

Module Detail	
Subject Name	Political Science
Paper Name	Public Policy, Governance and Indian Administration
Module Name/Title	Public Policy Making In India: Constitutional Imperatives
Pre-requisites	
Objectives	<ol style="list-style-type: none"> 1. To know about the Basic Philosophy of the Indian Constitution 2. To describe the debate on the decline of the Parliamentary form of government, giving recent examples. 3. To explain the process of Judicial review and to know how it has been able to guard the constitution.
Keywords	Public Policy , Constitution, Preamble, Democratic Republic, Socialist , Public Sovereign Socio- Economic change

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PUBLIC POLICY MAKING IN INDIA: CONSTITUTIONAL IMPERATIVES

I

Introduction:

Making of public policy is a complex process which involves various actors and institutions. Since public policies affect all individuals directly and indirectly on a daily basis, the study of how the various decisions are taken, what are factors which influence the various institutions and officials who take such decisions becomes important.¹ It has been further argued that the “scientific, systematic and rigorous study of the origins, development and implementation of public policies will enhance our knowledge of political behavior and governance, as well as of public policy per se.”²

‘Policy’ refers to a broad statement that reflects future goals and aspirations and provides guidelines for carrying out those goals.³ Hill defines ‘policy’ as ‘the product of political influence, determining and setting limits to what the state does’. To be more precise, when a government takes a decision or chooses a course of action in order to solve a social problem and adopts a specific strategy for its planning and implementation, it is known as public policy.⁴

Authors such as Jenkins, Rose and Anderson have argued that policy is best seen as a process as it involves multiple actors and levels because policy decisions are not ‘something confined to one level of organization at the top, or at one stage at the outset, but rather something fluid and ever changing’.⁵ Rose makes a similar agreement when he says, ‘policy making is best conveyed by describing it as a process, rather than as a single, once-for-all act’. This process involves

¹ Anderson, James E. *Public policymaking: An introduction*. CengageBrain. com, 2010.

² Anderson, James E. *Public policymaking: An introduction*. CengageBrain. com, 2010.

³ Osman, Ferdous Arfina. "Public policy-making: Theories and their implications in developing countries." *Asian Affairs* 24, no. 3 (2002)Page 38

⁴ Ibid

⁵ Ibid

negotiation, bargaining and accommodation of many different interests, which eventually give it a political flavor. These political interactions happen within the network through which decisions flow, programmes are formulated and implemented and inter organizational dependencies and interactions take place.⁶

Of the various institutions and actors present one of the chief instruments which serves as a guidebook to public policy making is the Constitution of a country. It determines the manner in which policy is conceived and the objectives which drive such formulations. The following paper would be examining the constitutional imperatives that influence public policy making in India. The first section would give an insight into the Indian constitution, its evolution and trace the trajectory of its development. The second section would trace the philosophy which is inherent in the Constitution outlining the major themes imbibed within the document. The third section dwells into how the philosophy of the constitution has determined and influenced policy making in India.

II

Making of the Indian Constitution:

The Indian Constitution is a marathon effort to translate philosophical rule of law into practical set up divided into three significant estates checking each other exercising parallel sovereignty and non-egoistic supremacy in their own way.⁷ Power has been divided into two main levels in the Indian Constitution, that is the Centre and the States, with ample scope for the third tier that is the local bodies.

India possesses the largest written constitution containing 395 Articles and 9 schedules, originally making it the bulkiest and largest in the world. The Indian Constitution consists of 444 Articles divided into 22 parts ,12 Schedules and 118 amendments. The Indian Constitution has been adapted and adopted form various constitutions around the world such as the United States of America, the United Kingdom and Germany.

