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THE BILL OF RIGHTS, DUE PROCESS, AND FEDERALISM IN INDIA*

WILLIAM Ó. DOUGLAS**

THE CONSTITUTIONAL FRAMEWORK

The Indian Constitution was adopted on November 26, 1949, and went into effect on January 26, 1950. It is a long document, containing close to 400 articles and a series of "Schedules." The official edition embraces over 200 pages. In contrast to the general provisions of our own Constitution, the Indian Constitution contains many matters of minute detail, such as those dealing with Parliamentary procedure and those concerning the Indian Civil Service.

India, like the United States, recognizes the people as the basis of sovereignty. The Preamble of the Indian Constitution is somewhat akin to our own and starts off, "We, the people of India."

Article 368 of the Indian Constitution (the equivalent of our own Article V) establishes a procedure for constitutional amendment. Unlike our own amending process, most portions of the Indian Constitution can be amended by special majorities in Parliament and the assent of the President, without the approval of the constituent States. Yet certain crucial portions of the Indian Constitution can be amended only with the consent of a designated percentage of the state legislatures. These include the provisions for the popular election of the President, the executive power of the Union and the States, the judiciary, the distribution of legislative powers, the representation of the States in Parliament, and the amending article itself.

*This article was delivered as a Sidney Hillman Lecture at the University of Minnesota, May 25, 1955.
**Associate Justice, Supreme Court of the United States.
1. Articles 107-122.
2. Articles 308-323.
3. Articles 34, 35.
4. Articles 73 and 162.
6. Articles 245-255 and the lists in the Seventh Schedule.
7. Article 368.
The framers of the Indian Constitution followed the Parliamentary or Cabinet form of government. The Indian Constitution provides, however, for a nationally elected President to serve for a fixed term. But he does not serve in an executive capacity. "Under [the Indian Constitution] the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation." Actual executive power under the Indian system is placed in a Council of Ministers, with a Prime Minister at its head. These ministers are responsible to Parliament and are drawn from that body, as provided in Articles 74 and 75.

While following the British pattern in the selection of the form of executive-legislative relations, the Indian Framers rejected the unitary British system and chose instead a federal system better suited to such a vast, populous, and heterogeneous land. That choice is in part responsible for the length of the Indian Constitution—not only because it required the spelling out of the respective roles of the state and federal governments, but also because the Indian Constitution, unlike our own, serves as the basic charter for the state governments, as well as for the federal government. Hence, much of the Constitution is devoted to outlining the state governmental machinery.

The Indian equivalent of our Bill of Rights is contained in Part III. These rights are guaranteed against action by both the Union (Central) and State Governments. Comparable rights under the Fourteenth Amendment of our Constitution are secured only against "state" action. The literal language of the Indian Constitution would indicate that some rights are secured against private conduct, as well as against state action, but the question seems not to have been decided in India.

8. Articles 52-62.
9. See 7 Const. Assembly Debates 32.
10. For example, cf. Article 105, outlining the privileges of the Union Parliament with Article 194, dealing with the State Legislatures.
11. Articles 12, 13.
12. Article 15, for example, provides in part:
"(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
"(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—
"(a) access to shops, public restaurants, hotels and places of public entertainment; or
"(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public ** * *"
Article 19(1) (a) provides that all citizens shall have the right to freedom of speech and expression. But this right, unlike our own free speech guarantee, is expressly qualified by Article 19(2) which (as amended in 1951) makes the right subject to the power of the State to make “reasonable restrictions” in the interests of 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.” These qualifications assume importance in light of the fact that the Fundamental Rights contained in Part III are enforceable by judicial remedy. Therefore, the task of the Indian judiciary in this area is largely one of determining whether a given restraint on one of the Fundamental Rights is or is not reasonable.

These Fundamental Rights may be grouped into seven major groups: right to equality; right to freedom; right against exploitation; freedom of religion; cultural and educational rights; right to property; and right to constitutional remedies.

The right to equality embraces a general guarantee of equal protection similar to that in our Fourteenth Amendment, and a series of specific guarantees aimed at particular types of discrimination. A notable feature of this section is the abolition of untouchability. The right to freedom includes both substantive guarantees (freedom of speech, freedom of assembly, freedom of association, freedom of movement) and procedural safeguards (privilege against self-incrimination, right to counsel, prohibition against double jeopardy). The Indian Constitution contains, however, provisions authorizing preventive detention, a procedure unknown to American jurisprudence.

The right against exploitation embraces prohibitions against forced labor and child labor. Provisions on freedom of religion embrace both freedom of conscience and separation of Church and State. Cultural and educational rights are designed to preserve and protect rights of ethnic minorities.

The provision on the right to property deals primarily with the
power of eminent domain. The restrictions on governmental interference with property and business interests, short of acquisition, are contained in the sections dealing with the right to freedom.\textsuperscript{24}

The right to constitutional remedies embraces the right to move the Supreme Court of India for enforcement of the rights contained in the other articles, and includes authority to issue various writs for this purpose.

The writ of \textit{habeas corpus} is indeed firmly imbedded in the Indian Constitution, the power to issue the writ being conferred on the Supreme Court and the High Courts.\textsuperscript{25} The Supreme Court has frequently emphasized the importance of the Great Writ. Thus, in \textit{Singh v. Delhi},\textsuperscript{26} the Court stated

"This Court has often reiterated before that those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of the law."\textsuperscript{27}

In contrast to the judicially enforceable rights contained in Part III of the Constitution, Part IV contains a series of Directive Principles of State Policy,\textsuperscript{28} provisions having no counterpart in our own constitutional system. These directive principles set forth the economic, social, and political goals of the Indian Constitutional System. For example, Article 38 provides "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." Article 39 states

"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, (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 childhood and youth are protected against exploitation and against moral and material abandonment."

\textsuperscript{24} See Article 19(1)(f) and (g).
\textsuperscript{25} Articles 32(2), 226(1).
\textsuperscript{26} 16 Sup. Ct. Jour. 326 (1953).
\textsuperscript{27} Id. at 327.
\textsuperscript{28} Articles 36-51.
Article 37 provides that these principles are not enforceable in any court.

THE FEDERAL SYSTEM

India has a bicameral national legislature, with the lower house (House of the People) being selected on the basis of population and the upper house (Council of States) being selected by the various constituent units of the republic.

The division of powers between the Union and State Governments is set forth in three lists contained in the Seventh Schedule, as provided in Article 246. The Union List (List I) setting forth the powers of the central government, the State List (List II) doing the same for state powers, and a Concurrent List (List III) containing powers enjoyed by both central and state governments. These lists itemize various powers in great detail. Foreign affairs, the defense of India, naturalization, coinage of money, interstate trade and commerce, are on List I. Betting and gambling, land reform, wild life, hospitals and dispensaries, intoxicating liquors, and public order, are on List II. Criminal law, marriage and divorce, bankruptcy, adulteration of foods, trade unions, and electricity, are on List III. India’s Supremacy Clauses make federal law supersede state law, not only as respects matters covered by the Union List, but also as respects items on the Concurrent List. All residual authority under the Indian Constitution is vested, not in the States, as in America, but in the Union Government.

The emergency provisions of the Indian Constitution can cause a virtual disappearance of state government. Article 352 gives the President power to make a proclamation that “a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.” Article 353 provides that while such a proclamation is in operation, the executive power of the central government supersedes that of the States, and Parliament can make laws conferring powers and duties on Union officials respecting matters not on the Union List.

Article 356 gives the President broad powers over state governments where he is satisfied that “a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.” In that event, the President can assume the executive powers of the State and declare that

29. See Article 254(1); Article 251.
30. Article 248.
its legislative powers shall be exercisable "by or under the authority of Parliament." This power was exercised to take over the State of Andhra in 1954 after which elections were held in 1955 to form a new government. The same procedure had been earlier used in the State of Pepsu in 1953. The judicial power, vested in the High Courts of the States, may not, however, be suspended in whole or in part. A lesser emergency power is granted to the President by Article 360, when "the financial stability or credit of India or of any part of the territory thereof is threatened." In that event the executive authority of the central government extends to the giving of directions to the State including those respecting "canons of financial propriety."

Other provisions for administrative control and direction of the States are found in Articles 256, 257, and 258. Article 256 states

"The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose."

Article 257 provides for the giving of such directions in regard to particular subjects, such as the maintenance and construction of important means of communication, and also as a means of avoiding interference with the Union executive. Article 258 enables the Union to delegate to the States certain functions in regard to what would normally be Union matters. In addition, Article 249 provides that, upon a two-thirds vote by the Council of States that it is necessary or expedient in the national interest, Parliament may make laws with respect to any specified matters on the State List. There are no counterparts in America of this vast reservoir of federal power.

