

Chapter:-1 **CONSTITUTION OF INDIA**

The constitution of India came into force on January 26, 1950. It is a comprehensive written document containing 395 articles divided into 22 parts and 12 schedules.

PREAMBLE:-

Q.1. *what is preamble? Discuss the meaning and purposes of the preamble.*

Ans.:- The preamble to an act sets out the purpose and object for which a statute is enacted. It lays down the aim and the objectives for which the constitution framed. In a case "kesvanand Bharti v. State of kerla" (1973). It was held by the Supreme Court, preamble is a part of the constitution and constitution should be interpreted in the light of preamble.

The purpose of the preamble:-

- It discloses the source of the constitution,
- It laid down the date of the commencement of the constitution,
- It sets out the right and freedoms which the people of India wished to secure for themselves,
- It declares the nature of the government which it wishes to establish in the country.

The preamble is reproduced below

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a 'SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC' and to secure to all the citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;
And to promote among them all
FERTENITY assuring the dignity of the individual and the unity and integrity of the nation;
IN OUR CONSTITUENT ASSEMBLY, this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

STRUCTURE CONSTITUTION OF INDIA:-

Q.2. *what is nature of Indian constitution? Or*

"The constitution is more unitary in nature than federal." Comment. Or

"The constitution of India is neither purely federal nor purely unitary, but is a combination of both" discuss.

Ans.:- All constitutions are generally divide into two categories, one federal and other unitary.

Under unitary constitution the power of the government are centralised in one government and that is generally the Central Government and the states are subordinate to it.

But in federal constitution there is division of powers between the centre and the states and both are independent as well as coordinate to each other.

A federal constitution has following essential features:-

1. **Distribution of power**:- a federal constitution defines and demarcates the sphere of the State and Central Government. Each Government has to act within its own sphere and can not interfere in other's field.
2. **A written constitution**:- Distribution of power can not be made oral. It must be done by written document which is known as the Constitution so as to avoid disputes.
3. **Supremacy of the Constitution**:-In a federal system the constitution is considered as the supreme law of the land. All organs and institution of the State derived their power from the Constitution and have to function within the limits defined by it.
4. **Authority of the court**:-The courts in this system have the final authority to interpret the provision of the Constitution and maintain the supremacy of the constitution.
5. **Rigidity**:-The procedure of amendment in a federal constitution is generally rigid.

The Indian Constitution possesses all essential characteristics of federal constitution as mentioned above.

In certain circumstances the constitution expressly empowers the Centre to interfere in the states matters, which is against the features of federal constitution.

In the following matters, the Indian Constitution becomes unitary:-

1. **Appointment of government**:-The Governments are appointed by the President of the India and are answerable to him.
2. **Parliament's power to legislate in the national interest**:-**Articles 249** empowers parliament to make laws with respect to every another matter of state list if it is in national interest.
3. **Emergency provisions**:-emergency like war, failure of state machinery and financial emergency, if arise in country then parliament can make law even on matters given in state list.

Hence we can say that the Constitution of India is neither purely federal nor unitary but it is combination of both. The Indian Constitution is mainly federal with unique unitary features to safeguard the unity and integrity of the country.

FUNDAMENTAL RIGHTS

Part 3rd of the Constitution of India guarantees certain fundamental rights to the citizen of India; some of these rights are also available to all people in India.

These rights are essential for the all round development of individual personality. Such rights can be classified as follows:-

1. Right to equality.....Articles 14 to 18
2. Right to freedom.....Articles 19 to 22
3. Right against exploitation.....Articles 23 to 24
4. Rights to freedom of religion.....Articles 25 to 28

- 5. Cultural and educational rights.....Articles 29 to30
- 6. Right to constitutional remedies.....Articles 32 to 35

Right of property (article-31) is no more a fundamental right; it is only a legal right.

Definition of `State`

- The guarantee of fundamental rights is sought to be made as complete and absolute as possible by a very comprehensive definition of the term “State” for the purposes of Part III of the Constitution.
- With few exceptions, all the fundamental rights are available against the State.

Article 12 `State`, unless the context otherwise requires, 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.

Scope

- What is, and what is not a “State” has been the subject matter of rich case laws under Article 12.
- There are tests formulated by several cases of the Supreme Court to find out whether an institution is a “State”. There cannot indeed be a straightjacket formula. It is not necessary that all the tests should be satisfied or reaching the conclusion either for or against holding an institution to be “State”

CASE EXAMPLE

- In **AJAY HASIA VS. KHALID MUJIB, (REGISTERED SOCIETY)**, Regional Engineering College was held to be a “ State”. In this judgment of the Supreme Court, Mr. Justice Bhagwati enunciated the following test for determining whether an entity is an instrumentality or agency of the State: -
1. One thing is clear that if the Government holds the entire share capital of the corporation, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.
 2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.
 3. It may also be a relevant factor whether the corporation enjoys monopoly status, which is the State conferred or State protected.
 4. Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

5. If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of government.
6. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.

In another case, the Hon'ble Supreme Court laid down the preponderant consideration for deciding whether any agency is a State agency or not. They are: -

1. Financial resources of the State being the chief funding scheme
2. Functional character being governmental in essence
3. Plenary control in the government
4. Some element of authority or command
5. Prior history of some activity having been carried on by the government and made over the new body

Judicial Review (Justifiability of Fundamental Rights)

Article 13 gives teeth to the fundamental rights. It lays down the rules of interpretation in regard to laws inconsistent with or derogation of the fundamental rights.

Existing laws: Article 13(1) All laws in force in the territory of India, immediately before the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part III, shall, to the extent of such inconsistency, be void.

Scope

- Article 12 mentions the authorities against which fundamental rights are available. Article 13 lays down that any law passed by a legislature or a law already in existence, as far as it is inconsistent with the guarantee of fundamental rights will be void. The responsibility of declaring such a law void, is cast on the judiciary.
- Article 13 (1) is not retrospective in operation. Hence laws that were already in existence on the date of commencement of the Constitution do not become void ab initio, but only from the commencement of the Constitution. The term void does not mean repealed.

Hence, such a law will be a good law for all obligations incurred before January 26, 1950 and also in cases of those persons who cannot claim fundamental rights guaranteed by the Constitution. Moreover, if by a subsequent amendment of the Constitution the inhibition is removed by existing law will become operative. Further, the law shall be void only to the extent of the inconsistency.

Future Laws : Article 13(2) future laws means laws made after the commencement of the Constitution. After the constitution comes into force the State shall not make any laws which is

takes away or abridges the rights conferred by part III (Fundamental rights) and if such laws made, it shall be void to the extent to which it curtails any such rights.

