

## CHAPTER 3

# FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES

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CHAPTER 3

**FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES  
AND FUNDAMENTAL DUTIES<sup>1</sup>**

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1[1] See also the Consultation Papers released by the Commission on “Enlargement of Fundamental Rights” and “Effectuation of Fundamental Duties” in Volume II (Book 1) of this Report.

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### ***A. Fundamentals of the Constitution***

3.1 The Constitution which lays down the basic structure of a nation's polity is built on the foundations of certain fundamental values. The vision of our founding fathers and the aims and objectives which they wanted to achieve through the Constitution are contained in the Preamble, the Fundamental Rights and the Directive Principles. These three may be described as the soul of the Constitution and the testament of the founding fathers to the succeeding generations together with the later Part on Fundamental Duties.

### ***B. Vision of Socio-Economic Change***

#### ***The Preamble***

3.2.1 The vision of socio-economic change through the Constitution is reflected in its lofty Preamble. The Preamble expresses the ideals and aspirations of a renascent India. At independence, emerging out of a long period of foreign domination and oppression under a feudal system, the people were grimly struggling to be reborn into a life of dignity and hope. The past was heavy on their shoulders, and the future uncertain. There was social and economic exploitation around. There were a whole host of social ills such as illiteracy, superstition, *sati*, child-marriage, agrarian exploitation, child-labour, bonded labour, gender-inequality, bedeviling the society and polity.

3.2.2 The framers of the Constitution sought to unite the vast country with its great diversity of languages and creeds within a common bond of constitutional justice based on the great ideals of liberty, equality, fraternity and justice. Framers showed an uncompromising respect for human

dignity, an unquestioning commitment to equality and non-discrimination, and an abiding concern for the poor and the weak. They made a bold attempt to base the constitutional foundations on the firm faith that all classes of people, followers of all faiths, and particularly the traditionally under-privileged should all join to work for harmony, progress, prosperity and nation building.

3.2.3 The Preamble through its noble words promised Justice, social, economic and political; Liberty of thought, expression, belief, freedom of faith and worship; Equality of status and of opportunity and to promote Fraternity, assuring the dignity of the individual and the unity and integrity of the Nation. Speaking of the imperatives of social democracy, Dr. Ambedkar said:

"it was, indeed, a way of life, which recognizes liberty, equality and fraternity as the principles of life and which cannot be divorced from each other: Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things."

### ***The Socio-economic Agenda***

3.3.1 The scheme of the Constitution for the realisation of the socio-economic agenda comprises of both the justiciable Fundamental Rights as well as the non-justiciable Directive Principles. The judicial contribution to the synthesis and the integration of the Fundamental Rights and the Directive Principles in the process of "constitutionalising" social and economic rights has been crucial to the realisation of the Directive Principles not only as a means to effectuate Fundamental Rights but also as a source of laws for a welfare state.

3.3.2 The Constitution makes it mandatory to protect and promote freedoms, and to assure every citizen a decent standard of living. It makes a strong commitment to promoting the well-being of all citizens without any discrimination on the grounds of caste, creed, community or gender.

## **C. Fundamental Rights**

### ***Background and Approach***

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3.4.1 Constitutional guarantees for the human rights of our people were one of the persistent demands of our leaders throughout the freedom struggle. By the year 1949, when the Constituent Assembly had completed the drafting of the Fundamental Rights Chapter, it had before it the „Universal Declaration of Human Rights, 1948.

3.4.2 The International Covenant on Civil and Political Rights, 1966 (ICCPR) broadly referred to the inherent right to life and liberty and the right against arbitrary deprivation of those rights and its various aspects (Articles 6 to 14); privacy, family, etc. (Article 17); freedom of conscience and religion (Article 18); freedom of expression and information (Article 19); Right of peaceful assembly (Article 21); freedom of association (Article 22); rights of minorities (Article 27); etc. The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) broadly referred to the “right to work” and its various aspects (Articles 6 and 7); right to form trade unions for promotion of economic or social interests and the right to strike (Article 8); right to social security and social insurance (Article 9); family, marriage, children and mothers’ rights (Article 10); adequate standard of living, right to food, clothing and housing, freedom from hunger (Article 11); physical and mental health (Article 12); education (Article 13); compulsory primary education (Article 14) and culture (Article 15). The treaty obligations under the covenant enjoined the State Parties to ensure these rights without discrimination and “to take steps” to promote them “to the maximum of its available resources”, with a view to achieving “progressively” the full realisation of these rights. The Directive Principles of State Policy in Part IV of the Constitution are indeed the precursor to economic, social and cultural rights specified in the ICESCR.

3.4.3 During the last three decades, a vast number of human rights have found place in new constitutions and bills of rights of more than eighty countries and of supra-national entities.

Countries which enacted these new constitutions have had the benefit of all the developments in the human rights jurisprudence which have taken place since 1950. Also, our Supreme Court has by judicial interpretation expanded the scope of the fundamental rights, particularly in relation to article 21, and this has included more civil and political rights which were not explicit in Part III.

3.4.4 A new development is that of the principle of „basic structure“ of the Constitution enunciated by the Supreme Court in 1973 in *Kesavananda Bharati vs. State of Kerala*<sup>2</sup>

1[1]. As to what are these basic features, the debate still continues. The Supreme Court has also held that the scope of certain fundamental rights could be adjudged by reading into them or reading them not only in the light of the Directive Principles of State Policy but also international covenants or conventions which were in harmony with the Fundamental Rights.

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3.4.5 The Commission feels that after fifty years, time is ripe to review and enlarge suitably the contents of some of the Fundamental Rights, particularly those Fundamental Rights which have been judicially deduced.

#### *Definition of ‘the State’*

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3.5 Fundamental rights guaranteed by the Constitution are, in the absence of specific constitutional provisions, mainly enforceable against „the State“. The definition of 'the State' in article 12 being an „inclusive“ one, courts have ruled that where there is pervasive or predominant governmental control or significant involvement in its activity, such bodies, entities and organizations fall within the definition of „the State“.

