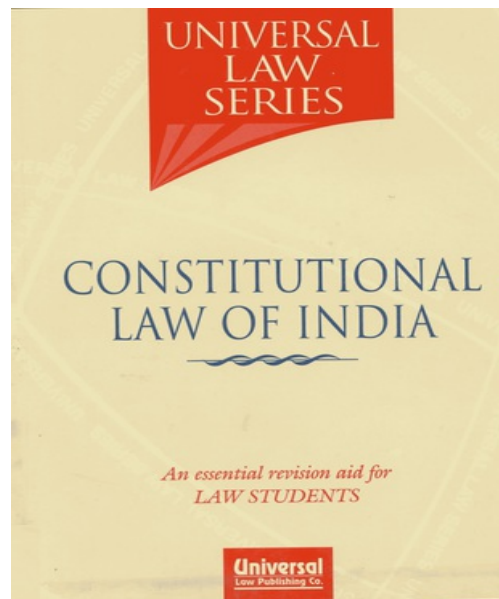
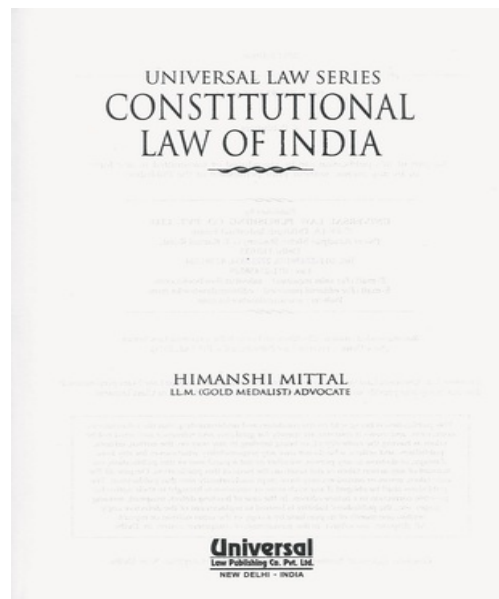


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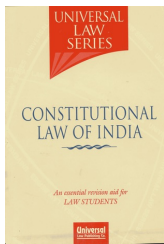




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CHAPTER 1

Introduction

The Constitution of India was framed by an elected Constituent Assembly, and was formally adopted on 26th November, 1949. It came into force on 26th January, 1950 as desired by the Father of the Nation, Mahatma Gandhi. The Constituent Assembly was set-up under the framework of the Cabinet Mission (1946) for drafting the Constitution for Independent India. It was a large representative body having 385 Members, of which 292 were elected by the elected members of the Provincial Legislative Assemblies while 93 members were nominated by the Princely States. But when the Muslim League decided to withdraw its Members from the Constituent Assembly of India and with the creation of separate Constituent Assembly for Pakistan on July 16, 1947, the Membership of the Constituent Assembly of India was reduced to 299 out of which 229 represented the provinces and 70 were nominated by the Princely States.

The first meeting of the Constituent Assembly had taken place on December 9, 1946 with Dr. Sachchidanand Sinha as its interim President. Subsequently Dr. Rajendra Prasad was elected as its President on 11th December, 1946. The 26th January, 1950, was a red letter day in the long and chequered history of India. For on that day the present Constitution of India was brought into force which announced to the world the birth of a new republic.

What is Constitution?

Define Constitution

A Constitution is a document of people's faith and aspirations possessing a special legal sanctity. It is the fundamental law of a country and all other laws and customs of the country in order to be valid must confirm to it. It sets out the framework and the principal functions of various organs of the Government, as well as relations between the government and its citizens.

Is Indian Constitution Federal?

There has been a lot of insolvable controversy as to the question whether Indian Constitution is federal or unitary. Some characterized it as federal, while others treated it as unitary. Some others have taken a compromising view. According to them, it has both federal and unitary characteristics. In a unitary Constitution, the powers of the Government are centralized in one government viz., Central Government. The provinces are subordinates to the centre. In the federal Constitution, there is a division of powers between the Federal and the State Governments and both are independent in their own sphere. Dr. K.C. Wheare in his book 'Federal Government' characterized the Indian Constitution as quasi-federal. Jennings also characterized it as federal with strong centralizing tendency.

The American Constitution is universally regarded as an example of federal Constitution. It establishes dual policy or dual form of Government i.e., the Federal and the State Government. The powers of both the Central and the State Governments are divided and both are independent in their own spheres. The existence of co-ordinate authorities independent of each other is the gist of the federal principle.

What are the federal features of Indian Constitution?

The Constitution which embodies a federal system has normally the following five characteristics-

1. Distribution of Powers.-

An essential feature of the federal Constitution is the distribution of powers between the Central Government and State Governments. Federation means the distribution of the power of the States among a number of coordinate bodies, each originating in and controlled by the Constitution.

2. Supremacy of the Constitution.-

Distribution of Powers will be of no use if the Constitution is not treated as supreme and governments are allowed to violate it. The Supreme Constitution is essential if Government is to be federal. The written Constitution is essential if Federal Government is to work well.