Meaning of Laws: Article 13(3) In this Article, unless the context otherwise requires, -

- (a) "law" includes any ordinance, order, bye-law, regulation, notification, custom or usage having in the territory of India the force of law;
- (b) "laws in force" include laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Article 13 of the Constitution come for judicial review in a number of cases and the Courts have evolved doctrines like doctrine of Severability, eclipse, etc.

Doctrine of Severability

- It is not the whole Act, which would be held invalid, by being inconsistent with Part III of the Constitution but only such provisions of it, which are violative of the fundamental rights, provided that the part, which violates the fundamental rights, is separable from that which does not isolate them.
- But if the valid portion is so closely mixed up with invalid portion that it cannot be separated without leaving an incomplete or more or less mingled remainder **the court will declare the entire Act void. This process is known as Doctrine of severability or separability.**

Some cited case laws

- In re: **A K Gopalan**, the Supreme Court held that the preventive detention minus Sec 14 was valid as the omission of Sec 14 from the Act will not change the nature and object of the Act and therefore the rest of the Act will remain valid and effective.
- In **RMDC Vs Union of India**, the Supreme Court held that where the validity of Sec 2(d) of Prize Competitions Act, which was broad enough to include competitions of a gambling nature as well competitions involving skill, was challenged. The Supreme Court held that the provisions of the Act were severable and struck down only those provisions which related to competition involving skill.
- In **re: Ramesh Thapar** case, the Hon`ble Supreme Court held that if the test of severability cannot be pressed into service the entire statute must be declared *ultra vires* even though a part of it may be consistent with the Constitution.

Doctrine of Eclipse

- What happens to those portions of laws or even the entire laws, which are declared, void because of inconsistency with the provisions of fundamental rights? Are such laws deemed to be repealed?

The answer to these questions is that *such laws are only inoperative and not void. If by a subsequent amendment to the Constitution, the necessary legislative power is conferred on the legislature with retrospective effect, laws or portions of laws, which were inoperative because of inconsistency with fundamental rights, are revived and can be enforced.*

Some cited case laws

- In re : **Bhikaji Nrain Dhakras** case, Acting CJ, Supreme Court observed that an existing law inconsistent with a fundamental right though becomes inoperative from the date of commencement of the Constitution, it is not dead altogether. Though it is overshadowed by the fundamental rights and remains dormant, it is not wiped out from the statute book. They stand for all the transactions and for enforcement of rights incurred during pre-constitution period. If this shadow is removed by an appropriated constitutional amendment the law revives.
- In re: **Shenoy case**, the Supreme Court held that an Act is eclipsed when a court declares it as unconstitutional, but it revives again as soon as the appellate Court upholds its constitutionality and validity.
- Thus, the impugned law was only eclipsed by the shadow of unconstitutionality. When the shadow was removed by correcting the defects, the eclipse ceased and the law can be enforced.

Is the doctrine of eclipse applicable only to pre-constitution law or is it applicable to post-Constitution laws also?

This question came for judicial review many times, some decision were in favour of pre-constitution laws while others were in support of both laws. However till now there is no any unambiguous judicial pronouncement.

Doctrine of Waiver of Fundamental Rights

- When a person who has right of privilege conferred on him by a statute, contracts away or otherwise intentionally gives up the right of privilege he is supposed to waive the right.
- The question is **can a person waive his fundamental rights?**
- The matter was considered by the Supreme Court in **Behram Vs. State of Bombay**. In that case the majority held that the fundamental rights, though primarily for the benefit of the individual, have been put into our Constitution on grounds of public policy for the benefit of general public and in pursuance of the objective declared in the preamble and hence none of them can be waived.
- Finally in **Bheshwar Nath Vs. CIT**, S K Das J observed as follows
Where a right of privilege guaranteed by the Constitutions rests in the individual and is primarily intended for his benefit and does not infringe on the rights of others, it can be waived provided such waiver is not forbidden by law and does not contravene public policy or public morals.

However, Bhagwati J held that no fundamental right could be waived. The Fundamental rights are mandatory on the State and a citizen cannot by his act or conduct relieve the State of the solemn obligation imposed on it.

Conclusion: in light of above cited cases we can conclude that Fundamental rights cannot be waived.

RIGHT OF EQUALITY

Article 14 – Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Equality before the law: The expression “equality before the law” means the absence of any special privilege in favour of any person and the equal subject of all classes to the ordinary law, i.e Article 14 prohibits unreasonable discrimination between persons. The expression indicates a negative concept.

Equality before the law indicates that among equals the law should be equal and should be equally administered, that like should be treated alike.

Equal protection of the laws: The expression “equal protection of the laws” indicates a positive concept implying equality of treatment in equal circumstances. In other words, all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should not be discrimination between one person and another under same circumstances.

- Equal protection of laws does not mean that the same laws will be applicable to all persons. It means the same law will apply to all persons placed in similar situations. It prohibits discrimination. Among equals, law will be equally administered.

Doctrines of Classification

- Article 14 assures equality to all persons before the law. However, this does not and cannot mean that in their application all laws shall be equal to all persons. This is not possible.
- Equal protection of laws guaranteed by Article 14 does not mean that all laws should be general in character and universal in application. It does not mean that same laws should apply to all persons. Varying needs of different classes of persons often require separate treatment. In fact, equal treatment in unequal circumstances would amount to inequality. Therefore a **reasonable classification** is not only permitted but it is necessary if the society is to progress.
- The power to make classification may also be exercised by administrative bodies acting under an Act of a legislature.

Classification means segregation in classes, which have a **systematic relation, usually formed in common properties and characteristics.**

Test of Valid Classification:

The Supreme Court of India in ***State of West Bengale V. Anwar Ali Sarkar*** enunciated following two test of valid classification:

1. It must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group; and
2. The differentia must have a rational nexus with objects sought to be achieve by statue in question.

Rules with respect to valid Classification:

Summary of the principles (Rules) formulated by the Supreme Court with respect to valid classification

Following is the *summary of the principles formulated by the Supreme Court* while dealing with **Ram Kishen Dalmia Vs. Justice S R Tendulkar**:- Laws ought to operate alike on all persons under like circumstances

1. Article 14 forbids class legislation, but does not forbid classification.
2. Classification must be rational i.e. must satisfied two conditions, namely (a) the classification must be founded on an intelligent differential which distinguishes those that are grouped together from others (b) the differential must have a rational relation to the object sought to be achieved by the Act.
3. the Classification may be founded on different basis, namely geographical, or according to objects or occupation or the like
4. in permissible classification, mathematical nicety and perfectly equality are not required.
5. Even a single individual may be treated a class by himself on account of some special circumstances or reason applicable to him and not applicable to others.
6. Articles 14 prohibits discrimination not only by substantive law but by a law of procedure also.
7. Burden of proof lie on a person who challenge the constitutionality of classification.

