Constitutional New Challenges

Lectures to I Year M.L. (Private Study) Students

by

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Cases and Materials

Objectives of the Course

The Constitution, a living document, is said to be always in the making. The judicial process of constitutional interpretation involves a technique of adapting the law to meet changing social mores. The Constitution being the fundamental law, an insight into its new trends is essential for a meaningful understanding of the legal system and processes.

The post graduate students in law who had the basic knowledge of Indian Constitution Law at LL.B level, should be exposed to the new challenges and perspectives of constitutional development while they are allowed to choose an area of law for specialisation.

Obviously, rubrics under this paper require modification and updating from time to time.

Syllabus

1. Federalism

1.1. Creation of new states

1.2. Allocation and share of resources – distribution of grants in aid

1.2.1. The inter-state disputes on resources

1.3. Rehabilitation of internally displaced persons.

1.4. Centre's responsibility and internal disturbance within States.

1.5. Directions of the Centre to the State under Article 356 and 365

1.6. Federal comity: Relationship of trust and faith between Centre and State.

1.7. Special status of certain States.

2. "State": Need for widening the definition in the wake of liberalization.

3. Right to equality: privatization and its impact on affirmative action

4. Empowerment of women.

5. Freedom of Press and challenges of new scientific development

5.1. Freedom of speech and right to broadcast and telecast.

5.2. Right to strikes, hartal and bandh.

6. **Emerging regime of new rights and remedies**
   6.1. Reading directive Principles and Fundamental Duties into fundamental rights
      6.1.1. Compensation jurisprudence
      6.1.2. Right to education
         6.1.2.1.Commercialisation of education and its impact.
         6.1.2.2. Brain drain by foreign education market.
7. **Right of minorities to establish and administer educational institutions and state control.**
8. **Secularism and religious fanaticism.**
9. **Separation of powers: stresses and strain**
   9.1. Judicial activism judicial restraint.
   9.2. PIL: implementation.
   9.3. Judicial independence.
      9.3.1. Appointment, Transfer and removal of judges.
   9.4. Accountability: executive and judiciary
   9.5. Tribunals
10. **Democratic process**
   10.1. Nexus of politics with criminals and the business.
   10.2. Election
   10.3. Election commission: status.
   10.4. Electoral Reforms.
   10.5. Coalition government, stability, durability, corrupt practice.
   10.6. Grass root democracy.

Schedule

22nd: Emerging Fundamental Rights

23rd: [e] Governance
(Fedaralism; Separation of Powers;
Judiciary; Democratic Process)

Fundamental Rights

- Birth place
  - “Swaraj is my birth right and I shall have it” - Tilak
  - Racial discrimination in SA and fights by Mahatma Gandhi
  - The historic birthplaces of all human rights struggles are the hearth and the home, the church and the castle, the prison and the police precinct, the factory and the farm – Upendra Baxi in “Future of Human Rights”
- Grammar of Governance: Part III-Articles 12 to 35
- Juridical Production
- Culture
- Form and Clarity
- Discursivity: “Rights talk” by both the erudite and the lay
- Logics & Paralogics:”Techniques of persuasion as a means of creating awareness”
- Future of Human Rights
  - Common language of humanity
  - Open, diverse, ambigious, and imperative praxis

2. “State”: Need for widening the definition in the wake of liberalization.

Part III
Fundamental Rights
General

12. Definition. - In this part, unless, the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all other local or other authorities within the territory of India or under the control of the Government of India.

Judiciary is not included in the definition of “the State”

Naresh Sridhar Mirajkar v. State of Maharashtra
A.I.R. 1967 SC 1
www.commonlii.org/in/cases/INSC/1966/64.html

Brief Facts:

Naresh Shridhar Mirajkar, who is a citizen of India, serves as a Reporter on the Staff of the English Weekly "Blitz", published in Bombay and edited by Mr. R. K. Karanjia. It appears that Mr. Krishnaraj M. D. Thackersey sued Mr. R. K. Karanjia (Suit No. 319 of 1960) on the Original Side of the Bombay High Court, and claimed Rs. 3 lakhs by way of damages for alleged malicious libel published in the Blitz on the 24th September, 1960, under the caption "Scandal Bigger Than Mundhra". This suit was tried by Mr. Justice Tarkunde.

On Friday, the 23rd October, 1964, Mr. Goda stepped. into the witness-box in pursuance of the order passed by the learned Judge that he should be recalled for further examination. On that occasion he moved the learned Judge that the latter should protect him against his evidence being reported in the press. He stated that the publication in the press of his earlier evidence had caused loss to him in business; and so, he desired that the evidence which he had been recalled to give should not be published in the papers. When this request was made by Mr. Goda, arguments were addressed before the learned Judge and he orally directed that the evidence of Mr. Goda should not be published. It was pointed out to the learned Judge that the daily press, viz., 'The Times of India' and 750 'The Indian Express' gave only brief accounts of the proceedings before the Court in that case, whereas the 'Blitz' gave a full report of the said proceedings.

The learned Judge then told Mr. Zaveri, Counsel for Mr. Karanjia that the petitioner who was one of the reporters of the 'Blitz' should be told not to publish reports of Mr. Goda's evidence in the 'Blitz'. The petitioner had all along been reporting the proceedings in the said suit in the columns of the 'Blitz'.

The petitioner felt aggrieved by the said oral order passed by Mr. Justice Tarkunde and moved the Bombay High Court by a Writ Petition No. 1685 of 1964 under Art. 226 of the Constitution. The said petition was, however, dismissed by a Division Bench of the said High Court on the 10th November, 1964 on the ground that the impugned order was a judicial order of the High Court and was not amenable to a writ under Art. 226. That is how the petitioner has moved this Court under Art. 32 for the enforcement of his fundamental rights under Art. 19(1)(a) and (g) of the Constitution.

Arguments ...

In regard to judicial orders passed by courts, Mr. Setalvad says that the said orders cannot claim immunity from being challenged under Art. 32, because some of the fundamental rights guaranteed are clearly directed against courts. In support of this contention, he relies on the fundamental rights guaranteed by Art. 20(1) & (2), Art. 21, and Art. 22(1). These Articles refer to protection in respect of conviction for offences, protection of life and personal liberty, and protection against arrest and detention in cer- tain cases, respectively. Read Art. 32(1) and (2) together in this broad perspective, says Mr. Setalvad, and it would follow that if a judicial order contravenes the fundamental rights of the citizen under Art. 19(1), he must be held entitled to move this Court under Art. 32(1) and (2).

On the other hand, the learned Attorney-General contends that the scope of Art. 32(1) is not as wide as Mr. Setalvad suggests. He argues that in determining the scope and width of the fundamentals rights guaranteed by Part 111, with a view to decide the extent of the fundamental right guaranteed by Art. 32(1), it is necessary to bear, in mind the definition prescribed by Art. 12. Under Art. 12, according to the learned Attorney-General, "the State" includes the: Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. He elaborated his point by suggesting that the reference to the Government and Parliament of India and the Government and the Legislature of each of the States specifically emphasises the fact that the Judicature is intended to be excluded from the said definition. He argues that the fundamental rights guaranteed by Articles 17, 23 and 24 on which Mr. Setalvad relies, are, no doubt, of paramount importance; but before a citizen can be permitted to move this Court under Art. 32(1) for infringement of the said rights, it must be shown that the said rights have been; made enforceable by appropriate legislative enactments. In regard to Articles 20, 21 and 22, his argument is that the protection guaranteed by the said Articles is intended to be available against the- Legislature and the Executive, not against courts. That is how he seeks to take judicial orders completely out of the scope of Art. 32(1) According to him, private rights, though fundamental in character, cannot be enforced against individual citizens under Art. 32(1).