3. Written Constitution.-

The Constitution must also necessarily be a written Constitution. It will be practically impossible to maintain the supremacy of the Constitution. To base an arrangement of this kind upon understanding or conventions would be certain to generate misunderstanding and disagreements.

4. Rigidity.-

For a federation, it is necessary that power to amend the Constitution should not be given exclusively to centre or regional units. Both must participate in the process of amendment. A Constitution of a country is considered to be a permanent document. It is a supreme law of the land. This supremacy of the Constitution can only be maintained if the method of amendment is rigid.

5. Authority of Courts.-

In a federal state the legal supremacy of the Constitution is essential for the existence of the federal system. The independent and impartial authority of courts is essential for the federal structure of the Constitution.

The Indian Constitution possesses all the essential characteristics of a federal Constitution mentioned above. The Constitution establishes a dual polity, a system of double government with the Central Government at one level and the State Government at the other. Each level of Government is supreme in its own sphere. The Constitution of India is written and is supreme. Prof. Wheare remarked, "The Constitution establishes a system of Government which is also quasi-federal...a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features". Jennings has characterized it as a "federation with a strong centralising tendency".

Though the Constitution of India possesses the essential features of a federation, it differs noticeably from the typical federal system of the world in certain ways. These are-

1. Parliament's Power to form new States and alter boundaries of existing States

The Parliament of India may form new States, it may increase or diminish the area of any State and it may alter the boundaries or name of any State. The Constitution does not protect the territorial integrity of the States. Parliament can by unilateral action, increase or diminish the area of any State.

2. Appointment of Governors.-

The Governors of the States are appointed by the President (Articles 155 and 156) and answerable to him. This is, however, not a matter of much significance, for, the Governor is only the constitutional head of the States who shall normally act on the advice of his ministers.

3. Parliament's power to legislate in the national interest.-

Under article 249, Parliament is empowered to make laws with respect to every matter enumerated in the State list if the Rajya Sabha passes a resolution by 2/3 majority that it is necessary in the national interest.

4. Emergency Provisions.-

The Constitution envisages three types of emergencies-

- (a) Emergency caused by the war or external aggression or armed rebellion (Article 352);
- (b) Emergency caused by the failure of Constitutional machinery in States (Article 356);
- (c) Financial emergency (Article 360).

When the proclamation of emergency is in operation the Parliament is empowered to make

directions to any State and Parliament is empowered to make laws with respect to any matter enumerated in the State List.

Thus, in principle, Indian Constitution is federal but with capacity to work as unitary when so required.

Kuldip Nayar v. Union of India, MANU/SC/3865/2006 : AIR 2006 SC 3127: 2006 AIR SCW 4394: (2006) 7 SCC 1: 2006 (6) SCJ 702, the Supreme Court of India also observed that federal principle is dominant in our Constitution and that federal principle is one of the basic features of our Constitution.

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CHAPTER 2

Salient features of the Indian Constitution

What are the salient features of Indian Constitution?

Before making the present Constitution, the framers examined Constitutions of various countries of the world and also the working of the Government of India Act, 1935. They liberally borrowed appropriate provisions from Constitutions of many countries of the world. The Constitution so adopted has the following salient features-

1. The Longest Constitution in the World.-

Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution. The Constitution of India is the longest of all the written Constitutions of the world. It is a very comprehensive, elaborate and detailed document.

The Indian Constitution originally consisted of 395 articles divided into 22 Parts and 9 Schedules. Presently, it consists of a Preamble, about 450 articles divided into 24 Parts and 12 Schedules.

2. Parliamentary Form of Government.-

The Constitution of India has opted for the British Parliamentary system of Government rather than American Presidential System of Government. The Parliamentary system is based on the principle of co-operation and co-ordination between the legislative and executive organs while the Presidential system is based on the doctrine of separation of powers between the two organs.

3. Unique Blend of Rigidity and Flexibility.-

The Constitution of India is neither rigid nor flexible but a synthesis of both. A rigid Constitution is one that requires a special procedure for its amendment while flexible Constitution is one that can be amended in the same manner as ordinary laws are made.

4. Fundamental Rights.-

Part III of the Indian Constitution guarantees six fundamental rights to all the citizens-

- (a) Right to Equality (Articles 14-18);
- (b) Right to Freedom (Articles 19-22);
- (c) Right against Exploitation (Articles 23-24);
- (d) Right to Freedom of Religion (Articles 25-28);
- (e) Cultural and Educational Rights (Articles 29-30);
- (f) Right to Constitutional Remedies (Article 32).

The Fundamental Rights are meant for promoting the idea of political democracy. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature.

5. Directive Principles of State policy.-

The Directive Principles of State Policy contained in Part IV of the Constitution set out the aims and objectives to be taken by the state in the governance of the country. According to B.R. Ambedkar "the Directive Principle of State policy is a novel feature of the Indian Constitution. They can be classified into three broad categories, Socialistic, Gandhian and Liberal-intellectual.

6. Fundamental Duties.-

By Forty-second Amendment Act, Part IVA has been added to the Constitution which enumerates certain

fundamental duties of the citizens. Originally, ten duties were enlisted in clause (a) to (j) of article 51A. Clause (k), which imposes duty on parents/wards has been added by the Constitution (86th Amendment) Act, 2002.