Some cited case laws

- In **Ramesh Prasad Singh Vs. State of Bihar**, it has been held that Equality is for equals, that is to say, those who are similarly circumstanced are entitled to an equal treatment. The guarantee of equality does not imply that the same rules should be made applicable to all persons in spite of differences in their circumstance and condition.
- In **Chiranjeet Lal case** it was held that singly individual maybe considered as a class in special circumstances.
- In **Shashi Mohan vs. State of West Bengal**, the Supreme Court had that what Article 14 prohibits is class legislation. But it does not forbid reasonable classification. The classification, however, should not be arbitrary it must rest upon some real and substantial distinction having some relationship which is reasonable to the things in respect of which

the classification is sought to be made. The classification can be based on the basis of geography or other objects or occupation.

- In **R K Garg Vs. Union of India**, the Supreme Court held that classification made by the Act between persons having black money and persons not having black money is based on intelligible differential having rational relation with the object of the Act.

Article 15 : Prohibition of Discrimination

Article 15 (1) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

The State shall not discriminate against any citizen on grounds only of religion, race, case, sex, place of birth or any of them.

Article 15(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:

- (i) access to shops, public restaurants, hotels and places of public entertainment; or
- (ii) 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.

Exception:

Article 15(3) & (4) create some exception to the right guaranteed under Article 15(1) & (2), these exception are as follows:

Article 15(3): The State may make any special provision for women and children.

Article 15(4): The State may make any special provision for the advancement of any-

- socially and educationally backward classes of citizens or
- for the Scheduled Castes and the Scheduled Tribes.

Relationship to article 14

- It should be noted that Art 15 is limited to Citizens while art 14 extends to all persons.
- The right conferred by clause (1) is available against the State only, while that under clause (2) is available against persons also.
- The **crucial word** in this article is **discrimination**, which means *making an adverse distinction with regard to or distinguishing unfavourably from others*. **Another crucial word** is **only** so that if the discrimination were based on some ground not connected with religion etc but with some other rational factor, the discrimination would be valid.

Article 16: Equality of Opportunity in matter of public employment

Article 16 This Article, inter alia, provides as under

All citizens to get equal opportunity

Article 16(1): There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Article 16(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.

Exceptions: however certain exception provided under Art. 16(3), 16(4) and 16(5)

Article 16(3): Classification in employment as per place of residence

- Parliament may make any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

Article 16(4): Reservation for certain class and its cumulative effect

- The State may make any provision for the reservation of appointments or posts or promotion of any class or classes of posts in the services 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.

Article 16(5): Religious office

- A law may provide that any incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Some cited case laws

- In **Janaki Prasad Vs. State of J & K** the Supreme Court laid down that the expression “backward class of citizens” in Article 16(4) means the same thing as the expression “any socially and economically backward class of citizens” in Article 15(4). In order to qualify for being called a “backward class citizen” a person must be a member of socially and educationally backward classes. This is indeed a new approach and a departure from earlier view accepted by the Supreme Court.
It is necessary that the following conditions be fulfilled before the application of the principle laid down in Article 16(4):
 - a) The class of citizens is socially and educationally backward
 - b) In the opinion of the State the class is not adequately represented in the service under the state.
- In **Akhil Bhartiya Soshit Karamchari Sangh (Rly) Vs Union of India** the Supreme Court laid down that in the interest of efficient administration, at least half of the total number of posts should be kept open to attract the best of nation’s talent. If it is otherwise, an excess of reserved quotas would convert the State service into a collective predominantly of backward classes. The Court laid down that it was for the State to innovate and classify to weed out the creamy layers of SC and ST.

Article 17: Abolition of Untouchability

Article 17 “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “untouchability” shall be an offence punishable in accordance with law.

Scope

- This is a very significant provision from the point of view of equality before the law. It guarantees social justice and dignity of man, the twin privileges which were denied to a vast section of the Indian society for centuries together.
- As the “Untouchable” is put in inverted commas, it is held that the word is to be understood in its historical sense and not in literal and grammatical sense (**Devarajiah Vs. B Padmanna**).
- Untouchability does not include social boycott (**Davarajiah v. Padamanna**)

Article 18: Abolition of Titles

Article 18 (1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the president any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

Scope

- The abolition of title did not affect the ten existing titles of the rulers of Indian States, which were guaranteed to them under Article 362 (since repealed). Similarly there is nothing in the article that prevents the universities from conferring honorary degrees, as degrees are not titles.
- It is to be noted in this connection that Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri are awards. They are not titles.

Article 19: RIGHT TO FREEDOM

- Article 19 guarantees six freedoms to an Indian citizen. It consists of two parts: the first part declares the six freedoms while the second part lays down the circumstances under which certain limitations on these freedoms may be justified.

Article 19 Protection of certain rights regarding freedom of speech etc.

- This Article, inter alia, provides that

Citizens to have six rights

- All citizens shall have the right –
 - a) To freedom of speech and expression
 - b) To assemble peaceably and without arms;
 - c) To form associations or unions;
 - d) To move freely throughout the territory of India;
 - e) To reside and settle in any part of the territory of India, and
 - f) To practise any profession or to carry on any occupation, trade or business.

State may impose reasonable restrictions

- The State may by law impose reasonable restrictions on the exercise of the above-mentioned rights in any of the following circumstances: -
 - a) In the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
 - b) In the interests of the general public or for the protection of the interests of any Scheduled Tribe.
 - c) In relation to
 - (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.
 - (ii) the carrying on by the State or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, or citizens or otherwise.

Scope

- These rights are not absolute rights. In fact, no right can be absolute right. Neither the individual is allowed to enjoy his liberty unfettered, nor is the Government given a free charter to abrogate individual liberty. In a civilized and advanced society, it is necessary to reconcile individual liberty with State control. The power of the Government to limit human liberty must itself be limited, as also the right of the individual to enjoy his liberty. In the absence of such provision on the part of Government, individual liberty itself might come to an end by the action of anti-social persons. Hence a reconciliation of the two (right and restriction) is very necessary.

Relationship

- The freedoms under article 19 are limited to citizens. Article 19 is available against State action for the protection of freedoms mentioned in the article.
- A detainee cannot be prevented from sending outside the jail for publication, matter that contains nothing prejudicial to the grounds for which he had been detained. **(State of Maharashtra Vs. Prabhakar; Fernandez Vs State of Maharashtra)**
- Shareholders can challenge the validity of a law on the ground of violation of their fundamental rights and the company may be joined in with proper pleading **(Barium Chemicals Vs company Law Board)**
- An unincorporated association cannot also be citizen and cannot claim these rights **(All India Bank employees Association Vs National Industrial Tribunal)**

Criteria of validity of law

- The considerations that generally prevail in judging the validity of a law in the context of the article are: -
 - (i) Whether the law imposes a restriction on the freedom in question.
 - (ii) Whether the restrictions have been imposed by law
 - (iii) Whether the restrictions are reasonable and
 - (iv) Whether the restriction besides being reasonable is imposed for one of the specified purposes relevant to the freedom in question as enumerated in the article.
- Each of these conditions must be satisfied.