**It is recommended that in article 12 of the Constitution, the following Explanation should be added:-**

**„Explanation – In this article, the expression “other authorities” shall include any person in relation to such of its functions which are of a public nature.“**

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2[1] AIR 1973 SC 1461 = 1973(4) SCC 228

### *Heads of discrimination*

**3.6 In articles 15 and 16, prohibition against discrimination should be extended to “ethnic or social origin; political or other opinion; property or birth”.**

### *Reservation for minorities*

3.7.1 There was a plea on behalf of some minority communities for an express provision for reservation in favour of minorities both in articles 15 (4) and 16 (4). The Commission, upon due consideration of the representations, felt that no special provision was necessary inasmuch as, under the existing provision of articles 14, 15 and 16, it is open to the State to make reservation if it is of the opinion that such reservation is necessary and justified.

3.7.2 The Commission noted that the ultimate aim of affirmative action of reservation should be to raise the levels of capabilities of people of the disadvantaged sections and to bring them at par with the other sections of society.

### *Freedom of Press and Freedom of Information*

3.8.1 Article 19(1)(a) refers to „freedom of speech and expression“. It is proposed that the article must expressly include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas. It is also proposed to amend article 19(2) by adding a further restriction on disclosure of information received in confidence except if required in public interest.

**The Commission recommends that article 19(1)(a) and (2) be amended to read as follows:**

**“Art. 19(1): All citizens shall have the right -**



(a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas;”.

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

**3.8.2** A mere legislation by the Parliament by amending the Contempt of Courts Act, 1971 alone may not suffice because the power of the Supreme Court and the High Courts to punish for contempt is recognized in the Constitution. Therefore, **the Commission recommends that an appropriate proviso to article 19(2) of the Constitution may be added as under:-**

**“Provided that, in matters of contempt, it shall be open to the Court to permit a defence of justification by truth on satisfaction as to the bona fides of the plea and it being in public interest.”.**

### ***Rights against torture and inhuman, degrading and cruel treatment and punishment***

3.9 Torture and inhuman, degrading and cruel treatment and punishment grossly violate human dignity. The Supreme Court has implied a right against torture, etc. by way of interpretation of article 21 which deals with the right to life and liberty. The Universal Declaration of Human Rights 1948 and the ICCPR prohibit such acts in article 5 and article 7 respectively.

**It is, therefore, recommended that the existing article 21 may be re-numbered as clause (1) thereof, and a new clause (2) should be inserted thereafter on the following lines:**

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**“(2) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”.**

***Right to compensation for being illegally deprived of one’s right to life or liberty***

3.10 Article 9(5) of the ICCPR states, “any one who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.” In *D.K. Basu vs. State of West Bengal*<sup>3</sup>

[1], the Supreme Court of India held that the reservation made by India to this clause while acceding to the Convention does not come in the way of the Court’s awarding compensation in the cases of illegal arrest or detention. The High Courts in India have also been awarding compensation.

**It is, therefore, recommended as under:-**

**After clause (2) in article 21 as proposed in para 3.9, a new clause (3) should be added on the following lines :-**

**“(3) Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation.”**

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3[1] 1997 (1) SCC 416

### ***Right to travel abroad and return to one's country***

3.11 The Supreme Court has spelt out in articles 14 and 21 the right to travel abroad and return to one's country. Again, this right finds a place in article 13(2) of the Universal Declaration of Human Rights, 1948 as well as in articles 12(2),(3) and (4) of the ICCPR.

**It is, therefore, recommended that after article 21, a new article, say article 21A, should be inserted on the following lines:-**

**“21A. (1) Every person shall have the right to leave the territory of India and every citizen shall have the right to return to India.**

**(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions in the interests of the sovereignty and integrity of India, friendly relations of India with foreign States and interests of the general public.”**

### ***Right to Privacy***

3.12 The Supreme Court has included<sup>4</sup>

1[1] „Right to Privacy“ in the Right to „Life“ under article 21.

**It is, therefore, proposed that a new article, namely, article 21-B, should be inserted on the following lines:**

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<sup>4</sup>[1] Kharak Singh v. State of U.P., AIR 1963 SC 1295: R. Rajagopal v. State of Tamil Nadu, 1994 (6) SCC 632.

**“21-B. (1) Every person has a right to respect for his private and family life, his home and his correspondence.**

**(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others.**

### ***Right to Work***

3.13.1 It is in the rural sector that widespread poverty, underemployment, malnutrition, lack of access to healthcare and oppressive social customs that bear down heavily on women and children create a social landscape of appalling misery. It is here that a major action plan has to be launched to create additional jobs, to enhance incomes of those at the bottom rung of the social ladder and to create the physical and social infrastructure of a vibrant economy.

**3.13.2 The Commission, therefore, recommends that a new article, say article 21-C, may be added to make it obligatory on the State to bring suitable legislation for ensuring the right to rural wage employment for a minimum of eighty days in a year.**

### ***Preventive Detention***

3.14.1 Article 22 (3)(b) permits „preventive detention“ and the rule in clause (2) of article 22 which requires production before the nearest magistrate within 24 hours does not also apply in such cases. No doubt, several preventive detention laws have been upheld by the courts. But, being detention without trial, there is a view that such a detention is a negation of the rule of law and the principles of fair trial. The arrest is supposed to be made on the basis of information that the person is likely to commit some serious offences. There are complaints that this law is misused quite frequently.

**3.14.2** While the Commission does not propose to recommend deletion of clauses dealing with preventive detention under article 22, **it recommends the following changes :-**

**(i) The first and second provisos and Explanation to article 22(4) as contained in section 3 of the Constitution (44<sup>th</sup> Amendment) Act, 1978 should be substituted by the following provisos and the said section 3 of the 1978 Act as amended by the proposed legislation should be brought into force within a period of not exceeding three months :-**

**“Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman and the other members of the Board shall be serving judges of any High Court :**

Provided further that nothing in this clause shall authorize the detention of any person beyond a maximum period of six months as may be prescribed by any law made by Parliament under sub-clause(a) of clause (7)”.

