Ahmedabad St. Xavier's College Society v. State of Gujarat (AIR 1974 SC 1389), the bench went one step further and held **that even majorities could claim protection under Article 29 of the Constitution of India, even though the term 'minorities' is mentioned in the title of the provision.**

The "right to conserve" granted under Article 29(1) has been held under Jagdev Singh Sidhanti v. Partap Singh (AIR 1965 SC 183,188) to include the **freedom to agitate for the protection of their language, meaning 'political region.'**

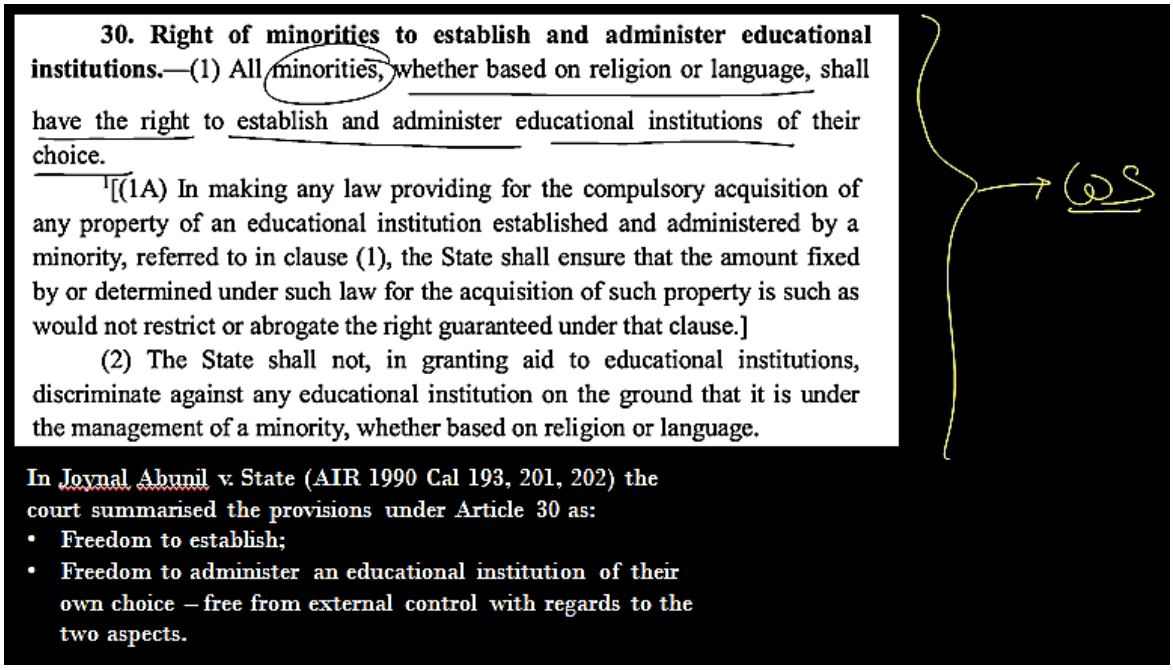
Article 29: Protection of interests of minorities

The benefit of Art. 29(2) is not confined only to minority groups but extends to all citizens whether belonging to majority or minority groups in the matter of admission to the educational institutions maintained or aided by the State.

Article 29(2) is broad and unqualified. It confers a special right on all citizens for admission into the state maintained or aided educational institutions. **To limit this right only to minority groups will amount to holding that the citizens of the majority group have no right to be admitted into an educational institution for the maintenance of which they contribute by way of taxes.**

To enforce the restrictions laid down in Art. 29(2), a High Court can issue a writ under Art. 226 even against a private institution receiving aid from the state.11 Art. 29(2) makes it very clear that a private institution receiving aid from the state cannot discriminate on grounds of religion, caste, etc.

Article 30:



Indian model of secularism

Equality:

- **14 -** The State shall not deny to any person **(Religious Neutrality)**
- **15 (1) -** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. **(Religious Neutrality)**

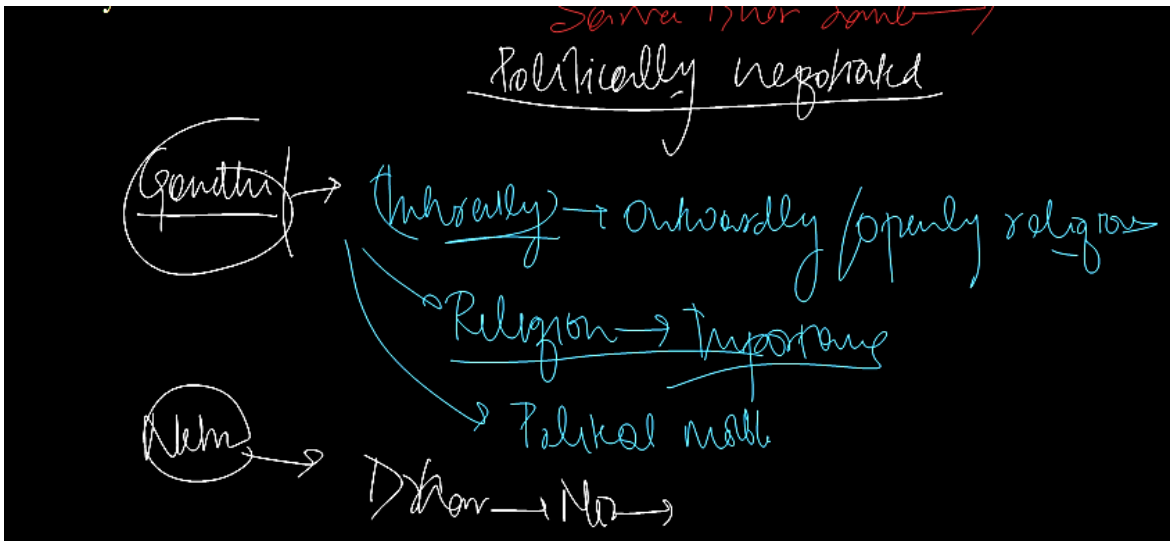
Right to freedom:

- **25 -** Freedom of conscience and free profession, practice and propagation of religion. **(Between individual and state, Freedom of conscience)**
- **26 -** Freedom to manage religious affairs - **(state and religion)**
- **27 -** Freedom as to payment of taxes for promotion of any religion. **(Religious Neutrality)**
- **28 -** Freedom as to attendance at religious instruction or religious worship in certain educational institutions**.—(Religious Neutrality)**

Cultural and Educational Rights (Community specific):

- **29 -** Cultural and Educational Rights
- **30 -** Right of minorities to establish and administer educational institutions.

History of Secularism in India



History of Secularism in India

In the 1920s, the political project of fashioning secularism was accompanied by an overlapping project, that of **commitment to the rights of minorities to their own culture and religion.** This commitment formed part of the Nehru Constitutional Draft of 1928, the Karachi Resolution of 1931, and later documents issued by the Indian National Congress. Admittedly the commitment to minority rights, like the commitment to secularism, initially stemmed from **pragmatic considerations—to stave off the demand for separate electorates based on religion in post Independent India.** But in time minority rights, like secularism, became a credo of faith for those Congress leaders who sought to conceptualize a society in which all religious communities would be able to live without the constant danger of being swamped by the majority.

In one way the **Partition of India signified the failure of the secular/minority rights project.** The Congress leaders failed to convince the leadership of the Muslim League that the members of the Muslim community would be armed with equal citizenship rights as well as constitutional protection to their own religion in post-Independence India. But in another and a more significant sense, **the secular project can be considered a success.** For, despite the fact that the Constituent Assembly met amidst wide-scale rioting, atrocities heaped by one religious community on another, massacres, and looting of property, and despite the fact that the country had been partitioned in the name of religion, the makers of the Constitution stood firm in their commitment to secularism as the unstated but explicit principle underlying the Constitution. It was not even considered necessary to mention secularism in the Constitution. It was only in 1976 that the Emergency regime of Prime Minister Indira Gandhi inserted the word secular along with the word socialist into the Preamble of the Constitution.

History of Secularism in India - Gandhi

By the 1920s, at the very time when Mahatma Gandhi set out to forge a **major mass movement that could take on colonialism, the politicization of religious identities,** whether in the form of the Muslim League or that of the Hindu Mahasabha, could have hampered the project of building a pan-Indian freedom struggle.

Mahatma Gandhi looked for a principle that could bind people who subscribed to different faiths together, and which could weld them into a mass movement. This principle he found in the doctrine of **sarva dharma sambhava,** which can be read as **'equality of all religions'** or **'all religions should be treated equally'.**

Given Mahatma Gandhi's religiosity, the notion of sarva dharma sambhava was not only a pragmatic principle designed to bring people together; it was also a **normative principle that recognized the value of religion in people's lives.** On the other hand, for Pandit Nehru, profoundly uneasy as he was with the kind of political passions that religious identities had the power to evoke, secularism meant something else altogether.

History of Secularism in India – Nehru

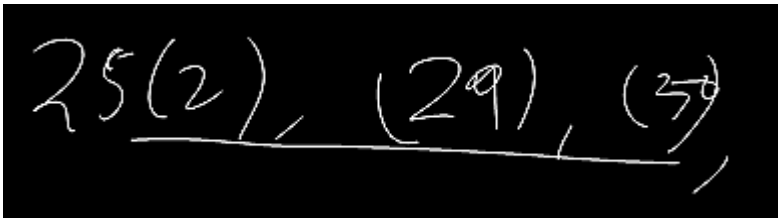
Nehru's preferred notion of secularism was that of **dharma nirpekshata, or that the state would not be moved by religious considerations in enacting policy. It is therefore not surprising that public debate on the issue has been polarized between those who subscribe to the Nehruvian meaning of secularism, and those who subscribe to the meaning that Gandhi gave to the concept.**

However, that Pandit Nehru continued to believe that **the state could abstract the domain of policymaking from that of religion is debatable.** For, the recurrent communal riots which culminated in the frenzy of the Partition proved that religious prejudices, more than religious sensibilities, had become a constituent feature of Indian politics.

To ignore this would have been bad historical understanding as well as bad politics. In the process of coming to terms with this unpalatable reality of Indian politics, Pandit **Nehru's understanding of secularism came much closer to the notion of sarva dharma sambhava.** Nehru, who by that time had become India's first Prime Minister, made this clear on various occasions.

- First, secularism did not mean 'a state where religion as such is discouraged. It means freedom of religion and conscience, including freedom for those who may have no religion'.
- Second, for Nehru, the word secular was not opposed to religion!

Secularism and Equidistance??



Secularism and Equidistance??

Scholars generally agree that the Indian version of secularism is **grounded in the principle of equality of all religions**, and not in that of the separation of the state and religion.

- What does it mean to treat religious groups equally?
- Does the state stay away from religious beliefs and practices equally?
- Or does it intervene in the internal affairs of religious groups for whatever reason, equally?
- Does not the equal treatment of religious groups reproduce the empirical fact that one of these religious groups is numerically dominant and culturally hegemonic, and that minority groups are at risk because they are vulnerable to assimilation on the one hand and cultural domination of the majority on the other?
- Does equality, in other words, imply that special protection should be granted to the culture and religion of minority groups to protect them against advertent or inadvertent assimilation?
- What exactly does equality imply?

Secularism and Equality

DE Smith and his critique of Indian model

D.E. Smith (1963) suggested that the liberal democratic theory of secularism carries three connotations:

(a) liberty and freedom of religion,

(b) citizenship and the right to equality, non-discrimination, and neutrality, and

(c) the separation of state and religion.

The problem is that immediately after Independence, the government set out to reform the personal laws of the Hindu community through a series of legislations known collectively as the **Hindu Code Bill.** And through the Constitution and a series of parallel legislations, the government set out in a determined **fashion to reform the Hindu caste system.** In other words, government intervention in the affairs of religious groups proved to be selective. **Whereas the Hindu community was socially reformed through legislation from above, the personal laws of the minorities were left alone.**

The first substantive debate on secularism emerged in the aftermath of precisely this development. **D.E. Smith (1963) suggested that the liberal democratic theory of secularism carries three connotations:**

(a) liberty and freedom of religion,

(b) citizenship and the right to equality, non-discrimination, and neutrality, and

(c) the separation of state and religion.

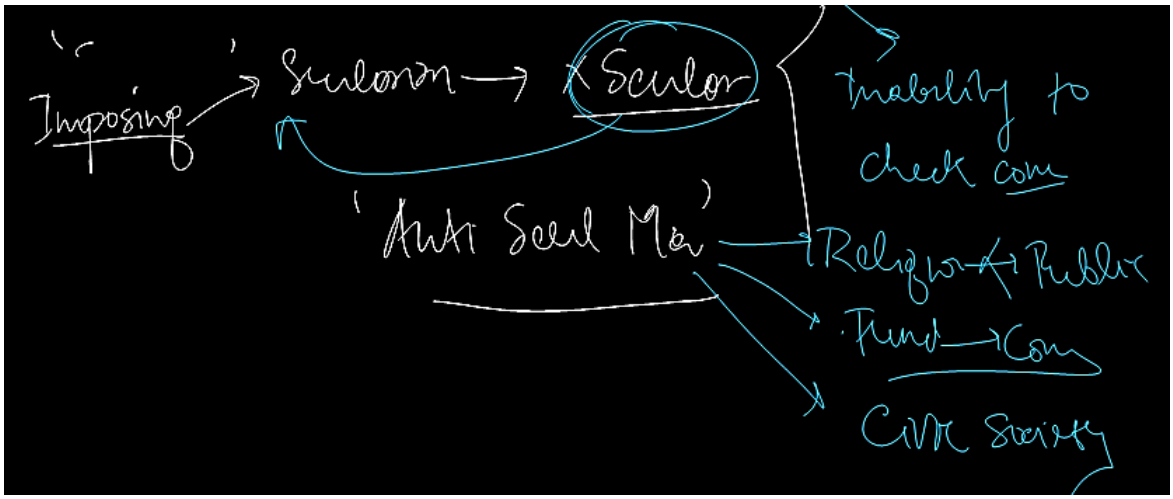
In India, argued Smith, the first two principles have been incorporated into the Constitution both as the basis for secularism, and as important constitutional values in their own right. However**, the right of the state to intervene in the affairs of religion have deeply compromised these two principles.** The core of the problem of Indian secularism, argued Smith, lies in the non-separation of state and religion. Therefore, he concluded that India has some, but not all, the features of a secular state.

The Hindu right, capitalizing upon the selectiveness with which Congress governments have intervened in religious affairs, accused the government of **practicing pseudosecularism**. It is not that the Hindu right dismisses secularism. The argument goes deeper; if secularism means equality of all religions, then minority rights and retention of personal laws violate the basic precepts of secularism.

The Hindu right has no problem with secularism as the doctrine of strict equality between religious groups, till we recollect that the doctrine of formal equality is profoundly indifferent to background inequalities.

Secularism, Uneven State Intervention, and Minority Rights

The dilemma**: if the state adopts secularism as separation, then minorities cannot be protected; however, if it interprets secularism as equidistance, its own practices violate the norm.**



Secularism, Uneven State Intervention, and Minority Rights

Matters came to a head in the mid-1980s with the **Shah Bano case.** The Supreme Court, in effect, had to pronounce on the relation between Sections 125 and 127 (3) of the CrPC on the one hand, and the relationship between the CrPC and personal laws on the other. On 23 April 1985, a Supreme Court Bench under Chief Justice Chandrachud confirmed the judgement of the MP high court, and stated that Article 125 of the CrPC overrides all personal laws, and that it is uniformly applicable to all women. The Court thus subordinated not only Section 127, 3(b) of the CrPC to Section 125, but also personal laws to the civil code. The Bench also called upon the Government of India to enact a UCC under Article 44 of the Constitution.

As expected, the leaders of the Muslim community and in particular the ulama opposed the judgement on the ground that it constituted a disregard for the personal laws of the Muslim community, which are based on the Shariat. In February 1986, the government introduced a Bill in Parliament that sought to exempt Muslim women from the protection provided by Article 125 of the CrPC.

The passage of the Bill aroused massive demonstrations as liberal, Left, and feminist sections, who considered the Bill regressive and violative of gender justice, mobilized against it. In fact, the Hindu right argued even more vociferously than the feminists about the need to subordinate the personal laws of the minority to a UCC in order to secure basic rights for all women.

Those who defended the rights of the minorities to their own cultures and community identity were frankly on a weak wicket. How could the government, or the defenders of secularism, justify the retention of personal laws of the minorities when these violated the basic precepts of gender justice? Second, why did the state not interfere in personal laws in the cause of social reform when it had done so in the case of the Hindu majority?

In the process, defenders of secularism were laden with two more theoretical tasks: one, to justify selective state intervention in religion and square this with secularism and two, fit minority rights into the secular project.

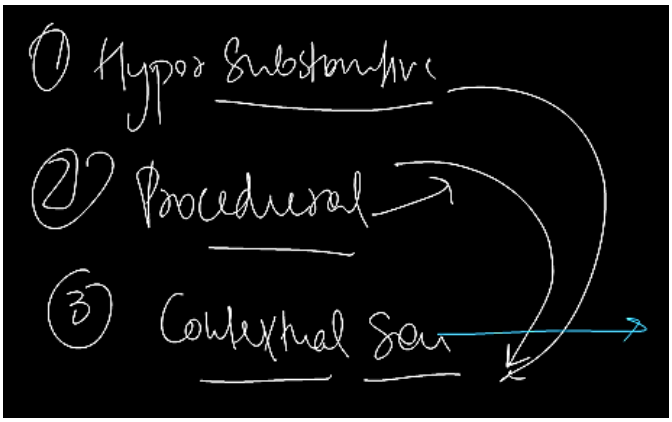
Partha Chatterjee: The dilemma is the following: **if the state adopts secularism as separation, then minorities cannot be protected; however, if it interprets secularism as equidistance, its own practices violate the norm.**

A better way to protect minorities, suggested Chatterjee, is through the establishment of the norm of toleration.

Democratic accountability within groups, in order to build in minority rights into the principle of toleration

Indian Secularism/ Contextual Secularism/ Principled Distance

Rajeev Bhargav



Indian Secularism/ Contextual Secularism/ Principled Distance

Bhargava came to an understanding of why secularism **necessarily involves differential treatment for different groups from another theoretical direction.** He begins his argument by distinguishing between **three kinds of secularism.**

- The first kind, **hyper-substantive secularism,** seeks to bring about a separation between religion and the state in the name of a package of ultimate substantive values, for example autonomy, development, or reason.
- The second kind of secularism, **ultra-procedural secularism**, separates religion from the state in the name of purely impersonal, value-free, rational procedures and rules, such as bureaucratic and technocratic rationality.
- The third kind, and one that Bhargava clearly prefers over the other two, is **contextual secularism.**

Contextual secularism **implies principled or non-sectarian distance, or non-absolutist separation between the state and religion.** In other words, **this avatar of secularism combines substantive values and procedures, without any commitment to the priority of either.** Bhargava argues that contextual secularism, which is enshrined in the Constitution, enjoins the state to **exclude religion for some purposes**, as for instance in the decision to exclude separate religious electorates, **and to include it for others, as, for example, in accepting personal laws.**

But contextual secularism is always guided by **non-sectarian principles**, which are consistent with a set of values constitutive of a life of equal dignity for all. Admittedly, in recent times sectarian considerations have become important, as Bhargava accepts, and religion has entered politics where it should not have been allowed to do so, and excluded when much could have been achieved by inclusion. Yet contextual secularism is the only appropriate form of secularism in India.

Indian Secularism / Contextual Secularism / Principled Distance

The state may not be able to relate to every religion in exactly the same way; **it must ensure that the inclusion or exclusion of religion in politics is guided by non-sectarian principles,** which are consistent with a set of values constitutive of a life of equal dignity for all.

In sum, secularism for Bhargava is

1. fully compatible with the defence of differentiated citizenship rights;
2. the secularity of the state does not necessitate strict intervention, non-interference, or equidistance, but any or all of these as the case may be.

In other words, we should shift the debate away from secularism per se to the **antecedent moral principles from which secularism derives its specific meaning.** The antecedent moral principle that informs the practice of secularism as equality among religions is that of equality. However, if we begin to look closely at equality, we find that it is by no means a self-evident concept. Whereas in a purely formal sense equality means that each should be treated equally, this interpretation ignores the fact that the constituency for equality is supremely unequal. If we apply formal equality in an unequal society, we land up reproducing inequality, which is something the egalitarians have been warning against. Equally procedural equality can facilitate the subordination of minorities to majorities.

There is only one way out of reproducing inequality through equal treatment, and that is to **treat different groups differently,** or according to their specific circumstances. In this sense, **equality of religion would mean protecting those groups whose identities and religious beliefs are under constant threat of being subordinated to the majority.** Of course, this would mean that we add to the original egalitarian agenda, which is closely involved with the notion of redistribution, the idea of recognition. It also means that we think out in detail the relationship between group rights and individual rights. **Individuals need access to their cultures/religious affiliations because this gives them their basic system of meaning.** However, groups and their rights are important only insofar as they are important for individuals. Therefore, individual rights cannot be subordinated to group rights.

The Crisis of Secularism

Secularism and Secularization

Much of the confusion is caused by the fact that the concept of secularism tends to merge into that of **secularization. Secularism, it is often presumed, follows or accompanies the secularization of society,** or that secularization is an essential prerequisite for secularism as state policy. **Hereupon a number of scholars have argued that secularism is simply inappropriate for a deeply religious country like India.** Yet secularism and secularization are to some extent independent of each other, and one need not necessarily follow the other. **Kemal Attaturk** did, after all, establish a secular state in religious Turkey.

It is, by now, generally agreed that the **assumed binary distinction between secularized and religious societies is an optic illusion**, and that the distinction is a matter of degree. Secularization does not necessarily imply that people have become areligious or antireligious, or that religion has disappeared from both the public domain and the domain of personal belief. What it does imply is that **religion is just one, and not necessarily the most important, way in which people understand themselves and their relationships.** Religion may continue to matter, but the way in which it matters has changed from earlier times, when religiosity provided the overarching guide to everyday life.

For with the coming of the age of reason and the age of science, **individuals no longer needed to refer to a body of sacred beliefs,** which were by reason of sacredness considered outside the purview of rational investigation, to live their lives.

They had other intellectual resources to help them do so, in the form of knowledge provided by science and knowledge provided by reasoned and rational thinking. Therefore, since religion had lost its capacity to provide a comprehensive worldview, it was demoted.

Secularism and Secularization

The secularization of society is of some interest to sociologists, but it also holds important implications for politics and state policy.

- First, on the assumption that rational individuals are able to either balance religious and non-religious considerations, or subordinate the former to the latter, **the state can leave religious beliefs and institutions well-nigh alone.** It does not need to keep them under check.
- Second, **the state no longer requires the sanction of religion to legitimize its power** or translate power into authority. Correspondingly, since the public domain has been cleared of religion, **the state can subordinate religious projects to secular ones**, and ignore the salience of religion in people's lives as long as these beliefs do not contravene the core secular values of that society.

Secularism in a secularized society is, in other words, **premised upon the separation of the public and private spheres of individual and collective existence.** Therefore, it is **relatively easy to essay a wall of separation between the state and religion,** or assert the dominance of the secular over the sacred in public life.