A. Right to freedom of speech and expression (Art. 19(1)(a)):

The freedom of speech and expression under Article 19(1)(a) means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode.

Freedom of speech and expression include:

- Right to make good and bad speech
- Right not to speak
- Expression by sign
- Freedom of press
- Publication
- Dramatic performance
- Cinematography
- Commercial Advertisement
- Right to information
- Right to get reply
- Fly national flag

Permissible Restriction:

- a) In the interests of the sovereignty and integrity of India
- b) the security of the State
- c) friendly relations with foreign States
- d) public order

- e) decency or morality, or
- f) in relation to contempt of court
- g) defamation or
- h) Incitement to an offence.

B. Freedom of assembly (Art. 19(1)(b)):

Article 19(1)(b) guarantees to all citizens of India the right of assembly which includes the right to hold meetings and putting ones views before it or to take out processions. However such assembly must be peacefully and without arms and subject to such restriction as may be imposed by the state in the interests of:

- a. the sovereignty and integrity of India, or
- b. Public order

C. Freedom of Association (Art. 19(1)(c)):

All citizens of India have right to form association and union or people are free to have the members of association or union entertaining similar views but such freedom is subjects to such restriction as may be imposed by the State in the interest of:

- a. the sovereignty and integrity of India, or
- b. Public order
- c. Morality

Freedom to form association includes freedom to deny forming association.

D. Freedom of movement (Art. 19(1)(d)):

Every citizen of India have right to move or travel throughout the territory of India, this right is not extend to travel abroad and subject to such restriction as may be imposed by the State:

- a. In the interest of general public, or
- b. For the protection of the interest of Schedule tribe

E. Freedom of residence (Art. 19(1)(d)):

This freedom is with intention to remove internal barriers within the territory of India to enable every citizen to travel freely and settle down in any part of a state or union territory, but subject to such restrictions as may be imposed by the State on following grounds:

- c. In the interest of general public, or
- d. For the protection of the interest of Schedule tribe

Besides from that certain area may be banned for certain persons such as prostitutes (State of UP v. Kaushaliya devi)

F. Deleted

G. Freedom to trade and occupation:

The right guaranteed by clause (g) of article 19(1). namely, freedom of profession, trade or business, is intended to ensure that citizens' right to business does not depend on grant by the State and that the State cannot prevent a citizen from carrying on a business, except by a law imposing a reasonable restriction in the interest of the general public. Of course, there is no right where the business is dangerous or immoral; such a business may be absolutely prohibited or may be required to be licensed. Moreover,

there is no right to carry on a business at any place or at any time restrictions may be imposed in that regard. A citizen cannot be compelled to do a certain business. [(**Pyare Lal v. Delhi Municipality, (Business on the streets); Ebrahim v. Regional Transport Authority, (Reasonable restrictions for public convenience; Hathising Manufacturing Co. v. Union of India, (Right not to carry on a business). Lakhani Lal v. State of Orissa, (Dangerous trade)]**

State may impose restrictions on following grounds:

- a. The professional or technical qualifications necessary for practicing or carrying on any occupation, trade or business, or
- b. The carrying on by the State, or by a corporation owned by the State, of any trade, industry or services whether to exclusion, complete or partial, of citizen or otherwise

Some cited case laws

- **Test of reasonableness**

In applying the test of reasonableness (which is the most crucial consideration), the broad criterion is whether the law strikes a proper balance between social control on the one hand and the rights of the individual on the other hand. The court must take into account the following aspects

1. nature of the right infringed
2. underlying purpose of the restriction imposed
3. evils sought to be remedied by the law, its extent and urgency
4. how far the restriction is or is not proportionate to the evil and
5. prevailing conditions at the time.

(Chintaman Rao Vs. State of Madhya Pradesh; Khare Vs State of Delhi)

- One of the tests is to bear in mind the directive Principles of State Policy. **(Kesavananda Bharti Vs State of Kerala)**
- **Privileges available to the print media** has the following limitations: -
the right to reputation
the right to privacy
the law of contempt of court.
- Freedom of speech is based on the foundation of freedom of right to know. The State can impose and should impose reasonable restriction in the rights where it affects the national security or another matter affecting the nation's integrity.
- Citizens have a right to know about affairs of Govt. But the right is not absolute. Secrecy can be legitimately claimed in respect of transactions with repercussions on public security **(Dinesh Trivedi Vs Union of India)**
- The freedom of press is not expressly mentioned in Art 19 It has been judicially construed, this freedom now includes not merely the freedom to write and publish what the writer considers proper (subject to reasonable restrictions imposed by law for specific purpose) but also the freedom to carry on the business so that information may be disseminated and

excessive and prohibitive burden restricting circulation may be avoided (**Express Newspapers Vs Union of India; Bennett Coleman Vs Union of India**)

- The freedom of movement guaranteed by clause (d) of article 19 is in addition to the right to personal liberty guaranteed under articles 21. Orders of externment and internment violate this right unless they fall within the permissible restrictions (**Khare Vs State of Delhi; Kharak Singh Vs State of Uttar Pradesh**)
- There cannot be any right to call or enforce a *Bandh*, which conflicts with the exercise of the fundamental rights of other citizens in addition to causing nation loss in many ways. *Bandhs* do not fall within the fundamental right of speech (**Communist Party of India (M) Vs Bharat Kumar**)
- If a convict is prepared to give an interview to journalists and videographers, the facility should be allowed to the latter. Position of a person sentenced to death is in this respect not inferior to that of a citizen (**M Hasan Vs Government of Andhra Pradesh**)
- **Trial by media-** Questions are often raised as to "trial by media". When a sensational criminal case comes to be tried before the court, public curiosity experiences an upsurge. Newspapers - most of them compete with each other, in publishing their own version of the facts. Some of them employ their own reporters, to unearth details not otherwise available. This enthusiasm is understandable. The thirst for sensational news is a natural human desire. However, investigatory journalism has its risks. The law does not prohibit it in the abstract. But the law does require the players in this activity to keep within certain limits. These limits primarily flow from:
 - (a) the right to reputation;
 - (b) the right to privacy; and
 - (c) the law of contempt of court.
- **AIDS-** A person suffering from AIDS can be restricted in his movements by law. (**Lucy v. State of Goa,**)
- **Bandhs-** The distinction drawn between "Bandh" and a call to general strike or "Hartal" is well made out with reference to the effect of a "Bandh" on the fundamental rights of citizens. There cannot be any doubt that the fundamental rights of people as a whole cannot be sub-servant to the claim of fundamental right of an individual or only a section of the people. There cannot be any right to call or enforce a "Bandh" which conflicts, with the exercise of the fundamental rights of other citizens, in addition to causing national loss in many ways. "Bandhs" do not fall within the fundamental right of speech. A Bandh is a warning to a citizen that he goes for work or opens his shop he would be prevented. Even if legislature does not prohibit them courts should intervene to protect the right to work or right to study; (**Communist Party of India (M) v. Bharat Kumar**).

