

## THE CONSTITUTION OF INDIA AND THE ROLE OF STATE FOR SOCIO-ECONOMIC DEVELOPMENT

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### ABSTRACT

*We have seen that overtime since the concept of government and constitution has evolved over a long period of time, the concepts like Fundamental rights, Fundamental duties, Directive Principles of State Policy (DPSPs), the concept of Welfare state and so many new things have been also emerged out. Earlier the only motive of the state was to act as a police state i.e. it has the whole and sole function to protect the territories of the state and its people only. But with the passage of time, the duties of the state also started changing with the changing needs of the citizens, so the concept of state shifted from the Police state to the Welfare state. Since the formation of the Indian Constitution, the framers have kept the concept of Welfare State on the topmost priority and included it as a obligation in the form of Directive Principles of State Policy enshrined under the Indian Constitution. Now, its an obligation upon the state to act as a Socio-Economic welfare state to uplift all those areas ad people who needs to be uplifted and thus help in boosting up the country as a whole.*

*So, in this research paper, we are going to discuss in depth the concept of Socio economic development and the role of state in doing these in context with the Constitution.*

### INTRODUCTION

Since the implementation of the Indian Constitution, the concept of state has undergone a radical change and in the modern times, many of the economies of the world have focused more on the laissez faire theory (A feature of Capitalist Economy where transactions are free from the state intervention), but most often, this theory has been rejected and are considered to be as out-dated. Now, if we talk about the modern concept of state, the countries are inclined towards the concept of welfare e.g. France, Belgium, Finland, Denmark, Sweden etc. and India, of course. The Social- Economic development of their countries have become their first priorities and objective as well.

If we talk about the Indian concept of State, it has not changed much. It may have changed in its mechanism but since the beginning and even during the British rule in India, the clear and underlined objective of India was welfare state i.e. Socio- Economic Development of its people.

National Movement- One of the corner stones of this movement was the Socio-Economic freedom of the people including the freedom of slavery. These things were clearly stated in the Karachi Congress 1931 as-

“In order to end the exploitation of the masses, political freedom must include real economic freedom for the starving millions.”

It was considered under the heading of Fundamental Rights and the other Economic Programmes as well. It manifested for the welfare of the Indian people under various heads like-

For a living wage for industrial workers, limited hours of labour, healthy conditions of the work, protection against economic consequences of the old age, sickness and unemployment; labour to be freed from serfdom or conditions bordering on serfdom; protection of women workers and specially adequate provisions leave during maternity period; prohibition against employment of children of school going age in factories etc. It stated the rights of labourers to form unions for the protection of their rights. Spoke about nationalisation of the industries, for agricultural reforms and numerous of provisions for the welfare of the society and for their upliftment.

### OBJECTIVE RESOLUTION

On 13th December, 1946<sup>1</sup>, Pt. Jawaharlal Nehru moved the Objective Resolution in the Constituent Assembly of India in which the socio-economic objectives were embodied. The Objective Resolution stated as:

“This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;

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- 1) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
- 2) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting there from; and
- 3) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
- 4) WHEREIN shall be guaranteed and secured to all the people of India justice, social economic and political : equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
- 5) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

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<sup>1</sup>*The Objectives Resolution, 1946, available at: <https://www.gktoday.in/gk/objectives-resolution/> (Last visited on June 08, 2021).*

- 6) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilized nations; and
- 7) This ancient land attains its rightful and honored placed in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.”



## THE CONSTITUTION

### PREAMBLE<sup>2</sup>

The Constitution of India<sup>3</sup> declares the Republic of India to be-

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<sup>2</sup>*Preamble to the Indian Constitution, 1949, available at: <https://www.clearias.com/preamble-of-indian-constitution/> (Last visited on June 08, 2021).*

Sovereign, Socialist, Secular, Democratic, Republic

From the above words, we could assume that the Constitution itself strives to promote social justice, equality, peace and freedom and to assure the same within the constitutional lines, means anything which needs to be done should be done within the powers conferred by the Constitution only. If anything is done beyond the Constitution, then of course it would be declared as ultra vires by the Judiciary (Safeguarding the rights of the Public).

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It highly affirms its faith in democracy i.e. By the People, For the People and Of the People.