While the Indian Constitution is basically federal in character, certain features of our own federal system are conspicuously absent. First of all, India has no dual court system. Instead, all cases originate in the various state courts, and the Supreme Court of India serves as the final arbiter on all questions of law. There is no dichotomy of "federal" and "state" questions. Second, unlike the American Constitution, which envisages both a State and a National citizenship, there "is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship."31 Third, the Indian States are not faced with the problem of interstate rendition,

31. 7 Const. Assembly Debates 34.
which has troubled our courts. Item 4 of List III of Schedule VII of the Constitution of India provides that there shall be concurrent jurisdiction to legislate regarding removal from one State to another of prisoners, accused persons, and persons subject to preventive detention. Section 82 of the Criminal Procedure Code provides: "A warrant of arrest may be executed at any place in India."

The Indian Constitution has many features of federalism in common with our own. It creates an area of free trade. Article 301 of her Constitution provides: "Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free." The Indian Constitution also prohibits taxes on sales involving imports or exports. Article 286(1)(b) provides:

"No law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place * * * in the course of the import of the goods into, or export of the goods out of, the territory of India."

The Indian Constitution also guarantees free movement of the individual. Article 19(1)(d), which is reminiscent of the decision of our Court in Edwards v. California, provides that all citizens shall have the right "to move freely throughout the territory of India." This right of free movement is subject to the imposition of reasonable restrictions in the interest of the general public. Therefore, the Government may, in some circumstances, issue orders of externment which prohibit the movement of an individual into, or his residence in, certain prescribed areas. In permitting use of externment orders during times of peace, India has gone well beyond the position of our own Court, which has upheld such orders only during a war emergency.

34. The Supreme Court of India held in Travancore-Cochin v. Bombay Co., 15 Sup. Ct. Jour. 527 (1952), that sales and purchases which occasion the export or import of goods out of or into India come within the scope of this provision. And see Travancore-Cochin v. Vilas Factory, 16 Sup. Ct. Jour. 471 (1953).
35. 314 U.S. 160 (1941).
36. Article 19(5).
37. The extent to which the Indian courts have gone in sustaining orders excluding troublesome people from particular areas is indicated by Kharie v. Delhi, 13 Sup. Ct. Jour. 328 (1950), and Singh v. Bombay, 15 Sup. Ct. Jour. 322 (1952).
38. Reference is to the exclusion orders that removed the Japanese from our West Coast area during World War II. See Korematsu v. United States, 323 U.S. 214 (1944).
The administration of justice in India is, as indicated earlier, entrusted to a single system of courts, consisting of High Courts and subordinate courts in the States and a Supreme Court at the apex of the judicial pyramid. The Supreme Court of India does not limit its review to “federal questions.” It also passes on matters which our Supreme Court would regard as non-reviewable “state questions.” The Supreme Court of India exercises a broad power of supervision over cases from the state courts. *Singh v. Uttar Pradesh* holds that the Supreme Court of India has general powers of judicial superintendence over all the courts of India and is “the ultimate interpreter and guardian of the Constitution.”

The basis of the appellate jurisdiction of India’s Supreme Court is set forth in detail in Articles 132-138 of the Constitution. Article 132 provides for appeal from a High Court decision, if the latter certifies that the case “involves a substantial question of law as to the interpretation of this Constitution,” or if the Supreme Court grants special leave on this ground, in the absence of such a certificate. The appeal may be based on a claim that the question was wrongly decided or, with leave of the Supreme Court, on any other ground. This form of appeal applies to all types of proceedings, civil or criminal. Review is provided in civil cases where the High Court certifies that the dispute involves a specified monetary amount or that the case is “a fit one for appeal.” But in the former case, if the High Court has affirmed the decision of the court below, it must also certify that some substantial question of law is involved. Appeals do not lie, however, from the judgment of one judge of a High Court, unless Parliament so provides. Criminal appeals lie where a High Court in a capital case reverses an acquittal or withdraws a case from a lower court for trial before itself. Such appeals also lie where the High Court certifies that the case is suitable for review, or where additional powers are con-


42. Article 133(1) (a), (c)

43. Ibid.

44. Article 133(3).

45. Article 134(1) (a), (b).
ferred by Parliament. Article 136 provides for special leave to appeal which may be granted by the Supreme Court in any case passed on by any court or tribunal in India (except in matters relating to the armed forces). This head of jurisdiction is somewhat analogous to the discretionary certiorari jurisdiction exercised by the United States Supreme Court. The role of the High Courts in certifying cases to the Supreme Court is actually a screening device that has no counterpart in our federal government. The jurisdiction of the High Courts is also set forth in some detail.

The question whether the Indian Supreme Court may exercise a power of judicial review over the constitutionality of legislation (a problem which in our own country required resolution by judicial decision) does not present a problem in India. Article 13 expressly declares the invalidity of legislation which does not comport with the Constitution. Article 32(1) grants the right to move the Supreme Court for enforcement of fundamental rights. And the provisions governing Supreme Court jurisdiction, referred to above, clearly contemplate that the Court is empowered to pass on constitutional questions. Unlike the jurisdiction of our own Supreme Court, that of the Indian Supreme Court is not dependent on the action of the Legislative Branch. It is fixed by the Constitution and can be changed only by constitutional amendment.

The original jurisdiction of the Supreme Court of India is not unlike that of the United States Supreme Court. Article 131 of the Indian Constitution provides in part:

"Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends."

In regard to the nature of controversies which are regarded as suitable for judicial resolution, the Indian courts are bound by some, but not all, of the limits imposed on our own Supreme Court.
Perhaps the most notable difference is the advisory opinion, which is expressly provided for in Article 143(1) of the Indian Constitution. The importance of the advisory opinion in India's constitutional scheme may be seen in a momentous decision on the delegation of legislative authority rendered in 1951. The principle that academic or moot issues will not be decided (well-recognized in our own jurisprudence) appears in Indian decisions also.

The Indian courts also recognize that certain "political questions" are better left to the non-judicial branches of the Government. For example, there is a well-established policy of non-interference with the internal affairs of the legislative branch. The classic decision is *Singh v. Govind*, from the High Court of Allahabad, refusing to pass judgment on the disciplinary action taken by a Legislative Assembly against a member.

"[T]his Court," wrote Justice Sapru, "Has no jurisdiction to issue a writ, direction or order relating to a matter which affected the internal affairs of the House." Justice Sapru, after reviewing the British law on the power of the House of Commons over its internal affairs, closed his opinion with these words, "With political remedies this Court is not concerned. Important as they are, they lie beyond our sphere."

One notes the meticulous care with which the Indian courts read and construe Article 329, dealing with elections, so as not to bring the judiciary into any of the preliminary phases of election contests, since those phases are in the hands of an Election Commission or Tribunal. Once the Election Tribunal has acted, however, the Supreme Court may review its action under Article 136(1), which gives that Court discretion to "grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India." (Emphasis added.) This power

50. Article 143(1) states, "If at any time it appears to the President that a question of law or fact has arisen or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon."
52. See Lokanath v. Vice-Chancellor, A. I. R. 1952 Ori. 198.
54. See Article 194(3).
56. Id. at 335. And see Misra v. Nandakumare, A. I. R. 1953 Ori. 111, from the High Court of Orissa.
of review has been held by the Supreme Court of India to extend to the Election Tribunal.  

The Indian Constitution, like our own, contains provisions designed to insure that the judiciary which exercises these broad powers will be an independent one. Separation of the Judiciary from the Executive is stated as a directive principle of state policy. Judges serve until they reach a specified age, unless removed for misbehavior or incapacity. In India, as in the United States, salaries of the judges may not be diminished during their term of office.

The design of the Framers in seeking an independent judiciary has been fulfilled. The Supreme Court of India in *Bihar v. Singh,* held that the state legislature exceeded its powers to fix compensation, under Item 42 of List III, by a colorable exercise of those powers in creating artificial deductions which were not really designed to fix compensation, but rather to deprive persons of their property without payment of compensation. That decision shows how meticulous the Judiciary has been in measuring laws against the Constitution and striking down any provisions deemed unconstitutional. *Bombay v. Bombay Education Society,* is in the same tradition. A State barred from public schools where the English language was used as a medium of instruction, any pupil other than Anglo-Indians or citizens of non-Asian descent. The purpose of the law was to promote the advancement of the national language, by denying admission to schools where English was used to all pupils whose mother tongue was not English. The Supreme Court held the law to be in violation of Article 29(2) of the Constitution, which provides that "No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them." This attitude of independence is evident not only in cases of high importance involving constitutional rights. It is also present in less spectacular, more mundane cases. There is a lively solicitude for human rights, a close scrutiny of records in capital cases.