RIGHTS TO FREEDOM OF PERSON

Article 20 Protection in respect of conviction for offences.

- This Article provides three important protections :-

Art.20(1)

A person shall be convicted as per law in force (*Protection against ex post facto laws*)

- No person shall convicted of any offence except for violation of a law in force at the time of commission of the act charged as an offence;
- The person shall not be subjected to a penalty greater than that, which might have been inflicted under the law in force at the time of the commission of the offence.
 - o The prohibition in Article 20 is a prohibition against legislation, but not against judicial decisions.
 - o The term 'convicted' implies that the provision is with respect to criminal punishment. The term 'penalty' means punishment for an offence. It does not include any other measures; say by way of preventive detention.
 - o Every ex post facto law must necessarily be retrospective but every retrospective law is not an ex post facto law. The former only are prohibited.

Article 20(1) does not affect ex post facto law reducing the sentence under the law on the same subject. Such a law must be deemed to have impliedly repealed the earlier law on the topics. In this case the Court has explained the distinction between retrospective law and ex post facto law

Art 20(2)

A person shall not be convicted twice for the same offence (*Prtection against double jeopardy*)

- No person shall be prosecuted and punished for the same offence more than once.

Protection of Article 20(2) will be available only if there has been a prosecution **and** punishment for the same offence before a court of law or tribunal required by law to decide the matters in controversy judicially on evidence and on oath, which it must be authorised by law to administer, and not before a tribunal which entertains departmental or administrative inquiry even though set up by a statute. Similarly, if a law provides two punishments for the same offence, Article 20(2) would not be attracted.

Thus protection of Article 20(2) can be claimed only if following conditions are fulfilled:

- (1) There was a previous prosecution,
 - (2) the prosecution was before a court of law or a judicial Tribunal authorised to take evidence on oath,
 - (3) The prosecution ended in punishment of the accused, and
 - (4) The punishment was for the same offence.
- Protection of Article 20(2) is not available if the previous prosecution was vitiated for want of jurisdiction, proper complaint or prior sanction, etc.

Art 20(3)

Accused person shall not be compelled to be witness against himself (*Privilege against self-incrimination*)

- No person accused of any offence shall be compelled to be a witness against himself, in other words, an accused cannot be compelled to state anything which goes against him. But this protection is applicable only when all three conditions are fulfilled:
 - a. That he must be accused of an offence;
 - b. That there must be a compulsion to be a witness; and
 - c. Such compulsion should result in his giving evidence against himself.

The Supreme Court laid down that:

- ✓ This protection is available only to an accused person.
- ✓ An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more.
- ✓ The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not "compulsion".
- ✓ "To be a witness" means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise.
- ✓ To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused any time after the statement has been made.

Article 21 Protection of life and personal liberty

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

Scope

- It lays that no person shall be deprived of life or personal liberty except "Procedure established by law" which means a procedure which is reasonable fair and just.
- A person who cannot pay for medical expenses must be given free medical treatment and that, without delay. A person should not be hand-cuffed (after arrest on a criminal charge) except in certain exceptional situations.
- The impact of constitutional provision (protection of life and personal liberty) lies in the fact, that by being elevated to the pedestal of a fundamental right, the right is placed beyond the reach of ordinary legislation inspired by political motives,
- Right to life includes the finer graces of human civilisation: -
 1. the right to live with human dignity
 2. right to healthy environment, pollution free water and air, protection against hazardous industries, free education up to 14 years.
 3. Emergency medical aid, privacy, shelter, livelihood, fair trial, free legal aid.

- Punishment for attempted suicide has been held to be unconstitutional by the Supreme Court on the reasoning that a person cannot be forced to enjoy the right to life to his detriment.

Personal liberty

- The expression `personal liberty` has been understood in a wide sense. The Supreme Court pointed out that it “does not mean only liberty of the person but it means liberty or the rights attached to the person (*jus personam*)

Death Penalty

- In **Bachan Singh Vs State of Punjab**, the Supreme Court laid that death penalty as an alternate remedy for murder is not violative of Articles 14, 19 and 21.
- In **Sher Singh Vs State of Punjab**, the Supreme Court laid down that “ if there is delay in execution of death sentence exceeding two years, that by itself does not entitle a person under sentence of death to demand quashing of sentence of death, and convert it into a sentence of life imprisonment.

Article 21 and Article 19 and a new trend

- In **Menaka Gandhi Vs Union of India** , Bhagwati J observed : “ The expression ` personal liberty` in Article is of the widest amplitude and it covers a variety of right which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given protection under Article 19.

Some cited case laws

- In **Kharak Singh Vs State of UP**, the Supreme Court laid that **domiciliary visits by the police** during night constituted a violation of the fundamental rights under this Article.
- The Supreme Court laid down that the **right to free legal services is an essential** ingredient of reasonable, fair and just procedure for a person accused of an offence. This right commences when the accused is produced for the first time before the magistrate who is under an obligation to inform the accused that he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal service
- In **Kadra Pendiya Vs State of Bihar**, the Supreme Court laid down that (a) **a speedy trial** is also a fundamental right of the accused, and (b) under trial prisoners must also be provided with a fairly competent lawyer at State expense.
- The term “**life**” includes “**reputation**” or **livelihood**” of a person. (**LIC Vs. Union of India**)
- In **Bachan Singh Vs State of Punjab**, the Supreme Court held that death penalty as an alternate remedy murder is not violative or Articles 14, 19 and 21.
- Article 21 is **not applicable to case of reduction or retirement age**. For such reduction does not amount to deprivation of livelihood (**Nagraj Vs. State of A P**)
- **Infliction of physical torture on an under trial prisoner** while being taken to Court also violates Article 21 (**Sunil Batra Vs. Delhi Admn**)
- **Right to go abroad (Re. Menka Gandhi)**
- **Right of a couple to adopt son (Philips Alfered Malvin v. Y.J Gonsalvis)**

Article 22 Protection against arrest and detention in certain cases

Rights of an arrested person

- A person who is arrested
 - ❑ shall **not** be detained in custody without being informed, as soon as may be, of the grounds for such arrest
 - ❑ shall he **not** be denied the right to consult; **and**
 - ❑ shall have a right to be defended by, a legal practitioner of his choice.