The Crisis of Secularism

The inability of the state to prevent communal riots, and the role of state officials in fomenting communalism, has necessarily caused a great deal of consternation and apprehension.

Prof Ashish Nandi:

- Secularism is mindless import from west.
- **'Anti-secularist manifesto'** there should be active dialogue between religion.
- Recommends
    - Tradition of tolerance.
    - Educational institutions should promote religious education people should come to know what is there in the religion.

TN Madan:

- Madan cites three reasons for this belief:
    - one, that the majority of people living in the region are active adherents of some religious faith;
    - second, Buddhism and Islam have been declared state religions;
    - Third, **secularism is incapable of countering religious fundamentalism.**
- **Secularization is pre-requisite for the success of secularism** hence politics and state in south asia may not remain secular.
- For the inhabitants of the region, religion as the doctrine of overarching ends is more important than any other social or cultural factor. This is because religion establishes the place of individuals in society, and because it gives meaning to their lives. It is both moral arrogance and political folly to impose the ideology of secularization on believers.

In answering this question, both Nandy and Madan raised two sets of distinctions to the forefront of the debate:

- that **between secularism and secularization**, and that between the **state and civil society.**
- If India's civil society is deeply religious, then this poses a problem for secularism as a state project.

Therefore, **both theorists sought the answer to communalism in the practices of civil society;** particularly that of tolerance. Nandy dismissed secularism altogether, Madan suggested that state practices of secularism have to be based on the recognition of religious practices. This has to be buttressed by discovering and strengthening the internal resources of religious pluralism and tolerance. Tolerance is too important to be left only to the state.

Criticism of Indian model

- **Advani:**
    - calls constitutional secularism as Congress secularism or as “pseudo secular” (based on minority appeasement)
- **Arun Shouri**
    - In secularism, it is the individual and not the community as the basis of rights.

- Secular state should follow the principle of non-discrimination.

- **Pratap Bhanu Mehta:**
  - principled distance model is asymmetrical
  - rational only in theory
  - legitimizes vote bank politics with distinctive name
  - it is casting secularism to hide communalism
  - leads all communities insecure all the time
- **Romilla Thapar: (marxist)**
  - Present model is weak model, fails to counter communalism
  - Hence bold model is needed
- **Prof Ashish Nandi**
  - Neo-gandhian
  - secularism is mindless import from west
  - 'anti-secularist manifesto' there should be active dialogue
  - educational institutions should promote religious education people should come to know what is there in the religion

Way Forward

- Need for public debate on secularism
- Strict application of constitutional norms.
- Electoral reforms - use of religion
- Zero tolerance towards human rights violation
- Judicial reforms, criminal justice police reforms.
- Constructive role of media

Freedom to Assemble: Arts. 19(1) (b) and 19(3)

Article 19(1) (b) guarantees to the citizens of India the right to assemble peaceably and without arms.

Under Art. 19(3), however, the state can make any law imposing reasonable restrictions on the exercise of this right **in the interests of public order, and sovereignty and integrity of India.**

To some extent, there is common ground between Arts. 19(1)(a) and 19(1)(b). For example, **demonstrations, processions and meetings considered under Art. 19(1) (a) also fall under Art. 19(1) (b)** for a demonstration also amounts to an assembly and, therefore, the same principles apply under both Articles.

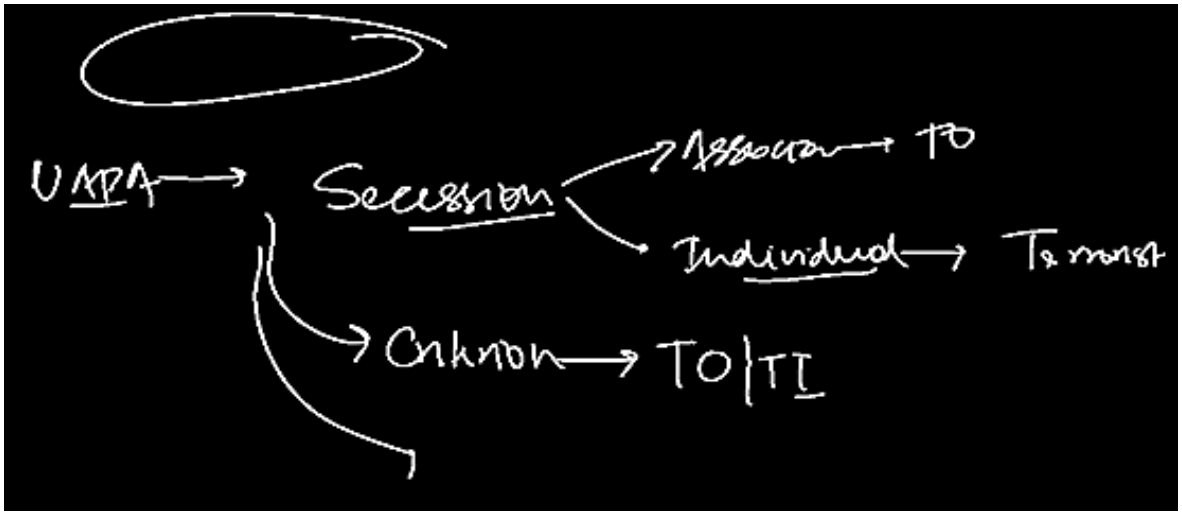
The **right to strike is not available under either of these Articles**. Article 19(1)(b) does not confer on any one a right to hold meetings in government premises. Therefore, Railways can validly prohibit holding of meetings in their premises either within or outside office hours. **The right of assembly cannot be exercised on the property of somebody.** Railways are entitled to enjoy their properties in the same manner as any private individual subject to such restrictions as may be placed on them by law or usage.

Freedom To Form Association: Arts. (19)(1)(c) And 19(4)

Article 19(1) (c) guarantees to the citizens of India the **right to form associations or unions.** Under Art. 19(4), reasonable restrictions in the interests of **public order or morality or sovereignty and integrity of India may be imposed on this right by law.**

The right to form associations is the very **lifeblood of democracy**. Without such a right, **political parties cannot be formed**, and without such parties a democratic form of government, especially that of the parliamentary type, cannot be run properly. Hence the Constitution guarantees the right to form associations subject to such restrictions as can be imposed under Art. 19(4)

The Unlawful Activities (Prevention) Act, 1967 (Act)



The Unlawful Activities (Prevention) Act, 1967 (Act) was enacted to provide for more effective **prevention of certain unlawful activities of individuals** and associations, and for dealing with terrorist activities, and related matters. Provisions of the act:

- **Act defines "Unlawful activity" as** "any action taken by individual or association that leads to cession of a part of the territory of India, questions the sovereignty of India or disrupt the integrity of India etc.
- Powers with the government: Under the Act, Central government can **declare a person or an organization as a terrorist/ terrorist organisation,** if it/ he:
    - commits or participates in acts of terrorism,
    - prepares for terrorism,
    - promotes terrorism, or
    - is otherwise involved in terrorism.
- Government can impose **all-India bans on associations** which are declared 'unlawful' under the Act.
- Both Indian nationals and foreign nationals can be charged under the Act. Also, Act holds offenders accountable in the same manner if crime is committed on foreign land outside India.
- **Investigating powers:** Cases can be investigated by both State police and National Investigation Agency (NIA).
- **Appeal mechanism:** It provides for tribunal to review or to hear an appeal against the ban.
- **Act allows seizure of property connected with terrorism** without taking approval of Director General of Police in case investigation is conducted by an officer of National Investigation Agency (NIA)

The Government of India **issued notifications under the Act on December 10, 1992,** declaring the following bodies as unlawful for two years:

- Vishwa Hindu Parishad (VHP);
- Rashtriya Swayam Sevak Sangh (RSS); Bajrang Dal;
- Islamik Sevak Sangh and Jamaat-e-Islami Hind.

Challenges

- **Vague and unclear definitions:** Act does not define terrorism and definition of 'unlawful activity' is such that it covers almost every kind of violent act be it political or non-political.
- **Excessive discretionary powers:** No objective criterion has been laid for categorization of an individual as a terrorist and the government has been provided with **"unfettered powers" to designate anyone** as a terrorist.
- **Challenge to fundamental rights like Article 14, 19(1) (a), 21:** Act does not provide any opportunity to the individual termed as a terrorist to justify his case before the arrest. Those arrested under Act can be imprisoned up to 180 days without a charge sheet being filed.
- **Contrary to the principle of 'innocent until proven guilty:** Act violates mandate of Universal Declaration of Human Rights and International Covenant on Civil and Political Rights which recognize this principle as a universal human right.
- **Low conviction rate:** Only 2.2% of cases registered under the UAPA between 2016 and 2019 resulted in conviction by courts.
- **Issue in the appeal process:** Act provides for appeal, but government itself will set up three-member review committee, two of whom can be serving bureaucrats.

Freedom of Movement and Residence: Arts. 19(1) (d), (19)(1)(e) AND 19(5)

- Article 19(1) (d) guarantees to every citizen the right to move freely throughout the territory of India.
- Art. 19(1) (e) guarantees to a citizen the right to reside and settle in any part of India.
- According to Art. 19(5), however, the State may impose **reasonable restrictions on these rights by law in the interests of general public or for the protection of the interests of any Scheduled Tribe.**

These constitutional provisions guarantee to the Indian citizens the right to go or to reside wherever they like within the Indian Territory. A citizen can move freely from one State to another or from one place to another within a State. **These rights underline the concept that India is one unit so far as the citizens are concerned.**

The rights of movement [Art. 19(1)(d)] and residence [Art. 19(1)(e)] go together in most cases for when a person is asked to quit a particular place, both these rights are simultaneously affected.

Therefore, most of the cases fall both under Arts. 19(1)(d) and (e) simultaneously, and the same principles are followed in the matter of restrictions on any of these two rights, and hence these are being discussed together.

Freedom to Carry On Trade and Commerce: Arts. 19(1) (g) AND 19(6)

Article 19(1) (g) guarantees to all citizens the right to practice any profession, or to carry on any occupation, trade or business.

Under Art. 19(6), however, the state is not prevented from making a law imposing, in the interests of the general public, reasonable restrictions on the exercise of the above right. Nor is the state prevented from making –

1. law relating to **professional or technical qualifications** necessary for practising a profession or carrying on any occupation, trade or business; or
2. law relating to the carrying on by the state, or by corporation owned or controlled by it, of any trade, business, industry or service**, whether to the exclusion, complete or partial, of citizens or otherwise.**

The right to carry on trade is very much regulated in India and the Courts have upheld, in course of time, a good deal of social control over private enterprise.

Article 20

TOP STORIES

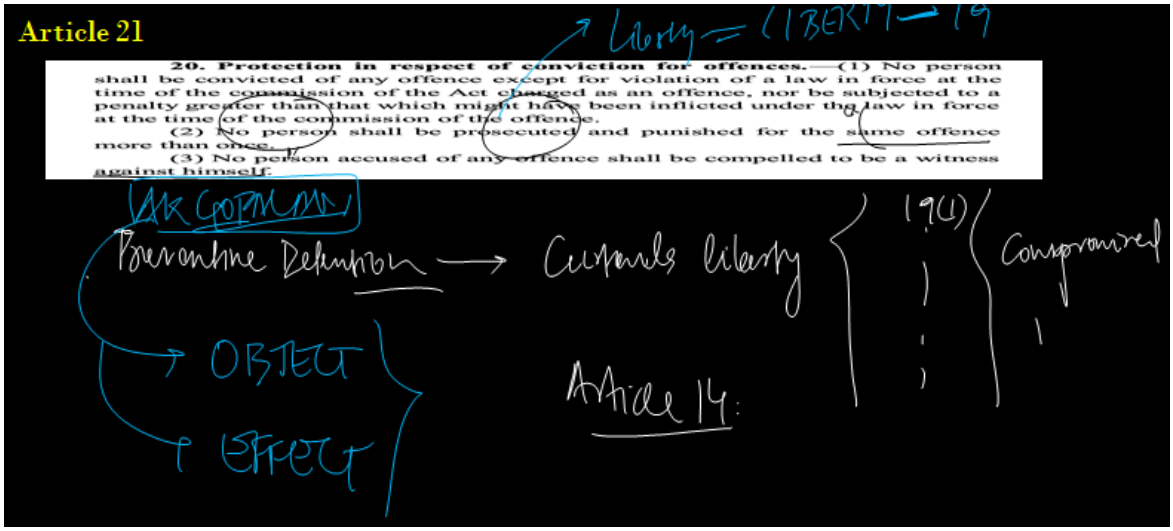
Supreme Court To Hear Plea Challenging Constitutionality Of Unlawful Activities Prevention Act On Oct 18

Padmakshi Sharma 26 Sept 2022 12:20 PM

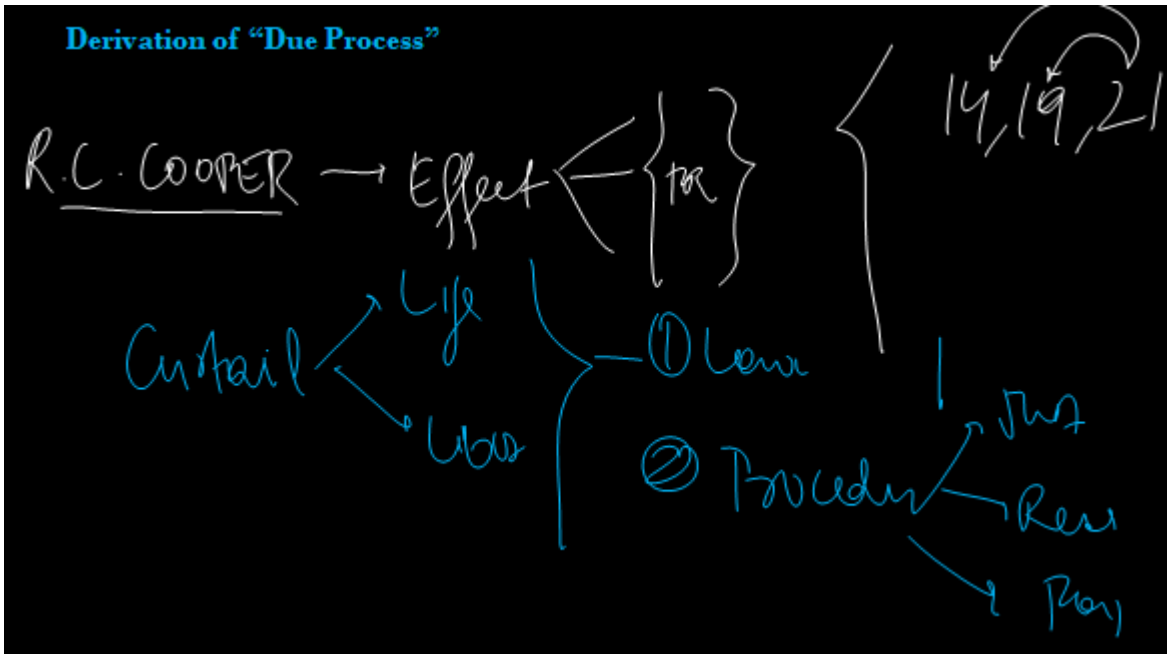
1. **Ex post facto law (Art. 20(1))**
   - A law, which imposes penalties or convictions on the acts already done and increases the penalty for such acts".
2. **Double Jeopardy (Art. 20(2);**
   - "No individual shall be arrested and punished for the same offence more than once,"
3. **Self-incrimination (Art. 20(3).**
   - The person (seeking protection under Clause 3 of Art. 20) must be 'accused of an offence
   - The protection is against 'compulsion to be a witness. (He is compelled to give witness);
   - The compulsion relates to giving evidence 'against himself.

We can observe that each clause of Art. 20 is designed to protect the people against the excess of the legislature, the judiciary and the executive respectively.

These protections are available to both citizens and foreigners for criminal cases only and not for



RELATION BETWEEN ARTICLES 21, 14 AND 19



GOPALAN: 1950

'Mutual Exclusivity Theory

- The validity of the Preventive Detention Act, 1950, was challenged.
- Article 21 envisaged any procedure laid down by a law enacted by a legislature, or whether the procedure should be fair and reasonable.

The word 'law' was used in the sense of lex (state-made law) and not jus. The expression 'procedure established by law' would therefore mean the procedure as laid down in an enacted law."

On the other hand, Fazl Ali J disagreeing with the majority view, held that the principle of natural justice that 'no one shall be condemned unheard' was part of the general law of the land and same should accordingly be read into Article 21.

R. C Cooper Case

Breakdown of Exclusivity & "Effect Test"

The major contribution of this case was the **overruling of the 'Mutual Exclusivity Theory'** which had been practiced for 20 years till this case happened, from A. K Gopalan Vs. State of Madras.

The Court held that just based on technicalities; **it can't reject a petition which clearly shows that the Fundamental Rights of the citizens are being violated.** Just because a Legislative action was also violating the Rights of the company didn't mean that the Court was not having the jurisdiction to protect the Rights of the shareholder of the company as well.

The Court also struck down the **'Object' test and laid down the 'Effect' test.**

The Effect test would now **investigate the Effect of any legislative Act, rather than looking at the objective** with which it had been formulated. Thus, if any Act of the Legislature, even at a remote stage, violated the Fundamental Rights of the citizens, then, it was liable to be struck down.

MANEKA GANDHI: THE NEW APPROACH

Re-interpretation by the Court of the **expression 'procedure established by law' used in Art. 21.** The Court now gave a new orientation to this expression.

Article 21 would no longer mean that law could prescribe some **semblance of procedure**, however arbitrary or fanciful, to deprive a person of his personal liberty. It now means that the procedure must satisfy certain requisites in the sense of being fair and reasonable. The procedure "cannot be arbitrary, unfair or unreasonable". **The concept of reasonableness must be projected in the procedure contemplated by Art. 21.**

The **Court has now assumed the power to adjudge the fairness and justness of procedure** established by law to deprive a person of his personal liberty. The Court has reached this conclusion by holding that **Arts. 21, 19 and 14 are not mutually exclusive,** but are inter-linked.

Impact of Maneka Gandhi

Art. 21 which had lain dormant for nearly three decades has been brought to life by Maneka. Art. 21 has now assumed a **"highly activist magnitude**. According to Bhagwati, J., Art. 21 **"embodies a constitutional value of supreme importance in a democratic society."** Iyer, J., has characterized Art. 21 as "the procedural magna carta protective of life and liberty."

The Supreme Court has described this metamorphosis of Art. 21 as follows: **"Once Gopalan was overruled in R.C. Cooper, and its principle extended to Art. 21** in Maneka Gandhi, **Art. 21 got unshackled from the restrictive meaning placed upon it in Gopalan.** It came to acquire a force and vitality hitherto unimagined. A burst of creative decisions of this Court fast on the heels of Maneka Gandhi gave a new meaning to the Article and expanded its content and connotation".

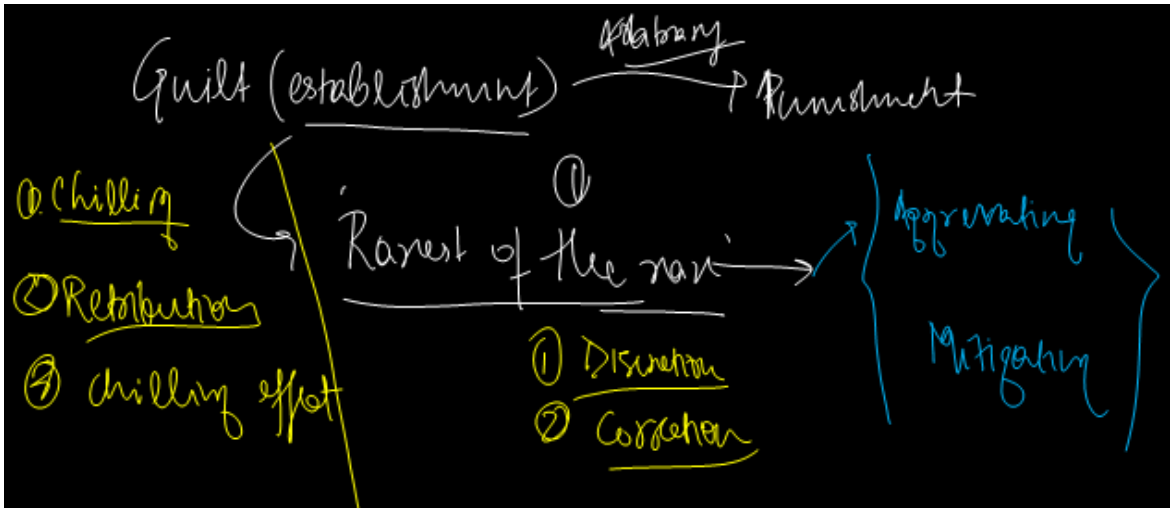
Criminal Jurisprudence:

- The Court has now expressly said **that arrest is not a must** in all cases of cognizable offences.

- There is little doubt that any procedure which keeps such large numbers of people **behind bars without trial** so long cannot possibly be regarded as "reasonable, just and fair"
- **Free legal aid be provided** by the State to poor prisoners facing a prison sentence.
- **Death Sentence**

Death Sentence

> **21. Protection of life and personal liberty.**—No person shall be deprived of his life or personal liberty except according to procedure established by law.



The question of constitutional validity of death sentence has been raised before the Supreme Court several times vis-a-vis **Arts. 14, 19 and 21.**

It has been argued in Jagmohan that the **right to live is basic to the enjoyment of all these freedoms** and, therefore, freedom to live could not be denied by a law **unless it is reasonable and in public interest.**

It was further argued against the constitutional validity of awarding a death sentence that the procedure laid down in the Criminal Procedure Code is **limited only to the finding of guilt.** After the accused is found guilty of the offence of murder, no procedure is laid down for trial of the **factors and circumstances crucial for making the choice by the Judge between awarding capital sentence or life imprisonment.**

The Supreme Court again upheld the constitutional validity of the death penalty in **Rajendra Prasad v. State of Uttar Pradesh.** The Court did agree with the proposition that, as death penalty finally deprives the accused of his right to life and other Fundamental Rights, the validity of such a punishment can be teste with reference to Arts. 14, 19 and 21.

In **Machchi Singh. Vs State of Punjab**, the Supreme Court has emphasized that death penalty need not be inflicted except in the **"gravest of cases of extreme culpability**" and that "**life imprisonment is the rule and death sentence is an exception"**. The Court has emphasized that death sentence is

to be imposed only when **"life imprisonment appears to be an altogether inadequate punishment** having regard to relevant circumstances of crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances."