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59. Article 50.
60. Article 124(4).
61. Article 125(2); Article 221(2).
63. See also Deo v. Orissa, 16 Sup. Ct. Jour. 592 (1953).
The scope of judicial review in India is still in evolution. As noted, there is in India judicial review of the action of administrative agencies, a review provided by the Constitution itself. There is an alertness on the part of the Indian judiciary to hold agencies to procedural requirements of law, to reverse them where they have not based their decision on the record and to set aside their orders where “there was no evidence of an admissible nature” on which the administrative finding could rest. The Indian judiciary is careful to keep the administrator within reasonable bounds. In *British Medical Stores v. Mal,* decided by the High Court of Punjab, an order fixing rents was entered without a hearing and on the basis of personal observation by the Rent Controller. The rent order was nullified, the court holding that the law in question gave the administrator “an unfettered and unguided discretion” in fixing the rent, provided for no hearing, and allowed orders to be entered on the basis of mere “private enquiries.” The court held the order invalid, *first,* because it violated the principles of natural justice, and *second,* because there was no evidence adduced at a hearing and present in a record to support the order. In *Dhakeswari Cotton Mills v. Commissioner,* there was an assessment for taxes on gross profits. The income tax officer estimated the gross profit at 40 per cent of the sales by “a pure guess” and the agency (tribunal) reviewing the assessment reduced it to 35 per cent “by applying some other rule of thumb.” But the factual bases of those decisions were not disclosed. The Supreme Court held that the executive officer making the assessment was not entitled to act on the basis of “pure guess” or “bare suspicion” but only on a record made after a fair hearing.

India has had great legal battles over the propriety of delegating certain powers to an administrative agency, battles reminiscent of *Schechter Poultry Corp v. United States.* The leading case is *Reference under Article 143.* That case shows that the scope of permissive legislative action, while not unlimited, is extremely broad. The Legislature may legislate in a sphere in which it has

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70. A. I. R. 1955 Pun. 5.
72. *Id.* at 68.
73. 295 U. S. 495 (1935).
sovereign power in any way it regards as best suited to carry out
its policies in making the particular law; and it may use any out-
side agency to the extent it finds necessary to do things that are
inconvenient or impossible for the Legislature itself to deal with.
But the Legislature cannot abdicate its legislative functions. It
must therefore see that the outside agency acts in a subordinate
capacity.\(^\text{76}\) \text{Narain v. Uttar Pradesh}\(^\text{76}\) involved a system of licens-
ing coal dealers and fixing their prices, a system of control insti-
tuted by a state government. One provision of the law was to the
effect that the licensing agent might grant or refuse a license "for
reasons to be recorded" by him. The Supreme Court construed this
to be a grant of "absolute power" to the State Coal Controller,
which he in turn could delegate to any person. It was held that this
grant of power was not a "reasonable" restriction on the right to
carry on a trade or business, within the meaning of Article 19(6)
of the Constitution.

"No rules have been framed and no directions given on these
matters to regulate or guide the discretion of the Licensing
Officer. Practically the Order commits to the unrestrained will
of a single individual the power to grant, withhold or cancel
licenses in any way he chooses and there is nothing in the
Order which could ensure a proper execution of the power or
operate as a check upon injustice that might result from im-
proper execution of the same."\(^\text{77}\)

On the other hand, the Court in \text{Edward Mills Co. v. Ajmer},\(^\text{78}\) up-
held minimum wage legislation against a charge of delegation of
powers. The Act authorized the setting of minimum wages for
certain specified industries and also permitted the Government to
add other industries by notification. It was argued that there was
no legislative policy to guide the Government officials charged with
adding to the list of industries covered. The Court held that the
legislative policy, which was to guide in the selection of industries,
was clearly indicated in the Act, namely, to avoid exploitation of
labor by setting minimum wages in industries where due to un-
equal bargaining power or other causes wages were depressed. It
was necessary to allow flexibility for adaptation to local conditions,
said the Court, speaking through Chief Justice Mukherjea.

\textbf{Due Process and Natural Justice}

One of the most hotly debated issues in the Indian Constituent

\(^{75}\) And see \text{Bagla v. Madhya Pradesh}, 17 Sup. Ct. Jour. 637 (1954).
\(^{77}\) Id. at 243-244.
Assembly concerned the question whether a Due Process Clause should be included in the Indian Constitution. Pandit Thakur Dass Bhargava, who favored the adoption of such a provision, contended "This is only victory for the judiciary over the autocracy of the legislature. In fact we want two bulwarks for our liberties. One is the Legislature and the other is the judiciary." Shri Alladi Krishnaswami Ayyar opposed it, pointing out that the United States Supreme Court had, in the past, used such a clause to interfere with social legislation, and that its inclusion in the Indian Constitution would be dangerous. Article 21 of the Constitution today provides

"No person shall be deprived of his life or personal liberty except according to procedure established by law"

In the first major decision by the Indian Supreme Court under the new Constitution, an attempt to salvage at least a part of the due process concept by a broad reading of the word "law" in Article 21 was rejected. In Gopalan v. Madras, the Supreme Court of India held that Article 21 was not the equivalent of our Due Process Clause, insofar as procedural requirements were concerned. The Court held that Article 21 merely required that the legal procedure, validly prescribed by the legislature, be followed, and did not embody a concept of natural justice by which the Court was to test procedural requirements.

The absence of a Due Process Clause, though important, has been less crucial than might be supposed. First, the fundamental rights in the Indian Constitution are applicable to both the Union and States, no Due Process Clause is necessary, as in this country, to make them applicable to the States. Second, at least some of the functions of our Due Process Clause in the area of property rights are performed by other constitutional provisions. Thus, Article 19(1) (f) provides that all citizens shall have the right "to acquire, hold and dispose of property" Yet Article 19(5) allows the state to impose "reasonable restrictions" on the exercise of that right. What is "reasonable" is ultimately a question for the Indian Supreme Court in proper cases coming to it for adjudication.

Finally, there is in Indian judicial decisions a flavor of due process under the guise of the concept of "natural justice." A leading case is Harla v. Rajasthan, decided in 1951 by the Supreme Court of India. It involved a criminal prosecution for violation of

79. 7 Const. Assembly Debates 848.
80. Id. at 853-854.
a law of Jaipur relating to dealings in opium. The Council of
Ministers, ruling during the Maharaja's minority, enacted the
Opium Act by resolution. The law was not promulgated or pub-
lished in the Gazette; nor were other measures taken to make the
law known to the public. The conviction was accordingly set aside.
What the court, speaking through Justice Bose, said, is reminiscent
of American decisions on due process of law:

"Natural justice requires that before a law can become oper-
ative it must be promulgated or published. It must be broadcast
in some recognisable way so that all men may know what it is;
or, at the very least, there must be some special rule or regula-
tion or customary channel by or through which such knowledge
can be acquired with the exercise of due and reasonable dili-
gence. The thought that a decision reached in the secret recesses
of a chamber to which the public have no access and to which
even their accredited representatives have no access and of
which they can normally know nothing, can nevertheless affect
their lives, liberty and property by the mere passing of a Reso-
lution without anything more is abhorrent to civilised man. It
shocks his conscience. In the absence therefore of any law, rule,
regulation or custom, we hold that a law cannot come into being
in this way. Promulgation or publication of some reasonable
sort is essential."

And see Krishnappa v. Bangalore City Bank, 84 and British Medical
Stores v. Mal, 85 in the latter of which a rent control order was
quashed because the procedure followed in formulating it was said
to conflict with principles of natural justice.

FREE SPEECH, PRESS, AND ASSOCIATION

Article 19(1)(a) of the Indian Constitution provides that "All
citizens shall have the right to freedom of speech and expression."
This provision has been held to include the guarantee of a free
press. 85 Both guarantees are subject to the limitations of Article
19(2). As originally enacted, Article 19(2) provided that the right
embodied in 19(1)(a) would not affect "any law relating to libel,
slander, defamation, contempt of court or any matter which offends
against decency or morality or which undermines the security of,
or tends to overthrow, the State." While this provision was in effect,
the Supreme Court of India rendered two important decisions on
the scope of free expression. The first held that, unless a law re-

83. Id. at 737.
84. A. I. R. 1954 Mys. 59, 62; British Medical Stores v. Mal, A. I. R.
1955 Pun. 5.
85. See In re Venugopal, A. I. R. 1954 Mad. 901, decided by the High
Court of Madras.
stricting freedom of speech and expression were directed solely against the undermining of the security of the State or its overthrow, it could not be held a reasonable restriction, though it sought to impose a restraint in the interests of public order. In the second, the Court stated that the imposition of pre-censorship on a journal was a restriction on the liberty of the press which is an essential part of the freedom of speech and expression guaranteed by Article 19(1) (a). Due in part, at least, to these decisions, Article 19(2) was amended in 1951 so that it now contains a somewhat broader qualification of the right of free expression. The present wording is as follows

"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 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."

The problem of determining whether a given restraint is reasonable, within the meaning of Article 19(2), is an oft-recurring one in India. The need to protect free speech was pointed out by the High Court of Patna, in Soren v. State, where it was held that certain speeches which allegedly attempted to bring the Government into hatred or contempt, invite disaffection toward the Government of India, and stir up class hatred did not in fact do so and were, therefore, not within the ambit of the applicable statutory prohibitions. Justice Das pointed out the task before the court as follows

"* * * the speeches made must be considered as a whole and in a fair, free and liberal spirit, not dwelling too much upon isolated passages or upon a strong expression used here and there, in other words, an attempt should be made to gather the general effect of the speeches as a whole. [T]he intention of the speaker in using the words complained of is relevant, but the intention must be gathered from the language used, as also from the whole of the circumstances in which the speeches were made including the audience to whom they were addressed."