Detenue to be produced before nearest Magistrate within 24 hours

- 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
- However, the time necessary for the journey from the place of arrest to the court of the magistrate has be excluded; **and**
- No such person shall be detained in custody beyond the said period without the authority of a magistrate.

Exceptions – enemy & preventive detention

- (a) to any person who for the time being is an enemy alien; or
- (b) to any person who is arrested or detained under any law providing for preventive detention.

As far as alien enemy is concerned, no protection is granted under this article.

Preventive detention

- **Meaning:** The Constitution does not define the expression 'preventive detention'.
- **It means detention of person without trial.**
- Kania, C.J. explained 'preventive' detention' in **A K Gopalan case** as follows:

"Preventive detention on the other hand, is not a punitive but a precautionary measure. The object is not to punish a man for having done something but to prevent him from doing before he does it. No offence is proved, nor any charge formulated and yet a person is detained because he is likely to commit an act prohibited by law. Both Parliament and State legislatures are empowered to pass a law providing for preventive detention"

Preventive detention – protection against

- A person may be detained under preventive detention upto a maximum period of three months.
- **However**, Parliament may make law for preventive detention beyond three months.
 - ❑ Parliament may by law prescribe
 - (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law

- providing for preventive detention without obtaining the opinion of an Advisory;
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
- (c) the procedure to be followed by an Advisory Board in an inquiry.

Grounds of arrest to be communicated

- 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.

When may not be communicated – public interest

- Authority making any such order may not disclose facts, which such authority considers to be against the public interest to disclose.

When preventive detention may be more than three months – Report by Advisory Board

- An Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

RIGHT AGAINST EXPLOITATION

Article 23 Prohibition of traffic in human beings and forced labour

- Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
 - State may impose compulsory service for public purposes such as in cases of flood, forest fire etc or military service, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.
- 'Beggar' is a kind of forced labour without remuneration
 - 'Traffic' in human beings means to deal in men and women like goods.

Some cited case laws

- The 'sagri' or 'hali' system prevalent in Rajasthan was a kind of forced labour. Under this system a creditor gives a loan to a debtor on the condition that until the loan is repaid with interest, the debtor or any other member of the family shall render labour or personal service to the creditor or any other person nominated by him.
- The M.P. High Court in one case laid down that withholding of pay of government employee as a punishment is not valid in view of Article 23 which prohibits *begar*. **(Suraj Narain ate of MP)**
- The expression 'traffic in human beings' prohibits traffic in women for immoral purposes. Parliament passed a law-The Suppression of Immoral Traffic in Women and Girls Act in the year 1956 (104 of 1956). The Allahabad High Court laid down that such a law is valid and is not inconsistent with the provisions of the fundamental right to carry on any trade,

etc. **(Shama Bai Vs State of UP)**

- Article 23 protects the individual not only against 'State' but also against private citizens.

Article 24 – Prohibition of employment of children in factories etc,

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any hazardous employment.

- The expression 'any other hazardous employment' must be understood *ejusdem generis* with work in a factory or mine. Article 24 does not prohibit, in general, employment of children. It prohibits employment in factories etc. There exists already, however, the Employment of Children's Act, 1938, on the statute.

RIGHT IN FREEDOM OF RELIGION

Article 25 –Freedom of conscience and free profession, practice and propagation of religion

- Subject to public order, morality and health and the provisions of Fundamental rights, all persons are equally entitled to freedom of conscience and the right freely to fess, practise and propagate religion.
- State may by any law
 - (a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - (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.
 - ❑ The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
 - ❑ The reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Scope

- With article 25 begins a group of provisions, which ensure equality of all religions, thereby promoting secularism. The emphasis in this article is on the practice of religious freedom by individuals.
- The emphasis in article 26 is on the establishment of institutions. But article 25 may be available even where the practice of religion by individuals is through institutions.

Management of religious affairs

Article 26 – Freedom to manage religious affairs

- Subject to public order, morality 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.

Scope

- Article 26 protects – (i) religious denomination and (ii) selection thereof.
- The four rights guaranteed by the article are subject to “public order, morality and health – as in Article 25. but Article 26 is not subject to other provisions of Part III (**Narendra Vs. State of Gujarat**)
- Article 25 talks about religious freedom of individual whereas Article 26 talks about collective right of religious denomination.

Denomination – meaning thereof

- Religious denomination is a religious sect with a distinctive name and a common faith.

Freedom to payment of taxes for promotion of any particular religion

Article 27 – Freedom to payment of taxes for promotion of any particular religion

- 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.

Scope

- Article 27 is one of the essential consequences of secularism.
- A tax is a compulsory exaction of money for public purpose. If the State exacts money though a tax whose proceeds are assigned for the benefit of a particular religion, obviously the State favours, patronises and supports that particular religion. Hence, the prohibition against such taxes.
- The distinction between ‘tax’ and fee has been adhered to in the context of this article also so that fees for secular regulation can be charged for meeting expenses of administrative regulation.

Freedom as to attendance at religious instruction

Article 28 - Freedom as to attendance at religious instruction or religious worship in certain educational institutions

The Article states that:

1. No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
2. No person attending an educational institution recognised by the State or receiving aid out of State funds, cannot be required
 - (1) To take part in any religious instruction that may be imparted in such institution;

or

- (2) To attend any religious worship that may be conducted in such institution or any premises attached thereto.

Exception

- 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.
- If such person or if such person is a minor, his guardian has given his consent thereto.

Scope

- This article relates to religious instruction in educational institutions.
- It prohibits imparting of religious instruction in institutions that are wholly maintained by the State, such as government colleges. However, if an educational institution is established under an endowment and the State is merely administering the affairs of the institution, religious instructions may be imparted in such an institution if the conditions of the endowment make it obligatory.
- Private educational institutions may impart religious instructions. However, if such an institution is either recognised by the State or receives aid out of State funds, attendance at religious instructions in such an institution shall not be compulsory but voluntarily.
- This article applies only to religious instruction. It does not prohibit moral instruction or academic study of religion.

CULTURAL AND EDUCATIONAL RIGHTS AND RIGHTS OF MINORITIES

Article 29 Protection of interests of minorities

- Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- 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.