Further, the Supreme Court in Bachchan Singh has formulated broad **guidelines for determining the "rarest of rare cases"** in which murderers should be awarded the death penalty instead of life imprisonment. The judges must ask themselves two questions for deciding whether a murder case falls in the category of "rarest of rare cases":

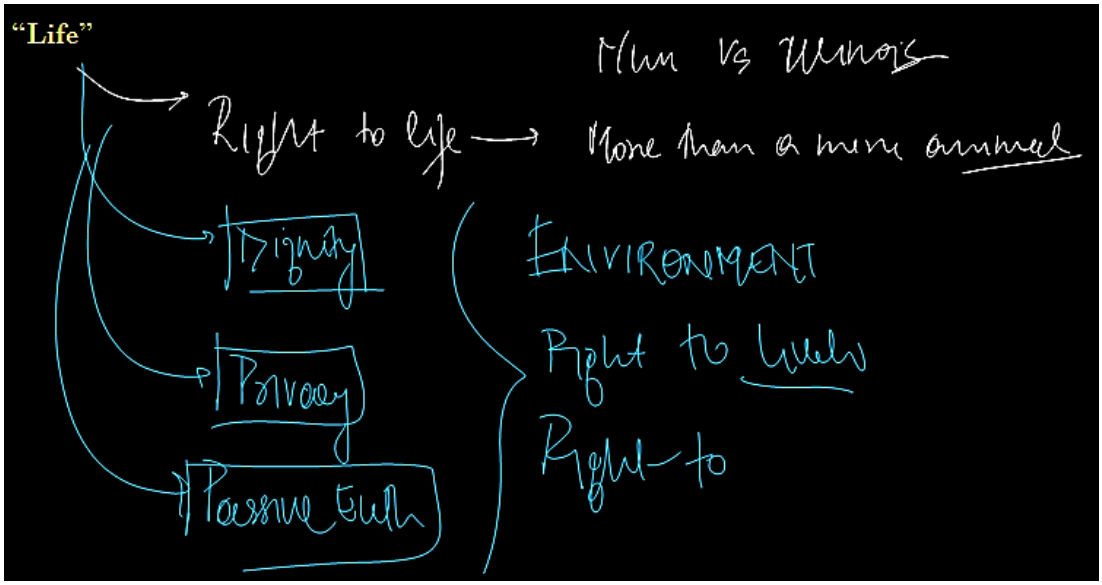
1. Aggravating Circumstances: Whether there is **something uncommon about the crime** which renders a life imprisonment sentence inadequate and calls for a death sentence
2. Mitigating circumstances Whether **"the circumstances of the crime are such that there is no alternative** but to impose the death sentence even after according maximum weightage to the **mitigating circumstances** which speak in favour of the offender?

Merits:

- **John Locke:** If someone violates another's right to life, they forfeit their own right to life.
    - The use of the death penalty is a reasonable method of retribution because those responsible for associated crimes ought to be punished.
- **Principle of Proportionality:** Justice demands that the punishment amount merited should be proportional to the seriousness of the offence.
- Proponents of the death sentence argue that it serves society better because it **has a brutalising effect and significantly deters crime.**
- Cpaital punishment helps police in plea bargaining

Demerits:

- Being irreversible in nature death sentence is opposed by UN
- There is no empirical evidence that the death penalty serves as a greater deterrent than less severe punishments like life in prison.
- When law and order are viewed from the perspective of retributive justice, the **restorative and rehabilitative parts of justice are marginalised.**
- **Media/Public sentiments** often dictates the trials.
- Other issues
    - Lack of concrete framework on aggravating and mitigating factors
    - Lack of procedural fairness due to the discretion in the interpretation of "Rarest of the rare"



"Life"

The Court has often quoted the following observation of Field, J., in Munn v. Illinois, an American case: "By the term **'life' as here used something more is meant than mere animal existence.** The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.

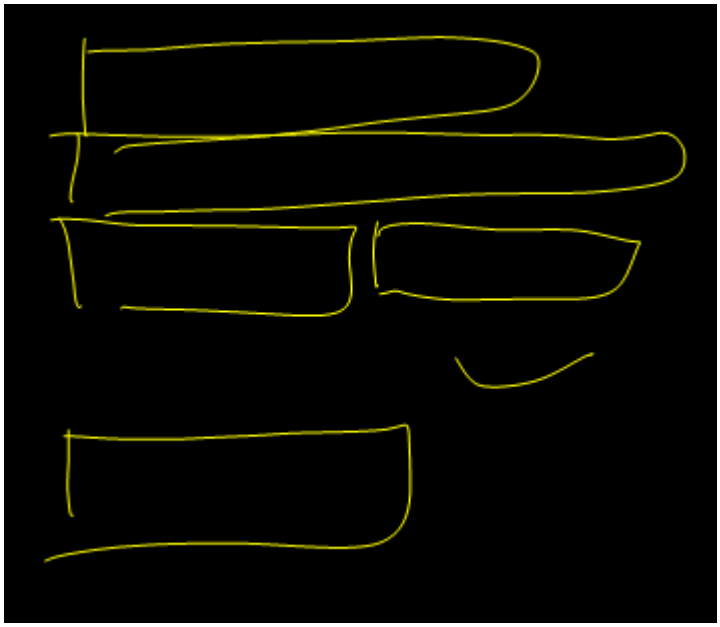
Bhagwati, J., has observed in **Francis Coralie:** "We think that the **right to life includes the right to live with human dignity** and all that goes along with it, namely, the **bare necessaries of life** such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings".

Thus, the inhibition against deprivation of 'life' would **extend to all those faculties by which life is enjoyed.**

In **P. Rathinam v. Union of India**, the Supreme Court has defined 'life' as follows: "The right to live with human dignity and the same does not connote continued drudgery. It takes within its fold some of the fine graces of civilization which makes life worth living and that the expanded concept of life would mean the tradition, culture and heritage of the person concerned

Widening interpretation of "The Life"

- Interpret Art. 21 along with International Conventions
- Interpret Art. 21 along with DPSP



Interpret Art. 21 along with DPSP

In Shantisar Builders v. Narayanan Khimalal Totame, the Supreme Court has observed: **"The right to life under Art. 21 would include the right of food, clothing, decent environment and reasonable accommodation** to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal, it is the bare protection of the body, for a human being, it has to be suitable accommodation which allows him to grow in all aspects-physical, mental and intellectual.

Olga Tellis: Two conclusions emerge from this discussion: one, that the right to life which is conferred by Art. 21 **includes the right to livelihood** and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. But the Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By Art. 21, **such deprivation has to be according to procedure established by law.**

The **Bandhua Mukti Morcha** offers yet another comprehensive interpretation of the concept of living with dignity. Characterizing Art. 21 as the heart of Fundamental Rights, the Court gave it an expanded interpretation--"**to live with human dignity, free from exploitation**. It includes protection of health and strength of workers, men and women, and of the tender age of the children against abuse, opportunities and facilities for children to develop **in a healthy manner and in conditions of freedom and dignity**, educational facilities, just and human conditions of work and maternity relief. These are the minimum conditions which must exist in order to enable a person to live with human dignity. No government can take any action to deprive a person of the enjoyment of these basic rights.

In **Chameli Singh v. State of Uttar Pradesh**, the Supreme Court while dealing with Art. 21 has held that the need for a decent and civilized life includes the right to **food, water and decent environment.** The Court has observed in this connection.

In **CERC v. Union of India**, the Supreme Court has observed: "The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living.

The expanded connotation of life would mean the **tradition and cultural heritage of the persons concerned."**

Environmentalism through Article 21

Apart from several personal rights which the Supreme Court has spelt out of Art. 21, as stated above, the Supreme Court has made a signal contribution to the welfare of the people by using Art. 21 for the improvement of the environment.

The Supreme Court has pointed out that two salutary principles governing environment are **(i) principle of sustainable development, and (ii) precautionary principle**. It was held that **Convention on Biological Diversity** having been acceded to by India, the Government should, in the absence of compelling reasons, keep in view the international obligations while exercising its discretionary powers under Forest (Conservation) Act.

The expansive **interpretation of 'life' in Art. 21 has led to the salutary development of an environmental jurisprudence** in India. Although a number of statutes have been enacted with a view to protect environment against pollution, and an administrative machinery has been put in place for the purpose of enforcement of these statutes, the unfortunate fact remains that the Administration has done nothing concrete towards reducing environmental pollution.

Government is not powerless to ensure compliance with environmental law but because environment authorities were not executing their authority, the **Supreme Court directed them to issue requisite order for closure of defaulting** units continuing to operate in violation of environmental laws.

In this context, the Supreme Court has performed a yeoman service by taking cognizance, in a number of cases, of various environmental problems and giving necessary directions to the Administration. The Court has thus compelled an inactive and inert Administration to make some movement towards reducing environmental pollution. In this way, the Court has promoted a broad social interest. For this purpose, the Court has depended upon **such Directive Principles as those contained in Arts. 47 and 48A as well as on the Fundamental Duty contained in Art. 51A(g) of** the Constitution.54 The right to healthy environment is an internationally recognized essential. For example, the Basel Convention effectuates the Fundamental Rights guaranteed under Art. 21, the right to information and community participation for protection of environment and human health.

Interpret Art. 21 along with Universal Declaration of Human Rights

Another strategy adopted by the Supreme Court with a view to expand the ambit of Art. 21, and to imply certain rights therefrom, has been to **interpret Art. 21 along with Universal Declaration of Human Rights.**

- For example, in **PUCL**, the Court has implied the right of privacy from Art. 21 by interpreting it in conformity with Art. 12 of the **Universal Declaration on Human Rights** and Art. 17 of the **International Covenant on Civil and Political Rights, 1966**.
- Both of these international documents provide for the right of privacy; India is a signatory to both and they do not go contrary to any part of Indian municipal law.

- However, the Court has been careful to point out that individuals rights cannot be absolute in a welfare state. It has to be subservient to the rights of the public at large. Hence financial constraints of the state have also to be considered and recognized when demands for medical and health facilities arise in a welfare state.

Thus, the Supreme Court has introduced a qualitative concept into Art. 21. **Whatever promotes quality of life falls within the parameters of Art. 21.** The right to life connotes not merely animal existence but includes finer graces of **human dignity, culture and civilization**. The right to life with human dignity encompasses within its purview some of the finer facets of human civilization which make life worth living. This gives a very expansive dimension to Art. 21. To reach such a result, the Supreme Court in a display of judicial activism has integrated Art. 21 withseveralf Directive Principles.

This judicial approach has led to two very spectacular results within the last two decades:

1. Many Directive Principles which, as such, are not enforceable have been activated and have become enforceable.
2. The Supreme Court has implied a number of Fundamental Rights from Art. 21.

The Supreme Court does not follow the principle **that unless a right is expressly stated as a Fundamental Right, it cannot be treated as one.** The Supreme Court has asserted **that in order to treat a right as a Fundamental Right, it is not necessary that it should be expressly stated as a Fundamental Right in the Constitution**. Political, social and economic changes occurring in the country entail the recognition of new rights and the law in its eternal youth grows to meet the demands of the society.

In course of time, **Art. 21 has come to be regarded as the heart of Fundamental Rights**. Art. 21 has enough of positive content in it and it is not merely negative in its reach. **Over time, since Maneka Gandhi, the Supreme Court has been able to imply, by its creative interpretation, several Fundamental Rights out of Art. 21**. This has been possible by reading Art. 21 along with some Directive Principles. Art. 21 has thus emerged into a multi-dimensional Fundamental Right.

PERSONAL LIBERTY

The expression 'personal liberty' used in Art. 21 has also been given a liberal interpretation. It does not mean merely the liberty of the body, i.e., **freedom from physical restraint or freedom from confinement** within the bounds of a prison. In other words, it means not only freedom from arrest or detention, from false imprisonment or wrongful confinement, but means much more than that.

The term 'personal liberty' is not used in a narrow sense but has been used in Art. 21 as a **compendious term to include within it all those variety of rights of a person which go to make up the personal liberty of a man.** Liberty of an individual has to be balanced with his duties and obligations towards his fellow citizens. The expression "personal liberty" in Art. 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct Fundamental Rights and given additional protection under Art. 19.

Right to personal liberty also means the **life free from encroachments unsustainable in law.** Any law interfering with personal liberty of a person must satisfy a triple test

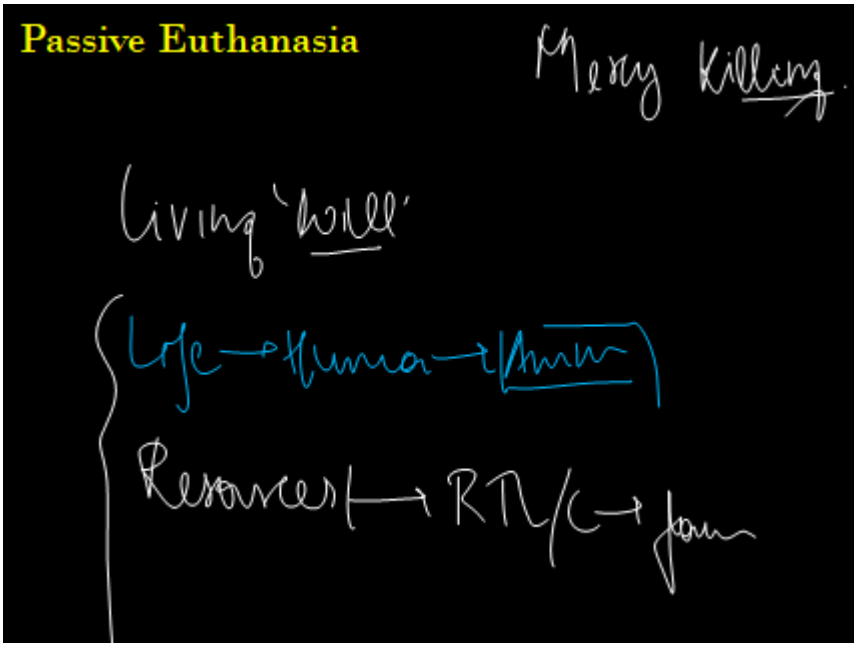
1. It must prescribe a procedure;
2. The procedure must withstand the test of one or more of the Fundamental Rights conferred under Art. 19 which may be applicable in a given situation; and
3. It must also be liable to be tested with reference to Art. 14

Article 21 –Summary

By the term **'life' as here used something more is meant than mere animal existence**. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.

The right to life guaranteed under Article 21 embraces within its sweep **not only physical existence but the quality of life**. If any statutory provisions run counter to such a right, it must be held unconstitutional.

The term **'personal liberty' is not used in a narrow sense** but has been used in Art. 21 as a **compendious term to include within it all those variety of rights of a person** which go to make up the personal liberty of a man. Liberty of an individual has to be balanced with his duties and obligations towards his fellow citizens.



Passive Euthanasia

India is witnessing a debate on whether right to die is a part of right to life under **Article 21**.

Euthanasia, also known as assisted suicide, and more loosely termed **mercy killing**, means to take a deliberate action with the express intention of ending a life to relieve intractable (persistent, unstoppable) suffering.

- In **active euthanasia** a person directly and deliberately causes the patient's death.
- In **passive euthanasia** they don't directly take the patient's life, they just allow them to die.

SC has upheld that the **fundamental right to life and dignity includes right to refuse treatment and die with dignity** because the fundamental right to a "meaningful existence" includes a person's choice to die without suffering (including terminally ill). The SC has laid down **specific guidelines to test the validity of a living will**, by whom it should be certified, when and how it should come into effect, etc. The guidelines also cover a situation where there is no living will and how to approach a **plea for passive euthanasia**.

- Some believe that every patient has a **right to choose when to die** similarly as they have right to life enshrined in the constitution.
- Proponents believe that euthanasia can be safely regulated by government legislation. Passive euthanasia has **already been practised in various cases** around the world.
- In case of **palliative sedation**, widely used across the world, many of the sedatives used carry a risk of shortening a person's lifespan. So, it could be argued that palliative sedation is a type of euthanasia.
- Some believe that every patient has a **right to choose when to die** similarly as they have right to life enshrined in the constitution.
- **Alternative treatments** are available, such as palliative care and hospices. We do not have to kill the patient to kill the symptoms. Nearly all pain can be relieved.
- There is **no 'right' to be killed'**. Opening the doors to voluntary euthanasia could lead to non-voluntary and involuntary euthanasia, by giving doctors the power to decide when a patient's life is not worth living.
- The assumption that patients should have a right to die would **impose on doctors a duty to kill,** thus restricting the autonomy of the doctor.
- Also, a 'right to die' for some people might well become a 'duty to die' by others, particularly those who are vulnerable or dependent upon others.
- Centre has also opposed the concept of a **living will**, stating that there was **risk of misusing** such a provision.

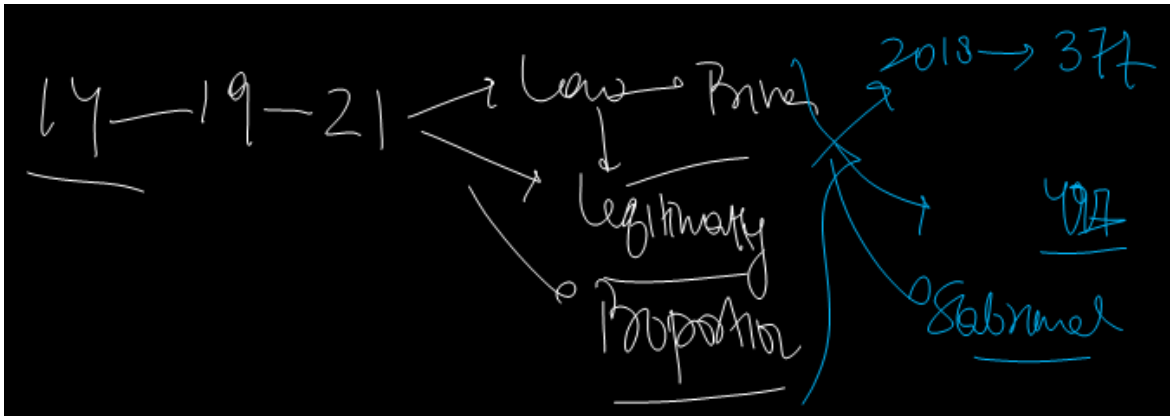
Euthanasia is an important issue as it deals with the right to die and right to live a dignified life of an individual. Currently, we do not have adequate laws and rules to regulate it and ensure it is not misused. There are various considerations that require attention, like -

- It is essential to assess the mental health status of the individual seeking euthanasia because according to them the main reasons for opting euthanasia are depression, hopelessness, pain and lack of care. Patients can overcome their decision on euthanasia or to receive natural death when they are well taken care of.
- A committee headed by Dr. M R Rajagopal tabled a report with the government listing the parameters and the threshold values at which 'passive euthanasia' and 'living will' can be implemented in the state. Important recommendations of the report are-
    - It stated that the usage of the term 'passive euthanasia' is 'misleading' (as it carries the meaning of intention to kill) and said the procedure should rather be called as 'withholding or withdrawing futile treatment'.

- A doctors' panel may be constituted at the district-level to process 'living will' and requests the government to direct the respective District Medical Officers to constitute the panel in advance as 'when the need arises, time will not be wasted for finding the doctors.

Right to Privacy

- Constituent Assembly after discussing this issue decided not to put right to privacy in constitution
- Earlier M.P. Sharma (8-judge Bench) and Kharak Singh (6-judge Bench) cases delivered in 1954 and 1961, respectively, held that privacy is not protected under the Constitution.
- In Maneka Gandhi vs Union of India (1978), it was held that any law interfering with personal liberty and right of privacy must be just & not arbitrary
- The IT (information technology) Act of 2003 was silent on privacy.



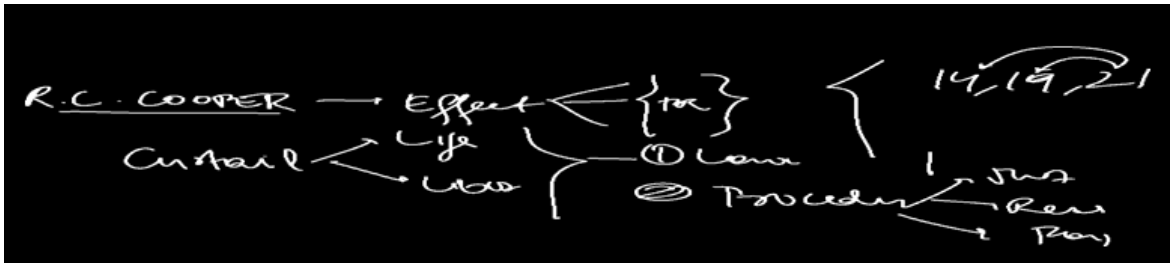
Right to Privacy – Puttaswamy

SC pronounced privacy to be a distinct and independent fundamental right under Article 21 of the Constitution. Expansive interpretation of the right to privacy - **it was not a narrow right against physical invasion, or a derivative right under Article 21, but one that covered the body and mind, including decisions, choices, information and freedom.**

It rejected the argument of the Attorney General that the right to privacy must be forsaken in the interest of welfare entitlements provided by the state.

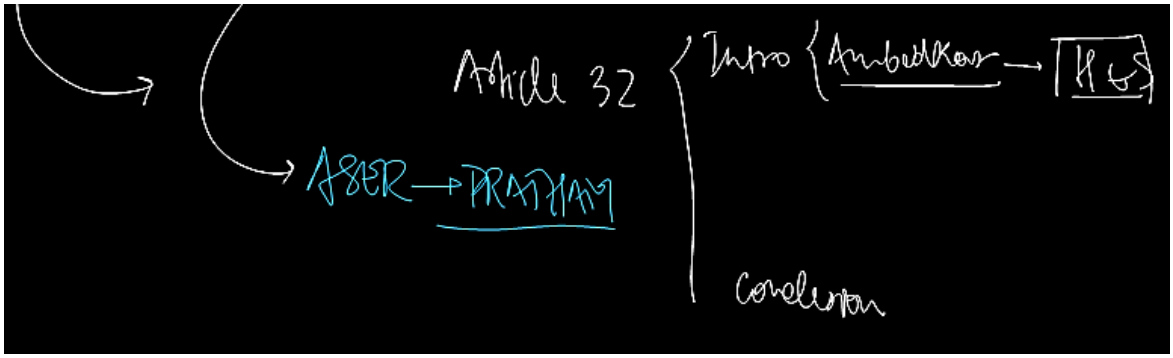
Significantly, while holding that the right to privacy was **not absolute in nature**, the judgment also gave an overview of the standard of judicial review that must be applied in cases of intrusion by the State in the privacy of an individual. It held that the **right to privacy may be restricted where such invasion meets the three-fold requirement of**

1. **Legality,** which postulates the existence of law;
2. **Need,** defined in terms of a legitimate state aim; and
3. **Proportionality** which ensures a rational nexus between the objects and the means adopted to achieve them.



- **Navtej Singh Johar and ors Vs. Union of India (UOI)**
- Section 377: 'carnal intercourse against the order of nature', held unconstitutional.
- **Joseph Shine vs. Union of India (UOI), 2018**
- Decriminalized adultery (it deprives a woman of her autonomy, dignity and privacy)
- **Indian Young Lawyers Association and Ors. vs. The State of Kerala**
- Supreme Court upheld the right of women aged between 10 to 50 years to enter the Sabrimala Temple.
- Forced disclosure of the menstrual status that consequently violates the right to dignity and privacy.