⁶ Ibid

⁷ Sridhar, Madabhushi. Evolution and Philosophy behind the Indian Constitution. Page 5

The demand that India should chart her own political course was put forward by Mahatama Gandhi as early as 1922. He stated that:

“Swaraj will not be a free gift of the British Parliament; it will be a declaration of India’s full self expression. That it will be expressed through an Act of Parliament is true but the will be merely a courteous ratification of the declared wish of the people of India even as it was in the case of Union of South Africa.”⁸

The Constituent Assembly: The Indian Constitution was drafted by the Constituent Assembly which began its work on December 9th, 1946. Dr. Rajendra Prasad was elected the permanent Chairman of the Constituent Assembly. Other prominent members were Sir Alladi Krishnaswamy Iyer, K.M. Munshi, T.T. Krishnamachari, Gopaldaswami Ayyangar, Jawaharlal Nehru, Sardar Patel, Maulana Azad, , Govind Ballabh Pant, Abdul Gaffar Khan, T.T. Krishnamachary, H.N. Kunzu, H.S. Gaur, K.V. Shah, Masani, Acharya Kripalani, Liaquat Ali Khan, Khwaza Nazimuddeen, Sir Feroze Khan Noon, Suhrawardy, Sir Zafarullah Khan, Dr. Sachchidananda Sinha. Except Gandhi and Jinnah almost all prominent public figures figured in this August body.

The salient features of the proposed Constitution had been outlined in various committees of the Assembly such as the Union Constitution Committee, the Union Powers Committee, Committee on Fundamental Rights, and on a general discussion on the reports of these Committees, the Assembly appointed a Drafting Committee on the 29th of August 1947. The Constitution was passed on 26th November 1949, with the provisions of the Constitution only coming into effect from November 26, 1949. The rest of the Constitution came into force on 26th January 1950 and this date is referred to in the constitution as the Date of its Commencement.⁹

III

Indian Constitution: Features and Basic Philosophy

⁸ Basu, Durga Das. *Introduction to the Constitution of India*. Prentice-Hall of India, 1982. Page 14

⁹ Ibid

The Indian Constitution is based on the philosophy of evolving an egalitarian society free from fear and bias based on promoting individual freedom in shaping the government of their choice. The whole foundation of constitutional democracy is building a system of governance in systematic machinery functioning automatically on the wheels of norms and regulations but not on individual whims and fancies.¹⁰ Such a goal was an enhancement of the Objectives Resolution of Pandit Nehru which was adopted by the Constituent Assembly on January 22, 1947 which inspired the shaping of the Constitution through all its subsequent stages it reads thus:

1.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;

2.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

3.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 therefrom; and

4.WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

5.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

6.WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

7.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

¹⁰ Sridhar, Madabhushi. Evolution and Philosophy behind the Indian Constitution. Page 5

8.this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.¹¹

The forestated resolution is reflected in the Preamble of the Indian Constitution illustrating the goals that the constitution seeks to achieve. Though by itself it is not enforceable in a court of Law the preamble to a written Constitution states the objectives which the constitution seeks to establish and promote and also aide the legal interpretation of the Constitution where the language is found to be ambiguous.¹² Since the Preamble presents us with a condensed version of the aims of the Indian Constitution exploring the various expressions outlined in it would help us to determine the basic philosophy of the Indian Constitution which influences public policy making in India.

The Preamble:

The first Prime Minister of Independent India categorically presented the objective of the constitution in a lucid statement: “The first task of this Assembly (Constituent Assembly) is to free India through a new Constitution, to feed the starving people and clothe the naked masses and to give each Indian the fullest opportunity to develop himself according to his capability”.¹³ This resolve reflected in Resolution passed on the 22nd January 1947 and inspired the shaping of the Constitution into a dynamic document. This resolution is the inner theme of the Preamble, which should be read, referred and remembered:

We, THE PEOPLE OF INDIA,

having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizen:

JUSTICE-social economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

¹¹ Basu, Durga Das. *Introduction to the Constitution of India*. Prentice-Hall of India, 1982. Page 20

¹² Ibid, Page 21

¹³ Sridhar, Madabhushi. *Evolution and Philosophy behind the Indian Constitution*. Page 5

And promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION. ¹⁴

Preamble is a statement of objectives and acts as guide to the interpretation of the provisions of the Constitution. Preamble made it clear that Constitution emanated from the people of India and not from any external authority or any less authority than the people of India.¹⁵ In order to have a better understanding of the main goals of the Indian constitution one must explore in detail the various expressions in the Preamble which are as follows:

Independent Sovereign Republic: The term Republic signifies that there shall be an elected head of the State who will be the Chief Executive Head. The expression connotes that the constitution of India is not a gift of the British Parliament and it is ordained by the people of India through their representatives assembled in a sovereign Constituent Assembly which was competent to determine the political future of the country in any manner it liked. Thus it declares that the source of authority of the constitution rests solely with the people of India. It also shows that since the making of the Constitution in 1949, India ceased to be a dominion and declared herself as a 'Republic'.¹⁶ However though the British Crown ceased to have any legal or constitutional authority over India, India was still a member of the British Commonwealth but with no obligation. Such an act by India was described by Pandit Nehru as “ its is an agreement by free will , to be terminated by free will.”¹⁷ Such a decision by India has to be understood as an act to promote international peace which is stated in Art 51 of the Constitution:

“The State shall endeavor to

- (a) Promote international peace and security;
- (b) Maintain just and honorable relations between nations;

¹⁴ Bakshi, Parvinrai Mulwantrai, and Subhash C. Kashyap. *The constitution of India*. Universal Law Publishing, 1954.

¹⁵ Sridhar, Madabhushi. *Evolution and Philosophy behind the Indian Constitution*. Page 5

¹⁶ Basu, Durga Das. *Introduction to the Constitution of India*. Prentice-Hall of India, 1982. Page 21

¹⁷ *Ibid*, Page 22

- (c) Foster respect for international law and treaty obligations in the dealings of organized people with another; and
- (d) Encourage settlement of international disputes by arbitration

Thus, though India declares her sovereignty to manage her own affairs, in no unmistakable terms, the Constitution does not support isolationism or 'Jingoism'. Indian Sovereignty is consistent with the concept of 'one world', international peace and amity.¹⁸

Democratic Republic: The picture of a 'democratic republic' which the Preamble envisages is democratic not only from the political but also from the social standpoint; in other words, it envisages not only a democratic form of government but a democratic society, infused with the spirit of 'justice, liberty, equality and fraternity.'¹⁹ The term "democratic" indicates that the Constitution has established a form of Government which gets authority from the will of the people. The rulers are elected by the people. Justice, liberty Equality and Fraternity are the essential features of the democracy.

Justice: in the Preamble can be categorized into two- political justice and economic justice. Politically India aims at a representative democracy wherein all people of India are to exercise their sovereignty through the Parliament at the Centre and a Legislature in each State which is to be elected on adult franchise and to which the real executive that is the council of ministers shall be responsible. No political decision can be exercised without consulting the Council of Ministers who represent the people. Another feature of political democracy is that every Indian irrespective of gender, caste, educational qualifications is allowed to participate in the political process. " Universal Adult Suffrage was adopted with this object in view. This means that every five years, the members of the Legislatures of the Union and of each State shall be elected by one vote of the entire adult population, according to the principle- 'one man one vote.'²⁰ When it comes to the social justice side the Preamble envisaged providing "equal opportunity to men and women, irrespective of their caste and creed, in matter of public employment."²¹ Such an ideal is

¹⁸ Ibid, Page 23

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

resonated in the Directive Principles of State Policy which aims at establishing a 'welfare state'. In this context Pandit Nehru states:

“Democracy has been spoken of chiefly in the past as political democracy, roughly represented by every person who has the right to vote. But a vote by itself does not represent very much to a person who is down and out, to a person, let us say, who is starving or hungry. Political democracy by itself is not enough except that it may be used to obtain a gradually increasing measure of economic democracy, equality and the spread of good things of life to others and removal of gross inequalities.”²²

Such a sentiment can only be achieved when economic inequities are also removed and there is equal distribution of national wealth and resources. Hence the constitution states ensuring economic justice also provides one with social justice.