Exception:

Special provision can be made for the admission of person belonging to

- educationally or/and socially backward classes, or
- schedule cast
- Schedule tribes

Scope

- Article 29 confers the following rights:
 - (1) Right of citizens of India to conserve their own distinct language, script or culture. **[Article 29(1)].**
 - (2) Right of every citizen of India not to be denied admission into any State-maintained or State-aided educational institution on grounds only of religion, race, caste or

language or any of them. **[Article 29(2)].**

- The first right is an absolute right. This right includes the right to agitate for protection of the language.
- The Supreme Court also laid down that Article 29(2) covers all citizens, whether they belong to the majority or the minority group. If the right were limited only to the minority group, there would be double protection for the minority and no special protection to the citizens who belong to the majority group.
- *The word minorities occur in the marginal note to Art 29 it does not occur in the text.*

Article 30 - Right of minorities to establish and administer educational institutions

Following rights declared by Article 30:

1. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
2. The State shall ensure that the amount fixed by or determined for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under this Article.
3. The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Scope

- Article 30 confers two rights:
 - a) Right to establish an institution, and
 - b) Right to administer it.

The former means the right to create the institution, while the latter (right to administer) means that the management of the affairs of the institution must be free of external control, so that the founders or their nominees can manage the institution as they think fit and in accordance with their ideas of how best the interest of the community in general and the institution in particular will be served. (Re. **Md. Joynal Abredin**)

Crucial words

- In Art 30 (1), the crucial words are: -
 - a) Minorities
 - b) Establish and administer
 - c) Educational institutions **of their own choice.**
- The words of their own choice are important
- What is a minority? Article 30 refers to a religious or linguistic minority. *The Kerala Education Bill, 1957*, the Supreme Court laid down that a community, which was less than 50% in population, is a minority community. The percentage in population is to be considered from the point of view of the relevant legislation. Hence the Court held that the Arya Samajis in Punjab constituted a religious minority having their own script. (**DAV College, Jalandhar Vs. State of Punjab**)

Some cited case laws

- ***Rights of minorities to establish and administer educational institutions***

- The Supreme Court summarised all its earlier decisions in *All Sts. High School v. Government of A.P.* It laid down **principles** some of which are as follows:

(1) Article 30(1) enshrines a fundamental right of the minority institutions to manage and administer their educational institutions which is completely in consonance with the secular nature of democracy and the directives in the Constitution itself.

(2) Although unlike Article 19 the right conferred on the minorities is absolute, unfettered and unconditional but this does not mean that this right gives a free licence for maladministration so as to defeat the avowed object of the article, namely, to advance excellence and perfection in the field of education.

(3) While the State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, the State can make regulatory measures to promote the efficiency and excellence of educational standards and issue guidelines for the purpose of ensuring the security of the services of the teachers or other employees of the institution.

(4) It is open to the Government or the university to frame rules and regulations governing the conditions of service of teachers in order to secure their tenure of service and to appoint a high authority armed with sufficient guidance to see that the said rules are not violated or the members of the staff are not arbitrarily treated or innocently victimised.

LIMITATIONS ON FUNDAMENTAL RIGHTS

Saving of certain laws

- The group of Articles 31-A, 31-B, 31-C, 33, 34 and 35 lays down various limitations on the fundamental rights and the circumstances under which these limitations may be imposed.

1.3.23A Articles 31A, 31B and 31C relating to Property

- Right to property is no more a fundamental right, which was previously guaranteed under Part III of the Constitution by Article 31.
- But the right to property has been inserted by Article 300A under Part XII of the Constitution. Article 300A reads: -

Article 300A "No person shall be deprived of his property save by authority of law".

Saving of Laws Providing for Acquisition of Estates etc.

- Article 31 A is an exception to the right of equality as guaranteed in Article 14 and to the six freedoms as guaranteed in Article 19, if they come into conflict with any law mentioned in Article 31 A.
- Such laws are those, which provide for
 - (i) the acquisition by the State of any estate or any rights therein or the extinguishment or

modification of any such rights.

'Estate' here means the property included within that expression according to the land tenures applicable in the area where it is situated. And 'rights' in relation to an estate means proprietary and other intermediary rights. In short, such laws are those which related to agrarian reforms, or.

- (ii) the taking over of the management of any property by the 'State for a limited period in the public interest or in order to secure the proper management of the property, or
- (iii) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
- (iv) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors or manager of corporations or of any voting rights of shareholders thereof, or
- (v) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning any mineral or mineral oil or the premature termination or cancellation of any such agreement, lease or licence.
- However, limitations have been imposed with respect to the laws relating to the acquisition of the estates. They are:
 - (a) If such a law is made by a State Legislature then it cannot be protected by the provisions of Article 31 A unless such law having been reserved for the consideration of the President has received his assent, and
 - (b) If the law provides for the acquisition of (i) any land within the ceiling limit applicable in that area, (ii) any building or structure standing thereon or apartment thereto, it (law) shall not be valid unless it provides for payment of compensation at a rate, which shall not be less than the market value thereof. This provision, however, has been amended by the Constitution (29th Amendment) Act.

Validation of certain Acts and Regulations

- Article 31 B certain laws against attack on the ground of violation of any fundamental rights. The laws so protected are specified in the Ninth Schedule to the Constitution. These laws also relate mainly to land reforms.

Saving of Laws giving effect to certain Directive Principles

- Article 31 C added by 25th Amendment of the Constitution lifted to the constitutional limitations on the powers of State, imposed by Article 14 (equality before law)' and Article 19 (freedoms) as regards law giving effect to the policy of the State towards securing the principles - specified in clause (b) or ,clause (c) of Article 39. These principles are
 - (i) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, and
 - (ii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
- The issue whether the 24th, 25th and 29th Amendments made by Parliament were valid or not was raised in the Supreme Court. In **Kesavananda Bharti v. State of Kerala**, the majority judgement (of a full bench of 13 judges) upheld the power of Parliament to amend the Constitution provided it did not alter its basic framework.
- By the 42nd Amendment in Article 31-C for the words the principles specified in clause (a)

or clause (c) of Article 34 the words in all or any of the principles laid down in Part IV were substituted. But this substitution was held to be void by the Supreme Court in **Minerva Mills v. Union of India**.

RIGHT TO CONSTITUTIONAL REMEDIES

- Article 32 guarantees the enforcement of Fundamental Rights. It is remedial and not substantive in nature. The rest of the Articles 33 to 35 relate to supplementary matters and do not create or guarantee any right.

Remedies for enforcement of Fundamental Rights – Article 32

- It is a cardinal principle of jurisprudence that where there is a right there is a remedy and if rights are given without there being a remedy for their enforcement, they are of no use.
- While remedies are available in the Constitution and under the ordinary laws, Article 32 makes it a fundamental right that a person whose fundamental right is violated has the right to move the Supreme Court by appropriate proceedings for the enforcement of this fundamental right.
- It is really a far-reaching provision in the sense that a person need not first exhaust the other remedies and then go to the Supreme Court. On the other hand, he can directly raise the matter before highest Court of the land and the Supreme Court is empowered to issue directions or orders or writs in the nature of *habeas corpus*, *mandamus*, *prohibition*; *quo warranto* and *certiorari*, whichever application for an appropriate direction or order or writ in the High Court under Article 226 or in case of breach of any Fundamental Right... to this Court under Article 32."
- A remedy under Article 32 is available only if there is an infringement of a fundamental right. It is not available for getting a mere declaration that a particular law is void.