In indicating the judicial attitude, he explained

"* * * In a democratic country such criticisms are to some extent unavoidable, they are made for the purpose of enlisting popular support, and in considering the effect of such criticisms

no serious notice ought to be taken of crude, blundering attempts or of rhetorical exaggeration by which nobody is likely to be impressed. * * * [W]ith the change of times, the effect of criticisms also changes, what was damaging contempt or hatred of a bureaucratic Government is not so of a popular Government—a Government which can neither afford to be hypersensitive, nor impervious, to criticism.  

The Supreme Court of India has voiced similar views. In *Bihar v. Devi*, the Supreme Court held that, while a statute could validly restrict expressions inciting the commission of violent crimes, the document in question did not fall within the statutory prohibition, as it merely consisted of "empty slogans." Justice Mahajan wrote:

"Writings of this character at the present moment and in the present background of our country neither excite nor have the tendency to excite any person from among the class which is likely to read a pamphlet of this nature.

"* * *[T]he writing has to be considered as a whole and in a fair and free and liberal spirit.* * *"

The Indian courts appear to share the revulsion at prior restraints voiced by the late Chief Justice Hughes in *Near v. Minnesota*. In *Shanker v. State*, the High Court of Allahabad held that an Act which required a permit to publish any newspaper and penalized publication without such a permit was not a reasonable restraint within the meaning of Article 19(2). Justice Desai pointed out:

"S. 15 confers absolute discretion to the District Magistrate to grant or refuse permit to anyone. There is absolutely nothing to guide him in his discretion. Not only are any standards laid down but also one cannot imagine any * * *

"'The censor is set adrift upon a boundless sea.' "

The problem of freedom of expression has, at times, become intertwined with that of preventive detention, authorized by Article 22 of the Constitution. While I shall defer discussion of the problem of preventive detention under Article 22, two cases in this overlapping area should be noted. In *Singh v. Delhi*, the Supreme Court of India refused to hold preventive detention invalid because it was based upon the making of speeches prejudicial to public order. Any notion, however, that preventive detention might be

89. *Id.* at 260-261.
92. 283 U. S. 697 (1931).
94. *Id.* at 568. And see *In re Venugopal*, A. I. R. 1954 Mad. 901.
In that case, people held in preventive detention used to vitiate the effect of the free speech guarantee was dispelled when they filed a petition for a writ of habeas corpus. They had distributed pamphlets which made serious accusations of improper conduct by a high judicial officer. That was the reason for their detention. In ordering their release the Supreme Court said

"* * * [T]he propriety or reasonableness of the satisfaction of the Central or the State Government upon which an order for detention is based, cannot be raised in this court and we cannot be invited to undertake an investigation into sufficiency of the matters upon which satisfaction purports to be grounded. We can, however, examine the grounds disclosed by the Government to see if they are relevant to the object which the legislation has in view, namely, the prevention of objects prejudicial to the defence of India or to the security of State and maintenance of law and order therein * * *

While the Indian decisions have shown a tendency to take a liberal view of the free expression guaranteed by Article 19(1)(a), there is one area in which a more restrictive approach has been taken. This is in the cases involving contempt by publication. The power to punish for contempt is expressly recognized in the Indian Constitution. Moreover, Article 19(2) expressly provides for reasonable restrictions on free expression under the contempt power. In interpreting these provisions, the Indian courts appear to have rejected the restrictive view of the contempt power voiced by our own Supreme Court in contempt by publication cases, in favor of

97. Id. at 277-278.
98. Articles 129, 215. The Supreme Court of India held in Singh v. Singh, A. I. R. 1954 S. C. 186, that the power of a High Court to punish summarily for contempt of court is an inherent one, which neither the Parliament nor the Supreme Court can modify.
a rather broad exercise of the contempt power.\textsuperscript{100} The basic problem in India, as in the United States, has been to reconcile the guarantee of a free press with the need to preserve fairness in the administration of justice.\textsuperscript{101} The High Court of Orissa in \textit{State v. Editors},\textsuperscript{102} stated:

"There is no doubt about the proposition that when a case is pending or imminent any matter published in a newspaper which has a tendency to prejudice one of the parties or to mobilise public opinion in favour of a rival party would amount to contempt. \textsuperscript{* ***}

"Where a pending case in respect of which contempt is alleged to have been committed is a case of defamation and the person alleged to have been defamed is a politician, other important questions also arise for consideration. Article 19(1)(a) of the Constitution guarantees freedom of speech, and the Press should have freedom to criticise the activities of public men belonging to one party or the other. Not infrequently a politician who does not want his public activities to be exposed may institute a criminal case of defamation in respect of an article appearing against him in a newspaper and then resort to the law of contempt for the purpose of gagging all hostile comments on his other public activities, while keeping the defamation case pending as long as possible. Hence, though any attempt of trial by the Press of a pending case should be sternly put down by enforcing the law of contempt, in appropriate cases the said law should not be so strained as to materially affect the freedom of speech of newspapers. A line has to be drawn between the law of contempt on the one hand and the freedom of speech of the newspapers on the other. Where an article is published with the 'intention' of prejudicing the fair trial of a pending case, there can be no hesitation in applying the law of contempt against the offending newspaper. But where such intention is absent and the Court is asked to infer that the article has a 'tendency to prejudice the fair trial of a pending case [sic] many other considerations should also be carefully weighed."\textsuperscript{103}

In addition to guarantees of free speech and a free press, the Indian Constitution also contains a provision insuring the right to assemble peaceably and without arms,\textsuperscript{104} subject to reasonable restrictions in the interests of public order.\textsuperscript{105} A related right, which has no precise equivalent in our own Constitution, is found in

\textsuperscript{102} A. I. R. 1954 Ori. 149.
\textsuperscript{104} Article 19(1)(b).
\textsuperscript{105} Article 19(3).
Article 19(1)(c), which states that all citizens shall have the right "to form associations or unions" subject to reasonable restrictions for public order or morality. While no sizeable body of case law has developed as yet in this area, it is clear that the right is regarded as an important one which will be jealously guarded by the courts.

**Religious Freedom**

Articles 25-28 of the Indian Constitution deal with the guarantee of religious freedom and the separation of Church and State. Articles 27 and 28 deal with problems akin to those of *Everson v. Board of Education*, and *McCollum v. Board of Education*.

Article 27 provides

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

Article 28 states

"(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

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

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

Articles 25 and 26 deal with the right to freedom of religious groups and their members from state interference. Like most of the other provisions in the fundamental rights, they are qualified. Thus, Article 25 provides in part

"(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

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

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

106. Article 19(4).
109. 333 U. S. 203 (1948)
"(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

Article 26 states:

"Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

"(a) to establish and maintain institutions for religious and charitable purposes;

"(b) to manage its own affairs in matters of religion;

"(c) to own and acquire movable and immovable property; and

"(d) to administer such property in accordance with law."

The Indian courts, like our own Court in _Reynolds v. United States_, and _Davis v. Beason_, have made it clear that socially harmful practices cannot be justified by calling them religious tenets. Such was the holding in _State v. Appa_, decided by the High Court of Bombay, upholding a statute prohibiting bigamous marriages against the defense of freedom of religion guaranteed by Article 25 of the Constitution.

The extent to which the qualifying provisions in Articles 25 and 26 permit state interference with the management of the affairs of religious institutions has led to sharp controversies in the Indian courts. A leading case is _Commissioner v. Swamnar_, decided by the Supreme Court of India. The case involved certain Maths (Hindu monasteries), one of which was headed by the petitioner. The Hindu Religious Endowments Board intervened at a time when the affairs of the Math were in some financial difficulty, and requested petitioner to appoint a managing agent to handle the affairs of the institution. Difficulties arose between the agent and petitioner, and the Board finally declared that it believed the endowments of the Math were being mismanaged, and that a scheme should be framed for administering its affairs. The petitioner then sought to prohibit further Board action, contending that the law regulating the framing of a scheme and interfering with the management of the Math and its affairs by the Mathadhipati was an unconstitutional interference with religious rights under the Constitution. The High Court of Madras held several portions of the Act invalid under Articles 25, 26, and 27, and the Commissioner appealed to the Supreme Court.