SC quotes Bentham with approval

“In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice.

It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity”

Per Gajendragadkar, CJ: Majority view:

The argument that the impugned order affects the fundamental rights of the petitioners under Art. 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions ,of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Art. 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Art. 19(1). ...

We are, therefore, satisfied that so far as the jurisdiction of this Court to issue writs of certiorari is concerned, it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction.

Per Hidayatullah J.(dissenting) :

The order commits a breach of the fundamental right of freedom of speech and expression. The Chapter on Fundamental Rights indicates that Judges acting in their judicial capacity were not intended to be outside the reach of fundamental rights. The word "State" in Arts. 12 and 13 includes "Courts" because otherwise courts will be enabled to make rules which take away or abridge fundamental rights and a judicial decision based on such a rule would also offend fundamental rights. A Judge ordinarily decides controversies between the parties, in which controversies he does not figure, but occasion may arise collaterally where the matter may be between the Judge and the fundamental rights of any Person by reason of the Judge's action.

“Other Authorities”

Sukhdev v. Bhagatram , LIC , ONGC ANDIFC were held to be State as performing very close to governmental or sovereign functions. The Corporations are State when they enjoy

(i) Power to make regulations;
(ii) Regulations have force of law.

In R.D.Shetty v. International Airport Authority, the Court laid down five tests to be an other authority-

(i) Entire share capital is owned or managed by State.
(ii) Enjoys monopoly status.
(iii) Department of Government is transferred to Corporation.
(iv) Functional character governmental in essence.
(v) Deep and pervasive State control.

In Ajay Hasia v. Khalid Mujib the Court observed that the test to know whether a juristic person is State is not how it has been brought but why it has been brought.

In Union of India v. R.C.Jain , to be a local authority, an authority must fulfill the following tests-

(i) Separate legal existence.
(ii) Function in a defined area.
(iii) Has power to raise funds.
(iv) Enjoys autonomy.
(v) Entrusted by a statute with functions which are usually entrusted to municipalities.

State owned business corporations are authorities

R.D. Shetty v. International Airport Authority of India

www.commonlii.org/in/cases/INSC/1979/111.html

"So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated inter alia that "management of State enterprises will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this." It was in pursuance of the policy envisaged in this and sub-sequent resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel but the instrumentality or agency of the corporation was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through instrumentality or agency of corporations should equally be subject to the same limitations."

Article 14 must not be identified with the doctrine of classification.

What Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality.

The doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions, namely,

(1) that the classification is founded on an intelligible differentia and

(2) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action, the impugned legislative or executive action, would plainly be arbitrary and the guarantee of equality under Article 14 would be breached.

Wherever, therefore, there is arbitrariness in State action whether it be the 83 legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

Ajay Hasia v. Khalid Mujib

www.commonlii.org/in/cases/INSC/1980/219.html

We must therefore give such an interpretation to the expression "other authorities" as will not stultify the operation and reach of the fundamental rights by enabling the Government to its obligation in relation to the Fundamental Rights by setting up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form.

We may point out that, in our opinion, if the marks allocated for the oral interview do not exceed 15% of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-arbitrariness.

We think that it would also be desirable if the interview of the candidates is tape-recorded, for in that event there will be contemporaneous evidence to show what were the questions asked to the candidates by the interviewing committee and what were the answers given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee.

Privatisation

Privatization is the incidence or process of transferring ownership of a business, enterprise, agency or public service from the public sector (government) to the private sector (business). In a broader sense, privatization refers to transfer of any government function to the private sector including governmental functions like revenue collection and law enforcement

Demutualisation

The process of changing a mutual or cooperative association into a public company by converting the interests of members into shareholdings, which can then be traded through a stock exchange.

Examples of mutuals are building societies, credit unions and some large insurance institutions. Their structure limits their activities to servicing their members and inhibits their ability to pursue profits and diversification as freely as companies.

Nationalisation

- Nationalisation, is the act of taking an industry or assets into the public ownership of a national government or state.
- Nationalization usually refers to private assets, but may also mean assets owned by lower levels of government, such as municipalities, being state operated or owned by the state.
- The opposite of nationalization is usually privatization or de-nationalisation, but may also be municipalization.
- A renationalization occurs when state-owned assets are privatized and later nationalized again, often when a different political party or faction is in power. A renationalization process may also be called reverse privatization.

CSX v. SEBI

It was established on 09.07.1991 as a public limited company under the provisions of the Companies Act, 1956. It was granted recognition as a Stock Exchange under Section 4 of the Securities Contracts Regulation Act, 1956 ("the SCRA") on 18.09.1991 for a period of three years and the recognition is being renewed on application by CSX annually under Rule 7 of the Securities Contracts Regulation Rules, 1957 (the Rules) . CSX initially proposed to operate as a Stock Exchange in view of the then felt necessity for a Regional Stock Exchange in Coimbatore since it was a city where a Regional Stock Exchange would benefit various companies that required listing at the Stock Exchange as well as the investor public. However, subsequent thereto, there has been a sea change in the manner in which Stock Exchanges operate.

In India, there were initially two broad Groups of Stock Exchanges with 20 Stock Exchanges being set up as Companies and 3 Stock Exchanges functioning as Association of Persons.

By efflux of time, the manner and conduct of business resulted in a situation where Regional Stock Exchanges started playing a continually diminishing role in the trading of securities. Then, the substantial impact of technology and the developments in computerisation resulted in significant changes to the manner in which the market activities took place and in the wake of globalisation and coming into force of the Securities & Exchange Board of India Act, 1992 ("the SEBI Act"), also resulted in various changes in the regulatory mechanism. There were committees constituted to consider the urgent need for corporatisation and demutualisation of Stock Exchanges for better professionalism in the running of Stock Exchanges and some recommendations were also made to the Government in this regard.

A Committee headed by Justice H.M. Kania had made recommendations requiring them to operate as corporate entities and demutualisation was required in order to separate ownership and trading rights. Also, it found the difficulties that were faced by the Regional Stock Exchanges whose business had declined significantly as investors preferred to trade in the BSE and NSE which had opened franchisees in every nook and corner of the country, offering deeper markets and further, with the fall in trading volumes in the Regional Stock Exchanges, (RSEs) the listed companies felt that there was hardly any purpose in remaining listed in the RSEs and with the coming to end of the manual trading system and terminal based trading being introduced, there was further reduction in the business volumes of Regional Stock Exchanges.

Ruling by the Learned Single Judge was as follows:

"As is known, the National Stock Exchange, Bombay Stock Exchange and RSEs in India play the role of a barometer in the development of Indian economy and in such view of the matter, any action which is detrimental to the interest of the investing public at large and contrary to the provisions of the SCRA and SEBI Act, will certainly have a negative impact on the economic system of the country as a whole.