The Preamble of the Indian Constitution itself embodies the socio-economic objectives as-

*“Justice, social, economic, political;  
Liberty of thought, expression, belief, faith and worship;  
Equality of status and opportunity;*

*And to promote among them all Fraternity assuring the dignity of the individual and unity of the nation.”*

The wording of the preamble clearly gives us the objectives endeavoured by the Constitution Framers and they framed the Constitution keeping in mind the tyranny and oppression faced by the Indians from the British during their rule. So, in order to secure JUSTICE, LIBERTY, EQUALITY among the Indians, the Constitution was framed in such a way that from the future date, their people do not face the same which they have faced already and to assure that, they made each and every possible provision in the Constitution and put forth public's rights first before everything.

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<sup>3</sup> *The Constitution of India, 1949, available at: <https://constitution.org/cons/india/const.html> (Last visited on June 08, 2021).*

Each and every word of the preamble indicates the future image of India with welfare of all the people and that's why the Preamble is known as the reflection/ mirror of the Indian Constitution because just having a look at it, we could make a fair analysis that what the Constitution is containing.

It also emphasizes on political freedom and creation of the social order and complete elimination of oppression and exploitation in the society and all these objectives are fully based on socio-economic principles which every Indian would have endeavoured.



## DIRECTIVE PRINCIPLES OF STATE POLICY

### (PART IV- Article 36-51 of The Indian Constitution)

The Concept of Welfare State is clearly reflected in the Indian Constitution and is enshrined under *Part IV- Directive Principles of State Policy*<sup>4</sup>.

**Art. 38 of the Indian Constitution contains in itself-**

***State to secure a social order for the promotion of welfare of the people***

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<sup>4</sup> *Part IV of the Indian Constitution, 1949, available at: <https://www.mea.gov.in/Images/pdf1/Part4.pdf> (Last visited on June 08, 2021).*

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(1) *The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.*

(2) *The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.*

By conferring the states with some duties towards its people, the objective of the Directive Principles of the State Policy was to socio-economic freedom. When these Directive Principles were proposed, Dr. B.R. Ambedkar made the following statement in connection with the Directive Principles in the Constituent Assembly:

*“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 the ideal before those who would be forming the government. That ideal is economic democracy..... In my judgment, the Directive Principles have a great value for us. They lay down that our ideal is economic democracy.*

*Because we did not want merely a parliamentary form of government to be instituted through the mechanism provided in the Constitution, without any direction as to what our economic ideal or as to what our social order ought to be we deliberately included the Directive Principles in our Constitution.”*

From the above statement, we could infer that the wish of the Constitution Framers was not merely to give power to the people who would be forming the government, but was also to set out some duties for them too so that they could have a clear idea about what major functions they have to discharge after coming into power.

In ***Minerva Mills vs. Union of India***<sup>5</sup>, the hon'ble Supreme Court of India realized:

*“... merely because the Directive Principles are not enforceable in the court of law, it doesn't mean that they cannot create obligations or duties binding on the state... In fact, non-compliance with the Directive Principles would be unconstitutional.”*

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AIR 1980 SC 1789.

The state is obliged by the principle to be followed by the state for securing economic justice by providing equal rights to both men and women on adequate livelihood, use of material source for common good, no concentration of wealth, equal wages for equal work for both men and women, to protect health and strength of workers & Children not to be forced to do the work for which they are not capable, Facilities and opportunities to children for their overall development.<sup>6</sup>

For this purpose, the Legislature enacted Equal Remuneration Act, 1976<sup>7</sup>. In ***Randhir Singh vs. UOI & Ors.***<sup>8</sup>, the Apex Court held that even though the equal pay for both men and women is not a Fundamental Right but a Constitutional Right and could be enforced by filing a writ under Art. 32 of the Indian Constitution<sup>9</sup>. This right applies equally to the persons employed on the daily wages.

The State to ensure Social Justice by providing equal justice and free legal aid to be given to all through mechanism of-

- ✓ Legislature.
- ✓ Schemes.
- ✓ Other Suitable ways<sup>10</sup>.

The State has to ensure employment, educational, public assistance (To unemployed, in sickness, old age people, disable people or in any other case) within its economic capacity<sup>11</sup>. It is the duty of the State to ensure and humane conditions for work and maternity relief to women<sup>12</sup>. In this context, the Parliament enacted Maternity Benefit Act 1961, as amended in 2017. State to ensure Living wage for workers + suitable

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<sup>6</sup> Art. 39 of the Indian Constitution, 1949.

<sup>7</sup> Equal Remuneration Act, 1976, available at: <https://labour.gov.in/womenlabour/equal-remuneration-acts-and-rules-1976> (Last visited on June 08, 2021).