**(ii) In clause (7) of article 22 of the Constitution, in sub-clause (b), for the words “the maximum period”, the words “the maximum period not exceeding six months” shall be substituted.**

***Right to justice and legal aid***

**3.15.1 The Commission recommends that after article 30, the following article should be added as article 30A:**

**“30A: Access to Courts and Tribunals and speedy justice**

**(1) Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before an independent court or, where appropriate, another independent and impartial tribunal or forum.**

**(2) The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object.”**

**3.15.2** Legal aid is essential for effective implementation of the various rights included in Part III to help the needy and the indigent. **The Commission recommends that article 39A in Part IV be shifted to Part III as a new article 30B to read as under:-**

**“39B. Equal justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”**

### ***Right to property***

3.16.1 After the 44<sup>th</sup> Amendment of the Constitution, right to property has ceased to be a fundamental right. Under article 300A, it has become a constitutional right. One other important aspect is with regard to deprivation or acquisition of agricultural and homestead land belonging to weaker sections. Before such deprivation takes place, the persons so deprived must be provided lands of quality as nearly as may be equal to the lands such persons were previously occupying or otherwise adequately rehabilitated.

**3.16.2** The Commission recommends that article 300-A should be recast as follows:-

**“300-A (1) Deprivation or acquisition of property shall be by authority of law and only for a public purpose.**

(2) **There shall be no arbitrary deprivation or acquisition of property:**

**Provided that no deprivation or acquisition of agricultural, forest and non-urban homestead land belonging to or customarily used by the Scheduled Castes and the Scheduled Tribes shall take place except by authority of law which provides for suitable rehabilitation scheme before taking possession of such land.”**

### *Article 31B and Ninth Schedule*

3.17 A number of enactments unrelated to the rationale underlying articles 31B have come to be included in the Ninth Schedule with a view to keep them secure from attack on the ground that such enactment or a provision thereof is inconsistent with any provision of Part III of the Constitution. In the Consultation Paper<sup>5</sup>

1[1] on „Enlargement of Fundamental Rights“, it was proposed that article 31B be suitably amended to provide that the laws to be included in the Ninth Schedule must, in pith and substance, relate to agrarian reforms or land reforms or laws to give effect to the directive principles in article 39(b) and 39(c). After further discussion, **the Commission recommends that in article 31-B, the following proviso should be added at the end, namely :-**

**“Provided that the protection afforded by this article to Acts and Regulations which may be hereafter specified in the Ninth Schedule or any of the provisions thereof, shall not apply unless such Acts or Regulations relate –**

- (a) in pith and substance to agrarian reforms or land reforms;**
- (b) to reasonable quantum of reservation under articles 15 and 16;**
- (c) to provisions for giving effect to the policy of the State towards securing all or any of the principles specified in clause (b) or clause (c) of article 39.”**

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5[1] See Volume II (Book 1) of the Report.

### *Suspension of articles 17, 23, 24, 25 and 32 during emergency*

3.18.1 Article 359 deals with “Suspension of the enforcement of the rights conferred by Part III during emergencies”. Clause (1) permits suspension of the right to move court but excludes article 20 (retrospectivity of law relating to offences, double jeopardy and self-incrimination) and article 21 (Life and liberty not to be deprived except according to procedure established by law which after Maneka Gandhi’s case<sup>6</sup>

1[1] means fair, reasonable and just procedure).

**3.18.2 The Commission recommends that clauses (1) and (1A) of article 359 should be amended by substituting for “(except articles 20 and 21)”, the following-**

**“(except articles 17,20,21,23,24,25 and 32)”**

### *Capital Punishment*

3.19 Section 121 of the Indian Penal Code permits death sentence or life imprisonment to be imposed for the offences of waging war against the Government of India, or attempts to wage such a war or abetment of such a war. The Commission, after due deliberations, has not thought it appropriate to recommend, at this stage, any change in the existing law relating to imposition of death penalty.

### *Right to Education*

3.20.1 At the time when the Commission released its Consultation Paper on the subject, Constitution (93<sup>rd</sup> Amendment) Bill was under consideration. But the proposed Amendment covers the Right to Free and Compulsory Education only between the years 6 and 14 years. The

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<sup>6</sup>[1] AIR 1978 SC 597



Commission is of the view that the Right to Free and Compulsory Education should also be extended to the children upto the age of fourteen years and that the right to education beyond the age of 14 years may depend upon the economic capacity and the stage of development of the State.

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**3.20.2 The Commission feels that the constitutional commitment for free and compulsory education for all children until the age of fourteen should under no circumstances be diluted and the State should fulfill this solemn obligation to the nation. The responsibility for the universalisation of elementary education should be entrusted to Panchayats and local self government institutions. It is recommended that the relevant provisions in the Constitution (93<sup>rd</sup> Amendment) Bill, 2001 making the right to education of children from six years till the completion of fourteen years as a Fundamental Right should be amended and enlarged to read as under:-**

**“30-C Every child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of the Scheduled Castes and the Scheduled Tribes, until they complete the age of eighteen years.”.**

### ***Rights of Children***

3.21.1 Article 39(e) in the Directive Principles in Part IV refers to the duty of the State to direct its policy to see that children of tender age are not abused. Article 39 (f) refers to a similar duty on the State to give opportunities and facilities to children to develop in a healthy manner and with dignity and in conditions which are free and where childhood and youth are protected against exploitation and moral and material abandonment.

**3.21.2 The Commission recommends that the following article should be added -**

**“Art. 24A. Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation.”**

***Right to safe drinking water, clean environment, etc.***

3.22.1 Gandhiji had once said that freedom for him would mean the availability of safe drinking water to every person in every village of India. This has still not become a reality.

3.22.2 Right to healthy environment and its protection and the right to development are group-rights and are loosely described as „third generation rights“. The right to sustainable development has been declared by the UN General Assembly as an inalienable human right<sup>7</sup>

1[1]. The Declaration recognizes that „human being is the central subject of the development process and that the development policy shall make the human being the main participant and beneficiary of development“. “Development” is defined as a „comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population in development and in the fair distribution of benefits therefrom<sup>8</sup>[1]. The Rio Conference of 1992 declared human beings as centres of concern for sustainable development. Human beings are, it is said, entitled to a healthy and protective life in harmony with nature (Principle 1). “In order to achieve „sustainable development“ environmental protection shall constitute an integral part of the development process and cannot be considered in isolation of it”. The 1997 Earth Summit meeting of 100 nations in New York affirmed these principles<sup>9</sup>[2].

**3.22.3 The Commission recommends that after the proposed article 30-C, the following article may be added as article 30-D :-**

**“Art. 30-D. Right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development. -**

**Every person shall have the right –**

**(a) to safe drinking water;**

**(b) to an environment that is not harmful to one’s health or well-being; and**

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<sup>7</sup>[1] See Declaration on the Right to Development, 1986.