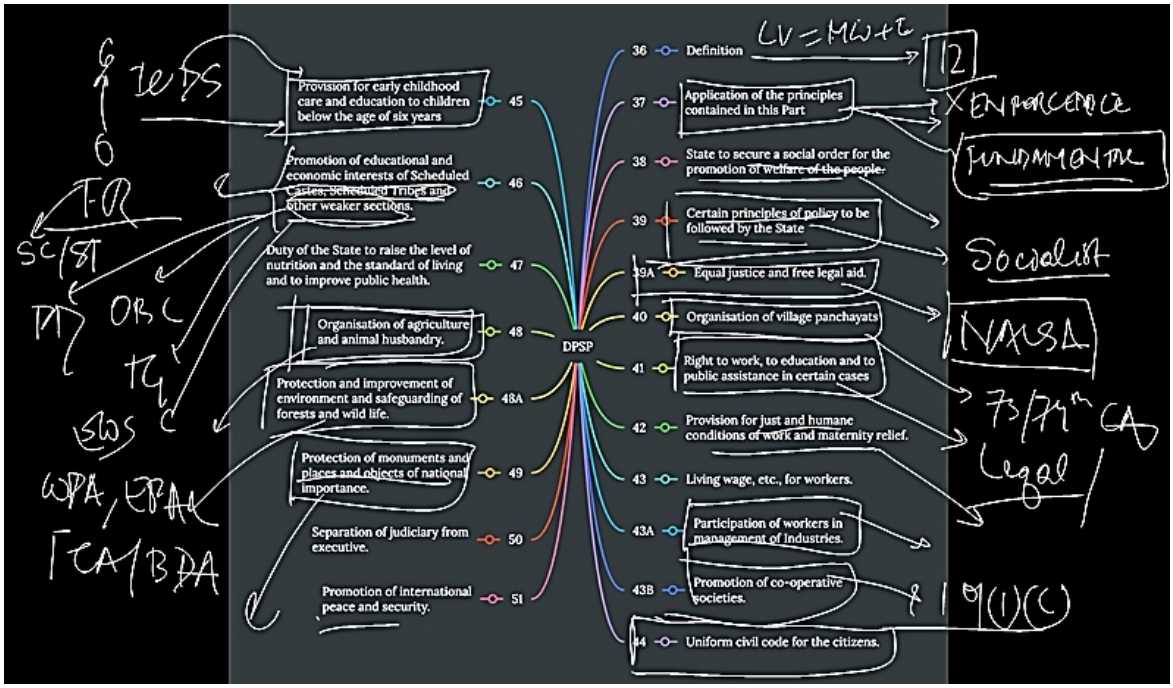
- **2020:** Answer in 150 words: Right to constitutional remedies in India
- **2017:** Comment on: Right to privacy is an intrinsic part of the right to life. Comment
- **2015:** Discuss the 'Right to Education' and the concerns raised by it.
- **2013:** Analyze the significance of Article 32 of the Indian Constitution.



DPSP Part IV:

- **2019:** Comment on the relevance of the Directive Principles of State Policy in an era of liberalization and globalization.
- **2014:** Comment on: Increasingly higher focus on Directive Principles of State Policy.

- **2012:** Examine the relevance of Directive Principles in the era of liberalisation and globalization.
- **2011:** Examine the significance of the Directive Principles of State Policy in achieving the goal of socio-economic justice.



Why DPSP are non-justiciable:

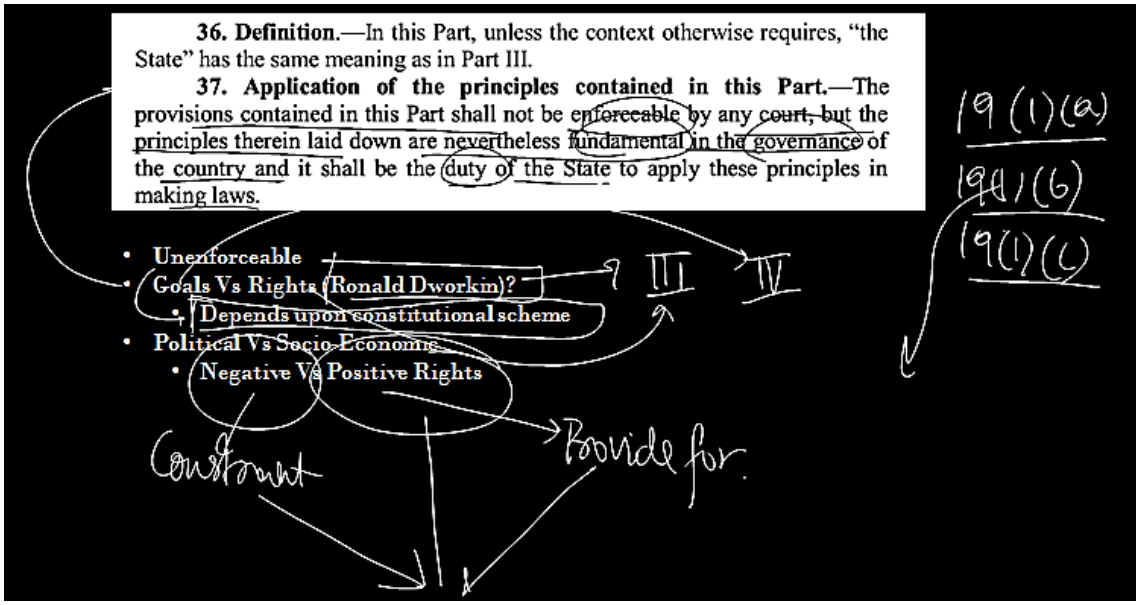
- India didn't posses financial resources
- Vast diversity and backwardness
- Could have been over burdened with too many preoccupations.

But:

- **Alladi K.S Ayer:** No responsible govt. can afford to ignore part IV.
- **Dr Ambedkar:** If government ignores them, it will certainly have to answer for that before electorate at election time.

Ideally, the constitution, which is the supreme law of the state, **should not contain any provisions that are not enforceable.** The constitution should be fully enforceable. It is hence a unique feature. In order to ensure that all parts of the constitution remain relevant, Judiciary goes for the application of doctrine of '**harmonious construction'.**

Difference between Part III and IV



The Directive Principles of State Policy ["DPSPs"] occupy an **ambiguous place in our Constitutional scheme.** They are framed as a set of **obligations upon the State.** Nonetheless, **the constitutional text expressly renders them unenforceable.** At the time of drafting, the only other Constitution that contained anything analogous was the Irish. The members of the Constituent Assembly themselves were deeply divided over the DPSPs. **Many could not see the utility of an unenforceable set of exhortations.**

Some recommended **scrapping the Chapter altogether,** while others argued for placing it within the **domain of Part III** and the fundamental rights. Still others argued over the level of detail that the Principles set out. And some of them pointed out the contradictions inherent in placing abstract principles of economic justice alongside concrete policies like prohibition and controlling cow slaughter.

Nonetheless, **Part IV survived the birth pangs of the Constitution relatively unscathed.** Yet its life after that has been anything but straightforward. Judicial approaches to the interpretation of Part IV as a whole, to individual Principles, and to their relationship with fundamental rights, **have been inconsistent.** And lately, directive principles such as the provision of universal primary education have been shifted from Part IV to Part III *via* Constitutional amendment **– raising the question whether there is any genuine conceptual distinction between fundamental rights and directive principles at all.** In this medley of diverging voices and with such a checkered history, is it at all possible to ground the DPSPs within a coherent intellectual vision, one that is justified both constitutionally and philosophically?

Is there an *a priori* conceptual reason that explains **why Parts III and IV are structured as they are?** In a series of cases in the 1970s the Supreme Court understood the Directive Principles as reflecting important governmental "goals", and fundamental rights as placing restrictions upon the *means* that the government could employ to achieve those goals. This is a familiar distinction. For instance, **Ronald Dworkin** argues that *goals* are particular end--states in the distribution of resources, while a *right* is something that the government is not permitted to infringe in its pursuit of its chosen goals. Yet the distinction is question–begging.

What makes something a right or a goal? As Dworkin himself observes, **it depends on the constitutional scheme and the legal framework of the polity in question.** Providing adequate nutrition to all its citizens can be framed as a goal, but it can equally well be framed as an individual right to food or health. The goals/rights, or ends/means distinction, therefore, needs something else to motivate it.

There is another, equally obvious distinction. **Part III embodies civil/political (or "first generation" rights), whereas Part IV enshrines socio-economic, second-generation guarantees.** Yet this, again, is simply labeling. **What is the relevant conceptual difference between these two categories, which would justify treating them differently in a Constitution?** The civil/political and socio-economic distinction tracks another, deeper distinction; however, that does have a conceptual history to it: the difference between negative and positive rights.

In political theory, the difference is conceptualized in the following manner:

- *first*, **negative rights involve freedom from governmental (or private) coercion** that would prevent an individual from doing what she is otherwise minded to do; **positive rights requires the government to take action** in order to provide an individual something she cannot get for herself.
- *Secondly* – and relatedly – **negative rights do not require policy choices**; positive rights, on the other hand, directly implicate economic prioritization and budgetary allocations – i.e. "*a broad redistribution of society's resources*".

The first distinction provides a *theoretical* ground for arguing that only negative rights are rights at all, properly called, since in a free society, the only form of protection that individuals should be entitled to is protection against coercion.

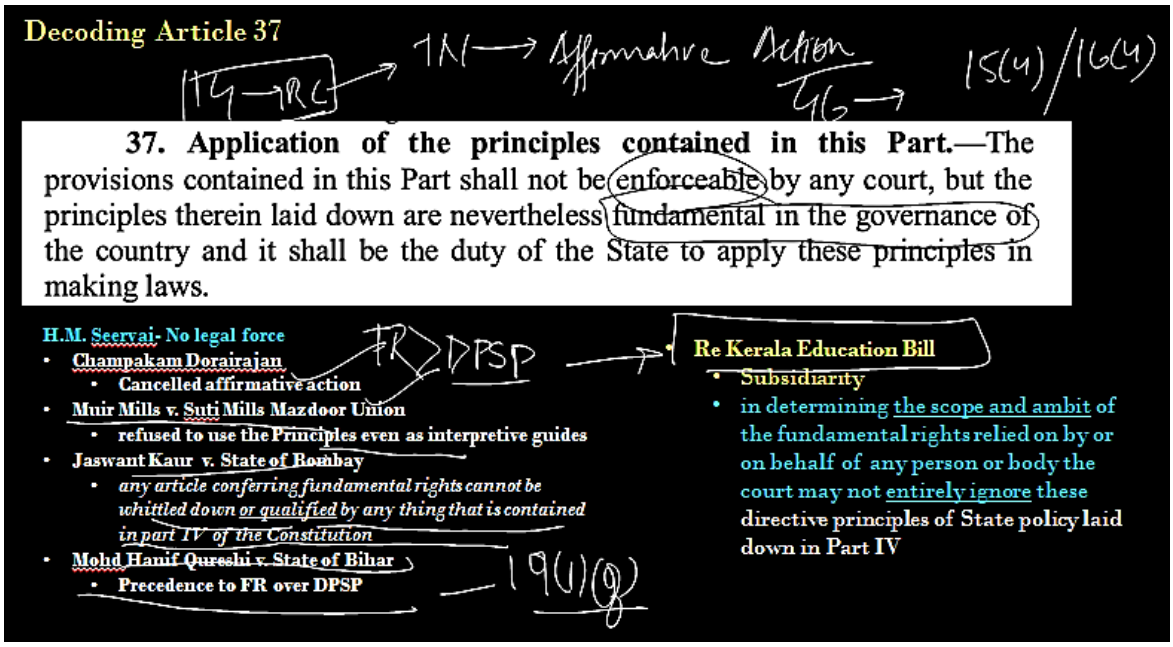
The **second provides a slightly more practical argument for the proposition** that, whether or not socio-economic rights are rights in theory, since they involve the kind of economic and financial balancing that lies within the competence of the government, they ought not to be made available to individuals as *enforceable claims* in the manner of negative rights.

On a closer analysis, however, both these distinctions break down. It is controversial whether coercion is a meaningful way to separate categories of rights. As Cohen, Sen and others have argued, the distinction is premised on the distinctly non–neutral and ideologically colored notion of freedom as *non- interference.* Even conceding that it is, however, so-called **negative rights involve as much governmental action as positive rights.** The right to property, for instance, is meaningless without an institutional system that involves a police force to prevent trespassing, and a legal structure to punish it when it does happen.

There is another way, furthermore, in which the coercion and action/inaction framework dissolves. Consider Cohen's famous example: I wish to travel from Place A to Place B, but lack the money to buy a train ticket. I board the train nonetheless, and at some point, after the ticket-collector has found that I do not possess a ticket, the coercive apparatus of the State will be called upon to remove me from the train, and prevent me from traveling to where I want. In this way, Cohen argues, **my lack of money violates my freedom of movement, even if freedom is defined strictly as absence of coercion.** Poverty, thus, is as much a violation of negative liberty as is the State preventing me from free movement by placing me under house arrest.

Therefore, in purely conceptual terms, there is good reason to deny a standalone distinction, independent of the particular framing history of the Indian Constitution, between Parts III and IV.

Indeed, the history of the right to education – which moved from the Directive Principles to the Fundamental Rights, becoming Article 21A via a Constitutional amendment at the suggestion of the Courts, suggests the **inherent fluidity of the distinction, and lends support to the proposition that, ultimately, the distinction is purely contingent and historical.**



Because abstract conceptual principles cannot take us very far in understanding Parts III and IV, we must pay even closer attention to constitutional specifics. **Let us commence with the Constitutional text.** The preambular Article 37 states:

> **37. Application of the principles contained in this Part.**—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The three underlined terms can carry multiple meanings. **"Not enforceable"** means, straightforwardly, that a breach of a directive principle cannot ground a legal claim (unlike the breach of a fundamental right). But does unenforceability prohibit the Court from considering the existence and content of the Directive Principles while **interpreting other laws?** The word **"fundamental"** has been used for a very specific purpose in Part III, to characterize the Bill of Rights. Does the use of the same word in Part IV imply at least some **conceptual overlap between fundamental rights and directive principles?** And what precisely is the nature of the **"duty"** placed upon the State? **Is it a legal duty or a moral duty?** If it is the latter, then what is it doing in a document whose intention is to define the basic legal structure of the Indian polity and its set of governing institutions? The text of the **Constitution, standing alone, cannot answer these questions for us.**

H.M. Seervai, however, sees no ambiguity in Article 37. He argues that the Directive Principles are merely *political exhortations* to the legislature. **They possess no legal significance,** and the only

remedy for their violation lies in the ballot box. For Seervai, the presence or absence of the directive principles should make absolutely no difference to anything a Court does.

This, precisely, was the judiciary's initial approach, between 1950 and 1960. In **State of Madras v. Smt Champakam Dorairajan,** for instance, Madras attempted to justify caste--based affirmative action policies, which conflicted with the fundamental right to non--discrimination, on the basis of the DPSPs. The Supreme Court flatly rejected the argument, pointing to the non--enforceable nature of the Directive Principles in refusing to accord them any weight in judging the constitutionality of the action.

This strict approach continued in **Muir Mills v. Suti Mills Mazdoor Union,** where the DPSPs were invoked in argument over workmen's rights to bonus payments. *Muir Mills* was not even a question of enforcement, involving only a question of **interpretation.** Nonetheless, **the Court refused to use the Principles even as interpretive guides,** preferring to adhere instead to traditional common law employment concepts of wages and bonuses. **Various state High Courts followed the Supreme Court's lead, taking the non--enforcement clause as evidence** that the Principles had no role whatsoever to play in the judicial task. In *Jaswant Kaur* v. *State of Bombay*, the Bombay High Court refused to let the DPSPs inform its interpretation of the Bill of Rights, holding categorically that **"any article conferring fundamental rights cannot be whittled down or qualified by anything that is contained in part IV of the Constitution."**

Perhaps the exemplar of this approach is the Constitution Bench judgment in **Mohd Hanif Qureshi v. State of Bihar.** A cow slaughter ban was challenged under Article 19(1)(g). It was argued that because the ban was designed to give effect to Article 48, and because the directive principles were fundamental to the governance of the country, a rights--based challenge to such legislation must fail. The Court made short shrift of this contention, holding:

"a harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the **State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights."**

In other words, it was desirable for the government to frame legislation advancing the Directive Principles, but the provisions of Part III, standing alone and interpreted autonomously, would serve as side--constraints on any such endeavour. **The Directive Principles might or might not have some role to play at the time of enacting legislation, but none afterwards.**

Re Kerala Education Bill

The end of the 1950s, however, marked a subtle – yet distinct – change. **In Re Kerala Education Bill,** dealt with the rights of minorities to run educational institutions. Referring to the Directive Principle that mandated the State to ensure the provision of effective and adequate education, the Court observed, in language that would soon become a staple feature of judicial decisions:

"**The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights... nevertheless, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these** directive principles of State policy laid down in Part IV of the Constitution but should adopt the principle

of harmonious construction **and should attempt to give effect** to both as much as possible." (Emphasis Supplied)

In *Re Kerala Eduction Bill*, **while reaffirming the primacy of the fundamental rights, the Court nonetheless opens the gates for DPSPs to play a tangible – if subsidiary role** – in interpretation, holding that the "scope and ambit" of the fundamental rights should be determined in such a harmonious way, that full effect is given both to Part III and Part IV.

Constitutional arguments that support this position

The first is textual. **Article 37 states that it shall be the duty of the State** to apply the Directive Principles in making laws. Now, whether the obligation is legal, moral or political, it is, at the very least, a **Constitutional obligation.** And if we are to accept the benign fiction that the legislature is composed of reasonable persons pursuing reasonable ends reasonably, then it makes sense to assume that, insofar as **the parliament acts in good faith while enacting laws, it is taking the DPSPs seriously,** and applying them in the making of such laws.

Consequently, when a Court is called upon to *interpret* those laws, the Principles may be invoked in determining their content. **Thus, textually, there is at least some scope for the DPSPs in an interpretive enquiry** (the clause leaves open what scope, exactly) that does not rise to the level of "enforcement".

According to Ambedkar himself, the proscription on enforceability was to be as **imposing no obligation upon the State to act upon the Directive Principles –** not that the principles themselves were irrelevant in understanding *how the State had (legislatively) acted*, once it did.

The Directive Principles as Markers Of Reasonableness

(6) Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [1][nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

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

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

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

The Directive Principles as Markers Of Reasonableness

The **Indian Constitution provides inbuilt, textual limitations to its fundamental rights.** For instance, Article 19(1)(g), that guarantees the freedom of trade, also permits the government to legislate "*reasonable restrictions... in the interests of the general public*". In the aftermath of *In Re Kerala Education Bill*, **the Court made the DPSPs an integral part of any enquiry into the validity of fundamental rights restrictions.**

This happened primarily in the realm of labour legislation, where several employee--oriented laws were challenged under Article 19(1)(g). In **Prakash Cotton Mills v. State of Bombay,** the question was whether the state could compel companies to join collective bargaining agreements that they had not directly consented to. Examining the application of Article 19(1)(g), the Bombay High Court observed:

"In the larger interests of the country an employer must submit to those burdens and carry on his business in **conformity with the social legislation** which is put upon the statute book."

While *Prakash Cotton Mills* did not **directly** refer to the Directive Principles, **Jugal Kishore v. Labour Commissioner** did so, **citing no less than three of the Principles** to hold that notice requirements and other restrictions upon employers' discretion were restrictions in interests of the general public. Similarly, in **Chandrabhavan v. State of Mysore**, the Court upheld state minimum wage legislation.

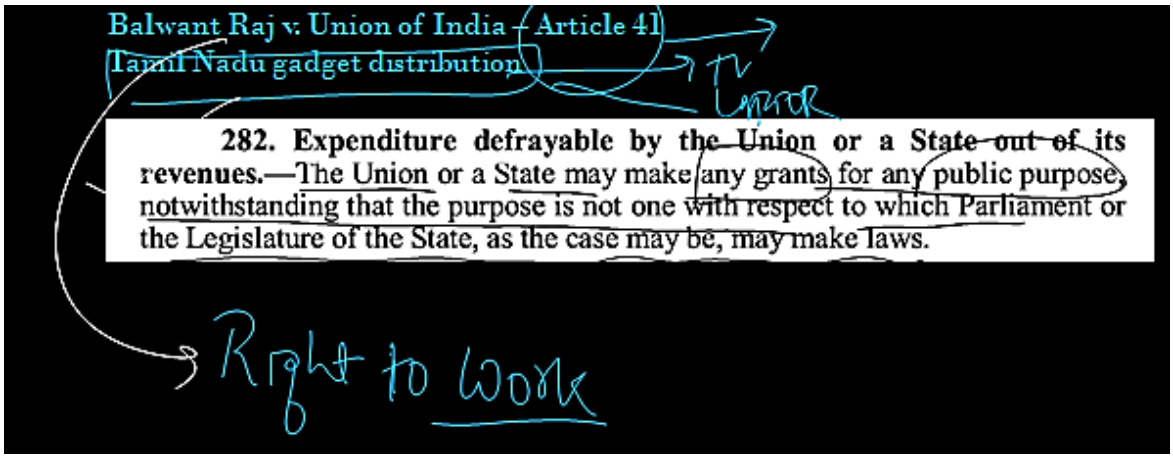
In Chandrabhavan, the Court observed that the bill of rights and the directive principles were **"complementary and supplementary"** to each other. In some way, this approach had already been adopted in Golak Nath v. State of Punjab, and it was echoed in two of the important constitutional cases of the 70s, Kesavananda Bharati v. State of Kerala, and Minerva Mills v. Union of India. **The Court rationalized this approach by defining the directive principles as "social goals",** and the **fundamental rights as "side constraints"** to be scrupulously adhered to by the government in its pursuit of those goals.

In thirty years, therefore, the Court moved from a **position where the Directive Principles were constitutionally irrelevant to a point where they were constitutionally at par with the bill of rights,** with the only difference being that citizens could not move the Court directly to enforce them. Yet the judgments of the 70s, placing the Directive Principles on the same conceptual level as the bill of rights was to have far-reaching consequences, as we shall presently note.

The shift in the 70s, that we shall go on to discuss, was complementary to the reasonableness-of-restrictions approach. It did not replace it. Throughout its history, the Court has regularly invoked the Principles to find that Article 19 restrictions are valid, in fairly unproblematic ways. The Court has done this through a simple argument: the **Directive Principles, it has held, are self-evidently expressions of what public interest is. Any governmental policy aimed at advancing a Directive Principle, then, cannot but be in the public interest, and can, at times, raise a presumption of**

reasonableness. Unfortunately, the Court has also held, on occasion, that such a policy is reasonable simply by virtue of being enacted in pursuit of a directive principle.

The Directive Principles as Interpretive Guides



Balwant Raj v. Union of India

The rights enshrined in the directive principles are not justiciable, but these principles have been made "fundamental in the governance of the country" under **Article 37** which provides that it shall be the dutv of the Slate to apply them in making laws. **The phrase "making of laws" is wide enough to include their interpretation and therefore the courts must inferpret the laws in the 'light of the Direclive Principles' Now.**

Article 41 commands the State to make effective provision, within the limils of its economic capacity and development, for securing inter alia two rights (1) the right to work and (2) the right to public assistance in cases of unemployment, old age disablement and sickness I am of the view that Rule 731(1), Note 3 should be interpreted in the light of **Article 41** of the Constitution, and it must be presumed that the rule was not framed with the object of depriving a person of his job if he happens to fall ill and is prevented by illness from reporting back on duty within the period of maximum leave due to him. The alternative interpretation that even a sick man must be deemed to have resigned his job if his period of illness happens to be a long one is not only against the spirit of **Article 41** but will make the Railway administration in India one of the most callous-minded employers in the State

The Directive Principles as Interpretive Guides

Once the Court had cleared the path for invoking the Directive Principles in legal adjudication in In Re Kerala Education Bill, it was not long before it took the next logical step: using them as interpretive guides.