110. 98 U. S. 145 (1879).
111. 133 U. S. 333 (1890).
112. A. I. R. 1952 Bom. 84.
In regard to Article 26, the Court stated that the question was, what were matters of religion and what were not? The former involved a fundamental right which no legislature could take away, while the right to administer the property of a religious organization was subject to regulation. A contention by the State that all secular activities associated with a religion are not "matters of religion" was rejected. The Court indicated that what is permitted by the Constitution is regulation of activities which are economic, commercial, or political, though associated with religious practices. Freedom of religion extends to some practices as well as to beliefs. The law must leave the right of administration to the religious denomination itself, subject to such restrictions and regulations as it imposes in regard to the use of property. A law which takes away completely the right of administration from a religious institution would be invalid under Article 26 (d). The Court then examined the Act in the light of these considerations. One section, which empowered the Commissioner to enter the premises to exercise his powers without adequate safeguards for the religious group, was held invalid. Certain features of the legislation which unreasonably restricted the Mahant's right to dispose of the property were held invalid, as were provisions for taking over the secular affairs of the institution. A challenge under Article 27 to provisions for payments by the religious institution to meet the costs of government supervision was rejected, since the purpose was not to foster a particular religion but to insure proper administration of religious institutions, in regard to secular and financial matters.

In Ratilal v. Bombay, the Supreme Court held invalid provisions of a law which attempted a rather extreme extension of the cy pres doctrine to religious trusts. Under the Bombay law, the Court could invoke the doctrine of cy pres if the object of the trust was deemed not wholly or partially expedient, practicable, desirable, or necessary, and if it was thought desirable to apply the trust to any other charitable or religious object. The Court held it to be an unconstitutional intrusion on the management of religious matters to allow "any secular authority to divert the trust money for purposes other than those for which the trust was created." The Court further stated, "The State can step in only when the trust fails or is incapable of being carried out either in whole or in part." Sital Das v. Sant Ram, decided by the Supreme Court of

116. Id. at 394.
117 Ibid.
India in 1954, involved problems of an intrachurch dispute akin to those in Watson v. Jones, and Kedroff v. St. Nicholas Cathedral. The approach taken was similar to that of our own Court—i.e., looking to ecclesiastical law or custom for determination of the right of succession to a religious office.

**Procedural Safeguards in Criminal Trials**

The Indian Constitution contains procedural safeguards designed to secure fair administration of criminal justice. The right to counsel is guaranteed by Article 22(1) of the Indian Constitution, which provides that "No person who is arrested shall be denied the right to consult, and to be defended by, a legal practitioner of his choice." In India the right to counsel has been held merely to assure that an accused person may engage a lawyer if he desires. The right to counsel, though limited, is still important as shown in Bai v. State, decided by the High Court of Rajasthan. There, counsel for the accused was denied an opportunity to interview the accused out of the hearing of the police. The court stated that the accused was entitled to consult her counsel outside the hearing of the police, and that the refusal by the police to permit such consultation was in error. After reviewing the applicable provisions of Article 22(1) of the Constitution and § 340 of the Criminal Procedure Code, the court concluded:

"Ever since his arrest, the accused has a right to be consulted by a legal adviser of his choice and to be defended by him; in order that such consultation may be effective, interviews must be allowed to his counsel, when asked for, out of the hearing of the police though within their presence; such a right must of course not be abused and must be granted subject to reasonable restrictions as to time and convenience of the police authorities, no less than that of the party seeking the interview. It must be clearly understood, however, that the police must not in any way obstruct such interviews on arbitrary or 

119. 80 U. S. (13 Wall.) 679 (1872).
120. 344 U. S. 94 (1952).
121. And see Section 340(1) of the Criminal Procedure Code.
123. The Supreme Court of India Rules (1950) provide in Order XXI(8) that, "In a proper case, the Court may, in its discretion, direct the engagement of an Advocate for an accused person at the cost of the Government."

fanciful grounds with a view to deprive the accused of his fundamental right.\footnote{Id. at 243. And see Reddy v. Hyderabad, 14 Sup. Ct. Jour. 320 (1951).}

India has a strict rule governing the detention of suspected offenders by the police. Article 22 (2) of the Indian Constitution provides:

"Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

The Indian courts indicate that strict compliance with this provision will be required. In Keshavram v. Hasan,\footnote{A. I. R. 1954 S. C. 636.} the Supreme Court held that failure to produce a prisoner before a magistrate in the time provided by Article 22(2) warranted his release.\footnote{Cf. Punjab v. Singh, A. I. R. 1953 S. C. 10.}

Article 20(3) of the Indian Constitution contains a guarantee against self-incrimination "No person accused of any offence shall be compelled to be a witness against himself." It was contended that this privilege extended only to testimonial compulsion in court, not to testimony forced from the accused prior to trial. But that view was rejected by an emphatic dictum of the Indian Supreme Court in Sharma v. Chandra.\footnote{A. I. R. 1954 S. C. 300.} Indian law provides a meticulous procedure for protecting the prisoner against confessions obtained during the period of his detention by the police. Statements to the police are excluded.\footnote{Code of Criminal Procedure § 164(3) the magistrate is admonished concerning it.} Any confession of a prisoner is recorded by the magistrate, and by Code of Criminal Procedure § 164(3) the magistrate is admonished concerning it:

"A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily \footnote{See Kalawati v. State, 16 Sup. Ct. Jour. 144, 146 (1953). A. I. R. 1954 Sau. 115.}"

In Jodha v. State,\footnote{A. I. R. 1954 Sau. 115.} from the High Court of Saurashtra, the prisoner was transferred to judicial custody twenty-nine hours before the magistrate recorded his confession. The court held that it was necessary to give the accused time "to reflect whether he should make a confession or not";\footnote{Id. at 118.} and that the time needed "to get rid
of any coercive influence while in police custody and to make up his decision whether to confess or not turned on the circumstances of each case. The court held that the twenty-nine hours in the case was adequate, especially in light of the fact that there was no evidence that the police had employed any “coercive methods” during the period of detention.

Article 342 of the Indian Code of Criminal Procedure provides:

“(1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

“(2) The accused shall not render himself liable to punishment by refusing to-answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

“(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.”

“(4) No oath shall be administered to the accused.”

This provision, which clearly would be incompatible with the American view of the privilege against self-incrimination, was upheld by the High Court of Madras in In re Ramakrishna, against a claim that such questioning of the accused would violate Article 20(3).

The Indian Constitution does not contain a restriction on searches and seizures comparable to our Fourth Amendment. It was contended in Sharma v. Chandra, that a search to obtain documents while investigating an offense is a compulsory procurement of incriminating evidence from the accused and is therefore barred by Article 20(3). The Court held that search warrants

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132. Ibid.
134. A. I. R. 1955 Mad. 100.
136. While India's Constitution contains no guaranty against search and seizure, the Code of Criminal Procedure sets up procedures whereby searches and seizures may be made. See §§ 51, 96-99, and 165. The Supreme Court of India held in Chand v. Himachal Pradesh, A. I. R. 1954 S. C. 415, that the seizure of certain medicinal herbs by the police without following the statutory procedure was an unlawful act, entitling the owner to a return of the property. The Court relied on Articles 19(1)(f) and 31(1). Article 19(1)(f) provides, “All citizens shall have the right . . . to acquire, hold and dispose of property.” Article 31(1) provides, “No person shall be deprived of his property save by authority of law.”
issued by magistrates are not methods of compelling testimony within the meaning of Article 20(3) \textsuperscript{137}

Article 20(1) of the Indian Constitution contains a provision substantially similar to our \textit{ex post facto} clauses, as interpreted by our decisions. That Article provides in part that no person shall be convicted of any offense "except for violation of a law in force at the time of the commission of the act charged as offence." The Supreme Court in \textit{Singh v. State},\textsuperscript{138} held that "law in force" meant "the law in fact in existence and in operation at the time of the commission of the offense, as distinct from the law 'deemed' to have become operative by virtue of the power of Legislature to pass retrospective laws."

While, as indicated above, the \textit{ex post facto} provision in the Indian Constitution is substantially similar to our own, the double jeopardy provision is much more limited than that in our Fifth Amendment. Article 20(2) of the Indian Constitution provides "No person shall be prosecuted and punished for the same offence more than once." This requirement of punishment and prosecution, rather than the mere attachment of jeopardy as in the American Constitution, was pointed up by the Supreme Court of India in \textit{Venkataraman v. Union of India}\textsuperscript{139}

"In order to enable a citizen to invoke the protection of clause (2) of Article 20 of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words 'prosecuted and punished' are to be taken not distributively so as to mean prosecuted 'or' punished. Both the factors must co-exist in order that the operation of the clause may be attracted."\textsuperscript{140}

In \textit{Kalawats v. Himachal Pradesh},\textsuperscript{141} the Supreme Court of India rejected a claim that this provision bars an appeal from an acquittal.\textsuperscript{142}

Thus, it will be seen that the Indian Constitution-makers have seen fit to incorporate many of the safeguards found in our own Bill of Rights. Some of our basic guarantees, however, are conspicuously absent from the Indian constitutional scheme. The absence of a guarantee against unreasonable searches and seizures has already been referred to. Moreover, the Indian Constitution does not contain a guarantee of jury trial, either in criminal or civil

\textsuperscript{137} And see \textit{In re Krishna}, A. I. R. 1954 Mad. 993, 1001.