<sup>8</sup>[1] Development, Human Rights, etc. by. S.K. Verma, vol. 40, 1998 JILI, pp. 217 to 229.

<sup>9</sup>[2] A.P. Pollution Control Board vs Prof. M.V. Nayudu [2001 (2) SCC 62].

**(c) to have the environment protected, for the benefit of present and future generations so as to –**

- (i) prevent pollution and ecological degradation;**
- (ii) promote conservation; and**
- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”.**

### ***Right to Freedom of Religion***

3.23.1 A number of institutions of Sikhs and Buddhists suggested certain changes in article 25(2). Explanation II to article 25 provides that reference to Hindus in sub-clause (b) of clause (2) should be construed as including a reference to Sikhs etc.

**3.23.2 The Commission, without going into the larger issue on which the contention is based, is of the opinion that the purpose of the representations would be served if Explanation II to article 25 is omitted and sub-clause (b) of clause (2) of that article is reworded as follows:-**

**“(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina or Buddhist religious institutions of a public character to all classes and sections of these religions.”**

### ***Special provision relating to language spoken by a section of population of a State***

3.24 In order to make the rights available to minorities under articles 29 and 30 meaningful, the Commission feels that the provisions contained under article 347 need some modification. Before the President directs that use of any language spoken by a section of the population of a State be recognized in a State for such purposes as he may specify, he has to ensure that a substantial proportion of the population of that State so desires. The explanation “substantial proportion of the population” had been a subject matter of controversy and different

constructions have been placed up on it. **It shall be desirable that some optimum level of population with a view to take necessary action under this constitutional provision is prescribed. In article 347 of the Constitution, for the words “a substantial proportion of the population”, the words “not less than ten per cent of the population” should be substituted.**

#### ***D. Directive Principles***

##### ***Principles of Governance***

3.25.1 It is only during the last two or three decades that there has been a perceptible shift in intellectual discourse in the academia towards problems and principles of good governance as contradistinguished from issues of government and politics. Our founding fathers, however, were far-sighted people. They realised even in the late 1940s the difference and in article 37 specifically spoke of certain "principles" being "fundamental" in the "governance of the country". Also, the State was enjoined "to apply these principles in making laws."

3.25.2 The founding fathers were conscious of the fact that mere political democracy, *i.e.*, getting the right to vote once in five years or so was meaningless unless it was accompanied by social and economic democracy. Political equality was not possible unless men were made equal on the social and economic plane as well. Right to vote for a hungry and illiterate man without clothing and shelter meant little. Dr. Ambedkar had said:

"We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the government. That ideal is of economic democracy."

3.25.3 The Supreme Court has, in a number of judgements, referred to the importance of the Directive Principles. It has called these principles the “conscience” of the Constitution and also as the core of the Constitution. These principles are the “goals” to be achieved by Part III of the Constitution. They are intended to ensure “distributive justice” for removal of inequalities and disabilities and to achieve a fair division of wealth amongst the members of the society. The Supreme Court held that the courts can look at the Directive Principles for the purpose of interpretation of the fundamental rights. The courts will adopt that interpretation which makes

the fundamental rights meaningful and efficacious. The courts have to make every attempt to reconcile the fundamental rights with the Directive Principles remembering that the reason why the Directive Principles were left by the founding fathers as non-enforceable was to give the Government sufficient latitude to implement them.

3.25.4 The Directive Principles are indeed the precursor to the Economic, Social and Cultural Rights specified in the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). They reflect the consensus on the intrinsic necessity of these means and envisage State action which would facilitate the transfer and distribution of power -- leading to transmission of power to the citizens and this is loosely called “empowerment” of the people. Democracy will become real when in practice there is sharing of power and responsibility by all sections of the people and it becomes illusory when it is about pursuit of power by the dominant sections alone. The Directive Principles cannot be confined to mere rhetoric or to *ad hoc* policies of electoral appeasement or handouts.

3.25.5 The comparable provisions of the Directive Principles of State Policy enshrined in the Constitution of India and the ICESCR are given below :-

<b>Articles of the Constitution</b>	<b>Articles of ICESCR</b>
Article 39	Articles 3, 6 (1) and 7
Article 41	Article 6 and 7
Article 42	Articles 7 and 10.2
Article 43	Articles 11 (1), 11(2) and 15
Article 45	Articles 13 (1), (2)(a), (3) and (4) and 14
Article 47	Articles 12(1), (2), (a) to (d)
Article 51	Articles 1.3 and 2 (1)

3.25.6 The concept of a division among human rights is no longer accepted in contemporary human rights discourse. Further, recent constitutional changes in the East European states have set at naught some of the reasons for the divide. Again, the description of the Civil and Political rights as „negative“ rights which prohibit the State from interfering with rights of the individuals and the description of the Economic, Social and Cultural rights as „positive“ rights which require affirmative action by the State is not accepted by jurists any longer. The theory that the former rights are justiciable and the latter rights are not justiciable has not also been accepted by

scholars. The existence of any basis for such division is described as a 'myth' and inaccurate generalization<sup>10</sup>

1[1].

3.25.7 The Vienna World Conference on Human Rights, 1993 reaffirmed that the Civil, Political and the Economic, Social and Cultural Rights are „universal, interdependent and indivisible.“ The European Social Charter 1961 (revised charter 1996) and Protocols; the American Convention on Human Rights, 1969 (effective from 1978); the African Charter of Human Rights and Peoples“ Rights, 1981 (effective from 1986) and finally the Human Rights Act, 1998 (UK) (which incorporates several provisions of the European Convention) and the South African Convention, 1996 deal with Civil, Political and Economic, Social and Cultural Rights covering the whole gamut of rights.

3.25.8 The Father of the Nation, Mahatma Gandhi stated in the Second Round Table Conference in London, long before the UN Declaration of Human Rights, 1948 that his aim was "to establish a political society in India in which there would be no distinction between high class of people and low class of people, that women should enjoy the same rights as men; and dignity, justice, social, economic and political, would be ensured to the teeming millions of India.”