7. A Federation with Strong Centralizing Tendency.-

The term 'federation' has nowhere been used in the Constitution. Article 1 describes that India "is a Union of States" which implies two things: Firstly - Indian federation is not the result of an agreement by the States; and Secondly - no State has the right to secede from the federation. The Constitution of India establishes a federal system of Government. It contains all the usual features of a federation viz., two governments, division of powers, written Constitution, Supremacy of the Constitution, rigidity of Constitution, independent judiciary and bicameralism.

8. Adult Suffrage.-

In India every person, male or female, who has obtained the age of 18 years, is entitled to vote in elections to Parliament or State Legislatures. Originally this age limit was 21 years but after the 61st Amendment Act, 1988 it was reduced to 18 years.

9. An Independent Judiciary.-

Independence of Judiciary is essential for impartial adjudication of disputes between individuals, between Union and State, between Union/State and individuals, between Union and States or between States inter se. The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are High Courts at the State level. This single system of courts enforces both the Central laws as well as the States laws.

The Supreme Court of India is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution

10. A Secular State.-

The Constitution of India stands for a secular State. Hence, it does not uphold any particular religion as the official religion of the Indian State. The term 'Secular' was added to the Preamble of the Indian Constitution by the 42nd Amendment Act, 1976. Articles 25-28 of the Constitution give concrete shape to this concept of secularism.

11. Single Citizenship.-

In most of the federation, people have double citizenship, citizenship of the Union and citizenship of one of the several States which form the Union. Every citizen is the citizen of India and enjoys the same rights of citizenship no matter in which State he resides.

12. Separation of Powers.-

This doctrine was for the first time properly formulated by the famous Jurist Montesquieu in his *Esprit Des Lois* and exercised great influence on the French legal system. Doctrine of separation of powers implies that powers of the three organs of the government viz., Legislative, Executive and Judiciary should be kept separate from each other.

CHAPTER 3

The Preamble of Constitution

Define Preamble

The Preamble to the Indian Constitution is based on the 'Objective Resolution', drafted and moved by Pandit Nehru, and adopted by the Constituent Assembly. It has been amended by the 42nd Amendment Act, 1976 which added three new words - Socialist, Secular, and Integrity.

The Preamble runs as follows:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its 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

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

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

In re Berubari case, MANU/SC/0049/1960 : AIR 1960 SC 845: 1960 SCJ 933: (1961) 1 SCA 22: (1960) 3 SCR 250. The Supreme Court has said that the Preamble to the Constitution is a key to open the mind of the framers, and shows the general purpose for which they made the several provisions in the Constitution.

Golak Nath v. State of Punjab, MANU/SC/0029/1967 : AIR 1967 SC 1643: 1967 (2) SCJ 486: (1967) 2 SCR 762: (1967) 2 SCWR 1006. The Preamble to an Act sets out the main objectives which the legislation is intended to achieve.

Kesavananda Bharti v. State of Kerala, MANU/SC/0445/1973 : AIR 1973 SC 1461: (1973) 4 SCC 225, Shelat and Grover, JJ., observed it is sort of introduction to the statute and many times very helpful to understand the policy and legislative intent. It expresses "what we had thought or dreamt for so long".

Ingredients of the Preamble

What are the ingredients of the Preamble?

The Preamble contains four ingredients:

1. Source of authority of the Constitution: The Preamble states that the Constitution derives its authority from the people of India.
2. Nature of Indian State: It declares India to be of a Sovereign, Socialist, Secular, Democratic and Republic Polity.
3. Objective of the Constitution: It specifies justice, liberty, equality and fraternity as the objectives.
4. Date of adoption of the Constitution: It stipulate November 26, 1949 as the date.

Preamble as Part of the Constitution

Whether Preamble is a part of the Constitution?

(1) In Re Berubari Union and Exchange of Enclaves.--The Supreme Court held that the Preamble is not the part of the Constitution and according to it, it is not a source of substantive powers. But this view has been rejected by the

Supreme Court in.

(2) Kesavananda Bharti v. State of Kerala, MANU/SC/0445/1973 : AIR 1973 SC 1461: (1973) 4 SCC 225. The Preamble to our Constitution was enacted after the whole of the Constitution was enacted and Preamble is part of the Indian Constitution.

(3) LIC of India v. Consumer Education and Research Centre, MANU/SC/0772/1995 : AIR 1995 SC 1811: 1995 SCC (Cri) 608: 1995 AIR SCW 2834: JT 1995 (4) SC 366. The Supreme Court held that the Preamble is an integral part of the Constitution.

Objectives enshrined in the Preamble

Define Sovereignty

1. Sovereign

The word 'Sovereign' implies that India is neither a dependency nor a dominion of any other nation, but an independent state. Being a sovereign state India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

Define Socialist

2. Socialist

Socialism implies that judicial freedom be completely subordinated to interest of the community with any deduction that may correctly or incorrectly be drawn from it, added by the 42nd Amendment Act, 1976.