Liberty: Full democracy cannot be achieved if it not accompanied by an equal level of freedom for an individual to be able to lead a civilized life. It is with this notion that the Preamble mentions these essential individual rights as 'freedom of thought, expression, belief, faith and worship' and these are guaranteed against all the authorities of the State by Part III of the Constitution [vide Arts.19,25-28], subject of course, to the implementation of the Directive Principles for the common good [Art.31C] and the 'fundamental duties' , introduced [Art.51A], by the 42nd Amendment, 1976.²³

Equality: All the aforementioned principles become redundant if all individuals are not given an equal opportunity to fully develop the best in them, that is to say inequality in any domain whatsoever was to be done away with. “This object is secured in the body of the Constitution, by making illegal all discriminations by the State between citizen and citizen, simply on the ground of religion, race, caste, sex or place of birth [Art 15]; by throwing open all 'public places' to all citizens [Art 15(2)]; by abolishing untouchability [Art17]; by abolishing titles of honour [Art18];by offering equal opportunity in matters relating to employment under the State [Art 16];

²² Ibid, Page 24

²³ Ibid, Page 25

by gaurenteeing equality before law and equal protection of the laws, as justiciable rights [Art.14].”²⁴

Fraternity: Another goal which the Preamble states is the issue of fraternity wherein it is envisaged that practices such as untouchability, communal and sectional anti-social feelings are abolished. Since “democracy would indeed be hollow if it fails to generate this spirit of brotherhood amongst all sections of the people- a feeling that all children of the same soil, the same Motherland. It becomes all the more essential in a country like India, composed of so many races, religions and languages and cultures.”²⁵

Socialist

The term "Socialist" has been inserted in the Preamble by the Constitution 42nd Amendment Act, 1976. In general, it means some form of ownership of the means of production and distribution by the State. India has chosen mixed economy and now drifting towards privatization. Such a socialist pattern of growth was professed at the Avadi Session of the Congress in 1955, which stated:

“In order to realize the objective of the Congress...and to *further the objectives stated in the Preamble and the Directive Principles of State Policy* of the Constitution of India, planning should take place with a view to the establishment of the a *socialistic pattern of society*, where the principal means of production are under social ownership or control, production is progressively speeded up and there is equitable distribution of the national wealth.”²⁶

However it is to noted that a socialistic pattern which was followed by India does not mean the abolition of private property, it only ensures that the national resources are managed in such a manner which would benefit all citizens of India.

Secular

The term Secularism means a State which has no religion of its own as a recognised religion of State. It treats all religions equally. In a secular State the State regulates the relation between man

²⁴ Ibid Page 25

²⁵ Ibid, Page 26

²⁶ Ibid, Page 25

and man. It is not concerned with the relation of man with God. The Constitution states that all citizens give all individuals freedom to follow any religion and they enjoy equal rights without any distinction of caste, creed, religion or sex. The word "secular" was inserted in the Preamble by the Forty Second Amendment. Article 15 (1) prohibits any discrimination based on religion, and Article 25 (1) provides that subject to public order, morality and health and to the other provisions, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. Secularism is also subject to democratic socialism. Religious freedom cannot therefore be used to practice economic exploitation. The right to acquire, own and administer property by religious institutions is subject to the regulatory power of the State.

Basic Characteristics of the Indian Constitution:

Popular Sovereignty: Self Government

One of the main tasks of the framers of the Constitution was to ensure that the ultimate authority over the constitution lay in the hands of the people of India. "Mahatma Gandhi wrote in January 1922 under the caption 'Independence' in his weekly, 'Young India': Swaraj, therefore will not be a free gift of the British Parliament. It will be expressed through an Act of Parliament is true. But it will be merely a courteous ratification of the declared wish of the people of India."²⁷ This statement clarifies the doubts about 'independent' origin of Independence of India, if any.