3.25.9 In the Annual Report of the National Human Rights Commission 1997-98, this is what is stated about our country:

“It is said that one third of the world“s poor are Indians, who lacked clean drinking water, basic sanitation and minimum standards of health care, food and nutrition....Persistence of such a situation constitutes a failure of governance which had urgently to be remedied for it is on the pillars of good governance that promotion of human rights in the final analysis rests.”

### ***Justiciability and Enforceability***

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<sup>10</sup>[3] See vols. 18 to 21 of Human Rights Quarterly for a number of articles; “International Covenant on Economic, Social and Cultural Rights“ by Mathew Craven (1995); Economic, Social and Cultural Rights, edited by Ralph Baddard 199; special issue on these rights by International Commission of Jurists, 1995; International Human Rights Context, 2nd Ed. Henry Steiner and Philip Alston, 1999.

3.26.1 The judiciary is not suited, according to several writers to enforce some of the ICESCR rights. Where the resources of the nation are involved and a question of priority arises, the remedy cannot be judicial. However, the concept here is not “justiciability” at the instance of individuals in courts of law, but the concept is one of “enforceability” which means that the State must “recognize”, and “take steps”, by adopting “legislative” or other measures for the “full realisation” and “to the maximum of the State's available resources, both “individually and through international assistance and co-operation”. These are the words actually used by the ICESCR and have been the subject matter of voluminous literature. These rights are described as “entitlements” of the people and give rise to “obligations” on the part of the State parties. The enforcement must first be of the “minimum core obligations” as stated in Para 10 of the General Comment No.3 of 1990 of the U.N. Committee on Economic, Social and Cultural Rights.

3.26.2 It is felt that an appropriate mechanism must be devised to oblige the State to take action step by step and progressively for the realisation of these rights to the maximum within the resources of the State.

**3.26.3 The Commission recommends that the heading of Part IV of the Constitution should be amended to read as “DIRECTIVE PRINCIPLES OF STATE POLICY AND ACTION”.**

### ***Right to Social Security and to Work***

3.27.1 Article 41 directs the State to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. This is social security in its widest sense. It is a measure of the distance the country still has to travel to build a good society. The present situation, as revealed by successive UNDP reports, is one of hardship and deprivation for very large sections of our people. Poverty eradication continues to be a major challenge for social and economic policy. The „trickle-down“ theory did not work but neither did the direct anti-poverty programmes.

3.27.2 Safety nets like the Public Distribution System (PDS), the Integrated Rural Development Programmes, and the targeted programmes for women and children have also not had the measure of success that was hoped for. Even the step up in growth rates following the introduction of the new economic strategy of liberalization has not succeeded in generating substantial increases in employment that alone would reduce poverty and increase the sense of security among the people. It is clear that a many-sided approach has to be developed to increase growth rates, to structure labour intensive projects spread through the length and breadth of the country and to help the vulnerable sections of the people to take advantage of government programmes intended for their welfare.

**3.27.3 The Commission, therefore, recommends the initiation of a strategic Plan of Action to create a large number of employment opportunities in five years to realize and exploit the enormous potential in creating such employment opportunities. The components of this plan may include:**

- (1) Improvement of productivity in agriculture that will activate a chain of activities towards increased income and employment opportunities.**
- (2) Integrated horticulture that will include production of fruits, vegetables and flowers, cut-flowers for export and medicinal plants as well as establishment of bio-processing industries aimed primarily at value-addition of agricultural products.**
- (3) Intensification of animal husbandry programs and production of quality dairy products.**
- (4) Integrated Program of Intensive Aquaculture including use of common property resources like village ponds and lakes.**
- (5) Afforestation and Wasteland Development to bring an additional 12 million hectares under forest plantation and contribute to rural asset building activity.**
- (6) Soil and Water Conservation to support afforestation and Natural Resource Conservation towards eco-friendly agriculture.**
- (7) Water Conservation and Tank Rehabilitation.**
- (8) Production and use of organic manures through vermiculture and other improved techniques and production of organic health foods from them.**



3.27.4 The State should provide opportunity to every person to gain his living by work which he freely chooses or accepts – which shall include the technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual. The right to work does not mean that everybody is to be employed by the State. It only means that the State has to develop “employment opportunities” both in the public and private sector<sup>11</sup>

1[1].

3.27.5 The resource requirement for the implementation of this plan can be met by integrating the plethora of government programmes and changing their focus towards employment generation and income enhancing activities. Institutionally, this plan of action can succeed only if programmes are people-oriented and developed in a participatory mode. A change in mindset where people are regarded as “partners in development” rather than “beneficiaries” is necessary.

3.27.6 The foregoing considerations suggest a complete change in emphasis insofar as growth strategy is concerned. What is important is how work, productive work, will enhance incomes for the individual and the community. It is essential to make a beginning toward making the right to work the integral component of growth and development strategy. The Commission has carefully examined the relevant economic data on the subject and has come to the conclusion that a realistic approach to the right to work is not only desirable, it is entirely feasible.

### ***Right to Health***

3.28.1 The right to health has been treated by the Supreme Court as part of the right to „life“ in article 21<sup>12</sup>

1[1]. But, the right to health is not a right to be „healthy“. It means a right both to certain „freedoms“ and „entitlements“. The freedoms include the right to control ones“ health and body,

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<sup>11</sup>[3] Chapter V on „Right to Work“ by Mathew Craven in the International Covenant on Economic, Social and Cultural Rights, 1995, p.199 to 225; Human Rights and World of Work by Kamala Sankaran, vol. 40, 1998 JILI, pp. 284 to 294.

<sup>12</sup>[3] State of Punjab v. Mahinder Singh Chawla, AIR 1997 SC 1225.

including sexual and reproductive freedom and the right to be free from interference, such as by non-consensual medical treatment and experimentation. Entitlements include a right to a system of health protection with equality of opportunity to enjoy the highest attainable level of health – a right to the enjoyment and availability of facilities, good services and conditions such as physical accessibility, economic accessibility and information accessibility. It must be qualitative and should include the right to healthy working conditions and preventive medicine.

3.28.2 The State has to “respect, protect and fulfill” its obligations in these areas for children, adults and those in old age<sup>13</sup>

1[1]. As of today, free medical treatment in government hospitals is totally inadequate. Nor is it available always in close neighbourhood. It is not possible to deal extensively with the pathetic conditions of medical care provided by government hospitals in our country. It is a fact of life that the poorer and weaker sections of society are unable to afford the extraordinary expense involved in the medical care provided by private hospitals. There is, therefore, an urgent need to see that, progressively, the State allocates adequate funds in this behalf<sup>14</sup>[3].