\textsuperscript{138} 16 Sup. Ct. Jour. 563, 570 (1953).

\textsuperscript{139} A. I. R. 1954 S. C. 375.

\textsuperscript{140} \textit{Id.} at 377

\textsuperscript{141} 16 Sup. Ct. Jour. 144 (1953).

cases. No provision is made in the Code of Civil Procedure for jury trials. The Criminal Procedure Code, however, provides for jury trial in certain instances. Section 267 states: "All trials under this Chapter before a High Court shall be by jury." Article 268 provides that "All trials before a Court of Session shall be either by jury, or with the aid of assessors." The jury plays an important, though not indispensable, role in Indian criminal justice. The Indian Constitution contains no guarantee of confrontation or compulsory process to procure witnesses. Failure to call crucial witnesses for the defense, however, may deprive the defendant of a fair trial, as held by the Supreme Court of India in Mohammad v. Hyderabad. And the function of our guarantee of confrontation is to some extent secured by statutory provision in the Code of Criminal Procedure, § 353.

India has written into her Constitution the institution of preventive detention, an institution unknown in this country. Such detention is provided for in detail in Article 22(4) to (7). Detention up to three months is authorized, with power in either the legislature or an advisory board to enlarge the period. These are provisions by which government can keep a tight rein on troublesome factions. Hundreds of Communists have been held in custody under these provisions. Of particular importance is Article 22(5), which provides

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

The Court in Bhardwaj v. Delhi, held that the adequacy of the grounds stated under Article 22(5) was a justiciable question, and that since the detenu would often be an inexperienced layman, it was important to inform him of the grounds in clear and understandable terms. Such clarity was essential so that the detenu could make an adequate representation against the order of detention. The detenu was held entitled to as full and clear a disclosure as the circumstances would permit. The grounds stated in the case at bar

144. For the independent role of the jury in a criminal case, see Hayatali v. Bombay, 17 Sup. Ct. Jour. 90, 94 (1954).
were held too vague to meet that standard. The Court explained:

"Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court."

Other major rights secured by the American Constitution not found in that of India include a prohibition against bills of attaint; a guarantee against impairment of contract obligations, a requirement of grand jury indictment and trial by jury in criminal cases, and a prohibition of excessive bail and cruel and unusual punishment.

**Property Rights**

Article 19(1)(f) provides that all citizens shall have the right to acquire, hold, and dispose of property, subject to reasonable restrictions provided for in Article 19(5) "in the interests of the general public" or of any Scheduled Tribe. Article 19(1)(g) guarantees all citizens the right to carry on any profession, trade, or business, subject to reasonable restrictions, as provided in Article 19(6). The cases arising under these provisions are reminiscent of some of those which have arisen under the Due Process Clause of our Fourteenth Amendment. Thus in *Hussain v. District Board*, decided by the Supreme Court of India, the operator of a cattle market challenged the validity of a local regulation which prohibited the operation of cattle markets. The court held the regulation void, as a violation of Article 19(1)(g). The court relied on its earlier decision in *Ahmed v. Municipal Board*, which held that a local regulation granting a monopoly in the wholesale vegetable business and thereby preventing a would-be dealer from carrying on such business violated Article 19(1)(g). The result reached in the *Ahmed* case was analogous to that sought unsuccessfully in the *Slaughter-House Cases*, under our Fourteenth Amendment.

Property and business rights under Article 19 have found simi-
lar vindication in other cases. In the latter 1940's, it appears that
the Government of Uttar Pradesh decided to run its own buses on
public thoroughfares, and to establish a state monopoly. At first,
an attempt was made to achieve this result under the Motor Vehicles
Act, which provided for permits to operate such vehicles. Pursuant
to that plan, the transport authorities began to cancel and refuse
permits to private operators. In Mott Lal v. Uttar Pradesh, the
High Court of Allahabad held that such nationalization of an in-
dustry was not possible by mere executive action without support-
ing legislation.

Thereafter, the state government passed legislation designed to
authorize such a state monopoly of road transport, and the validity
of this legislation came before the Supreme Court of India in
Ahmad v. Uttar Pradesh. The Court proceeded to decide whether
such a state monopoly could be regarded as a reasonable restraint
on the rights of private bus operators to carry on their trade. In
holding that the monopoly was not such a reasonable restriction,
the Court stated: "In order to judge whether State monopoly is
reasonable or not, regard . . . must be had to the facts of each par-
ticular case." One factor which was regarded as of importance in
the case was that many private bus operators would be put out of
business and deprived of a chance at a livelihood without receiving
any compensation, thus violating the spirit of Article 39(a) of the
Directive Principles. A contention that the legislation conflicted
with Article 14 by discriminating in favor of the State was re-
jected.

The Supreme Court of India has not applied the doctrine of

154. See Indian M. & M. Corp. v. Industrial Tribunal, A. I. R. 1953
Mad. 98; Singh v. Court of Wards, 16 Sup. Ct. Jour. 505 (1953).
155. A. I. R. 1951 All. 257.
157. After this law became effective, Article 19 was amended so that
it now expressly permits nationalization. Article 19(6), as amended in 1951,
provides that Article 19(1)(g) shall not prevent any law that in the inter-
ests of the general public imposes reasonable restrictions on the rights con-
ferred by that Article, and expressly saves laws relating to:
"(i) the professional or technical qualifications necessary for prac-
tising any profession or carrying on any occupation, trade or business, or
(ii) the carrying on by the State or by a corporation owned or con-
trolled by the State, of any trade, business, industry or service, whether to
the exclusion, complete or partial, of citizens or otherwise."
159. Article 39(a) provides:
"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."
160. Article 14 provides:
"The State shall not deny to any person equality before the law or
the equal protection of the laws within the territory of India."
these cases to an extreme. In *Bijay Cotton Mills v. Ajmer*, it was contended that minimum wage legislation conflicted with the fundamental rights of employers and employees to engage in business and trade, as guaranteed by Article 19(1)(g)—an argument reminiscent of the "liberty of contract" philosophy which once prevailed in our own Court under the Due Process Clauses. It was argued that under the law the Government was free to set arbitrary wage scales which could not be further challenged, and that such wages could force even well-meaning employers out of business. The Court upheld the validity of the legislation as reasonably imposed in the public interest under Article 19(6). The object of the Act, viz., the securing of living wages needed for health and decency, was said to be clearly lawful. Any restraint the Act imposed on freedom of contract was held not to be unreasonable. The Court ruled that hardship in the case of individual employers would not render the Act invalid. The machinery for setting wages, which included provision for advisory bodies representing employers, employees, and the public, was held to afford adequate safeguards against hasty or capricious action.

The Indian Constitution's equivalent of our Fifth Amendment guarantee against the taking of property, except for a public purpose and upon the payment of just compensation, is found in Articles 31, 31A, and 31B. The interpretation of their scope assumes great importance in India, due to the vast programs of land reform and economic development which the Indian Government has under way. Article 31 provides in part

"(1) No person shall be deprived of his property save by authority of law

"(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given. (Italics added.)

"(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent."

Article 31(4) exempts from the provisions of 31(2) certain pend-
ing legislation; and 31(6) makes a similar provision for certain pre-Constitution legislation. Additional exemptions are contained in Article 31(5).

Articles 31A and 31B were added by the 1951 Amendment to the Indian Constitution as a means of facilitating land reform measures, which were threatened by judicial interpretation of Article 31 in which legislation was closely scrutinized to see if it involved a taking for a public purpose, provided for proper compensation, and involved the type of acquisition contemplated by Article 31.\(^\text{163}\) These new Articles state that no law providing for acquisition by the State of any estate or right therein or for extinguishment or modification of such rights should be held void as infringing any fundamental rights as, for example, those guaranteed by Article 19. They further provide that such laws, when passed by state legislatures, must receive the assent of the President.

While the 1951 Amendments curtailed the area of justiciable controversy in matters involving land reform, they did not eliminate the role of the courts as guardians of property rights. Four basic problems have arisen in this area to date. The first concerns the question whether, in a given case, the legislature has exceeded its authority. In *Bihar v. Singh*,\(^\text{164}\) the Supreme Court of India held that the state legislature had exceeded its powers to fix compensation, under Item 42 of List III, by a colorable exercise of those powers in creating artificial deductions which were not really designed to fix compensation but rather to deprive persons of their property without payment of compensation.

Aside from this doctrine of colorable legislation, the main problems in India, as in the United States, have been to determine what constitutes a taking, whether the taking is for a public purpose, and whether just compensation has been provided for.