In view of the above discussion and various rulings of the Supreme Court and Bombay High Court, more particularly in the light of the decision in Anand Rathis case, it is not possible to interfere with the impugned order passed by SEBI since an emergent situation has arisen warranting SEBI to pass such an impugned order through its whole time member to safeguard the securities market and the investing public and to ensure orderly development of securities market in the process of development of national economy.

In that view of the matter, I find no infirmity with the impugned order no.WTM/GA.MRD/DSA/58/06 dated 17.04.2006 passed by SEBI giving directions to the effect that (i) CSX is restrained from transferring or alienating any movable or immovable property of the Exchange in any manner, (ii) the day-to-day functioning of CSX would be undertaken by a three member Committee consisting of Shri.V.Selvaraj, SEBI Nominee Director/ROC, Shri. C.A. Venkatesan and Shri. K.R. Raman, Public Representative Directors and (iii) the said Committee is authorized to make such expenditures and operate the bank accounts of CSX and as such, the same is upheld and the writ petition, which is devoid of merits, is liable to be dismissed and is accordingly dismissed without any order as to costs. Consequently connected W.P.M.P.s and W.V.M.P. are also dismissed."

Ruling reversed in appeal ...

In its order dated 6th January, 2009 the Madras High Court directed SEBI to consider the application of Coimbatore Stock Exchange (CSX) under exit option scheme of SEBI and pass orders before 31st March, 2009.

Even before the announcement of Exit Option for Regional Stock Exchanges by SEBI, Coimbatore Stock Exchange was the first to find out an innovative way by surrendering the recognition granted to it by SEBI citing unviability.

This surrender was not accepted by SEBI and the matter went to Madras High Court. The matter was pending before Madras HC for the past two and half years. Eventhough SEBI fought the case vehemently it had come to realities at last and announced the Exit Option for Regional Stock Exchanges. This is what CSX did at their AGM on 15.2.2006.

CSX is the first to avail the Exit Option and it had applied to SEBI on 1.1.2009 even when the case was in progress and brought this to the notice of Madras HC. Based on this the Court had directed SEBI to consider this application and pass orders on or before 31st March, 2009. CSX will have to comply with conditions stipulated in the Exit Option Scheme.

As CSX is being managed by a Three Member Committee at present, it is to be seen how the Committee is going to fulfill the conditions before 31.3.2009 to comply with the Court order. According to sources close to CSX the duly elected directors have not been given access to any records, vouchers, account books etc for the past two and half years by the Three Member Committee and it is only proper if SEBI hands over the management to the elected directors immediately so that they can take steps to complete the formalities. When contacted, the elected directors are confident that SEBI encourages good corporate governance and soon they will recall Three Member Committee and put the democratically elected directors back on the saddle.

Times of India report dated 11-9-2009 on

Ellen Venkatesalu Securities (P) Limited vs. SEBI

http://timesofindia.indiatimes.com/news/city/chennai/Move-to-derecognise-Coimbatore-Stock-Exchange-stayed-by-HC/articleshow/4996822.cms

Scuttling a move to de-recognise the Coimbatore Stock Exchange (CSE) and close down its operations, the Madras High Court has stayed a resolution passed to that effect

Justice P Jyothimani granted interim injunction restraining the Securities and Exchange Board of India (SEBI) from derecognising the Coimbatore Stock Exchange Limited, on a writ petition filed by Ellen Venkatesalu Securities (P) Limited, Coimbatore.

According to the petitioner, the SEBI framed guidelines on December 29, 2008 to permit companies seeking de-recognition as recognised stock exchange so as to enable them to carry on o their business activities and not function as a stock exchange.

However, even before the issue could be notified and communicated officially, the CSE convened a general body meeting on December 31, 2008 and adopted a resolution to get de-recognised.

Claiming that the resolution was adopted with an ulterior motive, the petitioner said an extraordinary general body meeting held on July 3, 2009 was attended by a majority of members who had defaulted on payment of annual subscriptions.

Besides restraining the board from giving effect to the resolution, he wanted the board not to convene any more meetings without furnishing the complete membership details.

NIC: National Informatics Centre

National Informatics Centre (NIC) is a premiere S & T institution of the Government of India, established in 1976, for providing e-Government / e- Governance Solutions adopting best practices, integrated services and global solutions in Government Sector.

In 1975, the Government of India strategically decided to take effective steps for the development of information systems and utilization of information resources and also for introducing computer based decision support system (informatics-led development) in government ministries and departments to facilitate planning and programme implementation to further the growth of economic and social development. Following this, the Central Government nucleated a high priority plan project "National Informatics Centre (NIC)" in 1976, and later on with the financial assistance of the United Nations Development Programme (UNDP) to the tune of US$4.4 million.

NIC set up/goals

* NIC Data Centre, established in 2002, hosts over 5000 websites & portals. Data Centres which have been established at State capitals for their local storage needs, have storage capacity from 2-10 Tera Bytes.
* NIC has been licensed to function as Certifying Authority (CA) in the G2G domain and CA services commenced in 2002.
* NIC set up the Right to Information Portal in order to provide support to the Government for speedy and effective implementation of the Right to Information Act 2005.
* Over the years NIC has extended the satellite based Wide Area Network to more than 3000 nodes and well over 60,000 nodes of Local Area Networks in all the Central Government offices and State Government Secretariats.

As a major step in ushering in e-Governance, NIC implements the following minimum agenda as announced by the Central Government:

* Internet/Intranet Infrastructure (PCs, Office Productivity Tools, Portals on Business of Allocation and Office Procedures)
* IT empowerment of officers/officials through Training
* IT enabled Services including G2G, G2B, G2C, G2E portals
* IT Plans for Sectoral Development
* Business Process Re-engineering

Government of India
Ministry of Communications & Information Technology
Department of Information Technology
Electronics Niketan
6, CGO Complex

New Delhi-110003
Dated: 27.11.2009

NOTIFICATION

Unicode 5.1.0

No. 2(32)/2009-EG-II: Whereas Department of Information Tecnology (DIT), Ministry of Communications and Information Technology, Government of India (GOI) is driving the National e-Governance Plan (NeGP) which seeks to create the right Governance and institutional mechanism and implement a number of Mission Mode Projects at the Centre and State Government; and

Whereas under NeGP, GOI is promoting the usage of Open Standards to avoid any technology lock-ins; and

Whereas Standards in e-Governance are a high priority activity, which will help ensure sharing of information and seamless interoperability of data across e-Governance applications. DIT, GOI has set up an Institutional Mechanism under NeGP to evolve/ adopt Standards for e-Governance; and

Whereas because of the lack of availability of information in local language there has been a slow progress in the Information and Communication Technology (ICT) sector and the benefits of ICT have not percolated down to the common man. Hence, "Localization and Language Technology" is an important area which is being addressed under Standardization; and

Whereas the Competent Authority on Standards has approved **Unicode 5.1.0** as Character Encoding Standard which is widely recognized all over the world for representation of multilingual text and also supports Indian languages as well as will ease Localization of applications for all the constitutionally recognized Indian languages; and

Therefore, Department of Information Technology, Government of India hereby notifies **Unicode 5.1.0** and its future versions as the Standard for e-Governance Applications w.e.f the date of notification.