### ***Right to Food and Freedom from Hunger, Clothing and Housing or Shelter***

3.29.1 The State must recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions; the State shall also have to recognize the right of everyone to be free from hunger. It shall then have to initiate programmes to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian system in such a way as to achieve the most efficient development and utilization of natural resources; and to take into account, the problem of both food-importing and

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<sup>13</sup>[3] See General comment No. 14, 22nd Session of Committee on ICESCR Rights (IHRR, Vol. 8, No. 1 (2001), p.1.

<sup>14</sup>[3] Chapter X in „Right to Health“ on Economic, Social and Cultural Rights by Ralpt Beddard, & Dilys“ Hill, 1992; „Towards an Improved Understanding of the International Human Right to Health by Brigit Toebes, vol. 21, (1999), Human Rights Quarterly, pp.661 to 679, for a detailed discussions.

food-exporting countries and to ensure an equitable distribution of world food supplies in relation to need.

3.29.2 It is well-known that while the godowns of the Food Corporation of India are overflowing and even rotting with excess food grains, there are reports of starvation deaths across the country. Further, quite a good percentage of food grains are lost due to inadequate conservation and also during distribution. This must be avoided by introducing proper systems.

3.29.3 The State must ensure right to housing or shelter. The Government of India formulated the National Housing Policy 1988, 1994, and the National Housing and Habitat Policy, 1998. There are various schemes for weaker sections, slum developments, etc.<sup>15</sup>

<sup>1</sup>[1]. As already stated, this right has been recognized by the Supreme Court of India as part of the right to life under article 21<sup>16</sup>[4].

3.29.4 The Commission is convinced that the realization of the right to food, clothing and housing requires the State to prepare long range and short range plans for proper allocation of necessary funds.

### *Right to Education*

3.30.1 Article 45 under the Directive Principles had envisaged free and compulsory education within ten years for all children till the age of 14. The national goal of universalisation of elementary education has still not been reached. Education for all remains an objective with the target date being pushed forward after every review. Increase in literacy rates to 72 per cent by 2007 and to 80 per cent by 2012, and universal access to primary education by 2007, have been set as goals in the approach paper to the Tenth Plan.

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<sup>15</sup>[4] Right to Shelter, A Human Rights Perspective, by Prafulla C. Mishra, vol. 40 (1998), JILI, pp. 230 to 242.

<sup>16</sup>[4] UP Avas Avam Vikas Parishad v. Friends Co-operative Housing Society Ltd., AIR 1996 SC 114.

**3.30.2 It should also be laid down in article 45 that the State shall make provision for education beyond the age of fourteen years within the limits of its economic capacity and stage of development.**

*New Challenges to Education Policy*

3.31.1 We live in an age of rapid social, economic and technological change. Educational policy and programmes have to reflect the changed requirements in content and techniques of delivery. There has been a paradigm shift from a teaching to a learning process. Information and communication technology have to be harnessed to the goal of achieving education for all. The need for autonomy, continuous review, flexibility and clarity have to be built into policy. The educational system should impart moral and ethical values essential for good citizenship.

3.31.2 Autonomy for the education budget should be ensured. Some sanctity should be attached to the core provisions, such as teachers' salaries. There is a strong case for constitutional protection for the service conditions of teachers. Moreover, there is need to insulate educational institutions from needless litigation.

**3.31.3 The Commission recommends that an independent National Education Commission should be set up every five years to report to Parliament on the progress of the constitutional directive regarding compulsory education and on other aspects relevant to the knowledge society of the new century. The model of the Finance Commission may be usefully looked into.**

## *Control of Population*

**3.32 The Commission noted with concern that proper planning and monitoring of the socio-economic development of the country is considerably hampered and neutralized by the exponential growth of population.**

The Commission, therefore, recommends that the following article should be added as a directive principle of state policy after article 47 of the Constitution:

**“Art. 47A. Control of Population:- The State shall endeavour to secure control of population by means of education and implementation of small family norms.”**

## Right to Culture

**3.33.1 Article 49 of the Directive Principles requires the State to protect monuments and places and objects of national importance. For the purpose of protecting culture in all its facets and in developing it, the State has to set apart necessary resources.**

**3.33.2 More than five decades of experience with the working of our Constitution and the laws has borne out that democracy in a meaningful sense, depends on a pluralistic ethos permeating the polity. Our national life must be accommodative of the myriad variegations that make up the unique mosaic of India's society. The framework of our many and elaborate structures of government must exemplify the architecture of an inclusive society and one of the means is to promote civil society initiatives for inter-religions and social harmony.**

**3.33.3 All considered, as advised by experience and by present and emerging needs, it is felt that a mechanism may be brought into being which can advance the cause of inter-faith harmony and solidarity. This can be done under the auspices of the National Human Rights Commission.**

*Promotion of Inter-Religious harmony and inter-faith values*

3.34.1 Past experience indicates that in sensitive areas and localities of the country where inter-religious conflicts have sprung up out of trivial incidents resulting in conflagration, extensive damage to life and property. The setting up of “*Mohalla Committees*” with the participation of prominent members of different communities to take note of early warning symptoms and alerting the administration in preventing them have produced enduring beneficial results. In particular, the endeavours made in Bhiwandi, in the State of Maharashtra, after the tragic riots there, have emphasised the value of such measures.

**3.34.2 The Commission, therefore, recommends the setting up of an inter-faith mechanism to promote such civil society initiatives. In the Commission’s view, this can be done under the auspices of the National Human Rights Commission set up under section 3 of the Protection of Human Rights Act, 1993 which, *inter alia*, provides for the participation of “the Chairpersons of the National Commission for Minorities, the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women” who shall be deemed to be the Members of the Commission for the discharge of functions specified in clauses (b) to (j) of the section 12 of the said Act. The Chairpersons of the National Commission for Backward Classes and National Commission for Safai Karamcharis should be co-opted to this body. This body could, in addition to its other statutory functions, also function as mechanism for promotion of inter-religious harmony. With an appropriate statutory enablement by way of enlargement of section 12 of the said Act, the purpose could be achieved **without additional expenditure for setting up a separate mechanism. Section 12 of the said Act could be amended by the addition of clause (k), which shall read as under:****

**“(k) promoting through civil society initiatives, inter-faith and inter-religious harmony and social solidarity”.**

By this simple statutory enablement, **with consequential amendment in Section 3(3)**, the Chairpersons of all the aforesaid Commissions who meet and interact would, in collaboration with the National Foundation for Communal Harmony (established under the Ministry of Home Affairs, Government of India), would be able to oversee the installation and working of “*Mohalla Committees*” and other civil society initiatives in sensitive areas which particularly require promotion of inter-faith harmony.