A leading Indian case on the problem of what constitutes a taking is *West Bengal v. Gopal*,\(^\text{165}\) decided by the Supreme Court. A Bengal law was enacted which operated retrospectively to restrict the rights of a purchaser of land to evict undertenants. Chief Justice Patanjali Sastri stated that the term “taken possession of or acquired” in Article 31(2) covers only an appropriation or abridgment, which amounts to a deprivation of ownership. The test suggested was whether a statute withheld the property from the possession and enjoyment of the owner or seriously impaired its use or

enjoyment by him, or materially reduced its value. Applying these principles, the Court held that the legislation was in line with traditional tenancy legislation, affording relief to tenants, and did not amount to a deprivation of property under Article 31. In *Ahmad v. Uttar Pradesh,*\(^{166}\) referred to earlier, a state monopoly of motor transport was held to infringe rights of private bus operators under Article 31(2). The Court pointed out that while no tangible property was taken, the government was depriving bus operators of the business of running buses on public roads, and this constituted a taking of property without compensation.

In *Shrinivas v. Sholapur Spinning & Weaving Co.,*\(^{167}\) the government of Bombay took over a cotton mill, in the sense that it appointed new directors who undertook the management of the mill. The reason was the desire to keep up production of an essential commodity and to avoid serious unemployment. The new management passed a resolution making a call on the preference shares. A preference shareholder sued, challenging the validity of the law under which the government took over the mill. The Supreme Court held this was a taking of property within the meaning of Article 31(2) of the Constitution. The purpose was held to be a "public purpose, namely, to keep the labour going and contented and to maintain the supply of essential commodity."\(^{168}\) But the seizure could not be constitutionally consummated without payment of compensation as provided in Article 31(2).

In *Rajasthan v. Mal,*\(^{169}\) the Supreme Court of India upheld a state law freezing stocks of food grains held by any person, so as not to allow the food grains to be sold without consent of the government. This regulation was held not to violate Article 19(1)(g) of the Constitution. But the Court went on to hold unconstitutional a provision of the law that "such stocks shall also be liable to be requisitioned or disposed of under orders of the said authority at the rate fixed for the purposes of Government procurement." This provision left it entirely to the government "to requisition the stocks at any rate fixed by it and to dispose of such stocks at any rate in its discretion."\(^{170}\) "The present is a typical case which illustrates how the business of a grain dealer can be paralysed, for it is admitted that while the Government procurement rate was Rs. 9 a maund, the market rate was Rs. 17 or Rs. 18 per maund, with the
result that the stockholder suffered nearly cent. per cent. loss, while
the Government made a profit of Rs. 4-5-4 per maund on the stock
requisitioned."\textsuperscript{172}

Except where restricted by the express terms of Articles 31, 31A, and 31B, the Indian courts, like those in America, pass on
the question whether the taking is for a public purpose.\textsuperscript{172} When
there is a taking for a public purpose, the question remains whether
adequate provision has been made for compensation. The Supreme
Court of India held in \textit{West Bengal v. Banerjee},\textsuperscript{173} that that issue
presents a justiciable question. A state law had set the maximum
compensation payable for the taking of property at its market
value on December 31, 1946. The Court held that the compensation
payable must be "a just equivalent of what the owner has
been deprived of"\textsuperscript{174} and that that requirement was not met in
all cases by referring the valuation to December 1, 1946. "It is common knowledge that since the end of the war, land, particularly
around Calcutta, has increased enormously in value and might
still further increase very considerably in value when the pace of
industrialisation increases. Any principle for determining compen-
sation which denies to the owner this increment in value cannot
result in the ascertainment of the true equivalent of the land
appropriated."\textsuperscript{175}

Such was the state of Indian constitutional law regulating the
taking of property down to April 27, 1955. On that date an amend-
ment to Article 31 became effective which substituted for Clause 2
the following clauses.

\begin{enumerate}
\item No property shall be compulsorily acquired or requisitioned
save for a public purpose and save by authority of a law
which provides for compensation for the property so acquired
or requisitioned and either fixes the amount of the compensa-
tion or specifies the principles on which, and the manner in
which, the compensation is to be determined and given; and no
such law shall be called in question in any court on the ground
that the compensation provided by that law is not adequate.

\item Where a law does not provide for the transfer of the
ownership or right to possession of any property to the State or
to a corporation owned or controlled by the State, it shall not
be deemed to provide for the compulsory acquisition or requisitioning
of property, notwithstanding that it deprives any person
of his property.
\end{enumerate}

\textsuperscript{171} \textit{Id.} at 407.
\textsuperscript{173} 17 Sup. Ct. Jour. 95 (1954).
\textsuperscript{174} \textit{Id.} at 98.
These new clauses have not yet been authoritatively construed. It would seem, however, that the question of a public purpose is still a justiciable issue in India. So also whether property has been taken. The question of the reasonableness of the compensation, however, is no longer a justiciable one, the courts are confined to determining whether the formula for the compensation provided by the legislature has been met.

**Equal Protection**

Articles 14 through 18 of the Indian Constitution deal with the right to equality Article 14 is worded somewhat like the Equal Protection Clause of our Fourteenth Amendment. It provides "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Article 15 prohibits discrimination by the State against any citizen on grounds of religion, race, caste, sex, or place of birth, and also assures equal access to certain public places, e.g. shops, public restaurants, and hotels. Article 16 guarantees equality of opportunity in matters of public employment. "Untouchability" is abolished by Article 17 and titles (other than military or academic) are prohibited by Article 18. A vast amount of litigation has centered about these provisions.

An important group of cases has involved the problem of special legal procedures. Where the procedures involved were patently arbitrary and discriminatory, the Indian courts have not hesitated to strike them down. For example, in *Mohta & Co. v. Sastri*, a case somewhat comparable to our *Cochran v. Kansas*, an Act of the Central Government provided that one group of income tax evaders might appeal from the factual determinations of the administrative agency, while another had their fate determined by the agency itself. Moreover, the former would have the right to inspect the record, while the latter would not. And the administrative agency determined which taxpayers were in which group. The Act was unanimously held by the Supreme Court to be a "piece of discriminatory legislation," which offended the equal protection guaranty of Article 14 of the Constitution. *Ameerunnissa v. Mahboob* presented discrimination in a raw form. There was a long drawn-out contest over an estate. There were many claimants, including two women, claiming to be wives, and their children. An Act was passed

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177. 316 U. S. 255 (1942).
by Hyderabad, eliminating those claimants from the contest, on the ground that the two women had not been lawfully wedded to the late Nawab. The Supreme Court held unanimously that the Act violated the equal protection guaranty of Article 14 of the Constitution.

Where the discrimination is less patent than in the Sastri and Mahboob cases, the Indian Supreme Court has been somewhat reluctant to strike down legislation providing for special procedures. The Indian courts, like the American courts, start off with a presumption of constitutionality. The Rawat case in India presented special law enforcement problems in certain regions of a State. There were certain areas in Saurashtra where “looting, robbery, dacoity, nose-cutting and murder by marauding gangs of dacoits” had increased. The law under review was passed to combat that regional crime wave. The law did five things: (1) it established special courts in these areas to try these crimes, (2) it abolished trial by jury (which is not guaranteed by the Indian Constitution) and the use of assessors (advisors to the courts) in these special tribunals; (3) it abolished the inquiry before commitment allowed in other prosecutions, (4) it reduced the records in these cases by providing only a memorandum of the substance of the evidence; and (5) it curtailed the time in which an appeal could be taken. The Indian Supreme Court sustained this law in a four-to-three decision. The majority sustained the law on the basic ground that it was a measure designed to deal with an acute area problem, similar to that in Salsburg v. Maryland.

Bajoria v. West Bengal put to rest some of the questions left unanswered by the Rawat case. A West Bengal law was passed authorizing the creation of special courts to hear criminal cases involving misappropriation of government property growing out of the post-war liquidation of agencies distributing essential supplies. Cases tried under this Act were not tried by a jury, as otherwise they would be. Cases tried by these special courts carried additional penalties. Moreover, the government could route a case under the new Act or prosecute it in regular channels, as it chose. The act was upheld. Justice Bose dissented, saying, “[W]e are opening a dangerous door and paving a doubtful road.” In his

181. Id. at 172.
184. Id. at 592.
view, since the legislature could not separate the two groups of cases and put one at a greater disadvantage than the other, neither could the agency of the government to which the power was delegated. The answer of the court, speaking through Chief Justice Sastri, was as follows

"[T]he discretion to make the selection is a guided and controlled discretion and not an absolute or unfettered one and is equally liable to be abused, but as has been pointed out, if it be shown in any given case that the discretion has been exercised in disregard of the standard or contrary to the declared policy and object of the legislation, such exercise could be challenged and annulled under Article 14 which includes within its purview both executive and legislative acts.""\(^{185}\)

These Indian cases involving special trial procedures raise problems akin to the American cases involving the use of the "Blue Ribbon" jury in some criminal prosecutions.\(^{186}\) They present serious dangers to the liberty of the individual, for they may cloak the most invidious discrimination.