(S.S. Rawat)
Joint Director

universal digital computer

0 represents false
1 represents true

Imagine an infinite tape on which 0's and 1's can be written or read

....10100110100001010101010111000...
^.....pointer to read, write, shift

universal digital computer with a new feature: * legal rights management *

Do you have rights to read, write or shift?

Imagine an infinite tape on which 0's and 1's can be written or read

Permissions

```
-rw-r--r--      38450 2010-02-19 21:58 00_ML_IPR_Syllabus.pdf
-rw-r--r--     281924 2010-02-19 22:00 digital_signatures.pdf
-rw-r--r--    2598727 2010-02-19 21:59 freeculture.pdf
-rw-r--r--      67870 2010-02-19 21:57 privatisation.pdf
-rw-r--r--     649441 2010-02-19 22:10 tml_unicode.pdf
-rw-r--r--     473009 2010-02-19 21:57 unicode.pdf
-rwx------
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Persons::

U = You, the Creator/Author
G = Group
O = Others

Permissions::

r = read
w = write
x = execute/shift

ASCII value	Character	Control character	ASCII value	Character	ASCII value	Character	ASCII value	Character
000	(null)	NUL	032	(space)	064	@	096	
001	☺	SOH	033	!	065	A	097	a
002	☻	STX	034	"	066	B	098	b
003	♥	ETX	035	#	067	C	099	c
004	♦	EOT	036	$	068	D	100	d
005	♣	ENQ	037	%	069	E	101	e
006	♠	ACK	038	&	070	F	102	f
007	(beep)	BEL	039	'	071	G	103	g
008	◘	BS	040	(	072	H	104	h
009	(tab)	HT	041	)	073	I	105	i
010	(line feed)	LF	042	*	074	J	106	j
011	(home)	VT	043	+	075	K	107	k
012	(form feed)	FF	044	'	076	L	108	l
013	(carriage return)	CR	045	-	077	M	109	m
014	♫	SO	046	.	078	N	110	n
015	☼	SI	047	/	079	O	111	o
016	►	DLE	048	0	080	P	112	p
017	◄	DC1	049	1	081	Q	113	q
018	↕	DC2	050	2	082	R	114	r
019	!!	DC3	051	3	083	S	115	s
020	π	DC4	052	4	084	T	116	t
021	§	NAK	053	5	085	U	117	u
022	▬	SYN	054	6	086	V	118	v
023	↨	ETB	055	7	087	W	119	w
024	↑	CAN	056	8	088	X	120	x
025	↓	EM	057	9	089	Y	121	y
026	→	SUB	058	:	090	Z	122	z
027	←	ESC	059	;	091	[	123	{
028	(cursor right)	FS	060	<	092	\	124	|
029	(cursor left)	GS	061	=	093	]	125	}
030	(cursor up)	RS	062	>	094	^	126	~
031	(cursor down)	US	063	?	095	_	127	⌂

Representing everything with ON & OFF

- ON-OFF states represent boolean values
  - OFF represents 0 or FALSE
  - ON represents 1 or TRUE
- Each 0 or 1 is a “binary digit” or “bit” of information
- A BYTE (BinarY TablE) is a contiguous sequence of a fixed number of bits which has come to mean 8 bits “octet” capable of holding 256 values from 00000000 to 11111111
- ASCII – American Standard Code for Information Interchange character encoding based on the English Alphabet is the widely used standard
- The 95 printable ASCII characters are:
  !"#$%&'()*+,-./0123456789:;<=>?
  @ABCDEFGHIJKLMNOPQRSTUVWXYZ
  [\]^_`abcdefghijklmnopqrstuvwxyz{|
  }~
- Source code by programmers is converted to machine code which computers understand natively

ASCII Chart

binary	glyph
0011 0000	0
0011 0001	1
0011 0010	2
0011 0011	3
0011 0100	4
0011 0101	5
0011 0110	6
0011 0111	7
0011 1000	8
0011 1001	9
0100 0001	A to
0101 1010	Z ..

Boolean Logic

AND

∧	**0**	**1**
0	0	0
1	0	1

OR

∨	**0**	**1**
0	0	1
1	1	1

NOT

a	**0**	**1**
¬a	1	0

ASCII Chart :::::::::::::::::::::: Intelligence

ASCII Code **Most Significant Bits [MSB]**

LSB	**000**	**001**	**010**	**011**	**100**	**101**	**110**	**111**
0000	NUL,^@	DLE,^P	spc	0	@	P	`	p
0001	SOH,^A	DC1,^Q	!	1	A	Q	a	q
0010	STX,^B	DC2,^R	“	2	B	R	b	r
0011	ETX,^C	DC3,^S	#	3	C	S	c	s
0100	EOT,^D	DC4,^T	$	4	D	T	d	t
0101	ENQ,^E	NAK,^U	%	5	E	U	e	u
0110	ACK,^F	SYN,^V	&	6	F	V	f	v
0111	BEL,^G	ETB,^W	'	7	G	W	g	w
1000	BS,^H	CAN,^X	(	8	H	X	h	x
1001	HT,^I	EM,^Y	)	9	I	Y	i	y
1010	LF,^J	SUB,^Z	*	:	J	Z	j	z
1011	VT,^K	ESC,^[	+	;	K	[	k	{
1100	FF,^L	FS,^\	,	<	L	\	l	|
1101	CR,^M	GS,^[	-	=	M	]	m	}
1110	SO,^N	RS,^^	.	>	N	^	n	~
1111	SI,^O	US,^_	/	?	O	-	o	DEL

ASCII integers are converted to binary integers by flipping bits 5 & 4 to 0

Uppercase alphabetical characters are converted to lowercase by flipping bit 5 from 0 to 1

Uppercase characters are converted to the equivalent control characters by flipping bit 6 (msb) from 1 to 0

Church-Turing Thesis

- According to the Church–Turing thesis, a computer with a certain minimum threshold capability is in principle capable of performing the tasks of any other computer.
- A Turing machine has only a single data structure, a variable-length linear array called the tape. Each component of the tape contains just a single character.

- **....1000110100101100110110100101111000....**
  .^. --->read/write/shift pointer

- Any computable function can be computed by a Turing machine
- It takes almost no machinery to achieve universality, other than some sort of unlimited storage capacity. Even an extremely simple set of data structures and operations are sufficient to allow any computable function to be expressed.
- Anything can be done in LISP, Python, PHP, C...
  The differences between programming languages is not quantitative but qualitative in how elegantly, easily, and effectively things can be done
- Computers with capabilities ranging from those of a personal digital assistant to a supercomputer may all perform the same tasks, as long as time and memory capacity are not considerations.
- The same computer designs may be adapted for tasks ranging from processing company payrolls to controlling unmanned spaceflights.

Law at the core of computing: machine knowledge of human rights

- Humans and other life forms are endowed with natural computing abilities.
- If we admit the Church-Turing thesis, in theory, all our computing functions could be performed by a computer.
- But then, why is it that common sense reasoning is not yet possible and the AI problem is without a solution?
- How would a robot know how to deal with humans and others?
- Assimov's three laws of robotics or are too simplistic - Law is more detailed in describing such matters and the best judge of what is relevant and what is not.
- The computing field has not taken law seriously enough, and that has prevented the evolution of robust AI systems.
- Porting the rules relating to the legal system, language, computing, arithmetic, vision, and other fields of knowledge would give computers a chance to do common sense reasoning.

D.P. Anderson & Co. Ltd. v. The Lieber Code Co.
[1917] 2 KB 469

A telegraphic code consisting of made words of five letters suitable for coding purposes, each of which was itself meaningless, and differed from every other word in at least two out of the five letters, was proper subject of copyright

Ager v. Collinridge
(1886) 2 TLR 291

The defendant used many of the words listed in the standard telegram code but assigned their own meanings and numbers to the terms making them suitable to facilitate transmissions pertaining to timber trade. Copyright was found in the subject matter of Ager's ciphers and codes.

The "Bentley's Code Phrases" [http://www.archive.org/details/bentleyscomplete00bentuoft] first published in 1906 continued to be commonly used till the end of 1960's. That and other codes were widely used by commercial establishments - "coding" seems to have been popular then at grass root levels. If the 5 letter codes were well understood, popular and used widely, there are no reasons why the present coding done with computer languages based on 8 bit letters can't be used with the same ease by the general public. Coding languages need to start circulating widely among the public the way Bentley's Code ruled from 1906 to the 1960s.

In the late 19th and earlier 20th Centuries, there were Code Books created because telegram messages were charged by the word. As many as ten characters in a grouping were considered a word by the telegraph companies. Commercial Code Books, such as the Acme Code Words, or the Bentley's Complete Phrase Code were available to companies, enabling them to send complex messages in only a few "words." For instance, if someone used a Bentley's, he or she might choose the following letter groupings:

DIZUH (contracts for)
DAELF (computing)
FEAVO (equipment)
RUGUB (has/have been signed)
KUKIB (New York)
CUGYA (commence)
OKGAP (production)
ICSCO (immediately).