### ***Mechanism for realisation of Directive Principles***

3.35.1 The State should devise appropriate mechanisms for realisation of Directive Principles. The Commission does not propose to recommend a complaints procedure inasmuch as it is more concerned with a procedure which will ensure proper allocation of resources for the realization of the right to work, health, food, clothing, housing, education and culture. Domestic bodies in various countries have different composition, membership and powers.

**3.35.2 In the view of the Commission, there must be a body of high status which first reviews the state of the level of implementation of the Directive Principles and Economic, Social and Cultural Rights and in particular (i) the right to work, (ii) the right to health, (iii) the right to food, clothing and shelter, (iv) Right to Education upto and beyond the 14<sup>th</sup> year, and (v) the Right to Culture.** The said body must estimate the extent of resources required in each State under each of these heads and make recommendations for allocation of adequate resources, from time to time. For ensuring that the Directive Principles of State Policy are realized more effectively, the following procedure is suggested:-

- (i) The Planning Commission shall ensure that there is special mention/emphasis in all the plans and schemes formulated by it, on the effectuation/realization of the Directive Principles of State Policy.**
- (ii) Every Ministry/Department of the Government of India shall make a special annual report indicating the extent of effectuation/realization of the Directive Principles of State Policy, the shortfall in the targets, the reasons for the shortfall, if any, and the remedial measures taken to ensure their full realization, during the year under report.**

- (iii) **The report under item (ii) shall be considered and discussed by the Department Related Parliamentary Standing Committee, which shall submit its report on the working of the Department indicating the achievements/failures of the Ministry/Department along with its recommendations thereto.**
- (iv) **Both the above Reports *i.e.* (ii) and (iii) above shall be discussed by the Planning Commission in an interactive seminar with the representatives of various NGOs, Civil Society Groups, etc. in which the representatives of the Ministry/Department and the Departmental Related Parliamentary Standing Committee would also participate. The report of this interaction shall be submitted to the Parliament within a time bound manner.**
- (v) **The Parliament shall discuss the report at (iv) above within a period of three months and pass a resolution about the action required to be taken by the Ministry/Department.**

**3.35.3 A similar mechanism as mentioned above may be adopted for the States.**

Credibility of Socio-economic Data

**3.36 The Report of the National Statistical Commission (2001) stresses the importance of availability of adequate, credible and timely socio-economic data generated by the statistical system, both for policy formulation and for monitoring progress of the sectors of economy and pace of socio-economic change. The Commission endorses the recommendations of the National Statistical Commission and stresses the importance of their implementation.**

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***E. Fundamental Duties***

***The Background***



3.37.1 Ten Fundamental Duties of the citizen are incorporated in article 51A, Part IVA of the Constitution. Inserted by the Constitution (Forty-second Amendment) Act, 1976 it was part of a large number of changes brought about during the Emergency. But after the end of the Emergency, when the new Parliament reviewed the whole position and in most cases restored the pre-emergency position, article 51A was one that emerged unscathed because it was considered by all parties to be an unexceptionable charter of principles which citizens could usefully absorb and practice.

3.37.2 Constitutions of some countries of the world contain provisions for Fundamental Duties. The inclusion of Fundamental Duties in our Constitution also brings it in line with Article 29(1) of the Universal Declaration of Human Rights which says: “Everyone has the duties to the community in which alone the free and full development of the personality is possible.”

**Exercise of fundamental rights entails duties to the community which ensures the free and full development of human personality.**

3.37.3 In the last quarter-century since the Amendment, several judgments of High Courts and the Supreme Court have quoted these Fundamental Duties, where applicable, to lend further support to their decisions.

3.37.4 A consultation paper on the subject of “Effectuation of Fundamental Duties” prepared for the Commission by the Citizenship Development Society was circulated for eliciting public opinion. Responses received were carefully examined by the Commission along with the report of the Justice Verma Committee on Fundamental Duties.

3.37.5 The Government of India appointed the committee “to operationalise the suggestions to teach Fundamental Duties to the citizens of India” in the year 1998 under the chairmanship of Justice J.S. Verma. The Committee submitted its report in October 1999. The Commission feels that it is, therefore, not necessary for it to cover the same ground again. It finds itself in full agreement with the report of the Verma Committee. The salient recommendations of the Committee are at Annexure 117

1[1] to the Consultation Paper on “Effectuation of Fundamental Duties of Citizens”.

### ***Usefulness of Duties***

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17[5] See Volume II (Book 1) of the Report.

3.38.1 Fundamental Duties of citizens serve a useful purpose. In particular, no democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming forward to give their best to the country. Some of the fundamental duties enshrined in article 51A have been incorporated in separate laws. For instance, the first duty includes respect for the National Flag and the National Anthem. Disrespect is punishable by law. To value and preserve the rich heritage of the mosaic that is India should help to weld our people into one nation but much more than article 51A will be needed to treat all human beings equally, to respect each religion and to confine it to the private sphere and not make it a bone of contention between different communities of this land. In sum, the Commission believes that article 51A has travelled a great distance since it was introduced in the Forty-second Amendment and further consideration should be given to ways and means to popularise the knowledge and content of the Fundamental Duties and effectuate them.

3.38.2 The most important task before us is to reconcile the claims of the individual citizen and those of the civic society. To achieve this, it is important to orient the individual citizen to be conscious of his social and citizenship responsibilities and so shape the society that we all become solicitous and considerate of the inalienable rights of our fellow citizens. Therefore, awareness of our citizenship duties is as important as awareness of our rights. Every right implies a corresponding duty but every duty does not imply a corresponding right. Man does not live for himself alone. He lives for the good of others as well as of himself. It is this knowledge of what is right and wrong that makes a man responsible to himself and to the society and this knowledge is inculcated by imbibing and clearly understanding one's citizenship duties. The fundamental duties are the foundations of human dignity and national character. If every citizen performs his duties irrespective of considerations of caste, creed, colour and language, most of the malaise of the present day polity could be contained, if not eradicated, and the society as a whole uplifted. Rich or poor, in power or out of power, obedience to citizenship duty, at all costs and risks, is the essence of civilized life.