In **Balwant Raj v. Union of India**, a 1966 judgment of the Allahabad High Court, an employee of the Indian Railways contracted tuberculosis and was unable to come to work for a time. Consequently, he was discharged for “failing to resume duty” under the stipulated rule. Reading the Directive Principle requiring the State to **secure the right to work**, the Court limited the phrase **“failing to resume duty” to voluntary failures,** holding that **“the rule must be interpreted in accordance with letter and**

spirit of the Directive Principles of State Policy." Thus, the Court assumed the legal fiction that the State had, in fact, applied the Principles in framing the contested legislation.

In other words, the **Court treated the Directive Principles as constitutive of legislative meaning:** the maximum degree to which it could infuse directive principles into the law without directly enforcing them. This strong vision of the Directive Principles has been latent in the Court's jurisprudence since then. In 2013, for example, the Court invoked the Directive Principles in determining the meaning of the phrase "public purpose" under Article 282 of the Constitution. It held that the **Tamil Nadu state government's distribution of free televisions** was a valid "public purpose" under Article 282 because it was in pursuance of the Directive Principles.

The Directive Principles as Establishing Framework Values

- **Champakam Dorairajan**: specific vision of equality running through Articles 15 and 16.
- **State of Kerala v. NM Thomas:** Articles 15(4) and 16(4) were not *exceptions* to 15(1) and 16(1), but *emphatic restatements*
- **Bennett Coleman**: rejection of free speech as an individual right of non-- interference
- **Bandhua Mukti Morcha,** the Court referred to Articles 39(d) and (e), 41 and 42 to infuse substantive content into the dignitarian principle underlying Article 21
- **Olga Tellis,** used the same technique (relying upon Articles 39(a) and 41) to read in a right to livelihood under the right to life

The Directive Principles As Establishing Framework Values

The result of the Indian Supreme Court's twenty--year incremental approach to the Directive Principles brought it to a point, where the **Directive Principles finally came to assume the role of structuring values.**

The best example is **State of Kerala v. NM Thomas**. In order to understand what was at stake in *NM Thomas*, recall the judgment in **Champakam Dorairajan.** The government's affirmative action program for admissions to medical and engineering colleges was struck down on Article 15 grounds, and the state's reference to the Directive Principles (Article 46) was rejected. In response, Parliament *amended* the Constitution to introduce Article 15(4), specifically allowing for affirmative action in educational institutions.

The Court's judgment, and Parliament's response, demonstrate a specific vision of equality running through Articles 15 and 16. Let us call this the "colourblind conception" of equality. This holds that there is a specific harm whenever the State classifies *individuals* on the basis of their caste, race, sex etc. – because historically, it was these bases that were used to sort people into categories, and determine their worth. Therefore, any distribution of benefits or burdens that classifies us into groups on such grounds, is presumptively suspect. Individuals are to be treated *qua* individuals, and not as *members* of groups.

That this was the animating vision of the *Dorairajan* court is evident from the fact that it refused to locate the permissibility of remedial affirmative action *within* Article 15 itself, and that it required a

specific amendment from Parliament to legalise it. Cases after *Dorairajan* affirmed this view, treating Articles 15(4) and 16(4) as *exceptions* to the 14--15--16 equality code.

While the colour--blind conception of equality is individual--centric, there is a competing vision. **Call it the "group-subordination" vision.** This argues that groups have been the *locus* of historic discrimination. Thus, remedial action must take into account the subordinate status of groups (such as women, or "lower-- castes), and governmental policies are perfectly legitimate if they make groups the site of redressing historic discrimination and achieving genuine present--dayequality. Article 46, which was cited and dismissed by the Court in *Champakam Dorairajan*, specifically envisages this conception, when it refers to the interests of the weaker sections of the people.

Under the colour--blind conception of equality, **NM Thomas ought to have been an easy case.** The question was about the constitutionality of caste--based affirmative action in employment. Article 16 guaranteed the equality of opportunity in employment. Article 16(4) carved out a specific exception for "*socially and educationally backward classes*." It was not disputed that *caste*- based affirmative action was not covered by the 16(4) exception. Surely, then, this was a straightforward equal--opportunities violation.

Not so, said the Court. Articles 15(4) and 16(4) were not *exceptions* to 15(1) and 16(1), but *emphatic restatements* of it. In other words, remedial affirmative action for certain historically subordinated groups was no longer grounded in 15(4) and 16(4), that specifically provided for it, but *implicit within the logic of the Constitutional commitment to equality itself.*

What justifies this departure from precedent, and seemingly from the text as well, that speaks of "persons" under Articles 15(1) and 16(1)?

According to Justice Mathew

"...if we want to give equality of opportunity for employment to the members of the Scheduled Castes and Scheduled Tribes, we will have to take note of their social, educational and economic environment. Not only is the directive principle embodied **in Article 46 binding on the law--maker as ordinarily understood but it should equally inform and illuminate the approach of the Court...** the guarantee of equality, before the law or the equal opportunity in matters of employment is a guarantee of something more than what is required by formal equality. It implies differential treatment of persons who are unequal... today, the political theory which acknowledges the obligation of government under Part IV of the Constitution to provide jobs, medical care, old age pension, etc., extends to human rights and imposes an affirmative obligation to promote equality and liberty. The force of the idea of a state with obligation to help the weaker sections of its members seems to have increasing influence in Constitutional law."

The point is perhaps summed up best by Justice Bhagwati's partially-- dissenting opinion in Minerva Mills:

"Where a law is enacted for giving effect to a Directive Principle in furtherance of the constitutional goal of social and economic justice it may conflict with a formalistic and doctrinaire view of equality before the law, but it would almost always conform to the principle of equality before the law in its total magnitude and dimension..."

In Bennett Coleman the Court held

"any theory of freedom of expression must take into account… the right of the public to education arising from the affirmative duty cast on the Government by the directive principles to educate the people, apart from the right of the community to read and be informed arising under the theory of the freedom of speech itself."[92]

Justice Mathew's rejection of free speech as an individual right of non-- interference, in favour of it being a social good characterized by principles of equal access, was grounded in the DPSPs, much like *N.M. Thomas'* changed vision of equality.

In **Bandhua Mukti Morcha,** the Court referred to Articles 39(d) and (e), 41 and 42 to infuse substantive content into the dignitarian principle underlying Article 21's guarantee of the right to life[94] -- and many of the substantive rights that the Court was to subsequently read into Article 21 were located within this dignitarian foundation.

In **Olga Tellis,** used the same technique (relying upon Articles 39(a) and 41) to read in a right to livelihood under the right to life.

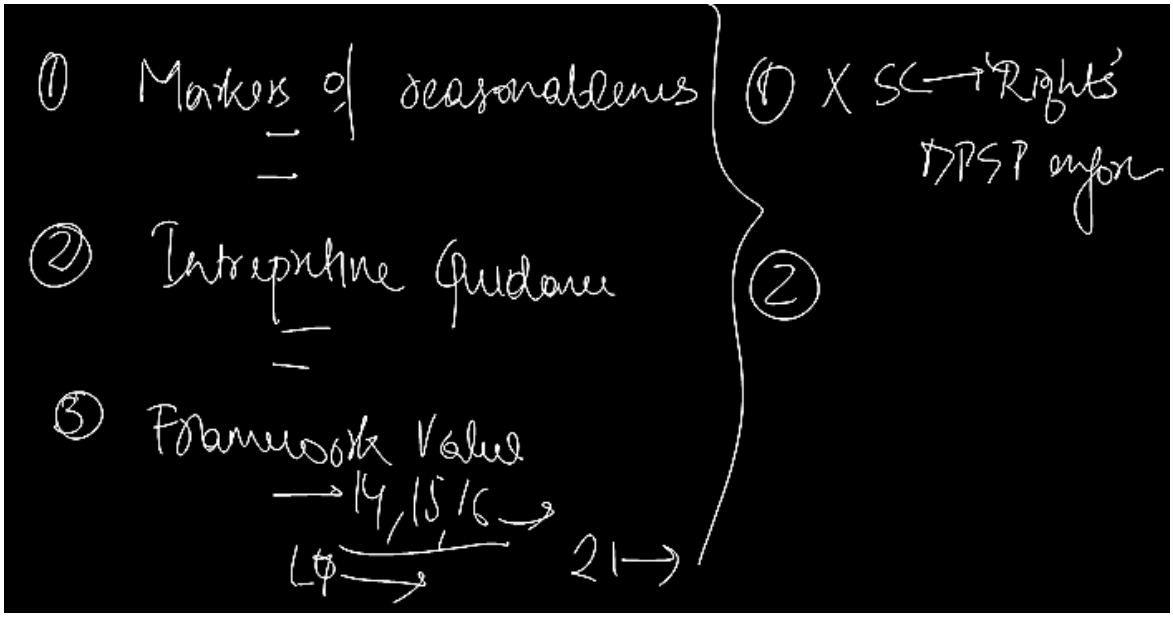
In **Nashirwar v. State of MP,** the Court invoked the Directive Principles dealing with prohibition to infuse moral content into Article 19(1)(g)'s freedom of trade: the right to freedom of trade itself was held *not* to include activities of a *res extra commercium* nature such as trade in alcohol.

And as **recently as 2014, it invoked Articles 39(e) and (f) to hold the right to a safe and healthy environment was part of the right to life.**

In sum

We have seen how the Directive Principles have structured the application of equality under 14--15--16, free expression under 19(1)(a), freedom of trade under 19(1)(g), and life under Article 21, helping the Courts to select what conceptions, our of a number of available (and conflicting) ones, all consistent with the abstract concepts of equality, speech etc., are *concretely* required by the Constitution.

The Limiting Principle: Non-enforcement



The Limiting Principle: Non-enforcement

Is there any difference that now remains between fundamental rights and directive principles, one may well ask – apart from the fact that laws cannot be struck down for violating the DPSPs? The Court answered that question in its 1982 case of **Ranjan Dwivedi v. Union of India**[1], well into the heyday of the Directive Principles era. Article 39A mandated the State to provide equal justice and free legal aid.

In **Ranajn Dwivedi, the petitioner's claim to a State-paid counsel engaged at** a fees commensurate with the fees the State was paying to its own counsel was rejected, the Court holding that:

"As is clear from the terms of Art. 39A, the social objective of equal justice and free legal aid has to be implemented by suitable legislation or by formulating schemes for free legal aid. The remedy of the petitioner, if any, lies by way of making an application before the learned Additional Sessions Judge." **In other words, the Court understood that shaping the State's fiscal policy was most definitely beyond its remit.**

This primarily institutional concern is reflected most vividly in the history of the right to education through the 1990s and the 2000s. In a series of cases such as **Mohini Jain and Unnikrishnan v. State of AP, the** Court invoked the Directive Principles to read into Article 21's guarantee of a right to life, a right to education as well **– but conspicuously refrained from going any further into an issue that would have profound economic and social implications**, not to mention a massive reorientation of budgetary priorities.

Eventually, it was the legislature that amended the Constitution to introduce Article 21A, codifying the right to education; and the Court's task was to uphold the validity of legislation passed under that provision that imposed certain economic burdens upon private schools.

The functions of the Directive Principles in judicial interpretation and the limits

It has now become almost routine for the Supreme Court to invoke Part IV in its decisions – as routine as Articles 14 and 21. With the increasing role of the Directive Principles, the need for judicial discipline cannot be overstated. **If the DPSPs are interpreted to mean everything, then they will end up meaning nothing.**

The Directive Principles, serve three distinct roles in judicial interpretation.

- *First*, legislation enacted in service of the Directive Principles meets the "public interest" threshold in a fundamental rights challenge (importantly, its reasonableness must then be examined, and *not* on the touchstone of the Directive Principles).
- *Secondly*, if legislation is intelligibly susceptible to more than one interpretation, then the meaning that corresponds more closely to the DPSPs is to be preferred over others (although, as we discussed, the Court is yet to clarify the standard applicable to this enquiry).
- And *thirdly*, the DPSPs play a structuring role in selecting the specific conceptions that are the concrete manifestations of the abstract concepts embodied in the fundamental rights chapter.
- This is the best way to understand the Court's dictum that fundamental rights "*ought to be interpreted in light of the DPSPs.*" There is thus a clearly delineated role for the Directive Principles in constitutional analysis.

The limits to this role are twofold:

- *first*, the Court **may not strike down legislation for non-compliance with the DPSPs;** and
- secondly, the **Court may not incorporate the DPSPs to a point that requires it stepping outside its designated role** under classical separation of powers theory – making policy choices and budgetary allocations (of course, the Court has not shrunk from this role more generally).

Such an approach is both intellectually defensible, and constitutionally faithful. Importantly, it ensures against the judicial drift that has blighted Articles 14 and 21, and is threatening to blight Part IV, with its recent, indiscriminate usage. Only time will tell, however, whether the Court follows this path.

What is the conflict between FR and DPSP

- **Champakam Dorairajan case 1951**
  - FR are supreme to DPSP, but FR can be amended
  - Parliament made 1st, 4th and 17th Amendment in 1951, 1955 and 1964 to implement some directives.
- **Golaknath Case 1967** FR can't be amended for implementation of DPSP
- Parliament made 24th and 25th Amendment Act in 1971
  - 24th: Parliament can amend FR
  - 25th: added Art 31C no law which seeks to implement DPSP in Article 39(b) (c) shall be void on the ground of contravention of FR by Art 14, 19 and 31

- **Keshvananda Bharti 1973:**
  - 25th Amendment is valid but laws can be questioned in court since JR is basic structure
- 42nd Amendment-
  - for any DPSP, not just (b)(c) of 39, FR can be amended
- **Minerva Mills case:**
  - Declared unconstitutional in 1980 Minerva Mills
  - Indian constitution **founded on the bedrock of balance between FR and DPSP**
  - Together they are two wheels of chariot.
  - Together they constitute the core of commitment to social revolution.
  - Harmony between basic features.

Initially there was lack of clarity because of the contradiction between the two parts. 1st contradiction – Fundamental rights enforceable, directive principles non-enforceable. 2nd contradiction – Fundamental rights based on liberalism, directive principles on socialism.

What was the result?

- The legal conflict and disagreement between the legislative and judicial branches. What is the situation right now?
- Over time, it has become clear that they are complementary rather than contradictory.
- Harmonious construction is required. Political democracy without social and economic is a contradiction.
- Directive principles were not given immediate effect not because they were not important but because country lacked resources, if given the status of enforceable rights and govt. unable to enforce it, it would create constitutional crisis.

Criticisms:

- **Lack of legal force: Non justiciable**
  - **K T Shah:** Pious superfluities, A check on bank payable when resources of the bank permit.
  - **Nasiruddin:** No better than new year resolutions
  - **T Krishnamachari:** A veritable dustbin of sentiments
  - **K C Wheare:** A manifesto of aims and ambitions.
  - **Ivor Jennings:** Pious aspirations
- **Illogically arranged**
  - **N Srinivas:** Neither properly classified, Nor properly arranged.
  - **Sir Ivor Jennings:** DPSP have no consistent philosophy.
- **Conservative:**

- **Sir Ivor Jennings:**
    - The Ghosts of Sydney Webb and Beatrice Webb talks in these pages of text.
    - Expresses Fabian Socialism without socialism
    - Even questioned the suitability of this part in 21st century India
- **Constitutional Conflict:**
- **K Santhanam: Have led to conflict between**
    - To fulfill DPSP, there can be constitutional crisis between Centre and State, President and PM and governor and CM
    - There can be conflict on whether DPSP or FR have to be given primacy
    - It undermines federalism. (some of the DPSPs contains subjects in state list)

Socialist:

1. welfare state, democratic socialism, social and economic justice
2. deals with health, wages, children, workers
3. Art 38, 39, 39A, 41, 42, 43, 43A, 47

Gandhian:

1. Reconstruction programme
2. Decentralization- Art 40
3. Village panchayat, cooperatives- Art 40, 43, 43B
4. Promote educational and economic interest of SCs, STs, Weaker sections of society- Art 46
5. Prohibit consumption of drugs, liquor Art 47
6. Prohibit slaughter of cows, calves, milch cattle- Art 48

Liberal-intellectual:

1. Principle of liberalism
2. Art44- UCC
3. Childhood care- Art 45
4. Organize agriculture and animal husbandry on scientific lines- Art 48
5. forest, environment, wildlife- Art 48A protect monuments, places of national importance- Art 49
6. Separate judiciary from executive- Art 50
7. Promote international peace, security, maintain just and honourable relations with nations; foster respect for international law and treaty obligation, encourage settlement of international dispute by arbitration- Art 51

So what is the utility of DPSP?

- **LM Singhvi:** These are life giving provisions of constitution.
- **MC Chagla:** If all these are implemented, India would be a heaven on earth.
- **DR B R Ambedkar:** they lay down the goal of Indian Polity and Indian Economy.
- **Granville Austin:** They aim at furthering the goals of social revolution.
- **BN RAU:** They are moral precepts for authorities of state nd have educative value.

Role:

- They remind basic principles of socio, economic order.
- Act as beacon to courts.
- Forms background for state actions.
- Amplifies the preamble and commitments
- Facilitate stability and continuity in domestic and foreign policy
- Supplementary to FR's
- Political democracy without economic democracy.
- Crucial test for the performance of the govt.
- Common political manifesto to parties.

Implementation of DPSPs

- Planning commission – securing socio economic justice
- Land reforms – redistribution of wealth
- Labour code on wages
    - Payment of Wages Act, the Minimum Wages Act, the Payment of Bonus Act, 1965 and the Equal Remuneration Act.
- Maternity Benefit Act, 1961 and Equal Remuneration Act
- Nationalization of Banks, LIC
- Abolition of Privy Purse
- Legal Services authorities Act, 1986
- MGNREGA
- WPA, 1972; FCA, 1980; EPA 1986;
- Agriculture- MSPs and Subsidies.
- PRI- 73rd and 74th CA
- SC/ST – Protection of Civil Rights Ac, 1955; Prevention of atrocities against SC and ST, 1988; NCSC and NCST
- CrPC – Separation of Judiciary and Executive

- Archeological Sites and remains Act (1951)
- Non-alignment and Panchsheel
- **2019:** Comment on the relevance of the Directive Principles of State Policy in an era of liberalization and globalization.
- **2014:** Comment on: Increasingly higher focus on Directive Principles of State Policy.
- **2012:** Examine the relevance of Directive Principles in the era of liberalisation and globalization.
- **2011:** Examine the significance of the Directive Principles of State Policy in achieving the goal of socio-economic justice.

Statutory Institutions/Commissions

Election Commission

- A permanent, independent, constitutional body
- Art. 324 – Power of superitendence, direction and control of elections to parliament and state legislature, office of President and Vice president of India.
- To ensure free and fair elections.

Power and Functions

1. Administration of elections
2. Advisory –

   President – on disqualification of MP

   Governor – on disqualification of MLA
3. Quasijudicial – Setting disputes relating to recognition of Parties.

Oxford Ref.

Election Commission –

- Supervision of internal democracy within Pol. Parties.
- Maintenance of codes of secular conduct during elections.
- Making of essentially Pol. Decision.

Introduction:

- ECI is an autonomous constitutional authority responsible for administering election process in India. Apart from recognizing free and fair elections, one of the important function is to suggest electoral reforms for efficient conduct of largest democratic exercise of world.
- Election Commission play an important role in the successful operation of democracy.
- Rudolph & Rudolph – EC has key position at the heart of regulatory system of Indian state. As an institution act as an enforces of rules that safeguard the democratic legitimacy of the Pol. System.
- EC played central role in the consolidation of democratic politics

  3 Periods:

  I – running of electoral process based on universal franchise

  II – Failed to react fundamental challenges to democratic Process.

  III – Period of activism – engaging fluid party system and new aspects of political mobilization
- Election Commission was a new development, as British had not provided such body.

  C.A. emphasized on independent Election Commission.
- The Constitutional Framework was consolidated through the RPA, 1950 and 1951, which provided detailed provisions of delimitation of constituencies, administrative details of electoral process and basis of electoral system.

- Drawing up electoral rolls
- Supervision of nomination of candidates
- Administration of electoral process
- Surveillance of probity of electoral conduct

- Tarkunde Committee (1975) on electoral reform – sugg. Multimember body
- Dinesh Goswami Committee (1990) –"—

Election Commission Guarantor of Electoral Legitimatacy

Electoral Reforms:

1. The accuracy of registration of electorate 'Once we ensure an updated electoral roll, half the battle of reforms is won'- Sanjay Kumar
2. Introduction of electronic voting M/C EVM and VVDAT
3. Overseeing candidate nomination and vote counting process.

4. Reduction (Regulation) of Campaign period – ROA (Amt.) 1996 – 21 – 14 days.
5. Repolling and Recounting
6. Regulation and Registration of Pol. Parties.
7. Deciding party symbol and designation in case of split.
8. Delimitation 2003 Amt.

- Provided limited redrawing of constituency boundaries
- Restricted future delimiting to intra-state allocation.
- Keeping no. of seats allocated to each state @ existing level.

9. Supervisory role in nomination of candidates
10. President and Vice – president

- Votes are weighted so that states are over under represented.

11. Election to Rs.

- Residence requirement for election has been abused

12. Election Expenses:

- Black money use; corrupt practice
- 1979 – Pol. Parties exempted from income and wealth tax provided they filed annual returns including audited accounts and identities of donors

SC (Y. K. Godak vs Balasaheb Vikhe Patil)

'prescription of ceiling on expenditure by a candidate is a mere eye wash and there is no practical check an election expenses for which it was enacted to attain meaningful democracy.'

- Electoral bonds.

13. Model Code of conduct

- Since Assembly (Kerala) Elections, 1960.
- General rules for electoral conduct; setting norms regarding the notification and conduct of public meetings; standards of decency and decorum in Pol. Debate; condemning contempt based upon appeal to violence or communal hostility.
- Lack of any legal sanction to MCC.

  So, toothless weapon against electoral corruption and campaign malpractice.

  - EC –

  Model Code of conduct is unique document and regarded by many democratic countries across world as singular contribution by ECI to cause free and fair elections.

14. ECI began campaign against criminalization of politics (1997)

    Arguing no candidate should be allowed to contest an election if they had been convicted of an offence even if convictim under appeal.

    [GVG Krishnamurthy (ECI former)

- "No law breaker should be law maker."

- 2002 – candidates to RS, LS, Assembly should file an affidavit detailing involvement in criminal prosecution, details of assets, property ownership and education qualification.

15. Media Regulation and Reporting –

    1998 – ECI imposed code of conduct on electronic media extending 48 hours hiatus in campaign (media broadcasting)

    Attempt to prevent exit / opinion pool.

16. 2014 – NOTA option.
17. SVEEP – Systematic Voter's Education and Electoral participation to educate, motivate and facilitate voters.

Constraints – No power to deregister parties

ECI can cancel elections only on grounds of both capturing; not if money power is involved.

Electoral Reforms = Mother of all reforms.