<sup>8</sup> AIR 1992 SC 415.

<sup>9</sup> Article 32 of the Indian Constitution, 1949, available at: <https://indiankanoon.org/doc/981147/> (Last visited on June 08, 2021).

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<sup>10</sup> Art. 39-A (Introduced by Constitution (42<sup>nd</sup> Amendment) Act, 1976).

<sup>11</sup> Art. 41 of the Indian Constitution, 1949.

<sup>12</sup> Art. 42 of the Indian Constitution, 1949.

working conditions either by law or by economic organization<sup>13</sup>. The State to make arrangement for the participation of the workers in the management of industries. This could be ensured by the State either by introducing a particular law or any other way.

The State to provide for early childhood care below 6 years and to provide free and compulsory education until they complete 14 years of age<sup>14</sup>. To fulfill this obligation, the Parliament of India enacted the Right of Children to Free and Compulsory Education Act, 2009<sup>15</sup>.

The State also has to take care of the minority rights and has to promote the social and economic interests of SCs/STs & other BCs. Not only this, the state also has to protect them from any kind of social injustice and the other forms of exploitation<sup>16</sup>.

Furthermore, The Directive Principles also puts an obligation on the State to raise-

- ✓ Standard of living.
- ✓ Public Health.
- ✓ Level of Nutrition.

Also, to prohibit any kind of drugs and other forms of intoxicants<sup>17</sup>.

All these Directive Principles endeavor to ensure the Socio- Economic rights to the people of Republic of India. However, in the beginning; the Directive Principles did not received the worth which they should. But, in the landmark case **State of Madras vs. Champakam Dorairajan**<sup>18</sup>, the Directive Principles were held to be subject to Fundamental rights. In this case-

This case was concerned with the issue of Caste based reservations in the Educational Institutions. The Government of Madras reserved some seats in the medical and engineering colleges of the state on the basis of Religion, Race and Caste and this was challenged on the basis of its validity and the Constitutionality.

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<sup>13</sup> Art. 43 of the Indian Constitution, 1949.

<sup>14</sup> Art. 45 of the Indian Constitution, 1949.

<sup>15</sup> *The Right of Children to free and compulsory Education Act, 2009, available at: [https://mhrd.gov.in/sites/upload\\_files/mhrd/files/upload\\_document/rte.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/rte.pdf) (Last visited on June 08, 2021).*

<sup>16</sup> Art. 46 of the Indian Constitution, 1949.

<sup>17</sup> Art. 47 of the Indian Constitution, 1949.

<sup>18</sup> A.I.R. 1951 S.C. 228.

The Government took the shelter of Art. 46 of the Constitution<sup>19</sup> and defended itself by contending that the state is ought to promote the educational and economic interests of the weaker sections of the society (especially the Scheduled Castes/ Scheduled Tribes) with special care.

The Hon'ble Supreme Court scrapped the order by saying that this provision is violative of the Art. 15(1) of the Indian Constitution<sup>20</sup> which guarantees equality and moreover, the Directive Principles of State Policy cannot override the Fundamental Rights contained in the Part III of the Indian Constitution. The Fundamental Rights are sacrosanct in nature and cannot be abridged either by any Legislative, Executive or any order, except to the extent provided in the Fundamental Rights itself.

Furthermore, the Directive Principles have to be conform and be consistent to that of the Fundamental Rights as any law, order or amendment made in lieu of the Directive Principles which subsequently violates the Fundamental Rights would be declared as ultra vires or unconstitutional. But if any steps took by the state to fulfil its duties under the Directive Principles doesn't affect the Fundamental Rights, then the State cannot be objected for acting in accordance with the Directive Principles. Moreover, the rule making power conferred to the Legislature under the Directive Principles is further subject to the Legislative and Executive powers and limitation conferred to them under the various provisions of the Constitution.

However, a possible attempt was made by the court to establish a harmonious construction between the Directives Principles of State Policy and the Fundamental Rights as far as possible and attempt should be made to give effect to both as much as possible<sup>21</sup>.



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<sup>19</sup> Art. 46 of the Indian Constitution, available at: <https://indiankanoon.org/doc/352126/> (Last visited on June 08, 2021).

<sup>20</sup> Art. 15(1) of the Indian Constitution, 1949, available at: <https://indiankanoon.org/doc/1942013/> (Last visited on June 09, 2021).

<sup>21</sup> *State of Bombay vs. F.N. Balsara*, (AIR 1951 SC 318).