Excel Wear v. Union of India, MANU/SC/0263/1978 : AIR 1979 SC 25: (1978) 4 SCC 224: 1979 (1) SCJ 292: (1979) 1 SCR 1009. The Supreme Court had held that the addition of the word 'Socialist' may enable the courts to lean more and more in favour of nationalization and State's ownership of industry.

D.S. Nakara v. Union of India, MANU/SC/0237/1982 : AIR 1983 SC 130: (1983) 1 SCC 305: (1983) 1 SCWR 390: 1983 (1) SCJ 188. The Supreme Court has held that the basic framework of socialism is to provide a decent standard of life to the working people and especially to provide security from cradle to grave.

Define Secularism

3. Secular

The term 'secular' too was added by the 42nd Amendment Act, 1976. It guarantees freedom of religion to all citizens and does not seek to patronize any particular religion. Articles 25-28 guarantee freedom of religion to all persons

Aruna Roy v. Union of India, AIR 2002 SC 3176: 2002 AIR SCW 3670: (2002) 7 SCC 368: 2002 (4) SCJ 235. The word 'Secularism' means developing understanding and respect for different religions. Secularism is thus susceptible to this positive meaning and a basic feature of the Constitution.

M.P. Gopalakrishnan Nair v. State of Kerala, AIR 2005 SC 3053: 2005 AIR SCW 2292: (2005) 11 SCC 45: 2005 (4) SCJ 47. It merely means equal status of all religions without any preference in favour of or discrimination against any of them.

4. Democratic

Democracy is a system of government in which supreme powers are vested in the people and are exercised by the people directly or through elected representatives. It is a government of the people, by the people, for the people.

5. Republic

A democratic polity can be classified into two categories - monarchy and republic. A republic also means two things, one - vesting of political sovereignty in the people and not in a single individual like a king; second - the absence of

any privileged class and hence all public officers being opened to every citizen without any discrimination. In India, the executive head is President of India. Who is an elected representative of the people of India.

6. Justice

The term 'Justice' in the Preamble embraces three distinct forms - social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles. Social Justice denotes the equal justice or treatment of all citizens without any social distinction based on race, religion, caste, creed sex and so on. Economic Justice denotes the non-discrimination between people on the basis of economic factors. A combination of Social Justice and Economic Justice is known as 'Distributive Justice'. Political Justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.

7. Liberty

Article 19(1)(a) guarantees fundamental right to freedom of speech and expression and article 25 guarantees freedom of conscience and freedom to profess, practice or propagate any religion. The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their fundamental rights, enforceable in the court of law in case of violation.

8. Equality

The term Equality means the absence of special privileges to any section of the society and the provisions of adequate opportunities for all individuals without any discrimination. Articles 14 to 18 guarantees right to equality.

- (a) Article 14 - Equality before law and equal protection of law.
- (b) Article 15 - Discrimination of the basis of race, religion, caste, sex, place of birth etc.
- (c) Article 16 - Equality of opportunities in matters of public employment.
- (d) Article 17 - Abolition of untouchability.
- (e) Article 18 - Abolition of titles.

9. Fraternity

Fraternity means brotherliness. It implies that all citizens should have a feeling that they are the members of the same family with common interests. The Preamble declares that fraternity has to assure two things the dignity of the individuals and unity and integrity of the nation. The word Integrity has been added to the Preamble by the 42nd Constitutional Amendment Act, 1976.

Amendment to the Preamble

Define Amendment procedure of the Preamble

For sometime an opinion prevailed that the Preamble to the Constitution was not a part of the Constitution. On this basis it was argued that since it is not a part of the Constitution, Parliament cannot amend the Preamble by virtue of its amending powers. However, in the case of *Kesavananda Bharti v. State of Kerala*, MANU/SC/0445/1973 : AIR 1973 SC 1461: (1973) 4 SCC 225, the Supreme Court overruled the earlier decisions and held that the Preamble is a part of the Constitution and in subject to the amending power of Parliament and is the basic structure of the Constitution.

The Constitutional 42nd Amendment Act, 1976 amended and added three new words - Socialist, Secular and Integrity in it.

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CHAPTER 4

The Union and its Territory

(Articles 1-4)

Article 1. Name and Territory of the Union

- (1) India, that is Bharat, shall be a Union of States.
- (2) The State and the territories thereof shall be as specified in the First Schedule.
- (3) The territory of India shall comprise-
 - (a) the territories of the States;
 - (b) the Union territories specified in the First Schedule; and
 - (c) such other territories as may be acquired.

The Drafting Committee replaced the word 'federation' by the word 'Union'. The committee observed that Indian federation is not the result of an agreement among the States like the American federation and the States have no right to secede from the federation. The federation is an Union because it is indestructible. The country is an integral whole and divided into different States only for the convenience of administration.

Before the Constitution (7th Amendment) Act, 1956, the Union consisted of States which were classified into four main categories Parts A, B, C and D of the First Schedule. Thus at the time of the commencement of the Constitution, the Union of India consisted of 10 Part A States, 8 Part B States, 9 Part C States and 1 Part D State.