Assessment of Role of ECI

ECI established as an institution which would enhance and entrench democratic character of the state

Its success is credit to

1. Wisdom of C A – establishment
2. Official and commissioners

- The lack of structure prescription and scope, in constitution could be criticized as being vague and leaving institution open to party-political manipulation.
- Success – with no significant institutional antecedents established the electoral democracy on UAF in a huge and diverse country with little experience of election.
- It set up an effective electoral process which gave solid grounding and enhanced legitimacy of democratic Indian government.
- Tradition of effectiveness of on conducting elections.
- T N Sheshan – recouse to election postponement, intervention in conduct of elections, threats to countermand elections.
- M. S. Gill – impose model code of conduct, expose criminalization of politics, constrain media report on election campaign.
- Limiting scope of campaigning and media reporting can be seen as restricting freedom of speech.
- Innovation – 'Vulnerability Mapping'
- Public perception – highest level of public trust / confidence

  Higher than judiciary (Mitra Singh Subrata V.B.)
- Improved transparency in electoral process.
- There is often tension between ECI and Function of Political parties
- The real test of EC is in the legitimacy of democratic govt. and public's faith in free and fair elections.

Comptroller and Auditor General (CAG)

- Art. 148 provides for independent office of CAG.
- CAG is a head of Indian audit and a/c department.
- He is a guardian of public purse.
- He controls entire financial system @ state and centre to uphold the constitution in the field of financial administration.

Dr. Ambedkar – "CAG is most important office and one of the bulworks of democratic (SC/UPSC/EC) system of India."

- Art. 149 to prescribe duties and power of CAG.
- Appointment by President for 6 years.

Security of tenure (6 years/65 years)

Removed only President on basis of resolution.

Duties and Powers :

1. Audits a/c related to expenditure from CFI, CF state and VTs.
2. Audits a/c related to expenditure from contingency.
3. Audits all trading a/c, mfg ak, P and L a/c, balance sheets of
4. Audits the receipts and expenditure

   To check on assessment, collection and proper allocation of resources.

1976 – Separation of accounts from audits

Compilation and maintenance of a/c.

Submit reports on –

1. Audit report on appropriation a/c
2. Audit report on finance a/c
3. Audit report on public undertakings, corporations

   Reports – to committee on public accounts and committee on public undertaking.

Limitations :

1. Can't audit secret service expenditure
2. Only auditor, no control over issuance of money

1968 – Establishment of Audit board to handle technical aspects of specialized enterprise.

Appleby's Criticism – (Paul H Appleby)

1. CAG is inheritance from colonial rule
2. He is primary cause of unwillingness to act by bureaucrats, as audit led to negative influence
3. Auditors do not know about good administration (dept. officials know more than CAG) recommended abolition of office of CAG.

Supreme Audit Institution of India

- Indian Audition accounts services aids the CAG in discharge of function.
- Economy, effectiveness and efficiency of the use of resources by the government.

CAG also conduct propriety audit, i.e. he can look into wisdom, faithfulness and economy of govt. expenditure and comment on the wastefulness and extravagance of such expend.

Contemporary relevance –

- CAG been accused of 2 criticism – Activism and Favouritism
- Moreover, CAG has became primary cause of unwillingness to ---------- auditing has negative and repressive influence.

Finance Commission:

Art 280 = Quasi judicial body constituted by President every 5th year

Composition – Chairman (Experience in public affairs) + 4 other members (1. Judge of HC, 2. Fin & a/c of govt., 3. Wide experience in financial matters and 4. Special knowledge of economics)

Functions:

Make recommendations of president

1. Distribution of net proceeds of taxes to be shared between centre and states and allocation among states
2. Principles that should govern grant – in – aid
3. Measures needed to augment consolidated fund of state
4. Any matter referred by president

Not Binding Recommendation

FC = Balancing wheel of fiscal federalism

15th FC – appointed in Nov, 2017

- Giving recommendations for 5 fiscal years (1st April 2020 – 31st March 2025)

Current Challenges –

1. GST
2. Though from 2003, some states still incur revenue deficits.

UPSC – part XIV – 315 – 323

- Central recruiting agency
- Independent constitutional body

- Constitution – elaborate provisions regarding compositon, appointment, removal of members, function and independence.

Role:

1. Watch – dog of merit system
2. Concerned with recruitment to A/S, CS – A and B.
3. Advises govt. on promotion and disciplinary matters (Not concerned with pay and service conditions, cadre management, training)
4. Recommendation made not binding (only safeguard is answerability of govt. to parliament for departing from recommendation)

Estab. – 1st Oct, 1926, as federal public service commission by GOI Act, 1935.

National Commission for Scheduled Castes –

- Constitutional body under Art. 338

338 – appointment of special officer.

65th CAA, 1990 – National Commission for SC and ST

89th CAA, 2003 – bifurcated NCSC and NCST (338 A)

Composition – Chairperson : +vice-chairperson and + 3 members : appointed by president

Functions :

1. To investigate and monitor all matters relating to constitutional and other safeguards for SC
2. To enquire into specific complaints with respect to deprivation of rights of SCs.
3. To advise on planning in socio-economic development
4. To present annual report on president.
5. To make recommendations for effective working of safeguards.
6. To discharge other functions like protection welfare, development and advancement.

Jurisdiction – OBCs and anglo – indian community

Criticism – Official posts are filled by political appointees and commission becoming residence for Political patronage

Recommendation (By expert) – To extend inclusion of members from NGOs, eminent personalities having considerable experience to enrich findings and activism of organization.

Critically important area – atrocities against Dalits.

- NCSC monitors implementation of various legal provisions regarding such occurences.
- Civil Right Act, 1955 and prevention of Atrocities Act, 1989 collects and comments the statistics.

- Special attention to atrocities perpetuated by Police personnel
- Key activity – setting up of special trial courts for speedy trial of offences under CRA 55, PAD 89

Concerns:

1. Even though commission has extensive powers of investigations and enquiry in this area, can fix responsibility and recommend action, recommendations are not binding.
2. Delays in conducting enquiry and delivering judgement
3. Perception, commission tends to confirm govt. possibilities

Economic Development

- Land question, 2nd report NCSCST – established large part of agricultural sector is from scheduled castes, unraveled their plight through statistics of no land holdings.
- Recommended surplus land distribution
- Suggested range of tenancy reforms.

Evaluation :

1. Charge of elite bias; not used power of suo moto.
2. Inability to reduce the incidence of atrocities and violence against dalits or effectively fight the persistent scourge of untouchability.
3. Lack of institutionalization of appointments – less competent
4. Decisions are not binding but recommendatory
5. Underlying tension between commission's constitutional obligation of monitoring the working of safeguards.

On one hand and its functioning as a body that redresses complaints of violations of safeguards.

6. Reports are often tabled two or more years after they have been submitted to President.
7. Even when tabled are frequently not discussed
8. Duplication and multiplications of institutions – institutional jungle
9. Quality of report in declining
10. Conflict between NCSC and Min of Social justice and empowerment

Recommendations:

- Commission is paper tiger which needs to be armed with greater powers.
- Additional powers in the matter of criminal investigation

Source : Centre for policy research study

National Commission on Scheduled Tribes :

- Art. 338 A – NCSC by 89th CAA, 2003.

  Set up in Feb 2004 Independent Agency

- Composition – 1 + 1 + 3

Function:

1. To investigate and monitor all matters regarding constitutional, legal safeguards for STs.
2. To enquire into specific complaints with respect to depriviations of right of STs.
3. To advise on planning in socio-economic development
4. To present annual report on President.
5. To make recommendations for effective workings of safeguards.
6. To discharge other functions like protection welfare, development and advancement of STs which the president, subject to parliament may specify.

4 wings –

1. Administration wing
2. Economic and social
3. Service safeguards.
4. Atrocities wing – SCST (Prevention of ATR) 1989, Bonded labour Abolition act, Min. Wages act.

Striking Issues : (CPR India Research)

1. Working in paternalistic mode, provision of constitutions seen as 'safeguards' than 'rights'
2. Working mere as department than independent body; uneasy coexistence with ministry of Tribal affair (MoTA)
3. Only 6 regional offices which are understafted.

Relation between MoTA and NCST is not accommodative. NCST alleges that it is not consulted while framing of FRA act or extension of PESA.

Similarly both institutions are not consulted for devising mining policy in ST areas.

MOTA controls NCST because it controls funding, infrastructure and annual report.

MOTA treats NCST as an appendage of normal activities

NCST is not vocal about is independence.

NCST has no independent powers to sanction officials who have committed atrocities. So Paper tiger

Issues of cases (Complaints)

1. Low no. of cases are handles w.r.t. happenings in country

   All the petitions are not recorded.
2. Pendency of cares – (a) Shortage of staff and (b) nature of files
3. Bulk of the cases are of service matters

4. Cases taken up are of individual atrocities and not widespread activities – NE, Central India.
5. Lacks ethno graphic information of STs.

Public perceptions –

Several Adivasi organisations do not approach commissions, as it is time-effective to directly approach concern authorities.

Employee Organisation – called NCSC and NCST as 'tigers without tooth'.

[political people working for their own survival.]

Recommendations :

Follow the constitution in spirit

Composition of commission needs to be examined to avoid political appointees.

The qualification of chairperson and members to be publicly available.

Overlap with MOTA to examined and independence to be asserted.

Common – short staffed, underfunded, need to be addressed

National Commission on Women –

National Commission on women is a statutory body of GOI, generally concerned with advising the govt. on all policy matters affecting women and defined in National Commission for Women Act, 1990.

It was suggested by CSWI, 1974 and established in 1992.

In the past two decades, NCW has been performing below its potential with few positives among host of negatives.

Positives

1. Passing of Domestic violence Act, 2005
2. Recommendation on MTP act, 1971 Maternity benefit act, 1963 Inaternity leave from 12 weeks to 26 weeks
3. Formation of parivarik Mahila lok adalats for quick settlement of disputes in cost – effective manner.

Negatives : UGC Study

1. Institutional collapse in NCW as it has become a tool for distributing patronage.
2. Various comments by chairpersons over accusing girls for their own molestations.

Conclusion: two power centres – Chairperson and Member Secretary

No power to appoint own staff.

CWDS Study – (Sadhana Arya)

- Need to national body –
  1. To raise women issues
  2. To make effective interventions in law and policy making
- For women's groups, expression from NCM to act link between them and state
- Present picture

  Though commission was created with a lot of hope and expectation on the part of women's movements, it has not lived upto this expectations.

  It needs support and legitimacy from women's group

  Compaints and dissatisfaction over the manner of response by NCW

  NCW has been ignored by government on policy issues.

  Lacks autonomy and in the performance of its role has been restricted by its institutional design.

  NCW act does not lay down any minimum qualification members and not stipulated any procedure of selection.

  They are essentially government and pol. Appointees.

  Committed and Competent are less likely to be appointed.

Power of Commission

Commission has not made an effective use of power criticism – 'it seems it derives its power from MoWCD rather than giving power to voice of women'

Subordinate to MoWCD – dependent for administration and fund

Reports are not taken seriously, as there is no time limit for the government to respond recommendations which are anyways not binding.

Effectivity of Commission:

- Chairman centered body and institution is not powerful.
- No Bold initiatives are taken
- No development of system of work culture
- Most of the members are either ill-informed or under informed about issues of women.
- Complaint redressal – individual case rather than cases of larger implications

Positives:

- Good support to women's groups and activists
- Disqualifications of elected member of panchayat over 2-child limit
- Issue of reservation of women in state legislative parliament.

- Good reports –

  "Voice of voiceless : status of Muslim women in India"

  "Women prisoner in Jails"

  "The Velvet house : Sexual Exploitation of Children"

- Tried to review investigate and examine govt. policy at diff. level; limited success due to lack of pol. Will.
- Tried to establish link with regional, state level and international bodies engaged in advancement of women.

Recommendations:

- More infrastructure
- Decentralization of work
- Autonomy
- Method of appointment
- Networking with more women's groups
- Legal section of NCW need to be strengthen
- Defining goals and vision.
- Inadequate term
- Should act as intervening agency between govt. and women's groups.

National human Rights Commission

NHRC is an autonomous public body responsible for the protection and promotion of human rights, defined by the act, "rights relating to life, liberty, equality and dignity of individual guaranteed by the constitution or embodies in the international covenants."

However, over the years NHRC has been plagued by several compositional and organizational weaknesses.

Weakness in Composition and Organization:

NHRC has over representation from judiciary, they primarily draw their staff government departments – either on deputation or reemployment over retirement – hence, the internal atmosphere is usually just like any other government office due to lack of involvement of persons from NGOs and professional fields.

Strict hierarchies are maintained, which often makes it difficult for complaints to obtain documents or information about the status of their case.

As non-judicial member positions are increasingly being filled by ex-bureaucrats, credence is given to contention that NHRC is more an extension of the government rather than independent agency exercising oversight.

Amongst the organizational weakness, they need to intimate authorities before vising prisons and with respect to Army, they can only request central government.

- NHRC can't peralise authorities.
- It is understaff.

- Large chunk of resources go in office expenses, leaving disprop ortionately small amounts for other crucial areas such as research and rights awareness programmes.
- NHRC is finding difficult to address the increasing no. of complaints. Moreover, the act does not categorically empower NHRC to act when HR violations the private parties.

Suggestions:

- Need to develop independent cadre of staff with appropriate experience in human rights cases.
- A large no. of violations in insurgency and conflict areas
- Not allowing NHRC to independently investigate complaints against the military and security forces only compounds the problems and further culture of impunity.
- Govt. should consider recommendations made by NHRC
- NHRC should have greater authority with respect to armed forces and their surveillance must be done in stricter sense.

Conclusion :

- NHRC began its journey with much promise. But along the way, it seems to have lost all its teeth. H.L. Dattu (Chairman) – "toothless tiger"

HRC Work –

Investigation of alleged violations, conducting public inquiries, exercising advisory jurisdicitons ensuring implementation of HR in prisons and custodies providing advise assistance to governements creating awareness.

Promoting interaction, exchange and better coordination among the institutions.

NHRC –

- Statutory Body
- Protection of Human right cut, 1993
- Watchdog of HR in country
- Rights related to life, liberty, equality, dignity (Protector and promotion).

Objectives :

1. Strengthen institutional arrangeemnts through which human rights issues are addressed.
2. To look into allegation of exceses.
3. Complementary to already existed institution, law, process.

Composition: 1 Chairman + 4 M + GM

Retired CJI	Judge – SC	NCSC
	Judge of HC	NCST
	2 persons of knowledge	NCW, NCPCR (new) proper

Functions :

1. To enquire the violations of HR on complaint, Sue Motu
2. To intervene in proceedings pending in court.
3. To visit jail and detention places
4. To review constitutional / legal safeguards for HR.
5. To review factors including acts of terrorism.
6. To review treaties / institution conventions.
7. To promote study in field of HR.
8. To spread HR literacy.
9. To encourage NGO.
10. To undertake effort as necessary.

Role

- Advices recommendatory, not binding
- No power to punish
- Limited role w.r.t. violation by armed forces (Section 19)
- Annual report
- Complains registered should be within 1 year.

Performance :

1. Abolition of bonded labour, manual scavenger
2. Function of mental hospitals, protective homes, shelter
3. Issues concerning right to food
4. Protocol on rights of child
5. Child labour
6. Disabled rights
7. Custodial death
8. Torture cases
9. Tribal issue
10. Sexual harassment
11. Promotion of HR literacy

12. Refugee right – Chakma Srilankan Tamils

HR (Amendment) act, 2006

1. Reduce members of state HRCs, 5 – 3
2. Strengthening investigating m/c ry
3. Empowering visits of jails without intimation

April – 2018 – Protection of HR (Amendment) Bill, 2018

1. Including NCPCR as deemed member
2. Proposing to add a woman member
3. '—"—to enlarge scope of eligibility and selection of chair persons.
4. '—"— incorporating a mechanism to HR violations in UTs.
5. Amending term of office of chairperson and members aligning and other commission.

Benefits:

- Strengthen HR institution of India for further discharge
- Amended act in Sync with global standard and benchmarks complying with paris principles concerning autonomy, independence, pluralism and wide ranging functions.

National Commission on Minorities 2017

- NCM Act, 1992
- 6 minority communities – Muslims, Christian, Sikh, Buddhists, Zorastrians (Parsis) Jains.
- State minorities commissions in 17 states
- 1 Chair + 1 VC + 4 M (each from each community)
- Constitutional provisions – 14, 15, 16, 25, 26, 27, 28, 29, 30, 347, 350
- Constitution doesn't mention word 'minority' (Sachar Committee Report 2005)
- UN declaration 1992 –

  "State shall protect the existance of the national, ethnic, cultural, religious and linguistic identity of minorities within their territories and encourage promotion of their identity."

Functions:

1. Evaluating the progress of development of minorities under union and state.
2. Monitor working of safeguards under constitution and in laws enacted by Parliament and state legislation.
3. Make recommendation for effective implementation of safeguards

4. Look into specific complaints regarding deprivation of rights.
5. Case studies to be undertaken into problems due to discrimination.
6. Conduct, studies, research, analysis
7. Suggest appropriate measures
8. Make periodical or special reports
9. Powers of civil court – Summon produce docs evidence on affidavit.

Current Status

- NCM seeks constitutional status to protect rights of minorities effectively.
- It can react against errant officials, not responding

  (NCSC, NCST have rights to act against officials)
- Has to rely on department for actions.
- High pendency of complaints
- Shortage of resources and employees

Former Chairman Prof. Tahir Mehmood – "Minor role in major affairs"

Only qualification – persons of eminence, ability and integrity

- No search committee or no role of opposition
- Members are appointees of govt.; So no independence and do not generally chose to embarrass govt.
- No representation Bahai's, few tribal faiths.

Sarla Mudgal Case –

SC registered the existence of NCM and suggested that law commission should examine the issue of reforming personal laws in consultation with NCM

Performance

- Considering backwardness of converts – Buddhist con – Neo-Buddhist
- Examined incident of communal violence set up Tarkunde committee to give suggestion for communal riots.
- Violence against muslim and Christians
- Recommendations to set up fast track courts.

1. Establishment of dept. of minority attain
2. Setting up minority – welfare dept. in all states.
3. Statutory status of CMP

4. Relaxation of educational and formal request for minorities in central and state police recruitments.
5. Amendment of Christian personal law
6. Continuation of SC converting to Islam, Christianity
7. Reinstith of MH state minorities comn.
8. Declaration of Jains as minority
9. Vesting management of Bodh Gaya to Buddhist Community

Conclusion:

- Ensuring constitutional guarantees of protection for minorities by institutional mechanism.
- But, has to cope up with indifference and neglect from govt. and those in power.
- Can make recommendation but can't make them implemented.
- Demand – constitutional status and power to get compensation for victims.

Tahir Mahmood (Former Chairman of NCM)

All commissions are white elephants, are drain on the state exchequer and ultimately unwarranted burden on taxpayers.

National Backward Classes Commission

- Statutory Body, 1993
- National Commission for Backward classes Act, 1993 (proposal to be dissolve to create National Communication for socially and educationally backward classes as Constitutional body) 338 B, NCBC Bill (2017) passed by LS.

Outcome of Indra Sawhney vs UOI

SC directed GOI, state govts, UT govts to constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in OBC lists

Composition – 1 (Judge SC/HC) + 4 M

1. Social Scientist
2. Special Knowledge
3. Member Secretary

Functions:

1. Considers inclusion in and exclusion from list notified as backward for job reservation (2000 groups – backward)

Power of Civil court.

NCSC – Competent authority to look into all the grievances, rights and safeguards relating to BCs.

123rd CA BIII

- Constitutional setting up of NCBC (repeal of earlier NCBC)

NITI Ayog:

- 31st Aug 2014 – Govt. scrapped planning commission
- 1st January 2015 – Niti Ayog
- Created by executive resolution
- Neither constitutional nor statutory
- Premier policy 'think tank' of GOI, providing directional and policy in puts
- Designing long term policies and programmes for GOI
- NITI also provides relevant technical advice to centre and states

National Institution for Transforming India

- A catalyst to the development process;
- Nurturing on overall enabling environment

Foundations of

1. Empowered role of states as equal partners in national development; operationalizing principles of co-operative federalism.
2. A knowledge hub of internal and external resources serving as a repository of good governance and a think tank offering domain knowledge as well as strategic expertise to all levels of govt.
3. A collaborative platform facilitating implementation by monitoring progress, plugging gaps and bringing together various ministries.

Guiding Principles:

1. Antyodaya – Prioritise service and uplift of the poor and margindised and downtrodens.
2. Inclusion – Empower vulnerable and marginalized sections, redressing identity based inequalities gender, caste region.
3. Villages – Integrate villages into development process to draw vitality and energy of bedrock of our ethas culture.
4. Demographic Dividend – Harness our greatest asset, the people of India by focusing on their development, education, skilling through productive livelihood opportunities.
5. People's Participation – Transform developmental process into people driven one, making awakened and participative citizency – a drives of good governance.

6. Governance – Nurture an open, transparent, accountable, pro-active and purposeful style of governance transitioning focus from outlay to output to outcome.
7. Sustainability – maintain sustainability at the core of our planning and developmental process, building on our ancient transition of respect for government.

A/V DbPpGs

1. Equal role of states
2. Knowledge hub
3. Collaborative platform implementation

Criticism:

Oppositon – 'Fluf', 'Gimmicky'

Sitaram Yechuri – Renaming PC = 'Aniti' and 'Durniti'

Evaluation

(i) Preparation of 15 years vision document (2017 – 18) – (2032 – 33)

7 years strategy document (2017 – 18) – (2023 – 24)

3 years action agenda (2017 – 18) – (2019 – 20)

(ii) Reforms in Agriculture –

1. Model land leasing law (MP has seperate law) – various states have come up leasing law
2. Reforms in Agricultural Produce marketing Committee
    1. Agricultural Marketing Reforms
    2. Felling and transit laws for tree produce
    3. Agricultural land leasing
3. 1st Agriculture Marketing and Farmer Friendly reform Indca

    0 = no reform 3 areas - Agricultural Marketing reforms

    100 = complete reforms - Land lease reforms

    (MH – header) - Forestry of private land

(iii) Reforming Medical Education

- Recommendation of abolition of MCI
- National Medical Commission

(iv) Digital Payment Movement

- Advocacy, Awareness, Coordination
- Capacity building, training
- BHIM app

- 2 incentive schemes – Lucky Grahak Yojana Digi Dhan Vyapar Yojana
- Digi Dhan Mela 5

(v) Atal Innovation Mission

- Strengthen innovation and entrepreneurship system
  - (a) ATL – labs to foster creativity in students.
  - (b) A/C – Atal Incubation Centres.

(vi) Indices measuring states performance in Health, Education and Water management

(vii) Rationalizing of centrally sponsored schemes (into 28)

(viii) Swachch Bharat Abhiyan recommendations

(ix) Recommendation and actionable points on skill development.

(x) Task force on Elimination of poverty in India

- Employment intensive economic growth
- Effective implementation of anti-poverty programme

(xi) Task force on agricultural productivity

5 areas

1. Raising productivity
2. Renumerative prices to farmers
3. Land leasing, land records, land titles
4. 2nd Green revolution focusing on NE.
5. Responding to farmers' distress.

(xii) 'Transforming India' lecture series

Knowledge building and transfer

NITI and PC

- Role of states increased
- Bottom-up approach of policy formulation
- PC – formulating govt. plans.
- NITI – Evaluating the implementation of programme
- No function of allocating funds like PC.

RTI

- RTI act, 2005 mandates, timely response to citizen request for government information

- To empower the ciitzens, promote transparency, accountability in the working of government, contain corruption, or make our democracy work for people in the real sense.
- An informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed.