Parliamentary form of Government

The Indian Constitution established a parliamentary form of Government based on the British model. The reason which has been given for the adoption of a parliamentary form of Government has been that it leads to greater responsibility. The Council of Ministers is collectively responsible to the Lower House i.e., Lok Sabha. In States the Council of Ministers is responsible to Legislature, and therefore it is called responsible Government. On the other hand the American Government is a Presidential form of Government, where the President, the real

²⁷ Sridhar, Madabhushi. Evolution and Philosophy behind the Indian Constitution. Page 8

executive and elected directly by the people for 4 years. All executive powers are vested in him. He is not responsible to the Lower House, i.e., the Congress. The members of his cabinet are not members of Legislature.²⁸ They are appointed by the President and therefore, responsible to him. The daily assessment which is done by Members of Parliament through questions and resolutions ensures a more responsible working. Another reason which was given in favour of the Parliamentary form of Government was that it was able to accommodate various groups and sections in the decision making process. “ The makers of our constitution rejected the Presidential system of government, as it obtains in America, on the ground that under that system the Executive and the Legislatures are separate from and independent of each other, which is likely to cause conflicts between them, which our infant could ill afford to risk.”²⁹

The Parliamentary system of Government in India is based on adult suffrage, whereby all citizens of India who are not less than 18 years of age and are not disqualified on certain grounds like non-residence, unsoundness of mind or corrupt practices have the right to be registered as voters in any election to the Lok Sabha and to the Legislative Assemblies of the States.³⁰

In recent times questions have been raised regarding the ability of a parliamentary form of government being able to meet the targets of economic and social growth. It has been pointed out that since the Executive depends on the support of the legislature, the actions and tenure of which is highly unpredictable it becomes a major obstacle to fast paced development. Such criticisms have also been directed towards a Presidential system where it has been pointed that the chief executive can become a dictator usurping all power. Thus the debate is not about which is a better system- Parliamentary or Presidential but its about the kind of democratic conditions which are prevalent in a state.

Federalism

According to a “Federal constitution provides for expression of regional goals and national objectives. It has a special advantage that the Federal Government can absorb some of the costs

²⁸ Ibid, Page 28

²⁹ Ibid

³⁰ Ibid

of new technology or programs that would have to be absorbed completely by member units in a unitary or con-federal government system. It can accommodate the aspirations and sovereign interests of different provinces with ethnic groups, linguistic characteristics. Federation is suitable to a plural society with multiple cultures and multiple language speaking populations. Federalism allows countries involved to maximize the growth and political strength, while at the same time allowing the expressions of regional characteristics. In situations of large size, involving separation and divergence of communities the federation will be a useful and working system of government.”³¹

India’s federal roots can be traced back to the Simon Commission which in its report in 1930 recommended the evolution of India into “ a federation of self governing units.” The framers of the Constitution felt that having a strong Centre for India would serve India better due to the socio-economic conditions which were prevailing in India after the Partition and would also be suited to diverse society like India. “Ambedkar said in the Constituent Assembly: “The Indian Constitution is a federal Constitution in as much as it established what may be called a dual polity which will consist of the Union at the Center and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution.”³²

However the Indian Constitution was not federal in the strict manner of the American Constitution as “it could be both unitary as well as federal according to the requirements of time and circumstances with an in-built mechanism to convert the Constitution into a unitary Constitution in certain circumstances.” Such a phenomena has been referred to as “cooperative federalism.”³³ The division of powers in India has been divided into three fields i.e. legislative, administrative and financial. Despite the distribution of power between the centre and the states, the centre is stronger with powers to intervene in matters of states. However the states also possess certain subjects which lie purely under their jurisdiction. “Thus the Indian Constitution had been cast in a mould of its own. It is certainly federal in so far as it assigns different, distinct and independent legislative fields to the Union and State governments, and in so far as it has in-

³¹ Ibid, Page 9

³² Ibid Page 13

³³ Ibid

built mechanism of converting the federation into a unitary system, it is typically Indian model.”³⁴

An Independent Judiciary

One of the chief concerns of the framers of the constitution was the protection of individual rights and freedoms, protection of minorities, upliftment of the oppressed etc. Hence many provisions were made by way of giving fundamental rights, directive principles, elections federalism etc. However in order to avoid a dictatorial rule by the state as a safeguard to individuals an Independent Judiciary with the power of Judicial Review. The Judiciary was to be accessible to individuals and groups. Such a provision was influenced by the American Judicial system. In this context the judiciary in India was protect and guarantee fundamental rights, maintain federal equilibrium, be a check on the legislature and the executive, and interpret the constitution when the need arose. The Indian Constitution has been seen as a middle path between the American System and the British System. The Judiciary in India can declare any law as unconstitutional if it impinges the fundamental rights provided by the Constitution or any other provision of the constitution for that matter. This however does not mean that the legislature has no power when it comes to judicial review. As the Judiciary can be deprived of any power of of judicial review of the wisdom of legislative policy. Further “the legislature can amend the Constitution by a special majority if in any case the Judiciary proves too obtrusive.”³⁵ Such a sentiment was summed by Pandit Nehru when he stated that:

“No supreme Court, no Judiciary, can stand in judgement over the sovereign will of Parliament, representing the will of the entire community. It can pull up that sovereign will if it goes wrong, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way...Ultimately, the fact remains that the legislature must be supreme and must not be interfered with by the Courts of Law in such measures as social reform.”³⁶

³⁴ Ibid

³⁵ Basu, Durga Das. *Introduction to the Constitution of India*. Prentice-Hall of India, 1982. Page 39

³⁶ Ibid

Rigid and Flexible

The Constitution of India is partly rigid and partly flexible. There are certain provisions which can be amended by a simple majority in Parliament, while there are certain other provisions whose amendment requires not only a special majority in Parliament but also ratification by at least one half of the State Legislatures. Despite being a written constitution the Indian Constitution is flexible to the changing needs. The flexibility of the Constitution reflects the liberal philosophy of the founding father of the Indian Constitution. Pandit Nehru stated that:

While we want this constitution to be solid and permanent as we can make it, there is no permanence in Constitution. There should be certain flexibility. If you can make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital organic people...In any event, we could not make this constitution as rigid that it cannot be adapted to changing conditions. When the world is in turmoil and we are passing through "a very swift period of transition, what we may do today may not be wholly capable tomorrow."³⁷

Amendments are the general means by which changes can be brought about in the Constitution. Article 368 of the Indian Constitution gives the power to the Parliament to amend the Constitution and the procedure which is as follows:

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

- (a) article 54, article 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in article 13 shall apply to any amendment made under this article.

[(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.³⁸

The power of the Parliament to amend the Constitution went under some major changes with the Golak Nath and Keshavananda Bharati cases. Before the Golak Nath case the Supreme Court had upheld that all parts of the Indian Constitution were amendable. However in the Golak Nath Vs. the State of Punjab which came up in 1967, the court ruled that the Fundamental Rights in Part III of the Constitution cannot be subject to the process of amendment. However this ruling was changed in the Keshavanand Bharati Vs. the State of Kerala 1973 which once again overruled the decision of Golak Nath Case. However it was also stated any amendment to the constitution would be declared ultra vires if it went against the basic structure of the Indian Constitution.

Fundamental Rights and Fundamental Duties

In India the concept of rights developed as a result of the influence of western political thought. Fundamental Rights were incorporated in the Indian Constitution despite the British resentment to it in the Government of India Act 1935. Fundamental rights are enshrined in Part III of the Constitution. The main objective behind these rights was that it prevented the use of arbitrary power by the State. Fundamental rights are enforceable in a Court of Law if they are impinged upon. The Supreme Court of India has been made the custodian of Fundamental Rights. In case the Fundamental Rights are violated the Constitution also provides remedies for the same by allowing individuals to file writs in the Court of Law such as Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari.

³⁸ Bakshi, P. M. "The Constitutional Law of India." (2003). Page 304

Fundamental rights in the Indian Constitution have been divided into the following six categories:

1. Right to equality (Art 14 to 18); Which gives Equality before Law and Equal Protection before Law; Prohibition of Discrimination on the basis religion etc; equality of opportunity in employment; abolition of untouchability and abolition of titles.
2. Right to particular freedoms (Art 19-22); gives freedom of speech expression; assembly ; association ; movement; residence ; and settlement and profession. Protection in respect of conviction for offences. Protection of life and personal liberty. Protection against arrest and detention in certain cases.
3. Right against exploitation (Art 23-24) prohibits traffic in human beings and forced labour. Prohibition of employment of children in hazardous employment.
4. Right to freedom of religion (Art 25- 28) gives freedom of conscience and profession. Freedom to manage religious affairs. Freedom to pay taxes for the promotion of any particular religion. Freedom to attend religious instruction in certain educational institutions.
5. Cultural and Educational Rights of minorities (Art 29-30) gives protection language, script or culture of minorities . Right of minorities to establish and administer educational institutions.
6. Right to property was later abolished
7. Right to Constitutional Remedies for the enforcement of the fundamental rights by writs such as habeas corpus, mandamus, prohibition, certiorari and quo warranto.³⁹