Thus, the message, DIZUHDAELF FEAVORIGUB KUKIBCUGYA OKGAPICSCO, four "words," would translate to, "Contracts for computing equipment have been signed [in] New York. Commence production immediately." This would be in place of 12 normal words (13 if the implied "in" is included); a savings of at least 75 percent. Of course, for someone without the Code Book, the message would be unreadable, but the message was sent primarily for economy, not security.

Code: The Future

- Contract transmissions from 1880's to 1960's used Codes (Std. Telegraph code to Bently's Second Phrase)
- Future codes:
  - Legal Documents written in scripting languages like PHP
  - Storage and access from public SQL servers
  - Text standards: ASCII, Unicode
  - Image and movie standards: PNG, MPEG ...
  - Other standard specs: SQL, POSIX, HTML, ...

Freedom of Press
Right to Strike, Hartal & Bandh
Empowerment of Women

Freedom of Press

In Re: Arundhati Roy Contemner

www.commonlii.org/in/cases/INSC/2002/116.html

The facts of the case: Narmada Bachao Andolan filed a petition under Article 32 of the Constitution of India being Writ Petition No.319 of 1994 in the Supreme Court. The petitioner was a mvoement or andolan, whose leaders and members were concerned about the alleged adverse environmental impact of the construction of the sardar Sarovar Reservoir Dam in Gujarat and the far-reaching and tragic consequences of the displacement of hundreds of thousands of people from their ancestral homes that would result from the submerging of vast extents of land, to make up the reservoir. During the pendency of the writ petition this Court passed various orders. By one of the orders, the Court permitted to increase the height of the dam to RL 85 meters which was resented to and protested by the writ petitioners and others including the respondent herein. The respondent Arundhati Roy, who is not a party to the writ proceedings, published an article entitled "The Greater Common Good" which was published in Outlook Magazine and in some portion of a book written by her. Two judges of this Court, forming the three-judge Bench felt that the comments made by her were, prima facie, a misrepresentation of the proceedings of the court. It was observed that judicial process and institution cannot be permitted to be scandalised or subjected to contumacious violation in such a blatant manner, it had been done by her.

Ms. Roy replied: "I believe that the people of the Narmada valley have the constitutional right to peacefully against what they consider an unjust and unfair judgment. As for myself, I have every right to participate in any peaceful protest meeting that I choose to. Even outside the gates of the Supreme Court. As a writer I am fully entitled to put forward my views, my reasons and arguments for why I believe that the judgment in the Sardar Sarovar case is flawed and unjust and violates the human rights of Indian citizens. I have the right to use all my skills and abilities such as they are, and all the facts and figures at my disposal, to persuade people to my point of view." She also stated that she has written and published several essays and articles on Narmada issue and the Supreme Court judgment. None of them was intended to show contempt to the court. She justified her right to disagree with the court's view on the subject and to express her disagreement in any publication or forum. In her belief the big dams are economically unviable, ecologically destructive and deeply undemocratic. ...But whoever they are, and whatever their motives, for the petitioners to attempt to misuse the Contempt of Court Act and the good offices of the Supreme Court to stifle criticism and stamp out dissent, strikes at the very roots of the notion of democracy.

Verdict:

On the basis of the record, the position of law our findings on various pleas raised and the conduct of the respondent, we have no doubt in our mind that the respondent has committed the criminal contempt of this Court by scandalising its authority with malafide intentions.

The respondent is, therefore, held guilty for the contempt of court punishable under Section 12 of the Contempt of Courts Act.

As the respondent has not shown any repentance or regret or remorse, no lenient view should be taken in the matter. However, showing the magnanimity of law by keeping in mind that the respondent is a woman, and hoping that better sense and wisdom shall dawn upon the respondent in the future to serve the cause of art and literature by her creative skill and imagination, we feel that the ends of justice would be met if she is sentenced to symbolic imprisonment besides paying a fine of Rs.2000/-.

While convicting the respondent for the contempt of the Court, we sentence her to simple imprisonment for one day and to pay a fine of Rs.2,000/-. In case of default in the payment of fine, the respondent shall undergo simple imprisonment for three months.

SHEELA BARSE v. STATE OF MAHARASHTRA

www.commonlii.org/in/cases/INSC/1987/258.html

Facts:

Sheela Barse, a free lance journalist, sought permission to interview the female prisoners in the Maharashtra State Jails. The permission was granted by the Inspector-General of Prisons. As, how ever, the journalist started tape-recording her interviews with the prisoners, the permission to interview was withdrawn.

Arguments:

According to the petitioner and her counsel Articles 19(1)(a) and 21 guarantee to every citizen reasonable access to information about the institutions that formulate, enact, implement and enforce the laws of the land. Every citizen has a right to receive such information through public institutions including the media as it is physically impossible for every citizen to be informed about all issues of public importance individually and personally. As a journalist, the petitioner has a right to collect and disseminate information to citizens. The press has a special responsibility in educating citizens at large on every public issue. The conditions prevailing in the Indian prisons where both under trial persons and convicted prisoners are housed is directly connected with Article 21 of the Constitution. It is the obligation of Society to ensure that appropriate standards are maintained in the jails and humane conditions prevail therein. In a participatory democracy as ours unless access is provided to the citizens and the media in particular it would not be feasible to improve the conditions of the jails and maintain the quality of the environment in which a section of the population is housed segregated from the rest of community.

Ruling:

In such a situation we are of the view that public access should be permitted. We have already pointed out that the citizen does not have any right either under Article 19(1)(a) or 21 to enter into the jails for collection of information but in order that the guarantee of the fundamental right under Article 21 may be available to the citizens detained in the jails, it becomes necessary to permit citizen's access to information as also interviews with prisoners. Interviews become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated.

We are, therefore, not prepared to accept the petitioner's claim that she was entitled to uncontrolled interview. We agree with the submission of Mr. Bhasme for the respondent that as and when factual information is collected as a result of interview the same should usually be cross-checked with the authorities so that a wrong picture of the situation may not be publised. While disclosure of correct information is necessary, it is equally important that there should be no dissemination of wrong information. We assume that those who receive permission to have interviews will agree to abide by reasonable restrictions. Most of the manuals provide restrictions which are reasonable. As and when reasonableness of restrictions is disputed it would be a matter for examination and we hope and trust that such occasions would be indeed rare. We see reason in the stand adopted by Mr. Bhasme relating to the objections of his client about tape-recording by interviewers. There may be cases where such tape-recording is necessary but we would like to make it clear that tape-recording should be subject to special permission of the appropriate authority. There may be some individuals or class of persons in prison with whom interviews may not be permitted for the reasons indicated by this Court in the case of 219 Prabha Dutt (supra). We may reiterate that interviews cannot be A forced and willingness of the prisoners to be interviewed would always be insisted upon. There may be certain other cases where for good reason permission may also be withheld. These are situations which can be considered as and when they arise.