### Constitution Twenty-Fifth Amendment, 1971<sup>22</sup>

The provisions made under this amendment to the Constitution came in the way of the programmes for economic emancipation contained in the Directive Principles if they come in the way of Fundamental Rights. The Directive Principles were preferred over the Fundamental Rights in this amendment and for this Art. 31-C<sup>23</sup> was inserted into the Constitution. It stated as:

“Notwithstanding anything contained in Art. 13<sup>24</sup>, no law giving effect to the policy of the State towards securing the principles specified in the Clause (b) or Clause (c) of the Art. 39<sup>25</sup> shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Art. 14<sup>26</sup>, Art. 19<sup>27</sup> or Art. 31<sup>28</sup>; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.”

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<sup>22</sup> *The Constitution (25<sup>th</sup> Amendment) Act, 1971*, available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-twenty-fifth-amendment-act-1971> (Last visited on June 09, 2021).

<sup>23</sup> *Article 31-C of the Indian Constitution, 1949*, available at: <https://indiankanoon.org/doc/198382/> (Last visited on June 09, 2021).

<sup>24</sup> *Article 13 of the Indian Constitution, 1949*, available at: <https://indiankanoon.org/doc/134715/> (Last visited on June 09, 2021).

<sup>25</sup> *Article 39 of the Indian Constitution, 1949*, available at: <https://indiankanoon.org/doc/555882/> (Last visited on June 09, 2021).

<sup>26</sup> *Article 14 of the Indian Constitution, 1949*, available at: <https://indiankanoon.org/doc/367586/> (Last visited on June 09, 2021).

<sup>27</sup> *Article 19 of the Indian Constitution, 1949*, available at: <https://indiankanoon.org/doc/1218090/> (Last visited on June 09, 2021).

<sup>28</sup> *Article 31 of the Indian Constitution, 1949*, available at: <http://www.elections.in/political-corner/article-31-of-the-constitution-of-india/> (Last visited on June 09, 2021).

### DOCTRINE OF BASIC STRUCTURE

The above amendment was challenged in *Kesavananda Bharati Vs. State of Kerala*<sup>29</sup> in 1973. A Special Constitutional bench of 13 judges was constituted to hear this case and this was the highest bench of judges in the judicial history of India. This case is also known as the Fundamental Right's Case in which the legality of the Kerala Land Reforms Act 1963<sup>30</sup> was questioned. This case demarcated the amending power of the Parliament.

During the pendency of the petition, the Kerala Land Reforms Act was amended in 1971<sup>31</sup> and was inserted into the 9th Schedule of the Indian Constitution by the 29th Amendment Act<sup>32</sup> to prevent them from being struck down by the Judiciary on the basis of their Constitutional validity. The Petitioner was allowed to challenge the 24th, 25th as well as the 29th amendment to the Constitution.

The question evolved under the Art. 368 was “the extent to which the Parliament was authorized to amend the Constitution”. The Union contended that the amending power of the Legislature is unlimited and the Petitioner contended that the Legislature's power is wide but not unlimited. The uncontrolled power of the Parliament was controlled by the establishment of Doctrine of Basic Structure.

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The Court by majority overruled the judgment of *Golaknath's Case*<sup>33</sup> in which the Parliament was prohibited to amend the Fundamental Rights of the people. It was held that though the Parliament has the power to amend the Constitution but it

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<sup>29</sup> AIR 1973 SC 1461

<sup>30</sup> Kerala Land Reforms Act 1963, available at:

[http://www.sanchitha.ikm.in/sites/default/files/KeralaLandReformsAct\\_1963.pdf](http://www.sanchitha.ikm.in/sites/default/files/KeralaLandReformsAct_1963.pdf) (Last visited on June 09, 2021).

<sup>31</sup> The Kerala Land Reforms Amendment Act 1971, available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-twenty-fourth-amendment-act-1971> (Last visited on June 09, 2021).

<sup>32</sup> The Constitution (Twenty-Ninth Amendment) Act, 1972, available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-twenty-ninth-amendment-act-1972> (Last visited on June 09, 2021).

<sup>33</sup> *Golaknath Vs. State of Punjab* (AIR 1967 SC 1643).

doesn't has the power to 'weaken', 'damage', 'change', 'abrogate', 'destroy' or 'alter' the basic structure of the Constitution.

So, the Parliament can make the amendments but the basic structure of the Constitution needs to be maintained and it cannot be changed anyway. This decision of the Supreme Court limited the powers of the Parliament and the Judiciary established its authority over the Legislature in this case which brought a landmark change & a turning point in the Constitutional History of India.