After the 7th Amendment Act, 1956, the three categories have been abolished and placed all the States of the Union on the same footing as a result of reorganization made by the States Reorganization Act, 1956. It has now reduced these categories into two only.

Article 2. Admission or establishment of new States

Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Thus article 2 empowers the Parliament to admit into the Union of India, or establish new State on such terms and conditions as it thinks fit. This article India new States, and (b) the power to establish new States.

Article 3. Formation of new States and alteration of areas, boundaries or names of existing States

Parliament may by law-

- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State.

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I.-In this article, in clauses (a) to (e). "State" includes a Union territory, but in the proviso, "State" does not include Union territory.

Explanation II.-The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.

By exercising its powers under article 3, Parliament has enacted over 20 Acts. Some of them are:

- (a) The Assam (Alteration of Boundaries) Act, 1951, which altered the boundaries of the State of Assam consequent on cession of a strip of territory comprised in that State to the Government of Bhutan.
- (b) The Andhra State Act, 1953, which formed the new State of Andhra Pradesh by separating same territory from the State of Madras.
- (c) The Bombay Reorganisation Act, 1960 divided the State of Bombay to establish the new two States of Gujarat and Maharashtra.
- (d) The Punjab Re-organisation Act, 1966 which divided Punjab into Punjab and Haryana.
- (e) The State of Sikkim was established by 36th Amendment Act, 1975.
- (f) The State of Goa Act, 1987 which incorporated Goa as a separate State of the Union.
- (g) Chhattisgarh was formed as a result of Madhya Pradesh Re-organisation Act, 2000 which came into being on November 1, 2000.
- (h) Uttaranchal came into existence by Uttar Pradesh Re-organisation Act, 2000 on 8th November, 2000, comprising the northern district of Kumaon and Garhwal Hills of Uttar Pradesh.
- (i) The State of Jharkhand was established by Bihar Re-organisation Act, 2000 on 15th November, 2000.

Article 4 - Laws made under articles 2 and 3 to provide for the amendment of the First Schedule and the Fourth Schedule and supplemental, incidental or consequential matters

- (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.
- (2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

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CHAPTER 5

Citizenship

Articles 5-11

Like any other modern State, India has two kinds of people - citizen and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Aliens on the other hand, are the citizens of some other State and hence do not enjoy all the civil and political rights. The following fundamental rights are available only to citizens-

- (1) The right not to be discriminated against any citizen on ground of religion, race, caste, sex or place of birth (Article 15).
- (2) Right to equality of opportunity in the matter of public employment (Article 16).
- (3) Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19).
- (4) Cultural and educational rights (Articles 29, 30).
- (5) Right to vote in election to the Lok Sabha and State Legislative Assembly.
- (6) Right to contest for the membership of Parliament and the State Legislature.
- (7) Eligibility to hold certain public offices that is, President of India, Vice-President of India, Judges of the Supreme Court and the High Courts, Governor of States, Attorney-General for India and Advocate-General of States.

The rights guaranteed by articles 14 and 21 are available to aliens also.

Person who acquired citizenship at the commencement of the Constitution by virtue of articles 5 to 8 can be divided in the following categories-

1. Citizenship by Domicile

Define citizenship by domicile

At the commencement of this Constitution every person who has his domicile in the territory of India and-

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be citizen of India.

Pradeep Jain v. Union of India, MANU/SC/0047/1984 : AIR 1984 SC 1420: (1984) 3 SCC 654. Under the Indian Constitution there is only one domicile of the country and there is no separate domicile for a State.

Chandigarh Housing Board v. Gurmit Singh, MANU/SC/0013/2002 : AIR 2002 SC 587: 2002 AIR SCW 176: (2002) 2 SCC 29: 2002 (1) SCJ 220. The 'Domicile' means that a person must be having permanent home in Chandigarh or he being there for years with the intention to live permanently or indefinitely.

Satya v. Teja Singh, MANU/SC/0212/1974 : AIR 1975 SC 105: 1975 SCC (Cri) 50: (1975) 1 SCC 120: 1975 (2) SCJ 294. To establish domicile, two elements must be proved:

- (i) residence of a particular kind;
- (ii) intention of a particular kind.

Domicile means the place, which a person has fixed as a habitation of himself and his family not for a mere special and temporary purpose but with a present intention of making it his permanent house.

2. Citizenship of Migrants to India from Pakistan (Article 6)

Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if-

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935; and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Shanno Devi v. Mangal Sain, MANU/SC/0189/1960 : AIR 1961 SC 58: 1961 (1) SCJ 201: (1961) 1 SCR 576. The Supreme Court held that the word 'migration' in article 6 means going to a country with an intention to reside there permanently.

Kulathil Mammu v. State of Kerala, MANU/SC/0080/1966 : AIR 1966 SC 1614: 1966 Cr LJ 1217: (1967) 3 SCR 706: 1967 (2) SCJ 653. The Supreme Court by majority held that the word 'Migrated' in articles 6 and 7 was not used in that narrow sense of the term but in a wider sense of going from one place to another whether with an intention to reside permanently there or not but the movement should be voluntary and should not be for a specific purpose and for a short or limited one.