The petitioner is free to make an application to the prescribed authority for the requisite permission and as and when such application is made, keeping the guidelines indicated above, such request may be dealt with. There will be no order for costs.

Trial by Media

STATE OF MAHARASHTRA v. RAJENDRA JAWNMAL GANDHI

www.commonlii.org/in/cases/INSC/1997/724.html

There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and he is to be guided strictly by rules of law. If the finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law. While imposing sentence of fine and directing payment of whole or certain portion of it to the person aggrieved, the court has also to go into the question of damage caused to the victim and even to her family. As a matter of fact the crime is not only against the victim it is against the whole society as well.

Does the right to strike exist in India?

While the right to strike is not explicitly included in the list of fundamental rights specified in the Constitution of India, Article 19 enumerates the right to freedom of speech and expression, to assemble peaceably without arms, and to form associations or unions (Art 19(1)(a)-(c)). The right to strike is thus a corollary of these expressly stated rights.

The Industrial Disputes Act 1947 (IDA) and the Trade Unions Act 1926 (TUA) are the primary pieces of Central legislation regulating this right in India. The IDA establishes the conditions regarding notice and arbitration that must be complied with before industrial action is undertaken (Sections 22, 23), and the circumstances in which such actions may be deemed illegal (Section 24). The IDA by virtue of its regulation of the legality of a strike, thus explicitly recognises that strikes exist as a legitimate means of negotiation, including for government employees (Section 22).

Right to Strike ?

In TK Rangarajan v Government of Tamil Nadu and Others (2003), Justices M.B. Shah and A.R. Lakshmanan stated that government employees had no moral or legal right to strike. The bench relied on the provisions of the Tamil Nadu Essential Services Maintenance Act 2002 (TESMA) and the Tamil Nadu Ordinance No 3 of 2003. Both these Acts reiterate Rule 7 of the Central Civil Services (Conduct) Rules, 1964, which prohibits the right of government employees to strike.

In B.R. Singh v. Union of India (v), ex-Chief Justice of India, A. M. Ahmadi, heading a three-member bench, had stated that “the bargaining strength [of trade unions] would be considerably reduced if it is not permitted to demonstrate by adopting agitational methods such as… ‘strike’…The right to strike is an important weapon in the armoury of workers, recognized by almost all democratic countries as a mode of redress.” This judgment justified a strike by certain employees on the grounds that the Trade Authority of India had dismissed them without referring them to a tribunal.

In Communist Party of India (Marxist) v Bharat Kumar and others, the court commented that, with respect to the Constitution, “nothing stands in the way” of a call for a general strike or hartal “unaccompanied by [an] express or implied threat of violence”. This is one of several Supreme Court judgments that has recognised not merely the rights of workers, but also the right of workers to strike.

No Strikes !

- Medical Profession
  - A public interest litigation (PIL) was filed against the striking doctors and the Medical Council of India (MCI) through a writ petition (People for Better Treatment vs. MCI & Ors; W.P. Civil No. 316/2006) seeking a complete ban on “doctors’ strike”. The Supreme Court has already issued notices to the respondent medicos in this case which might have significant implications on “doctors’ strikes” in India.
  - “Code of Ethics and Regulations” framed under the MCI Act which is binding on all practicing physicians in India also has strong prohibition against any doctors’ strike. The Section 2.1.1 of the MCI “Codes” has categorically stated that doctors cannot refuse treatment to a patient who is in need of emergency medical care. While a doctor may be able to wriggle out of a situation for his refusal to treat someone suffering from an insubstantial medical condition, he cannot deny therapy under any ground to a critically ill patient.
- Legal Profession
  - Ex-capt. Harish Uppal v. Union Of India & Anr.
- Public Servants
  - TK Rangarajan v Government of Tamil Nadu and Other

Ex-Capt. Harish Uppal v. Union of India

www.commonlii.org/in/cases/INSC/2002/547.html

- In conclusion it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protect marches outside and away from Court premises, going on dharnas or relay fasts etc.

- It is held that lawyers holding Vakalats on behalf of their clients cannot not attend Courts in pursuance to a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott.

- No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the Court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before Advocate decide to absent themselves from Court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts.

- It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be addition to damages which he might have to pay his client for loss suffered by him.

- It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self restraint will be exercised.

Empowerment of Women

- Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993.
  - Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
- Declining sex ratio
- 2001: Year of Women's Empowerment
- Right to vote and get elected
- Right to privacy

Education Committees

(a) The Punnayya Committee 1992-93

The Punnayya Committee that was set up by the University Grants Commission made valuable recommendations on the need for the Universities to identify various other means of revenue generation. The Committee has recommended that as a general rule, Universities should generate 15% of its annual maintenance expenditure through internally generated resources and this should go up to at least 25% at the end of ten years. The Committee also recommended that students receiving higher education should also bear a reasonable proportion of the cost of higher education.

(b) Dr. Swaminathan Panel 1992

The Dr. Swaminathan Panel which was set up by the All India Council for Technical Education also made important observations on the mobilisation of additional resources for technical education in India. The Panel has put forth the idea of collecting educational cess from industries and other organisations.

Education Committees

(c) The Birla Ambani Report 2000

The Prime Minister's Council on Trade and Industry appointed a Committee headed by Mr. Mukesh Ambani and Mr. Kumarmangalam Birla to suggest reforms in the Educational sector. The Committee, which submitted its report in the year 2001, highlighted the important role of the State in the development of Education. Some of the suggestions in the report include:

(i) The Government should confine itself to Primary Education and the higher education should be provided by the Private sector.

(ii) Passage of the Private University Bill.

(iii) Enforcement of the user-pay principle in higher education.

(iv) Loans and Grants to the economically and socially weaker sections of society.

The Report suggested that the Government must concentrate more on Primary Education and less on Secondary and Higher education. It also recommended the passing of the Private Universities Act. The Birla- Ambani Report further recommended that the Government must encourage business houses to establish Educational Institutions.

(d) Committee on 'Financing of Technical and Higher Education' of the Central Advisory Board of Education

The Central Board of Education Committee recognised the limitation of non-government funding and the role state financing of higher education plays in promoting growth. The Committee also insisted on the allocation of 1% of the National Income for higher education.