Besides the Fundamental Rights the Indian Constitution incorporated by the 42nd Amendment Act, 1976 ten "Fundamental Duties" for Citizens which are as follows:

It shall be the duty of every citizen of India:

1. To abide by the constitution of and respect the National Flag and National Anthem;
2. To cherish and follow the noble ideas which inspired out national struggle for freedom;
3. To protect the sovereignty, unity and integrity of India;
4. To defend the country
5. To promote the spirit of common brotherhood amongst all the people of India;
6. To preserve the rich heritage of our composite culture
7. To protect and improve the natural environment;
8. To develop a scientific temper and an spirit of enquiry;
9. To safeguard public policy;
10. To strive towards excellence in all spheres of individual and collective activity.⁴⁰

³⁹ Ibid Page, Page 10-84

⁴⁰ Ibid Page, Page 92

The fundamental duties are intended to serve as a reciprocal effect wherein the citizens do take for granted the fundamental rights that the constitution provides. The main objective of fundamental duties is to instill a sense of responsibility within citizens to observe a certain basic norm of democratic conduct and behavior. Since these duties cannot be enforced in a court of Law they are intended to remind individuals their duties as citizens.

Directive Principles of State Policy

The Directive principles of State Policy are found in Part IV of the constitution. They set out the the aims and objectives to be taken up by the States in the governance of the country. Unlike the Fundamental Rights these rights are not legally enforceable by courts therefore the State cannot be forced to implement them. However the Constitution makes these principles fundamental in the governance of the country. According to Granville Austin “by establishing these positive obligations of the State, the members of the Constituent Assembly made it the responsibility of future Indian Government to find a middle way between individual liberty and public good, between prescribing the privileges of the few and bestowing benefits on the many in order to liberate the powers of all men equally, for constructions of common good.”⁴¹

The following are the Directive Principles of State policy stated in the Indian Constitution:

Art 38 State to secure a social order for the promotion of welfare of the people.—

- (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 minimise the inequalities in income, and endeavour 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.

Art 39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

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(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Art 39A. 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.

Art 40. Organisation of village panchayats.—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Art 41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, 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.

Art 42. Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.

Art 43. Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Art 43A. Participation of workers in management of industries.—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

Art 44. Uniform civil code for the citizens.—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Art 45. Provision for early childhood care and education to children below the age of six years.—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Art 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Art 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Art 48. Organisation of agriculture and animal husbandry.—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

Art 48A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Art 49. Protection of monuments and places and objects of national importance.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Art 50. Separation of judiciary from executive.—The State shall take steps to separate the judiciary from the executive in the public services of the State.

Art 51. Promotion of international peace and security.—The State shall endeavour to—

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

(d) encourage settlement of international disputes by arbitration⁴²

IV

Indian Constitution as an instrument of Socio- Economic Change

After having gone through the basic philosophy and characteristics of the Indian Constitution it can be concluded that the founding fathers envisaged ideals of participatory democracy, rights of all citizens, secularism egalitarianism, an independent judiciary to achieve the goals of socio economic justice. With the kind of environment which was prevalent in India during the framing of the constitution where the Indian state was marred by the ills of partition, poverty, the framers were able to achieve writing a document which was a mid way between pragmatism and idealism. Thus the constitution of India has been able to provide a path for humane and progressive society and has also been able to provide a vision of a new social order. It is this very philosophy and characteristic which have found a way when it comes to public policy making in India. The Constitution plays a major role in the various policies which are framed by the Indian State when it comes to the formulation of various policies. All policies that come about have to resonate and uphold the basic tenants of the Constitution in order to achieve political social and economic democracy.

⁴² Ibid, Page 84-91