3. Citizenship of Migrants to Pakistan (Article 7)

Notwithstanding anything in articles 5 and 6 a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that, nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purpose of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

4. Citizenship of Persons of Indian origin residing outside India (Article 8)

Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935, and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the territory where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Article 9 - Person voluntarily acquiring citizenship of a foreign State not to be citizens

No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

Article 10 - Continuance of the rights of citizenship

Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Article 11 - Parliament to regulate the right of citizenship by Law

Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Citizenship Act, 1955

Define provisions under Citizenship Act, 1955

The Citizenship Act, 1955 provides for acquisition and loss of citizenship and provides for commonwealth citizenship. The Citizenship Act of 1955 prescribes five ways of acquiring citizenship viz. -

1. By Birth

The Act as amended in 2005 provides that a person is a citizen of India by

- (a) if he is born in India on or after 26 January, 1950 but before 30 June, 1987;
- (b) if he is born in India on or after 1st July, 1987 but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is citizen of India at the time of his birth;
- (c) if he is born in India on or after the commencement of the Citizenship (Amendment) Act, 2003, where-
 - (i) both of his parents are citizens of India, or
 - (ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth.

2. By Descent

A person born outside India shall be a citizen of India by descent, -

- (a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or
- (b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth.

Define Registration

3. By Registration

The Central Government may register as a citizen of India any person who is not an illegal migrant if he belongs to any of the following categories, if an application is made in this behalf-

- (a) a person of Indian origin who is ordinarily resident of India for seven years before making an application for registration,
- (b) person of Indian origin who is ordinarily resident in any country or place outside undivided India,
- (c) person who is married to a citizen of India and is ordinarily resident of India for seven years before making an application for registration,
- (d) minor children of person who are citizen of India,
- (e) a person of full age and capacity whose parents are registered as citizen of India.

(f) a person of full age and capacity who, on either of his parents was earlier citizens of independent India, and has been residing in India for one year immediately before making an application for registration;

(g) a person of full age and capacity who has been registered on an overseas citizen of India for five years and who has been residing in India for one year before making an application for registration.

Define Naturalisation

4. By Naturalisation

A foreigner can become an Indian citizen by naturalization if:

- (a) he is not a subject or citizen of a country where Indian citizens cannot become naturalized citizens;
- (b) he undertakes to renounce the citizenship of any other country if his application is accepted;
- (c) he has either resided in India or has been in Indian Government service for 12 months before making an application for naturalization or during 14 years prior to these 12 months, he has resided or has been in Indian Government service at least for 11 years;
- (d) he is of good character;
- (e) he has an adequate knowledge of a language recognised by the Constitution;
- (f) he intends to reside in India or to serve under the Government of India after naturalization.

5. By Incorporation of Territory

If any foreign territory becomes a part of India, the Government of India specifies the person who among the people of the territory shall be citizens of India. Such persons become the citizens of India from the notified date. For example, when Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order, 1962, under the Citizenship Act, 1955.

Loss of Citizenship

Define modes of loss of Citizenship

The Citizenship Act, 1955, also lays down how the citizenship of India may be lost whether it was acquired under the Citizenship Act, 1955, or prior to it under the provisions of the Constitution. It may happen in any of the three ways-

1. By Renunciation

An Indian citizen who is also a citizen or national of another country, can renounce his Indian citizenship. When such a declaration is made during a war in which India is engaged, its registration is withheld by the Central Government. When a person renounces his citizenship, every minor child of that person ceases to be an Indian citizen.

2. By Termination

When an Indian citizen voluntarily acquires the citizenship of another country, his Indian citizenship automatically terminates. This provision, however, does not apply during a war in which India is engaged.

3. By Deprivation

It is a compulsory deprivation of Indian citizenship by the Central Government if-

- (a) the citizen has obtained the citizenship by fraud;
- (b) the citizen has shown disloyalty to the Constitution of India;
- (c) the citizen has unlawfully traded or communicated with the enemy during a war;

(d) the citizen has, within five years after registration or naturalization been imprisonment in any country for two years; and

(e) the citizen has been ordinarily resident out of India for seven years continuously.

Overseas Citizenship or Double Citizenship

The Central Government may on an application made in this behalf, register any person as an overseas citizen of India-

(a) any person of full age and capacity,-

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is a citizen of another country, but belonged to a territory that become part of India after the 15th day of August, 1947; or

(iv) who is a child or a grand child of such a citizen; or

(b) a minor child of a person above mentioned.

Can a Juristic person, company be a citizen of India

In the beginning there has been some controversy as to whether citizen refers to only natural persons or includes juristic persons also.

State Trading Corporation of India v. Commercial Tax Officer MANU/SC/0038/1963 : AIR 1963 SC 1811: 1963 (2) SCJ 605: (1964) 2 SCA 201: (1964) 4 SCR 99. The Supreme Court held that citizen includes natural persons and not juristic person like corporation. The State Trading Corporation is not a citizen and cannot maintain a petition under article 32 of the Constitution.

Bank Nationalisation case, MANU/SC/0011/1970 : AIR 1970 SC 564: (1970) 3 SCR 530. If the State action impairs the right of the company thereby affecting the rights of an individual shareholder the protection of article 19 will be available to him.