However, the act is slowing moving away from its goal owing to many factors – lack of awareness,

- improper maintenance of records,
- poor compliance to public disclosure of informatin
- inconvenient fee depositing mechanism
- lack of sustained training mechanism for employees,
- misuse of the act
- pendency of appeals before information commission
- lack of legislative measures for protection of whistle blower.
- Only 2% used the sight in a decade.
- Vacancies in I C
- Huge peudeucy of appeallate

Page - 13

7. **Federalism: Constitutional Provisions,**

Changing the nature of Centre- State Relations;

Integrationist tendency & regional aspiration

Inter State disputes

Constitutional Provisions

Constitutional provides for division in 3 areas

1. Legislative
2. Executive
3. Financial

And 3 lists in VIth Schedule – Union (100), State (61), Con Current (52)

A. Legislative

248- Residuary Power with Centre

249- Power RS- State List

250- Parliament – State List in Nat^{n} emergency.

251- State laws not to be inconsistent C Centre law.

252- Laws with Consent of 2+ states

250- Laws for int$^{L.}$ treaches.

Concurrent List- Centro's Law Prevails.

Entry 2A (42nd CAA)

- Sending Armed Forces
- GST law

State list

Con Current {Union}

201 {Governor Reservation}

201 {Reservation of Bill for President's Unsent}

B. Administrative

Con Current list Admin C State

256- Obligation of state to comply C Centre's Law (Union Can give direction)

257- Exe. Of power of state not be obstacle in that of centre.

- Dir^{n} for Const^{r} 2 Main
- Tenance of Communication for Nat^{r} & Military importance.

339 (2) – Dir^{nc} for ST

347- reign language of minority

350 A - ed^{n} instructions in mother tounge

258 A- S→ C

288- State's power impose tax on sale of water / electricity / interstate river subject to prest Consid^{n}

304 – State's power to impose restrict^{n} on freedom of trade subject to presi Consideration

C. Financial

- Matter of dispute fiscal federalism
- K.C Whease

  Federalism means independent existence of state w.r.t economic resources.
- Asymmetrical/ quasi federal arrangement
- Horizontal / Vertical Influences

A. Tax- Revenue System

- Acc. To 7th Sch list
- GST
- 10th FC all Centre's levies = Distributable

B. Grants

282- Discretionary grant ∴ " Bargaining"

275- Statutory

273- Spc. To Orissa, Assam, Bihar

275- Grants for ST

C. Borrowing

292- B- Power of Centre fixed by parliament

293- Borrowing by states limited

Federalism Philosophy

- Method of Promoting 'Self- rule' & 'Shared rule' and balancing the intersect of its nations with its regions.
- Purpose
  1. Limiting Possibility of tyranny of majority
  2. Generating strength th^{r} union.
- Reconciliation of
  1. Freedom with cohesion
  2. Diversity of polo culture identities with effective collective union.
- Descriptive- implying opposite of union state

  Normative- division of substantive areas of powers.
- 4 Institutional Characteristics-
  1. 2 Sets of govts with independent spheres of administrative a legislative competence
  2. Independent tax bases
  3. Written constitution for deriving power.

4. Independent Judicial Court.

– **Significance**

Federalism in India has turned into a major source of legitimization & Democratization of power in India.

- Latin Word = "Foedus" = Contract.
- Power Distrib^{n} intensity – Delegatim- Devolution- Decentralisation

– S.R. Bommai- "Federalism" is a basic structure.

– K.C. Wheare – Quasifederal

1. No federal principle judiciary
2. Centre has more power – LAF
3. No Dual Citizenship
4. AIS
5. Emergency provisions
6. No Gurantee of territorial inteority

Ethno Centric, US ≠ ideal model – 1930s US- tilted to Unitary

Changing nature of Centre-State Relations

1950- Strong Centre Smooth Rel^{n} Party rule congress system
Consultation Accommodation

1967- Strong centre with rivalry among centre & States

1979- Increasing Influence of states

1989- Weak centre dominating states coalition politics bargaining assertion of regional parties

2014- Strong centre but not smooth with states bargaining

Tension Areas

1. Mode of Appointment & Dismissal of governor
2. Discriminatory & Pakistan role of governor.
3. Imposition of President's Rule of Pakistan intersects (356)
4. Deployment of central forces in state to maintain law & Order.
5. Reservation of state bills for Consider^{n} of president (201)
6. Discrimination in Financial allocation to states (282)
7. Role of planning Commission NITI AYOG.
8. Management of all India Services
9. Use of electronic Media for political purpose.
10. Appointment of enquiry commission against ems.
11. Sharing of Finances (Between Centre & States)

12. Encroachment of Centre in state list (249,250)

Power Sharing

Centre- President's Rule Con Current Legislation Transversal powers sharing among centre & each state.

State A- Horizontal power sharing between states Interstate tribunal water dispute state.

State B- Transitional power sharing between centre & all states.

- FC
- Interstate ISC Council
- Congress Party

Power Sharing

1. Finance Commission
2. Inter State Tribunals
3. Governor
4. Destructible States

Art. 35

1. Authorizes the president to dismiss the government of the state and dissolve/ suspend legislatives when he receives report of governor or in other way the government can't be carried an in accordance with the provision of constitution.
2. 1951-1966 = 10 times, 1967-1988 = 65 times, 1999-1997 = 13 times

Rajiv Dhavan – Book

1. Suggest Article 355 to be done away with
2. GST = Unambigous infroyement on stands rights

Fiscal Federalism

- Central govt. possess superior fiscal powers.
- Central Revenue- Export/ Import duties;
  Non- agricultural income tax
  Corporation Tax
- State's revenue- Shrinking- Pressure of populism done way land & agriculture -Income tax.
- Capacity of states = weak
- Depend more upon
  1. Taxes from VII
  2. FC grants

3. Transfers from ministerial budgets

- Central commissions- FC/ NITI Ayog generally SCT priorities for national government.
- Studies shown that- Since liberalization of economic policies & decentralization of policy making to states, states have been able to enjoy more autonomy that enable competition among states and provided incentives for reform- Oriented policies.
- Picture today-
- Differentiation among India's states in terms of their fiscal capabilities and their developmental potential; and need for a reform of Inter-State mechanism of co-ordination & Equalization.

Ques- How nature of Indian Federalism is changing with the change in party system and economic policies

Ans- Indian Federalism has been gone the profound process of Informal changes due to

1. Fragmentation of Indian Party system & Consolidation of broad based coalition govt. a) Centre
2. Transformation of Indian economy from a 'Command to a more liberalized demand economy.

Changing Party System & Federalism

The seeds of Changing party system & Consequent federal structure lies in characteristics of pre-multiparty phase of Indian politics. It was called or congress system (Kothari) charcterised by dominant congress party. The period of two decades marked by absolute way the congress had over centre & State.

Federal System was highly centralized and state intersects were not formally & Institutionally represented areas a) national level.

With decline of overbearing strength of congress system, 2nd phase was marked by competition in system, Rudi mentary opposition to congress in many states charcterised by bipolar, tripolar, quadripolar competitions this led to possibilities & potential for the formation of coalition & alliances. There has been increase in seats & Strength of regional parties (a) federal level this interogensity of unit level translated to both numerical plurality & Diversity of representation of national level.

Changing Party System & Federalism

Economic liberalization accelerated the process of federalization, promoting a change in federal relations from intergovernmental cooperation. Towards interjurisdictional competition among state. States began to compete with each other to offers concessions to global and national business actors. While this dynamic had some negative consequences in undermining regional states revenue capacities, scope for market competition and disruption of monopoly power of national business classes and national bureaucracy.

The Union has withdrawn some of its functions by displaying its public goods responsibilities to the regional states; this creates stronger hunger for resources & revenue at regional level. With passage of GST Bill, federal system has seen renewal of cooperative federalism with concept of pooled sovereignty.

Conclusion

Indian federal has been manifesting changes across decades w.r.t changing party system & Economic policies majority strengthened national unity & promoted dupt in nook & corner of nation.

Impact of GST on Centre- State Relations

GST- Destination based indirect tax system merging the most of indirect taxes on centre-states

101st CAA purpose- Avoid Cascading / double taxation; facilitating seemless nutrients of goods, common national market across borders states.

Mechanism

1. Levied & collected at each stage of sale & purpose of goods services
2. Export – 2ems rated, import – levied some domestic
3. Simplicity of tax administration & enforcement
4. Consequence – reduction of tax burden by 25-30%
5. Free Movement of goods from one state to another
6. GST Council- Constituted by president
   Union FM, Union FMOS, State FMs
7. Dual Administration – distribution of tax payers – single window
8. Taxes- Excise, Addition Custom, Service= Union VAT, luxury= state
9. GSTN – Not for, Profit, Non -government infrastructure firm providing service to tax payer & administration.

Impact on C-S relations-

- Phenomenon of pooled sovereignty
- GST Council with 2/3rd weightage in decision making to states. ∴ Coordination & max consus building is must.
- GST component destination based- loss to originator states
- GST takes away rights to states to decide indirect taxes, however VAT on petroleum products & liquids.

Conclusion

GST accelerated fiscal federalism among centre & states would be key stakeholders & Actions.

Integrationist tendencies & regional Aspirations

Union of India- Indestructible union with destructive states.

Art.3- creation of new states with simple majority by presidential recommendations.

1950 (I)-

- Integration of princely states
- Evolution of India II Territorially Coherent nation
- SK Dhar Up- Against linguistic Organisation
- Fazal Ali (1953)
- 'One State, One language'

1956 (II)-

- linguistic reorganisation
- Gandhi & Ambedkar

1970 (III)-

- Reorganisation of North east to urban on insurgency
- UTs- State

2000 (IV)-

- Development issue CH, JH, UK

2014 (V)-

- Development + Equity + Justice
- Telangana

Theories of STATE FORMATION

1. Sociological explanation – Yogendra Yadav – Marginalised groups mobilized for power sharing.
2. Electoral Politics – Louise Tillin – Central govt. catch the potential political pay offers for state creation. E.g Uttrakhand- BJP, Telangana- UPA
3. Political Economy – A.K Roy-Internal Colonialism & discrimination
4. Administrative Efficiency – L.K Adwani, Bibek Debroy

Globally-

1. Montesquieu supported smaller/ state / units
2. Madison- against smaller states, results into domination of by particular action.

Small States

Rajni Kothari, M.N. Sri Nivas

1. Fulfill polo aspirations
2. Administrative efficiency
3. Resol^{n} of identity crisis
4. Resol^{n} of internal colonization
5. Bibek Debroy

Adopt ratio at 25 million people for 20000 sq.km (50 states)

6. More balanced federalism
7. Security threats can be resolved.

Against Small States

M.P Singh, Sudha Pai

1. Statehood can't gurantee dvpt
2. Lead to aggressive nationalism proliferation of son of soil theory
3. ↑ In Inter -states disputes
4. Threat of Balkanisation
5. Strengthening of regional parties
6. Creation of new dispute- Chandigarh, Hyderabad.

   Sudha Rai, Sanjeev Baruah

   Rather than state formations, we should go for- decentralisation i.e. strengthening PRIs, ULB

Harrison & Wheare Indian Federalism constitutes a puzzle. But is relatively works so well than Postcolonial counterparts

1. Accommodation – (1952-67) congress party accommodated local & regional talents in party horizontal govt.
2. Public Involvement – Mobile social group enter inform of regional parties.
3. Atmostphere of 'competition – Centre playing role of mediator. {Collusion governmental between inter}
4. Role of & Impact of polo – Intra policy federalisation

   Parties – Regional Parties = Champion of state intersects

- Keen Awareness of 'reglon' in Indian Political System

  1990s- Rather than taking mechanical anti-Delhi stance new breed of ambitious, upwardly – mobile leaders have learnt to play by the rules. Eg. TN- Federal deal can be made

Regionalism

– Even in west UK – Scotland

  Canada- Qubee

  China- Taiwan {Way Out (West) }

– Paradiplomacy

– Referendum

Post-Colonial

– Violent Suppression

– **Particular region develop specific consciousness**

– **Sanjeev Baruah/ Ayesha Jalal**

  Region & Nation are constructs.

India Regionalism

1. Seperate State
2. Separate Nation- State (Secessionist)

- India has good record to tackle with even multilayered, multidimensional & ethnic aspects.
  1. Democratic ways
  2. Constitution provisions
  3. Variety of options.
- Atul Kohli Study-
  - Chance of peace are strong when party at centre is strong and leadership is accommodative.

1. Democracy is better solution
   - Scope for power sharing
   - Address problem of distributive justice
   - Consent based on legitimacy.
2. Constitutional Provisions
   - Introduction of federalism
   - English → link language
   - Constitutional recognition to language
   - AIS
   - Alliance with regional parties
   - Autonomous region administration
   - Alfred Stepan

     Article-3
3. Options exercised by GUI
   - No Declared policy
   - No comprise with territorial integrity
   - Solution within framework of constitution
   - Govt ready for dialogue, but violence must be stopped.

- **Why regional movements erupt?**
  1. Modernisation theory- Rudolph & Rudolph

     Forces of modernisation like democracy, competitive politics
  2. Uneven devpt model- Robert Hardgrave
  3. Culture of affluence- Thomas Januzi
  4. Son of Soil theory – Myron Weiner
  5. Politics of opposition

- India has been relatively successful in taming in deperist aspirations. Better success story – Dravidian Movement.
- Inverse 'V' curve by kohli (of India)
  Heightened mobilization of groups identities are followed by negotiations and eventually such movements decline 'as exhaust set in, some leaders are repressed other are co-opted and modium of genuine power- sharing & mutual accommodation Betⁿ Movement & central state oath. Is reached.
- Some, regions or nations = territorlization of political life.
- In N. India, religion, not language, primary line of cleavage.
- Alfred Stepan- The argument for holding together federation being demos enabling feature is based on the idea of reconciling diversity with policy making.
- Baruah – In above sense fedratim building, not nation building is a project for India.
- Congress fall in 1989, is not due to economic policy but on politics patronage. Parties realize that in order to win, they have to tune no local realities.

Inter State Disputes

The Successful functioning of Indian federal system not only depends upon centre state, but Inter-state relation too.

Constitutional Provisions

1. Adjudicⁿ of river water disputes (262)
2. Co- Ordination thʳ ISC (263)
3. Mutual recognition of public act, records
4. Freedom of interstate trade, commerce & intercourse (301-307)

Disputes

- Border
- Water
- Minority

- Extra constitutional – Zonal Councils
  Interstate Water dispute
  Article- 262
  1. Parliament by law provide for adjudicate of any dispute with respect to use, distribution & control of waters of any interstate river & river valley.
  2. Parliament may also provide that neither SC nor any other court to exercise jurisdiction.
     1965-
  1. Interstate water dispute for establishment of tribunal

2. River Boards act for reg^{n} dvpt of interstate river & River Valley,

Water: State subject (Entry 17)
Interstate & River Valley Reg^{n} & dvpt: Union list (56)

Resolution - Article-131,262,263,136
ISWD issue

1. Constitution of tribunal
2. Delay in proceeding
3. Legitimacy
4. Implentation
5. Jurisdiction
6. Environmental
7. Reorganization of states
8. Reglоualization
9. Geographical & di mate fouler

Ques- Weakness of I-S river water dispute redressal mechanism. Give suggestion

Ans- Art. 262. Bars jurisdiction of SC/ any court over ISW dispute ISWD, ACT, 1996 provides- ad hoc, temporary, exclusive tribunals. The awards by tribunals carry force of Sc's award and blinding on lighting states. As seen during Cauvery dispute, this arrangement has not been effective & suffered from several governance & Institutional Challenges.

Weakness- Despite SC order, Karnataka refused to release water for TN There is institutional vacuum for implementary tribunal awards the responsibility of central govt set up institution hasn't been fulfilled. During Distress time, the dispute become the often ride on emotive association & nations of identity to animate & Escalate disputes. ∴ Opportunity for bank politics. Adjudication by tribunals involves long drawn adverserial litigations causing chronic delays. The arrangement deprives the states of an avenue to redress their greivances. After tribunals are dissolved.

Suggestions

1. 2nd ARC
    1. Central govt. to become party in dispute
    2. SC to take note 262 should avoid entertaining SLPs.
    3. Need of creation of permanent water tribunal & national water law for use, Consideration & Management of water
    4. River Basin Organiz^{n}- central state & local govts.

Fali Nariman – Criticizes the functioning of tribunal.

Punchhi Comm[n]- Recommended multi-disciplinary composition of tribunal as per global trend.

Conclusion

- Union govt has recommended amendment is ISWD Act. And proposed an agency to collect data including rainfall, irrigation & Inter-basin flows.
- Cabinet also decided to constitute a permanent tribunal to adjudicate disputes over river water.

8. Planning & Economic Development

Nehruvian and Gandhian perspectives – 2015, 2014 Gandhi

Role of Planning & Public Sector

Green revolution – 2012, 2017

Land reforms and agrarian relations – 2016

Liberalization and economic reforms.

Niti Ayog – 2014

RTE – 2015

Politics of economic growth – 2016

POLITICAL ECONOMY

- Gunnar Myrdal – "Economic decisions are not taken in vacuum. There is politics behind economics."
- Indian economy shows combined paradox of economic success and deprivation.
- India and South Asia are engaged in consequential "human drama" ($ Myrdal in Pol. Economy of Nehruvian State, 1968)
- Almost all economic challenges faced by a developing and poor yet growing economy bring Political and Economic questions to the force.
- Political Economy is at the heart of India and its ongoing developing trajectory.
- The developmental trajectory can be broken into 2 phases:
    1. Nehruvian period till 1991
    2. New Economy path after 1991

- Political Economy refers to distribution of political and economic power in a given society and how that influences direction of dvpt and policies
- While the state in India has been powerful in its regulatory and interventionist role, it can't be described as "strong state", due to poor performance in commitments
- Accountability can be exercised the elections and Indian electorate have been quite assertive in throwing out incumbents, but elections are fought on multi dimensional platforms.
- Federalism and decentralization are ways of making state more responsive to local needs.

Federalism faces 2 dilemma :

1. Fiscal dependence on central govt.
2. Liberation and Competition

GANDHIAN PERSPECTIVE

- Gandhi was not economist and not given specific model of economy.

  S. N. Agarwal (1944) presented Gandhian model of growth

  - Hind Swaraj, various economic perspectives based upon principles of non-violence, towards environment and against exploitation of labour.
  - Focussed on minimization of wants.
  - Production by masses, not mass production in industry
  - Model aimed at inclusive development for attainment of Swaraj i.e. economic Swaraj, where people with poor class would have all life chances that of Prince
  - Decentralization of planning; oceanic circles.

Gandhian Model of Development Growth	
1. Agricultural Reforms	- Land reforms – 'land to tiller' - Abolition of money lending - Cooperatives - Rural Credit - Dairy farming
2. Rehabilitation of Village Industries	- Khadi - Cottage Industries
3. Large Industries	- He was not totally against large industries. - But should be limited to defence, chemical, thermal power, mining, m/c tools. - It shouldn't displace people - Production by masses - No concentration of wealth - Trusteeship theory

4. Other	- Afforestation - Soil conservation - Animal husbandry - Soil irrigation

- Nehruvian Model of development would lead to internal colonialism
- India resides in villages; rural area shouldn't be colonies of urban.

NEHRUVIAN PERSPECTIVE

- Influenced by Lenin and Stalin – Stateled economic planning
- Fabian Socialism – 1955 – Congress Awadi Session
- Mixed economics model – Capitalism + Socialism

1. Investment in heavy industries

- Basic platform for industrial development
- Less dependence on Foreign import; import substitution.
- Greater economy to India.

Economic Planning, Economic Self-Sufficiancy, Building Socialism

2. Rapid Industrialisation –

- To reduce dependence on agriculture
- Employment generation
- Demand for mfd. Products
- Helping agricultural inputs – Fertilizers pesticides.

3. Small Scale industries – 2nd priority and for private players.
4. Export promotion and import substitution.
5. Progressive Taxation
6. Science and technology promotion

Achievements	Drawbacks
1. Strong base for Industrial production 2. Stagnant economy – self-reliant economy 3. Volume of production increased 4. One of advanced country in 3rd world. 5. Improvement in human development indicators	1. License – permit quota raj 2. Insufficient poor quality consumer goods. 3. Shortage of capital 4. Black Economy 5. Social justice compromised 6. Stagnation in agriculture

	7. Imbalanced regional development 8. Unemployment

Marxist Critique – State Socialism – Marx criticism State capitalism; not state socialism or indigenous capital of Weah.

Provided robust base for future development of economy

ROLE OF PLANNING AND PUBLIC SECTOR –

Myrdal – "Economic decisions are not taken in vacuum. There is politics behind economics."

- Planning in India influenced from USSR, have to adopt planned measures due to paucity of capital.
- Model – Mixed model; top-down approach.
- Objective – better utilization of resources.
- 5 years plans to frame resource allocation and policies.

Achievements:

1. Industrial production increased
2. Agricultural self-sufficiency
3. Infrastructure development

Role of Public Sector – heavy industries	Problems in Public Sector
1. Major role during planning 2. Concentration on equitable distribution 3. Control of prices and stability of goods 4. Check growth of monopoly 5. Basic infrastructure Lack of capital to put	1. Overmanning 2. Less work ethics 3. Low capacity utilisation 4. Red tapism 5. Excessive expenditure 6. Fiscal Deficit 7. Absence of rational pricing policy 8. Negative rate of returns

1990s Economic Crisis

- Forced to adapt SAP of IMF and WB
- Changed the nature of Indian Economy
- Indicative planning
- Role of Public Sector
- Role of Private Sector

Now –

Role of Public Sector limited to –

1. Producer of goods and services
2. Supplier of public goods
3. Regulator of economics

ROLE OF PUBLIC SECTOR IN CURRENT AREA

GREEN REVOLUTION

- Land reforms failed to bring out agricultural growth due to lack of capital and motivation.
- 1960s – food crisis along with two wars

Concept of Green Revolution –

1. Introduction of High Yielding Variety (HYV) seeds of rice and wheat technology, fertilizers and pesticides.
2. Credit facility, price incentives, marketing facilities
3. R & D – Agricultural research institutes

Started in 1961 – Integrated Area Development programme – 14 districts

1965 – Integrated Area A Programme – 114 districts

Philosophy :

1. Productionist Approach
2. Scale neutral strategy – same to big and small farmers

Achievements:

1. Self-sufficiency in food production
2. Agricultural growth – 3 to 5%

Impacts:

1. More in equitable rural society
2. Eviction of tenants
3. Interstate migration
4. Mic – tractors, crushes; service groups in urban areas
5. Purchasing power decreased
6. Floating labourers
7. Dependency of agriculture on market
8. Feminization of agriculture
9. Destruction of traditional wisdom of farmers
10. Regional disparity increased.

11. Counter revolution in Naxalbari
12. Dependence on government for MSP, Marketing

V K R V RAO

1. Green revolution increased gap between rich and poor; though poor tenants got land rights; there is increase in indebtedness.
2. Government assured prices of production increased which can't be afforded poor, marginal section.

J. MENCHER

Bureaucracy didn't follow small farmers in Green Revolution

HARRIES

G R was not resource neutral.