So, the interference of the Judiciary saved the socio-economic interests of the public from the grudges of the Legislature and the Fundamental Rights prevailed over the Directive Principles or any other provision thereby giving birth to a new theory of Basic Structure.

### Constitution Forty Second Amendment, 1976

The 42nd Amendment Act 1976<sup>34</sup> came into picture after the cases of *Kesavananda Bharati* and *Indira Nehru Gandhi*<sup>35</sup>. This amendment made the Directive Principles more comprehensive.

By bringing this amendment, the Parliament added Art. 39 (a), Art. 39 (f), Art. 43 (a), Art. 48 (a) and Clause (4) & Clause (5) to the Art. 368 of the Constitution. Along with adding new articles, it made an amendment in Art. 31-C and replaced the words

“the principles specified in the Clause (b) or Clause (c) of the Art. 39” by the words “all or any of the principles laid down in Part IV”.

Again, the Parliament made an attempt to restore the Art. 31-C which it was under the Twenty-Fifth Constitutional Amendment, 1971. The Parliament tried to override the decision made in the *Kesavananda Bharati Case* with its blunt attempt.

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<sup>34</sup> The Constitution (Forty-Second Amendment) Act, 1976, available at: <http://legislative.gov.in/constitution-forty-second-amendment-act-1976> (Last visited on June 09, 2021).

<sup>35</sup> *Indira Nehru Gandhi vs. Raj Narayan*, (AIR 1975 SC 865).

The Parliament tried to establish its supremacy by adding the following wrong provisions-

- By making the President bound by the advice of the Cabinet.
- Made the Constitutional amendments beyond judicial scrutiny.
- Curtailed the powers of Judicial Review and Writ Jurisdiction of the Supreme Courts and High Courts.
- Raised the tenure of Lok Sabha and State Legislative Assemblies from 5 to 6 years.
- Provided that the laws enacted in approach of the Directive Principles cannot be made invalid on the ground of violation of the Fundamental Rights.

### Minerva Mills Vs. Union of India<sup>36</sup> (42nd Constitutional Amendment, 1976)

The provisions introduced by the 42nd Amendment of the Constitution ended the limitation on the Parliament for amending the Constitution by the way of any addition, variation or repeal of any particular provision. This provision set

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the Parliament free to amend the Constitution according to their sweet will & removed the limitation imposed on the amending power of the Parliament.

The matter was brought before the Supreme Court challenging the validity of the 42nd Constitutional Amendment, 1976<sup>37</sup> that if that provision would be enacted, then it would destroy the doctrine of 'Basic Structure' which is already established by the court that no amendment could take place which affects the basic structure of the Constitution. It also stated that the Parliament cannot have unlimited amending power so that it starts working arbitrarily and damage the Constitution.

The Clauses (4) & (5) of Art. 368<sup>38</sup> were violative on the ground that-

- ✓ They gave unlimited power to the Parliament to amend the Constitution the way they want.
- ✓ It restricted/ barred the Judiciary from any Judicial Review.

The Apex Court by majority, struck down the Clauses (4) & (5) of the Art. 368 inserted by the 42nd Amendment by stating that these are violative of the basic structure of the Constitution. Also, the Court held that it cannot be deprived of their power of Judicial Review.

The decision given in the Minerva Mills Case brought clarity to the Doctrine of Basic Structure which subsequently arisen into the tensions between the Parliament and the Judiciary and lead to conflict between both the wings of the government.

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<sup>38</sup> Article 368 of the Indian Constitution, 1949, available at: <https://indiankanoon.org/doc/594125/> (Last Visited on June 09, 2021).

## CONCLUSION

We have seen that the Constitution Framers were of the endeavour to see India free from any kind of evils like oppression, exploitation, untouchability etc. For this purpose, the endowed the Indian Constitution with numerous of the provisions for providing the citizens of Republic India with all the Socio-Economic privileges for which they were deprived since a long time during the British Imperial Empire. These Socio-Economic provisions benefitted the public for their upliftment but we see that from time to time, the Government has tried to interfere in these provisions by bringing some kind of changes via amendments e.g. 25th and 42nd amendments in the Constitution. Whenever, The Parliament tried to affect the rights of the people, their acts were challenged in the court and the Judiciary being endowed with the ask to safeguard the Constitution and thereby protecting the rights of the people, invalidated those acts of the government and again restored the rights of the people.

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