Reservation in Educational Sector

(a) The P.A. Inamdar case

The decision of the Hon'ble Supreme Court in P.A. Inamdar and others v. State of Maharashtra and others has created ripples in the Educational sector. It has been held by the Hon'ble Supreme Court that Professional colleges would now enjoy full autonomy in admitting students. It has also been stated that in the absence of a State or a Central legislation regarding admissions and fee in professional colleges, the Legislative Committee which regulates admission, procedure, fee structure, etc. shall continue to exist.

(b) The Unnikrishnan case

The Hon'ble Supreme Court in Unni Krishnan v. State of Andhra Pradesh laid down a formula to bring about a partnership between the Public Sector and the Private Sector to work together for the development of higher education. The Government has since developed mechanisms to prevent commercialization and at the same time rope in the Private Sector to provide higher education to its citizens.

93rd Amendment to the COI

With privatisation of higher education, the number of Private colleges is increasing at an unimaginable rate, the Hon'ble Supreme Court in P.A. Inamdar and ors v. State of Maharashtra and others has observed that the State cannot impose its reservation policy on minority and non-minority unaided private colleges which would also include professional colleges. This led to the amendment of Article 15 of the Constitution which prohibits discrimination on grounds of religion, race, caste, sex or place of birth, and a new clause (5) was inserted. The Amendment sought to bring private colleges under the purview of the Government policies on the fee structure and reservation.

Establishing and running an educational institution is a Fundamental Right of Occupation guaranteed under Section 19(1)(g) of the Constitution. According to Article 19(6) of the Constitution, the State can make regulations and impose reasonable restrictions in public interest. The Hon'ble Supreme Court has observed that 'Education accepted as a useful activity, whether for charity or for profit, is an occupation. Nevertheless, it does not cease to be a service to the society. And even though an occupation, it cannot be equated to a trade or a business'. It is the duty of the State to provide educational facilities. The shortfall in the efforts of the State may be met by private enterprise.

Federalism

- Hisory of Federalism in India
  - The Montague-Chelmsford Report, 1918
  - The Simon Commission, GI Act 1935
- Federalism under the Constitution
  - Article 1: India shall be an union of states
- Distribution of Legislative Power
  - Adopted the GI Act, 1935, scheme
  - Mutually exclusive lists:
    - List I: Taxes on Income other than agricultural income
    - List II: Taxes on agricultural income
- Distribution of Executive Power
- War or Emergency Power
- Special Reference of 1956. AIR 1965 SC 745
  - Indian Constitution is Federal

Creation of New States

- Territory of the States: Parliament has the power to alter the boundaries of the states without consent of states
  - Departure from the federal principle?
  - Practically, extra-constitutional agitations in the states led to reorganisation of state territories
  - Telengana
- In Re Indo-Pakistan Agreement [AIR 1960 SC 845]
  - www.commonlii.org/in/cases/INSC/1959/29.html
- Ram Kishore v. Union [AIR 1966 SC 644]
- Maganbhai v. Union
- S.R. Bhansali v. Union [AIR 1973 Rajasthan 49]
- Manoharlal v. Union
- Babulal Parte v. Bombay [AIR 1960 SC 51]

The Berubari Union and Exchange of Enclaves- (1) [1960] 3 S.C.R. 250 at pp. 256, 295-4. www.commonlii.org/in/cases/INSC/1959/29.html

- Q. (1) Is a law of Parliament relatable to Article 3 of the Constitution sufficient for implementation of the Agreement relating to Exchange of Enclaves or is an amendment of the Constitution in accordance with Article 368 of the Constitution necessary for the purpose, in addition or in the alternative ?" On the above Reference, this Court rendered the following ,answers : - Q. (I) Yes.
- Q. (2) (a) A law of Parliament relatable to Art. 3 of the Constitution would be incompetent;
  - (b) A law of Parliament relatable to Art.
  - 368 of the Constitution is competent and necessary;
  - (c) A law of Parliament relatable to both Art. 368 and Art. 3 would be necessary only if Parliament chooses first to pass a law amending Art. 3 as indicated above; in that case, Parliament may have to pass t law on those lines under Art. 368 and then follow it up with a law relatable to the amended Art. 3 to implement the Agreement.
- Q. (3) Same as answers (a), (b) and (c) to Question 2.
- As a result of the opinion thus rendered, Parliament passed the Constitution (Ninth Amendment) Act, 1960 which came into operation on December 28, 1960. Under this amendment, "appointed day" means such date as the Central Government may, by notification in the Official Gazette, appoint as the date for the transfer of territories to Pakistan in pursuance of the 'Indo-Pakistan Agreements' which means the Agreements dated the 10th September, 1958, the 23rd October, 1959, and the 11th January, 1960 entered into between the Government of India and Pakistan.

Ram Kishore v. Union of India

www.commonlii.org/in/cases/INSC/1965/151.html

Before proceeding to deal with the points which have been raided before us by Mr. Mukherjee on behalf of the appellants, it is necessary to advert to the opinion expressed by this Court in Re The Berubari Union and Exchange of Enclaves(1) with a view to correct an error which has crept into the opinion through inadvertence. On that occasion, it was urged on behalf of the Union of India that if any legislative action is held to be necessary for the implementation of the Indo-Pakistan Agreement, a law of Parliament relation to Art. 3 of the Constitution would be sufficient for the purpose and that it would not be necessary to take any action under Art. 368. This argument was rejected. In dealing with this contention, it was observed by this Court that. the power to acquire new territory and the power to cede a part ,of the national territory were outside the scope of Art. 3(c) of the Constitution. This Court then took the view that both the powers were the essential attributes of sovereignty and vested in India as an independent Sovereign Republic. While discussing the significance of the several clauses of Art. 3 in that behalf, it ,seems to have been assumed that the Union territories were outside the purview of the, said provisions. In other words, the opinion proceeded on the basis that the word "State" used in all the said clauses of Art. 3 did not include the Union territories specified in the First Schedule. Apparently, this assumption was based on the distinction made between the two categories of terri- tories by Art. 1(3). In doing so, however, the relevant provisions of the General Clauses Act (Act X of 1897) were inadvertently not taken into account. Under s. 3(58)(b) of the said Act, "State" as respects any period after the commencement of the 'Constitution (Seventh Amendment) Act, 1956, shall mean a 'State as specified in the First Schedule to the Constitution and shall include a Union territory.

Ram Kishore v. Union of India
www.commonlii.org/in/cases/INSC/1965/151.html

This provision of the General Clauses Act has to be taken into account in interpreting the word "State" in the respective clauses of Art. 3, because Art. 367(1) specifically provides that unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Art. 372, apply for the interpretation of this Constitution as it applies for 'the interpretation of an Act of the Legislature of the Dominion of India. Therefore, the assumption made in the opinion that Art. 3 in its several clauses does not include the Union territory is misconceived and to that extent, the incidental reason given in support of the main conclusion is not justified. How-ever, the conclusion itself was based primarily on the view that (1) [1960] 3 S.C.R. 250 the power to cede a part of the national territory and the power to acquire additional territory were the inherent attributes of sovereignty; and if any part of the national territory was intended to be ceded, a law relating to Art. 3 alone would not be enough unless appropriate action was taken by the Indian Parliament under Art. 368. It is common ground that the Ninth Constitution Amendment Act has been passed by Parliament in the manner indicated in the opinion rendered by this Court on the said Reference.