In the matter of fundamental freedoms guaranteed by article 19. Desai J. held that the right of a shareholder and the company which the shareholders have formed are co-extensive and denial to one of the fundamental freedoms would be denial to the other.

One Citizenship in India

Though our Constitution is federal, it recognizes one citizenship only i.e., citizenship of India. There is no separate State citizenship. Every citizen has the same rights, privileges and immunities of citizenship, no matter in which State he resides. In USA and Switzerland, there is a dual citizenship, namely, the citizenship of USA and citizenship of the State where a person is born and permanently resides and there are distinct rights and obligations flowing from the two kinds of citizenship.

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CHAPTER 6

Fundamental Rights

(Articles 12-35)

The Fundamental Rights are enshrined in Part III of the Constitution from articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of rights).

Part III of the Constitution is rightly described as 'magna carta' of India. It contains a long and comprehensive list of justiciable Fundamental Rights. Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their Government. The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country and protect the liberty and freedom of the people, against the invasion by the State.

The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are fundamental also in the sense that they are most essential for the all-round development of the individuals. The Constitution provides for six Fundamental Rights viz.

1. Right to equality (Articles 14-18);
2. Right to freedom (Articles 19-22);
3. Right against exploitation (Articles 23-24);
4. Right to freedom of religion (Articles 25-28);
5. Cultural and educational rights (Articles 29-30);
6. Right to constitutional remedies (Article 32).

Positive and Negative Rights

The negative rights are in the nature of restriction upon exercise of power by the State or private individuals while the positive rights require some positive action on the part of the State or individuals against whom they are available. In some constitutions both types of rights have been grouped under 'Fundamental Rights' but the Indian Constitution followed the pattern set by

Irish Constitution and include positive rights mostly in the charter on Directive Principles of State Policy, because it was not practicable to make them enforceable by an action in the court of law. Part III includes mainly negative rights.

Define State

Article 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 local or other authorities within the territory of India or under the control of the Government of India.

In *State of West Bengal v. Subodh Gopal Bose*, MANU/SC/0018/1953 : AIR 1954 SC 92: 1954 SCJ 127: 1954 SCA 65: 1954 SCR 587, Patanjali Sastri, C.J. said - "The whole object of Part III of the Constitution is to provide protection for the freedoms and rights mentioned therein against arbitrary invasion by the State".

The term 'state' thus include executive as well as legislative organs of the Union and States. It is, therefore, the action of these bodies that can be challenged before the courts as violating the Fundamental Rights. Therefore, authorities and instrumentalities not specified in it may also fall within it if they otherwise satisfy the characteristics of the State as defined in this article. The authorities and instrumentalities specified in article 12 are-

- (i) the Government and Parliament of India;
- (ii) the Government and the Legislature of each of the States;
- (iii) all local authorities.
- (iv) other authorities within the territory of India or under the control of the Government of India.

(a) Authorities.-

According to Webster's Dictionary: "Authority" means a person or body exercising power to command. The term 'authority' means the power to make law, orders, regulations by-laws, notifications etc., which have the force of law and power to enforce these laws.

(b) Local Authorities.-

The expression 'Local Authorities' refers to authorities like municipalities, District Boards, Panchayats, Improvement Trust, Port Trusts, Mining Settlement Board, etc.

In *Rashid Ahmed v. M.B. Kairana*, MANU/SC/0005/1950 : AIR 1950 SC 163: 1950 SCJ 124: 1950 SCR 566, the Municipal Board was held to be a local authority under article 12.

In *Mohammad Yasin v. Town Area Committee*, MANU/SC/0012/1952 : AIR 1952 SC 115: 1952 SCJ 162: 1952 SCR 572: 1952 SCA 237, the Supreme Court held that the bye-law of a municipal committee charging a prescribed fee on the wholesale dealer was an order by a State authority which contravened article 19(1)(g).

(c) Other authorities.-

The expression 'other authorities' was given different interpretation in early stage. Some courts applied the principle of "ejusdem generis" and distinction was made between State maintained and State aided or private institutions. Later it was held in the case *Ujjambai v. State of Uttar Pradesh*, (1963) 1 SCC 778: AIR 1962 SC 1621: (1963) 1 SCR 778, that the expression includes constitutional and statutory authorities and a distinction was made between authorities constituted by an Act and those constituted under an Act of the Legislature.

In *Electricity Board Rajasthan v. Mohan Lal*, MANU/SC/0360/1967 : AIR 1967 SC 1857: (1968) 1 SCA 9: 1968 (1) SCJ 461: (1967) 3 SCR 377, the Supreme Court held that all authorities created by the Constitution or statute or on whom powers are conferred by law are included within the expression "other authorities". It is not necessary that the statutory authority should be engaged in performing governmental or sovereign functions.

Sukhdev Singh v. Bhagatram, MANU/SC/0667/1975 : AIR 1975 SC 1331: (1975) 1 SCC 421: 1975 SCC (Lab) 101: (1975) 3 SCR 619. In this case, the question arose whether statutory corporation such as ONGC, IFC, and LIC created by the Oil and Natural Gas Commission Act, 1959, the Industrial Finance Act, 1948, the Life Insurance Act, 1956 come within the meaning of State under article 12. By a majority, the Court held that these corporations were States.