### ***Spirit of Harmony and Dignity of Women***

3.39.1 Some further thought needs to be given to clauses (e) and (f) of article 51A. Article 51A(e) desires the promotion of harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional or sectional diversities and renunciation of practices derogatory to the dignity of women. It is couched in broad terms but it should be clear that attacks on minority communities or minority opinions are frowned upon. Respect for both are essential and the wording lends support to a broad humanism to cover such differences as may exist or better still, co-exist. Two thoughts can be distilled. The first is that the objective will not be reached unless there is a determined effort to restrict religious practices

to the home on the justified premise that one's religion is a personal matter and is not conducive to mass assertiveness. The other is the status of women.

3.39.2 Lip service is being paid to the doctrine of gender equality. The fact remains that generally women are still regarded as inferior both at home and workplace although the Commission has noticed an improvement, however dissatisfied it may be with the degree of the improvement.

3.39.3 It is necessary to separate religious precepts from civil law. Civil law as the name implies is a matter for society not for religious leaders and it would seem to us to be axiomatic that in matters of civil rights, laws of property and inheritance and marriage and divorce, although practices may differ, legal rights that accrue must be the same. For example, a marriage may be solemnised according to religious or social custom but the rights of a woman in the case of divorce must be the same no matter what her religion is. As the Supreme Court held in the *Shahbanoo case*, an abandoned wife is an abandoned wife and it does not matter whether she professes one religion or another. She is entitled to alimony. Progress in these directions will be slow but it is necessary that progress is seen to be made. The key lies in education.

3.39.4 Clause (e) of article 51A also seems to cover the need to regard all human beings equally. In this connection, it is necessary to consider the question of the upliftment of the Scheduled Castes and other disadvantaged sections of our society. The scourge must be eradicated. The Constitution gave us ten years to do the job; the provision has been extended to fifty years and we are in our sixth ten-year period but we are no nearer the goal. The discrimination is two-fold. It is economic-condemning whole sections of our society numbering millions to menial jobs as part of the evil of treating them as sub-human. We have provided for reservation of jobs to these people, we have even given them separate constituencies to represent them. It has created a vested interest in backwardness. The other adverse result is that it has had no effect on their status in society, which continues to be determined by birth and not human worth and human personality. It is this social stigma which still plagues our people and the struggle to restore to them basic human dignity has made no significant progress. While the Commission appreciates the context in which affirmative action became necessary, it feels that reservation of jobs and seats in the legislatures will not help this aspect of the matter.

3.39.5 It is quite clear to the Commission that the disease of considering human beings as high or low based on the accident of birth is a disease rooted in the mind and it is in the mind that the defences of a society based on human dignity and equality must be constructed. Logically this leads directly to the conclusion that the key lies in education. The time to begin training our young people to respect the National flag and sing the National anthem, to respect women, to hold all religions equal and deserving of as much respect as one's own, to accept that all human

beings are born equal and are entitled to equal treatment are among principles best taught by examples when the child is too young to understand but not too young to obey. The focus must, therefore, shift to education which has suffered from serious neglect. Schools restrict admissions on unacceptable criteria, teachers themselves are untrained and often politicised, as is the curriculum. Despite these hardships, many of our young people have done well.

### *Composite culture*

3.40.1 Clause (f) of article 51A requires us to value and preserve the rich heritage of our composite culture. It follows that we may not break each other's places of worship, set fire to religious texts, or beat up one another's priests or obstruct those who exercise their Fundamental Right under article 25 to profess, practice and propagate religion. Composite culture means culture drawn from many strands. Here again education in its broadest and best sense can provide the corrective to the aberrations that have occurred.

3.40.2 Education is not confined only to the time spent in schools and colleges. Education begins at birth in the subconscious and continues till death. Anyone who says that he has nothing more to learn is already brain-dead. It follows that the influences that play on a child at home are of great importance. Parents should understand that education begins at home, the examples they set, the environment of enlightenment and tolerance that is necessary to produce good citizens cannot be sub-contracted to formal schooling important though this is. Schemes should, therefore, be framed that include parents in social activities that have as their objective the country's age-old traditions, its welcome to the persecuted of every faith, its virtues of tolerance of and respect for all religions and a certain pride in belonging to this land and in being considered as Indian. The highest office in our democracy is the office of citizen; this is not only a platitude, it must translate into reality. The distinction is not illusory. This country has given far too much indulgence to an attitude of mind that acts on the question - what is there in it for me? Education and the process of inculcating unselfishness and a sense of obligation to one's fellowmen should inspire the question - where does my duty lie? The transformation has the potential to make our nation strong, invincible and able to command the respect of the world.

**3.40.3 (i) The Commission recommends that the first and foremost step required by the Union and State Governments is to sensitise the people and to create a general awareness of**

**the provisions of fundamental duties amongst the citizens on the lines recommended by the Justice Verma Committee**

**18 on the subject. Consideration should be given to the ways and means by which Fundamental Duties could be popularized and made effective; (ii) right to freedom of religion and other freedoms must be jealously guarded and rights of minorities and fellow citizens respected; (iii) reform of the whole process of education is an immediate but immense need, as is the need to free it from governmental or political control; it is only through education that will power to adhere to our Fundamental Duties as citizens can be inculcated; and (iv) duty to vote at elections, actively participate in the democratic process of governance and to pay taxes should be included in article 51A. The Commission fully endorses the other recommendations of the Justice Verma Committee on operationalisation of Fundamental Duties of Citizens and strongly suggests their early implementation.**

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**3.40.4 The Commission also recommends that the following should be incorporated as fundamental duties in article 51A of the Constitution -**

- (i) To foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children.**
  
- (ii) Duty of industrial organizations to provide education to children of their employees**

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18 See Annexure 1 to the Consultation Paper on „Effectuation of Fundamental Duties of Citizens“ in Volume- II (Book 1) of the Report.

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