Babulal Parte v. State of Bombay

www.commonlii.org/in/cases/INSC/1959/108.html

A Bill introduced in the House of the People on the report of the States Reorganisation Commission and as recommended by the President under the proviso to Art. 3 Of the Constitution, contained a proposal for the formation of three separate units, viz., (1) Union territory of Bombay, (2) Maharashtra, including Marathawada and Vidarbha and (3) Gujrat, including Saurashtra and Cutch. This Bill was referred by the President to the State Legislatures concerned and their views obtained. The joint Select Committee of the House of the People (Lok Sabha) and the Council of States (Rajya Sabha) considered the -Bill and made its report. Subsequently, Parliament amended some of the clauses and passed the Bill which came to be known as the States Reorganisation Act, 1956. That Act by s. 8(1) constituted a composite State of Bombay instead of the three separate units as originally proposed in the Bill. The petition , out of which the present appeal has arisen, was filed by the appellant under Art. 226 of the Constitution in the High Court of Bombay. His contention was that the said Act was passed in contravention of the provisions of Art. 3 of the Constitution, since the Legislature of Bombay had not been given an opportunity of expressing its views on the formation of the composite State. The High Court dismissed the petition.

Held, that the proviso to Art. 3 lays down two conditions and under the second condition therein stated, what the President has to refer to the State Legislature for its opinion is the proposal contained in the Bill. On a true construction, the proviso does not contemplate that if Parliament subsequently modifies that proposal, there must be a fresh bill or a fresh reference to the State Legislature.

The word 'State' in Art. 3 of the Constitution has obvious reference to Art. i and the States mentioned in the First Schedule to the Constitution, and the expression 'Legislature of the State' means the Legislature of such a State. There are, therefore, no reasons for the application of any special doctrine of democratic theory or practice prevalent in other countries in interpreting those words; nor any justification for giving an extended meaning to the word 'State' in determining the true scope and effect of the proviso.

Delhi Bar Association v. Union of India

www.commonlii.org/in/cases/INSC/2008/937.html

The notification simply divides Delhi into nine civil districts. Therefore, the notification merely deals with and is confined to geographical division of the district boundaries and nowhere deals with jurisdiction of the courts or defines the courts' jurisdiction territorially or pecuniarily. The impugned notification issued by the Lt. Governor dated 28.06.2000 covers the subject, namely, division of the territory of U.T. of Delhi under his 32 administration into civil districts. The impugned notification does not cover the subject under Entry 11A of the Concurrent List, namely, administration of justice, constitution and organization of all courts except the Supreme Court and the High Court. The powers exercised by the Lt. Governor are referable to Section 19 of the Punjab Courts Act, 1918.

For the reasons aforesaid, we are of the view that the notification issued by the Lt. Governor dividing Delhi into nine civil districts was validly issued

Rehabilation of internally displaced Persons & Internal disturbances within States

- Kashmiri Pundits
- Chakmas
  - NHRC v. State of Arunachal Pradesh
  - www.commonlii.org/in/cases/INSC/1996/36.html
- Use of Force
- Armed Forces (Special Powers) Act, 1956
  - AFSPA operations in North-East states
  - Constitutionality of AFSPA upheld
    - Naga People's Movement v. Union
    - www.commonlii.org/in/cases/INSC/1997/867.html

State of Madras v. V.G. Row

www.commonlii.org/in/cases/INSC/1952/19.html

Section 15 (2) (b) of the Indian Criminal Law Amendment Act, 1908, as amended by the Indian Criminal Law Amendment (Madras) Act, 1950, included within the definition of an "unlawful association" an association "which has been de- clared by the State by notification in the Official Gazette to be unlawful on the ground (to be specified in the notification) that such association (i) constitutes a danger to the public peace, or (ii)has interfered or interferes with the maintenance of public order or has such interference for its object, or (iii) has interfered or interferes with the administration of the law, or has such interference for its object." Section 16 of the Act as amended provided that a notification under s. 15 (2) (b) shall (i) specify the ground on which it is issued and such other particulars, if any, as may have a bearing on the 598 necessity therefor and (ii) fix a reasonable period for any officebearer or member of the association or any other person interested to make a representation to the State Government in respect of the issue of the notification.

Under s. 16 A the Government was required after the expiry of the time fixed in the notification for making representa- tion to place the matter before an Advisory Board and to cancel the notification if the Board finds that' there was no sufficient cause for the issue of such notification.

There was however no provision for adequate communication of the notification to the association and its members or office bearers. It was conceded that the test under s.

15(2)(b) as amended was, as it was under s. 16 as it stood before the amendment, a subjective one and the factual existence or otherwise of the grounds was not a justiciable issue and the question was whether s. 15(2)(b) was unconsti- tutional and void:

State of Madras v. V.G. Row

www.commonlii.org/in/cases/INSC/1952/19.html

Held, (for reasons stated below) that s. 15 (2)(b) imposed restrictions on the fundamental right to form asso- ciations guaranteed by art. 19 (1) (c), which were not reasonable within the meaning of art. 19 (4) and was there- fore unconstitutional and void. The fundamental right to form associations or unions guaranteed by art. 19 (1) (c) of the Constitution has such a wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fiel this, that the vesting of the authority in the executive Government to impose restrictions on such right, without allowing the grounds of such imposition, both in their factual and legal aspects to be duly tested in a judicial inquiry, is a strong element which should be taken into account in judging the reasonableness of restrictions im- posed on the fundamental right under art. 19(1)(c). The absence of a provision for adequate communication of the Government's notification under s. 15(2)(b). by personal service or service by affixture to the association and its members and office-bearers was also a serious defect.

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India's democracy: New Challenges

Prabhat Datta

"Indian democracy, as it looks in the golden jubilee year of India's independence, is in a shambles. The democratic legitimacy of the state in India is in question because the electoral process is vitiated by money and muscle power. The attempts to develop grassroots democratic institutions and to build decentralised democratic structures at the regional levels in response to the growing demands of some ethnic groups to not seem to have been effective. The structural adjustment programme--induced liberalisation policy has hit the poor. As rampant corruption in public places shakes the foundation of Indian democracy and as the instrumentalities of the constitution and the actors in the political process seem to falter, the citizens begin to wonder about the way out. Some pin hope on non-government organisations as a counterpoise to the manifold infirmities eroding the faith in the system. All these challenges to Indian democracy have been dealt with in the articles contained in the book."