DHANGERE

New farmers movement for prices subdidies etc.

RUDOLPH AND RUDOLPH

Emergence of Bullock Capitalists.

Assema Sinha (Oxford Book)

Massive changes in India's agriculture sector in near future will transform the nature of agrarian capitalism again in next 10 years. Many Indian and multinational companies are moving into agriculture retail and Food processing industry.

Companies – ITC, Pepsi India, Mosanto, Tata Rallis, Bharati, Reliance

Sunil Mittal, chairman of Bharati Enterprises sums up put section optimism "the greatest area of development is going to be in the area of agriculture; which like telecom is business which can transform India and most importantly transform rural India."

LAND REFORMS & AGRARIAN RELATIONS:

- Land Reforms – Redistribution of land from rich to poor.
- Objectives –
    1. Economic growth by productivity in agrio
    2. Ensuring distributive justice to form egalitarian soc
    3. Generating income that will increase demand
    4. Freedom movement – "Land to tiller"
    5. Food Security
- 3 Options:
    1. Communist – Forceful acquisition and redistribution

2. Productionist – growth by investment
3. Institutionalist – Evolutionary Changes
    1. Land Reforms
    2. Providing Industrial Credit
    3. C D P

- Land Reforms – Obj

Abolition of Zamindaris – intermediaries

- Abolition of zamindari, mahalwari, ryotwari which had burdened tenants with rents.
- Upto 1972, all states passed anti-zamindari acts

Loopholes

1. Zamindars converted to tillers
2. Large benami transactions
3. Heavy compensation to zamindar

- Uma Chakravary – Middle castes got benefitted
- Rudolph and Rudolph

- Social hierarchy hardly changed
- Compensation goes as capital to rice mills/cold storage
- New rural entrepreneurial class
- Social structure remained pyramidical

Tenancy Reforms :

1. Setting of rents
2. Security of tenure
3. Ownership to tenants

Loopholes:

1. Poor documentation at tenants
2. Previous landowners became tenants and original tenants evicted.

Success in WB – operation 'Barga'

Danier Thornes

- Only formal change, no fundamental
- Dominant class continued to hold power

3. Land Ceilings:

1. Limiting Land holdings
2. Surplus land to govt.

Loopholes – Jt. Families broken; divorces, bureaucratic apathy

Analysis

- Least success in this area
- Distributed land with poor quality

4. Consolidation of land holdings:

- cooperative forming; failed experiment.

Gunnar Myrdal – co-operative farming used to aristocracy

Assessment

1. Lack of political will
2. Absence of records
3. Attitude of judiciary in favour of right to property
4. Bureaucratic apathy
5. Lack of Bottom pressure
6. Limited Bottom up movements like Bhoodan, Gramdan.

Social Consequences :

1. Rural landscape did not change too much.
2. Still hierarchical class structure
3. Dominant class in political power.
4. Green revolution increased gap.

Views

1. Daniel Thorner – Dominant Caste
- Large no. of legislations by state governments
- Largest body of legislations in the world
- Legislations with loopholes; poor implementation
- India's failure – soft state

2. Radhakrishnan
- Successful only where peasantry was mobilised politically and could pressure from below.

3. Atul Kohli
- Successful only where political parties supported.

W B – Operation Barga

K N – Under Devraj Urs govt.

- Failed in UP, Bihar.

Liberalisation and Economic Reforms :

- 1991 – fiscal crisis, balance of payment crisis. Forced to implement 'Structural Adjustment Programmes: of IMF in return of bail out.
- Opening the economy; fall of USSR.
- Liberalisation – privatization – Globalisation Model

'Trickle down Theory'

Major Reforms

1. Devaluation of Rupee
2. Removal of Industrial licensing
3. Abolition of MRTP
4. Disinvestment of PSVs.

Areas of reform

- Financial Policy
- Fiscal Policy
- Monetary Policy
- Industrial Reform
- Open trade Policy

Objectives :

1. Sustained high growth
2. Raising standard of living
3. Pursuit of equity and social justice.

Achievements:

1. Increased vol. of economy, growth rate 7 to 8%
2. Exports
3. Infrastructure
4. Reduction in Poverty

Criticism:

1. Human development not progressed

2. Inequality widened
3. Islands of poverty
4. Jobless growth
5. Mass – migration

Laaos

- Beginning of liberalisation policies and gradual withdrawal of state from sphere of economy

  = disenchantment with Nehruvian framework of development and social change.
- Nature of political and social mobilization changed.
- 'New social movements' questioned the wisdom of developmental agenda
- Changes – fall of USSR, end of cold war, new technologies of telecommunications, reach of global capital.
- Process of globalization not confined to economy alone.
- It influenced culture and politics everywhere and opened up new possibilities for social action and networking.
- New political questions like – environment, gender, human rights came across the world and networking across boundaries gave them different kind of legitimacy and strength.
- The language of equality and democratic representation mobilized new leaderships across social groups e.g. Dalit.

Oxford Book

Political Economy of Indian State

- India = land of paradox economic growth, development 'Hailing State'.
- Economists put onus on poorly conceived policies – (command and control aspects) – Bhagwati.
- Lipton – Urban-bias in policy making, though rural-lobbles were just beginning
- Kohli – importance of political variables – regime type and leaderships ideology
- Myrdal – India – soft state – expecting very little from citizens
- Devesh Kapur – Indian state better @ Macro level than micro level and institutionally better @ centre than state and local

Macro Level

- Inflation, monetary policy, external debt.
- Till 1991 – 'consecutive'

- Popular politics led to better control on Inflation's but fiscal defits enlarged to crisis in 1991, due to distributional conflicts, limitations in state capacity, powerful agrarian demand polity. And Industrial Command Polity – low taxes
- Coalition politics with no. of group interests led to economic stagnation.

Rudolph & Rudolph – The necessity of producing compromises among heterogenous ruling coalition helped to produced centrist policy.

Bardhan – Heterogenous dominant classes rich industrialists, farmers, public sector bureaucracy are reason for stagnation.

1991

- Fragmentation of coalition of dominant classes
- Earstwhile elites who controlled state apparatus now favourably inclined towards markets.

LPG

1. Fastest recorded growth ever
2. Structural transformation in economy
3. Engagement with global economy
4. Trade/GDP ratios almost tripled
5. Non-debt foreign capital in flow increased
6. Floating exchange rate regime left RBI to play little role
7. Tax revenues increased

Microlevel –

- Intensity of Poverty and Destitution
    1. India's Poverty programmes
        1. Price Support and Subsidy – most expensive
        2. Area development Prog – Bureaucratic apathy
        3. Administrative cost of social programme is large.
    2. Institutions and Incentives
        1. Clientalism – appeal of vote on private goods
        2. Electoral competition poorly revolves around the public goods.
    3. The demand size puzzle – Weakness in demand side due to identity politics, lack of voice of middle class (demand of temple > demand of hospital)
    4. Organizational Capabilities – Administrative capacity is poor, poor skills and inadequate no. of employees.
    5. Decentralization – less devolution and transfer of power.

6. Informational Transparency – information dissemination about equality of public services can assist in building political credibility. & - role of media

Conclusion : @ Macrolevel, decoupling between economics and politics whittling away state's monopoly power. While @ microlevel, states poor performance created space for uncivil pvt actors – raedical religious movement. left movement

Page – 9

Oxford Book

Political Economy of Reforms - Rahul Mukherji

India's transition from –

Import Substituting Industrialisation (IST) Towards Trade led Growth (TLG)

IST – rapid heavy industrialization in closed economy resulted in rapid urbanization – social mobilization, literary, mass communication expanding political consciousness and participation e.g. student led mobilization in 1970s.

Communial riots – modern urban phenomenon.

- Democratic politics became highly competitive.
- Janata Dal victory (1989) –
- Result of cooperation among disadvantaged and backword castes

2. Low productivity

- Dependent upon govt. policies, protection subsidy
- Tunover/investment ratio = 79 (1971), 2 (1981), 1 (1991)
- Productivity of mfg – dismal pestormanure
- International competitiveness declined

3. Fiscal Crisis

- Politics of ' command' chr. By state autonomy transformed to politics of 'demand' by
- MSP subsidies pays wase subsidized bankrupt industries
- Pressure groups – Rudolph & Rudolph.
- Govt. expenditure in a way that it didn't earn adequate resource on investment would invitably led to fiscal crisis.

TLG –

- Gradual reduction in trade protection with substiantially icreased incentives for export promotion.
- FDI was promoted, FERA – FEMA.
- International constraints playing role in policy formulation

- India = enthusiastic pro-capitalist state with neo-liberal ideology

Problem of redistribution in liberalisation – (Kohli)

- State – capital alliance for growth is leading to widening inequalities among city vs country, region, class lines.
- Balance of class power within India is also shifting decisively towards business and propertied class.

Chapter of Redistribution – Kohli, Oxford

Changing nature of Indian state after Liberalisation

1. Outward reform autonomy to state
2. Inword 73^{rd} , 74^{th}

- Economic liberalization
- Institutional Change
- Devolution of Pol. Authority
- Enfranchissment of mosses.

Pranab Bardhan –

Pre-lib – dominance of class coalition –

- Industrial Capitalist
- Rich forma
- Managesial clo-----

Partha Chatterjee – Post liberation -

- Industrial Capitalist

H / W – Due to peculiarity of Indian Democracy –

1. Electoral Compulsion – attempt to achieve min. satisfaction of poor masses. NREGA, NFSA.
2. Fear of violence – (Naxalist)

Yet, despite – rhetoric of 'inclusive growth' in equality

Prabhat Patnaik – Instead of retreating, the state act in interests of globalised capital and domestic corporated financial oliganchy.

H / W. K N Raj = "Intermediate Regime" – urban lower middle + rich peasantry

Impart of new Economic policy on Indian Democracy

1. HR, social movements

2. Pursuit of good governance

- Participation of citizen on governance
- Institutionalization of transparency and accountability mc chauisn.

3. Political consensus around market – led development.
4. Better organized civil society.
5. India in global chain – under scuutiny from international institutions

H/W

1. Market led
2. Elite bias
3. Low employment
4. Inequality Oxfam report

Reversal of open market policy is near impossibility, yet India has opportunity to humanize the economic realm that it complements the ideal of Democracy.

Centrist policy – Political Consenous

Foucauldian notton – governamentality – Fundamental of managing population – the welfare policies.

9. Caste, Religion and Ethnicity in Indian Politics

Caste In Indian Politics –

Indian Constitution does not mention concept 'CASTE'.

Nehru – Caste is threat to National Unity and has no role in modernization project of India

But constitution instituted certain legal and Institutional measures to enable groups and communities of people who had been historically disadvantaged in the given social system to participate in the game of democratic politics on equal terms.

Politically, Caste in much more active institution today that it ever was in the past, thanks to, electoral processes and competitive politics.

Democratic political process in terms at caste and communities has become common place in contemporary India.

e.g. Caste communities are presented as determining political outcomes; they work as pressure groups and influence governance agenda of Indian state at local, regional and national levels.

This reality of working of democratic political process is very different from the visions of constitution makers and founders of republic.

Colonial rulers tried to make sense of India in 3 central categories – village, caste, religious communities.

Caste as an institution – arranging social groups

Caste as an ideology : a system of values and ideas that legitimized and reinforces the existing -------

In evolutionary imagining of India, Caste was expected to disappear unfolding the process of industrialization, urbanization and modernization.

Caste and Democratic Politics:

Dynamic relationship between caste and democratic politics.

Horizontal consolidation of caste-increase in caste solidarity

Competition among different castes.

Change in politics – power shifting from one set of caste groups i.e. upper castes to middle level 'dominant'castes.

Introduction of UAF made no. of caste communities in local settings, critical.

Caste Associations – Agents of modernization (Rudolph and Rudolph)

Caste as pressure group – Robert Hardgrave "The Nadan of Tamilnad"

Notion – democratic politics helping the traditional institution

Kothari ("caste in Indian politics") argued against above notion – casteicization of politics.

"It is not politics that is getting caste-ridden; it is caste that is getting politicized..... Politicization of caste.

Rise of middle-level castes in 1960s

In some cases, agrarian castes formed their own pot parties; elsewhere, they emerged as powerful factions within congress party, around the caste identity.

1980s – Introduction of quotas by Mandal commission.

1990s – Gave new political legitimacy to caste; normalizing it as a mode of doing new politics.

Shifts from "politics of ideology to politics of representation" – Yadav

Language of equality and democratic representation gave rise to leadership from Dalit groups.

Policy of reservation had increased the size of Dalit middle class, felt confident and could put more weight in Indian politics.

The new class of political enterpreneurs emerged from communities using the idea of 'identity'

Kaviraj – 'caste groups, instead of crumbling with historical embarrassment, adapted themselves surprisingly, well to the demands of parliamentary politics'. 'It created 'democracy of caste'(Sudip to Kaviraj) in place of hierarchy'

Present Status –

Nancy Frazer – Politics of difference to be complemented by politics of redistribution.

No caste or religious community votes for single formulation.

Class, rural-urban differences etc. variables also matters.

Much work need to be done to evolve methodological tools that can tell us about complex relationship of caste and electoral politics.

Era of alliances – increase the role of polo entrepreneurs.

At socio-economic levels – caste groups are undergoing process of internal differentiation and dispersion through migration.

Such processes are bound fragment and weaken caste identity and sentiment of caste solidarity. – Suri Jodhka

Notes –

Presence of caste in Indian politics :

A/c D.N. Seth – Caste is present in following terms.

1. Caste based pol. Parties and pressure groups.
2. Parties chose candidates according to caste competition
3. Govt. formed to give representation to diff-castes.
4. Caste based Alliances – AJGAR (RJ), KHAAM (GJ), Muslim Yadav (UP/BIHAR)
5. Caste based political polarization.

Brahmin vs Non Brahmins (TN), Kamma vs Reddy (AP) LIngayat vs Vokaligas (KN), Nayar vs Ezhavas (Kerala)

6. Caste based political ideologies.
7. Casteisation of politics. Caste Impact Politics.
8. Secularization of caste – caste is more important for improving temporal aspects of life.

Positive Impact – Better Access to caste in decision making and wider representation.

Factors :

1. India lacks modern base of mobilization. Caste
2. Green Revolution: OBCs – middle level castes
3. Reservation and 1990s – Dalit rise in politics.

Expansion

1. Earlier in South India, now whole north
2. Caste at state/religion level, now at central level
3. Coalition politics
4. Left parties started to believe in caste variable.

Impact

1. Rajni Kothari:

   Democratisation of society

Marginal sections came to mainstream

Integration at sonscious, integratim and secular levels

Democracy in other 3rd world collapse, as they lack structure of caste.

2. Dysfunctional V. –

M. N. Sriniwas - Caste led in violence

C. P. Bhambri – detrimental to nats unity and not healthy for dem.

Andre Beitille (more dominant at state level) – Caste is universal feature of Indian politics as most formidduble element of group formation

Myral Weiner – Indian politics does not abolish caste rather institutionalize caste.

M. N. Sriniwas – Caste is present at subconscious level. It is natural for Indians to share interests with same member of caste. Hence we see integration of caste and politics.

Rudolph & Rudolph – Modernization of tradition (Caste) and traditionalization of modernity (democracy) matter of curiosity Interaction between 'modern politics' and 'traditional caste system'.

Suhar Palshikas – Interaction between caste and party system regional parties are caste parties. Caste is prime building block of political affiliation.

'Indian do not cast their vote, they vote their caste."

Yogender Yadav – last two election – Identity + politics, class politics.

Deepankar Gupta – There are other factors too apart from caste.

Developmental issues are being vented out in the form of caste demands

Class – division in caste

Anand Tel Tumbade (Book "Republic of Caste")

Reservation policy has reinstitutionalised caste through the inscription in the constitution, making it permanent feature of Indian pololife.

Caste is not question of simply identity and dignity.

It must also be seen in its intersection with class and persistent economic disparities.

Interaction

1. Initial Understanding : Caste in consistent and politics (Nehru, Ambedkar)
2. Later Understanding : Caste channel of democratic politics.

- Parties
- Participation of illiterate
- Mobilization of support
- Influencing voting behavior
- Public policy

- Deepening democracy

Mobilization

Policy Formulation

State

Vehicles of Social change

Limitations

1. Local # nation
2. Game of numbers
3. No socio-economic empowerment
4. # emanicipatiory politics

Vehicles of social change – OBC mandalisation

- 2nd democratic upsurge

Current in decline – BJP Victory

Nancy Frozer – politics of difference is not sufficient to be supported by politics of distribution

Religion (2017)

- Variable in politics in not only Indian, but global context
- 1990s – end of cold war, religious fundamentalalism
- In west medieval period – dominance of religion

  Mechavilean notion – separation of religion of rom politics.
- India, religious groups and political parties mutual relation
- Religion is the base of mobilization of politics : in the form of politics of hindutya, islam, Sikhism.

Nehru – Religion is threat to national unity and supported to /keZfujis{krk – negation of religion.

[Minority communalism – separatism;

Majority communalism – fascism]

Perspectives:

1. Elitist – Bipin Chandra – 'Communalism is modern phenomenon which rise in colonial rule and promoted by elitist leaders, feudals etc.'
2. Mars – Appeal to masses by Jinnah, 2 nation theory that 2 communities can'

3. Mars & Elite – Both are responsible for communal politics.

   Moin Shakir – Communal legacy is evoted to communalism.

   Asgar Ali Engr – Green revolution led to communalism in Punjab.

   Rajani Kothari – Systematic destruction of Pol. Institution during

Indira Gandhi – Art. 356 in J & K.

- Bhindranwale against Akali

Phases :

50s optimistic	60s started influence	80s aggressive 90s
Despite partition Communal parties failed to perform in elections ML, Hindu, MS. Bipin Chandra Dormant phase Communal Ideologies present; but not prominent	Politics become Influenced 1961- Jabalpur riots Strength of Jansangh	Communal riots increased in no. and intensity Kerala, AP, TN Ashish Nandy Hub of Communalism – Industrial towns. Spread to rural Rise of BJP S B Muni - Rise of Hindu fundamentalism - Led to increase in communalism

Analysis by Bipin Chandra –

1. Development process touched only small sections.
2. Indian society in transitional phase – Caste, Joint Family breaking down; communal forces provide base of solidarity
3. Communalist serious inroads to state apparatus
4. Political opportunism – ML + CPI in Kerala

   - Jansangh + Janata dal in 1977

5. Soft approach of state towards communalism led to legitimization of politics on basis of religion.

- Minory Issue revolves around the identity (non-discrimination) and development.
- Nehruvian notion : 'Project of development would eventually blunt rough edges of identity politics in India, failed.

Global Context

- Upsurge of community mobilization all around world, in last $2\frac{1}{2}$ decades.

  (In words of Charles Taylor, 'Politics of recogniton')
- The idea of individual rights (liberal notion); is not enough for protection of minority cultures in multicul society
- The role of state and politics came at centre of understanding of minority rights / identity in post colonial societies, esp. India.
- Minority community appears as vulnerable, threatened and inadequately represented in the society.
- Communalization of society has paralleled by communalization of polity.
- Ashish Nandy ("Anti-Secularist manifesto")

  'Since modern state seeks to dominate individual and collective lives
- Entry of religious identities into public sphere impoverishes religion, because religion is subordinated to political pursuits.
- India's civil society is deeply religious.

Way Ahead :

- Constitution of India provides – concept of secularism by –
  1. Freedom of religion for all (Art. 25)
  2. Non – Discrimination and equality of treatment (Art. 14)

If this follows rigorously, state can't possibly align with one religion to detriment of others.

Achin Vanaik Book – "Hindutva Rising : Secular Claims, Communal Realities".

- Concerns about rise of Hindu communalism
- Communalisation of Indian Polity
- Suggest long term battle to defeat communalist and fundamentalist on terrain of civil society.

[Secularisation of Civil Society]

India has only two parties namely caste and Religion

- Politics of ascriprtive divides.

Post reform

h/w

1. Emergence of neo middle class
2. Deepening democracy ----- newer institutions
3. Closes inter-cultural interactions with other democracies
4. Large scale urbanization
5. Break up of old client – patron relationship
6. Entry of private player

Newer Demands – But not wholling development orient dupt + claste – Moratha issue.

Communal riots caste atrocities ghettoization.

High caste in corporate sector

Political system needs to be reformed in line with goal of secularism.

Ethnicity

- The political processes arise out of the social environment
- In Europe, changes in the economy defined nature of modernity, In India, it increasingly intrusive presence of state and expansion of politics, that remade society and its terms of identity and agency'. – Khilnani Sunil
- India's democratic frame has been relatively effective in giving space to India's diversities and self-correcting in the moments when diversity has been devalued.
- Raj introduced Indians to the possibility of conceiving themselves as individuals, rights and interests.
- Senses of region and nation emerged simultaneously as a reaction to imperialism, colonialism.
- In India, society is multiethnic, multireligious and thus mobilization led to deep interaction between democratic politics and ethnicity in India.

Ethnicity – Identity around culture, language, religion and region.

- India suffered due to ethnic politics e.g. partition, violence, subnational movement, separatist tendencies.

Ramchandra Guha

The arrival of identity politics during 1980s, whereby people mobilise around particularistic identities like religion, caste, language, has promoted the political expediency of organisations and political parties.

BJP – Arguablej considered as more centrist and ethnically inclusive party; it always be tainted with its hascent associations with violent brand of Hindu Nationalism i.e. Hindutva.

William Crowne –

In Gujarat, RSS and VHP played a fundamental role in cementing intra-hindu solidarity in poor slums.

The task of accommodating diversities in democratic political process has been intricate, tension generating ironies and paradoxes.

1. In some respect, democracy has failed India's diversities, across space and time both.

   e.g. Kashmir, Punjab, North-eastern insurgency.

2. Indian model of 'said – bowl' allowed different ingradients to retain their individuality

Indian Democratic Process

1. Made it difficult to entrench majoritatrian or dominant identities, which would have led to excluded group to exit (e.g. Bangladesh ceded From Pak)

2. It forced Indian political elites to become inventive

Viceversa –

The identities of religion, caste and ethnicity are creation of democracy and political processes asserting claimes of recognition and fair treatment.

Conclusion:

Caste, religion, ethnicity is entrenched into Indian politics by partaking in modern political system.

Ethnicity is now visible to divisive influences and a new form of integration resulting from universalist-particularistic relationship.

Ethnicity has gained a powerful position in Indian politics and co-exists with it is India.

Minorities are the natural custodians of Indian Secularism - D.C. Smith.

Democracy

Political System

Giving Voice

Strengthen

Ethnicity

Class in India Politics

Class structure

Class Consciousness

Class formation

Class struggle

1. Class influencing public policy - pre 1991 rich aqri 1991 – buriers
2. Class ideology of parties – left, right populist
3. Electoral politics

Limitations of Class in India

1. Fragmentation of Indian Society
2. Difficulty in building class organization
3. Lack of credible left parties.

Class perspectives helps to analyze why in democratic setting, poor majority remain poor.

D. L. Seth – "Secularization of Caste"

1. Peritualisation – vertical hierarchy – horizontal groups

2. Politicisation

3. Classification

Present status of identity politics

1. Frozen various identity and no room for any mobility
2. Lost sight of emanicipatory politics
3. Diversion from real maternal issues.
4. New identity – migrant
5. Handful people or representatives.