Article 226

- Article 226 confers on the High Courts the power to issue these writs for the enforcement of fundamental rights and 'for any other purpose' also. Thus the High Courts and the Supreme Court have concurrent jurisdiction in issuing writs for the purpose of enforcement of fundamental rights. It is not obligatory for the petitioner to move the High Court first for the purpose of enforcement of his right. He may approach the Supreme Court directly.
- However, if a petitioner has moved a High Court under Article 226 for the enforcement of his fundamental right and the High Court has dismissed the petition on merits, it is not open to the petitioner to move the Supreme Court under Article 32 on the basis of the same facts for obtaining similar relief. The Supreme Court has laid down this principle.

NATURE OF THE WRITS MENTIONED IN ARTICLE 32/226

Habeas corpus

- *habeas corpus means (to have the body).*
- This writ is regarded as one of the most important safeguards of the liberty of a person.
- The writ is an order issued by the Court of competent jurisdiction directing the person by whom a prisoner is alleged to be kept in wrongful confinement to produce such person before the court and to let the court know on what ground and authority the said person is confined. If the detention is illegal or has not authority of law, the person under detention is ordered to be released.
- Thus the writ affords immediate relief against illegal confinement or restraint for vindication of the right to personal liberty. The writ, therefore, is the most effective means of checking arbitrary arrests effected by an executive authority.
- The person detained or any friend or relation of his may apply for the issue of this writ.
- But a stranger or a volunteer who has no authority to represent the detained person cannot move the court.
- Successive applications to the same court will not be entertained as the power is given to the court and not to judges. The High Court is one court though it sits in benches.
- An appeal will lie to the Supreme Court from an order of a High Court granting or refusing a writ of *habeas corpus*.

Mandamus

- Mandamus literally means ***we command***.
- Mandamus is a command issued by a superior court (the Supreme Court or the High Court) addressed to any Government, inferior Court, Corporation or public authority directing it to do some particular act specified therein which pertains to his or its office and is further in the nature of public duty.
- There must be in the applicant a legal right to compel the opponent for the performance of a duty. The duty must be of a public nature – A duty that is under a statute or common law and it does not correspond to a private right.

Objects of this writ: this writ is used for securing judicial enforcement of public duties

Case Laws

- It has been held that mandamus shall lie to compel the Income Tax Commissioner to issue order for refund of amounts certified to be over paid. There must be prior demand for the relief and its refusal by the authority.
- Mandamus would not lie where an alternative adequate relief exists.
- Mandamus is a discretionary remedy.
- Mandamus is issued upon the application of one who has a clear right to demand performance of a public duty and who has no other adequate relief.
- *Mandamus would not lie against private individuals*
- It would not lie against President of India.
- No court can issue a *mandamus* to a legislature to enact a particular law, nor would a *mandamus* lie to direct a subordinate legislative body to enact a law, which it may be

competent to enact.

- A writ of mandamus cannot be issued to enforce purely administrative instructions. For, administrative instructions have no statutory force.

Prohibition

- A writ of prohibition is a judicial writ issuing out of a court of superior jurisdiction and directed to an inferior court for the purpose of preventing the inferior court from usurping a jurisdiction with which it was not legally vested or in other words, **to compel courts entrusted with judicial duties to keep within the limits of the jurisdiction.**
- The writ lies if a provision of a statute is contravened by a tribunal or even if any principles of law are contravened.
- A writ of prohibition cannot be issued against a private individual or a legislative body. Nor can it be issued for mere irregularity of procedure.
- Prohibition is not a discretionary remedy: it is one of right.
- This writ is issued only at the beginning of the hearing of a matter by the inferior court with a view to preventing the court from exercising jurisdiction which it does not possess.
- If the court has decided the matter, this writ will not lie. The proper writ under such circumstances would be the writ of *certiorari*.
- The Supreme Court observed as follows: "*A clear distinction must, therefore, be maintained between want of jurisdiction and the manner in which it is exercised. If there is want of jurisdiction then the matter is coram non judice and a writ of prohibition will lie to the court or inferior tribunal forbidding it to continue proceedings therein in excess of jurisdiction.*"

Certiorari

- It means to inform.
- It is a command to an inferior court or tribunal to transmit the record of a cause or matter decided by it to the superior court to be dealt with there and if the order is found to be without jurisdiction or bad in law it is quashed.
- In certiorari proceedings the superior court merely quashes the order of the inferior court or tribunal and does not substitute its own order in place of the order that is quashed. It is for this reason that certiorari is often said to be destructive in nature. It merely destroys and creates nothing. In appeal the order of the lower court or tribunal is examined on merits by the Appellate Court and it has the power to modify or reverse the order of inferior court or tribunal and substitute its own order instead but in certiorari proceedings, the superior court does not examine the case on merits and therefore it has no power to substitute its own judgement and pass a fresh order.
- However, if there is a mere formal or technical error of law, the writ of *certiorari* cannot lie. The writ lies when there is failure to exercise jurisdiction or the inferior court or tribunal is acting under an invalid law or exercising jurisdiction, which it does not possess.

Grounds on which certiorari may be issued

- Certiorari may be issued on any of the following grounds: -
(a) Writ of excess jurisdiction.

- (b) Violation of procedure or the disregard of the principles of natural justice.
- (c) Error of law apparent on the face of the record.

Quo Warranto

- It is a writ issued against a person who claims or usurps a public office to inquire by what authority he supports his claim. This is done in order to determine his claim.
- Information in the nature of *quo warranto* is in the nature of civil proceedings.
- An application for a writ of *quo warranto* may be submitted by any private person. A writ in the nature of *quo warranto* is not issued as a matter of course. The court has discretion to grant or to refuse the writ.
- Information in the nature of *quo warranto* would lie even at the instance of relator who has no personal interest in the matter. It is open to a private individual to bring to the notice of the court that a person who is disqualified to hold an office is still holding it.

Case Laws

- A writ of *quo warranto* will not be issued by a court if such a writ is going to be futile, *e.g.* if the person appointed is likely to be reappointed after removing the defects in the original appointment.
- Following offices are held to be public offices and a writ of *quo warranto* may be prayed for examining the legality or otherwise of the appointment: the offices of the Chief Minister, the Advocate-General, university teachers, the chairman of a municipality, a member of the senate of a university, *etc.*

Rest will be in next notes