Another major area in which problems of equal protection have arisen in India concerns social legislation. Special provisions based on sex are expressly recognized by Article 15(3) of the Indian Constitution

"Nothing in this Article shall prevent the State from making any special provision for women."\(^{187}\)

This was used by the Supreme Court to sustain a law providing that only the man, not the woman, was punishable for adultery.\(^{188}\) Discriminations against women, however, do not fare so well. *Deen v State*,\(^ {189}\) from the High Court of Allahabad, held a provision of an Act unconstitutional which made it easier to have a woman declared incompetent to manage her own estate, than for a man to be declared similarly incompetent. The mandate of Article 15(1) is clear, "The State shall not discriminate against any citizen on grounds only of * * * sex * * *"\(^ {189}\)

Territorial classifications may be valid, but geography is not an infallible standard, as the Supreme Court of India noted in *Rajasthan v. Singhji*.\(^{189}\) There certain land owners (Jagirdars) in one area of a State were allowed to collect rents, but Jagirdars in the other areas of the State were not allowed to do so, even though

\(^{185}\) *Id.* at 589.


\(^{188}\) A. I. R. 1954 All. 608.

\(^{189}\) A. I. R. 1954 S. C. 297
there was no discernible difference between them. The court held the law unconstitutional as having "no rational basis" for the differentiation.\textsuperscript{190}

The classifications sustained by our own Supreme Court in the field of taxation\textsuperscript{191} come to mind as one reads Mohammad & Co. v. Andhra.\textsuperscript{192} There the Supreme Court of India upheld a sales tax that applied to hides but not to other commodities. In a similar vein is Singh v. Regional Transport Authority,\textsuperscript{193} where the Supreme Court sustained a Bengal law fixing one tariff for taxis with a small horsepower and another for taxis with a greater horsepower. The court announced that the classification would not be invalid under Article 14 of the Constitution "if any state of facts may reasonably be conceived to justify it."\textsuperscript{194}

Such decisions are in harmony with the American view of equal protection. But there have been some rather extreme applications of the classification doctrine in the Indian cases, applications which one versed in American precedents finds difficult to accept. Such a case is Bombay v. Appa,\textsuperscript{195} from the High Court of Bombay. A state law outlawed bigamous marriages by Hindus but not those contracted by Muslims. The law made bigamous marriages by Hindus void. It also attached criminal penalties to them, making any Hindu who contracted such a marriage punishable by fine and imprisonment. It comported with traditional concepts for the court to hold that bigamous marriages could not gain immunity from prosecution by being called a part of a religion. But the law was also upheld against the claim that it denied Hindus equal protection of the laws. As indicated, the law excluded Muslims. Nevertheless, the court held that it was not arbitrary or capricious but based upon reasonable grounds. The court stated that it was proper for the legislature to undertake this "social reform by stages"; and the stages, it was said, "may be territorial or they may be community wise."\textsuperscript{196}

Chowdhury v. Union of India\textsuperscript{197} presented another extreme test of equal protection of the laws under the Indian Constitution. A parliamentary investigation showed abusive practices by the management of a textile company. A law was passed to correct those

\begin{itemize}
  \item \textsuperscript{190} Id. at 299.
  \item \textsuperscript{191} E.g., Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283 (1898); Welch v. Henry, 305 U. S. 134 (1938).
  \item \textsuperscript{192} A. I. R. 1954 S. C. 314.
  \item \textsuperscript{193} A. I. R. 1954 S. C. 190.
  \item \textsuperscript{194} Id. at 192.
  \item \textsuperscript{195} A. I. R. 1952 Bom. 84.
  \item \textsuperscript{196} Id. at 87.
  \item \textsuperscript{197} 14 Sup. Ct. Jour. 29 (1951).
\end{itemize}
abuses. The law was not made applicable to all companies. The law
contained no provision making it possible for the government to
bring under like regulation any other company committing the
same offense or engaging in the same abusive practices. This law
applied only to this particular company. It in substance dismissed
the existing managers and directors, authorized the government to
to name successor directors, and deprived the shareholders of the right
to elect directors or to pass any resolution or to wind up the affairs
of the company without the approval of the government. A divided
Supreme Court sustained the law, relying on the presumption of
constitutionality which every piece of legislation enjoys and the
wide discretion which the legislature has to classify persons and
subjects for purposes of regulation.

Universal adult suffrage is guaranteed by the Indian Constitu-
tion. Suffrage is accorded citizens not less than 21 years old, who
have the qualifications prescribed by the state legislature.198 And it
is provided in Article 325 that no person shall be ineligible for in-
clusion on any electoral roll "on grounds only of religion, race,
caste, sex, or any of them."199 While the Supreme Court of India
has not yet developed a sizable body of case law in this area, it has
been held that elections based on separate electorates for members of
different religious communities offend Article 15(1) of the Con-
stitution, which bans religious discrimination.200

The State of Madras filled its Engineering School pursuant to
a quota system based on religion, race, and caste. For every 14
seats available, candidates were selected on the following basis:

<table>
<thead>
<tr>
<th>Category</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Brahmin (Hindus)</td>
<td>6</td>
</tr>
<tr>
<td>Backward Hindus</td>
<td>2</td>
</tr>
<tr>
<td>Brahmins</td>
<td>2</td>
</tr>
<tr>
<td>Harijans</td>
<td>2</td>
</tr>
<tr>
<td>Anglo-Indians and Indian Christians</td>
<td>1</td>
</tr>
<tr>
<td>Muslims</td>
<td>1</td>
</tr>
</tbody>
</table>

An applicant for admission as engineering student was rejected be-
cause he was a Brahmin and the Brahmin quota was filled. Yet on
the merits he stood ahead of non-Brahmins who were admitted. A
unanimous Court held in Madras v. Srinivasan,201 that the denial of
his admission was unconstitutional in light of Article 29(2), which

198. Article 326.
199. India’s first general elections, which lasted over a period of several
months during the latter part of 1951 and the early part of 1952, served as an
impressive example of the democratic process in action. Between 50 and 60
per cent of the total electorate of some 180 million men and women went to the
polls.
provides, "No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

The Court struck down a like provision in the Madras law regulating the selection of persons for the judicial service in Venkataramana v. Madras. Article 16 of the Constitution provides in part:

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

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

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

Madras selected the candidates pursuant to a quota system which provided:

- Harijans .................. 19
- Muslims ................... 5
- Christians ................ 6
- Backward Hindus .......... 10
- Non-Brahmin Hindus ....... 32
- Brahmins .................. 11

On the merits, petitioner would have been chosen. But the quota system defeated him. The Supreme Court upheld the quota system insofar as it reserved certain posts for backward classes, as that was deemed permissible under Article 16(4) of the Constitution. The backward classes were held to include only the Harijans and backward Hindus. The balance of the quota system was struck down as unconstitutional.

**Summary**

The constitutional systems of the United States and India are founded on the concept of popular sovereignty and universal suffrage. Each adheres to the federal form of government, despite differences in emphasis and detail, and each recognizes an area of free trade. India, like America, has respect for the system of checks and balances. Each relies on an independent judiciary as a guardian of constitutional rights.

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The Indian Constitution, like our own, recognizes the basic
erights of free expression, free religion, and separation of Church
and State. Each Constitution contains guarantees designed to in-
sure fair treatment to the defendant in a criminal prosecution, such
as provisions against self-incrimination, a right to be informed of
the charges against him, and a right to counsel. Each honors the
Great Writ—*habeas corpus*—as an instrument of freedom.

Both India and America afford protection to property rights
from arbitrary governmental action. Though India has no Due
Process Clause, it has other protective provisions that serve essen-
tially the same function in the field of social legislation.

Each recognizes that modern conditions frequently require dele-
gation of authority to administrative agencies, but each also recog-
nizes that judicial control is needed to keep the agency within the
authority delegated and to insure that the authority will be exer-
cised fairly.

Above all, the Indian Constitution, like our own, guarantees
equal protection to all, regardless of race, creed, or color. While
these similarities are important, there are also significant differences
between the two systems. First of all, the Indian Constitution is a
much more detailed document than our own Constitution, and un-
like the latter, it contains the basic framework for the State Gov-
ernments as well as that of the Union. Secondly, India's federalism
is much more flexible than our own, particularly in times of crisis;
furthermore, in India the reserved powers are vested in the Central
Government, rather than in the States. The dual system of courts,
a notable aspect of our federal system, has no Indian counterpart.
Third, the Directive Principles of State Policy in the Indian Con-
stitution have no counterpart in our Constitution; neither do the
provisions for preventive detention. Fourth, the Indian Executive
is patterned on the Parliamentary, rather than the American Presi-
dential model. Fifth, certain of our basic guarantees, such as the
right of privacy and guarantee of jury trial, find no counterparts in
the Indian Constitution, while the latter contains provisions on social
and economic rights not dealt with in the American Constitution.

These, then, are the main points of contrast and comparison with
our own system which have evolved to date in the Indian Constitu-
tional scheme. No doubt others will develop in the years ahead,
for no successful constitutional system can remain static. Based on
the record of the past five years, however, the future of the Indian
constitutional system is likely to be a hopeful and rewarding one.
By legal and political standards, India is strong in the democratic
tradition.