The State being an abstract entity, could undertake trade or business as envisaged under article 298 through an agency, instrumentality or a juristic person. Statutory corporation are agencies or instrumentalities of the State for carrying on trade or business which otherwise would have been carried out by the State departments.

R.D. Shetty v. International Airport Authority, MANU/SC/0048/1979 : (1979) 3 SCC 489: AIR 1979 SC 1628. The Supreme Court pointed out that the corporation acting as

instrumentality or agency of government would obviously be subject to the same limitations in the field of constitutional or administrative law as the government itself, though in the eye of the law they would be distinct and independent legal entities. It was held that the International Airport Authority constituted under the International Airport Authority Act, 1971 was an authority and, therefore, State within the meaning of article 12.

Ajay Hasia v. Khalid Mujib, MANU/SC/0498/1980 : AIR 1981 SC 487: (1981) 1 SCC 722: 1981 SCC (Lab) 258: (1981) 2 SCR 79. It has been held that a society registered under the Societies Registration Act, 1898, is an agency or instrumentality of the State and hence a 'State' within the meaning of article 12. Its composition is determined by the representative of the Government. The Court laid down the following tests for determining whether a body is an agency or instrumentality of the Government:

- (i) Financial resources of the State is the chief funding sources i.e., if the entire share capital of the Corporation is held by the government.
- (ii) Existence of deep and pervasive State control.
- (iii) Functional character being governmental in essence i.e., if the functions of the corporation enjoys monopoly which is State conferred or State protected.
- (iv) If the department of Government is transferred to a corporation.
- (v) If the functions of the corporation are of public importance and closely related to governmental functions.

Som Prakash Rekhi v. Union of India, AIR 1981 SC 212: (1981) 1 SCC 449: (1981) 1 SCWR 173: (1981) 2 SCR 111. The Supreme Court held that the Bharat Petroleum Corporation is clearly a creature of the statute, a limb of government, an agency of the State and is recognised and clothed with rights and duties by the statute. The Supreme Court reached the conclusion that there is enough

material to hold that the Bharat Petroleum Corporation registered as a company under the Companies Act, is State within the enlarged meaning of article 12.

Sukhdev Singh v. Bhagat Ram, MANU/SC/0667/1975 : AIR 1975 SC 1331: (1975) 1 SCC 421: (1975) 3 SCR 619. The Supreme Court held that Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Financial Corporation are authorities within the meaning of article 12 of the Constitution and, therefore, they are State. All these three statutory corporations have power to make regulations under the statute for regulating conditions of service of their employees.

Sabhajit Tewary v. Union of India, MANU/SC/0059/1975 : (1975) 1 SCC 485: AIR 1975 SC 1329: (1975) 1 SCWR 360: (1975) 3 SCR 616. The Supreme Court held that the Council of Scientific and Industrial Research, a society registered under the Societies Registration Act, 1860 was not State within article 12 but this case was analysed and distinguished in subsequent cases and it stands overruled.

Chander Mohan Khanna v. NCERT, MANU/SC/0010/1992 : AIR 1992 SC 76: 1991 AIR SCW 2749: (1991) 4 SCC 578: 1991 (2) UJ (SC) 747. The Supreme Court held that National Council of Educational Research and Training is not State within the meaning of article 12 as governmental control is confined to proper utilization of grants.

M. Kumar v. Bharat Earth Movers Ltd., MANU/KA/0406/1999 : AIR 1999 Kant 343: ILR (KANT) 1999 KAR 1715: 1999 (5) Kant LJ 193. Bharat Earth Movers Ltd. and Indian Telephone Industries Ltd. were held to be 'State' under article 12 because in spite of disinvestment government holds more than 51 per cent. shares and it has deep and pervasive control over them.

Assam Small Scale Ind. Dev. Corpn. Ltd. v. J.D. Pharmaceuticals, MANU/SC/1206/2005 : AIR 2006 SC 131: 2005 AIR

SCW 5600: (2005) 13 SCC 19: 2005 (8) SCJ 98. Assam Small Scale Industries Development Corp Ltd. is a statutory body and so is a State within the meaning of article 12.

Mohan Mahto v. Central Coal Fields Ltd., MANU/SC/7934/2007 : AIR 2008 SC 39: 2007 AIR SCW 6060: (2007) 8 SCC 549: 2007 (6) Supreme 525. The Central Coal Fields Ltd. falls within the definition of State.

Zee Telefilms Ltd. v. Union of India, MANU/SC/0074/2005 : AIR 2005 SC 2677: 2005 AIR SCW 2985: (2005) 4 SCC 649: 2005 (2) SCJ 121. BCCI is not financially or administratively dominated by Government nor it is under control of Government, therefore, is not a State.

Manmohan Singh v. Commissioner, Union Territory of Chandigarh, MANU/SC/0281/1984 : AIR 1985 SC 364: 1985 UJ (SC) 411: 1984 Supp SCC 540. It has been held that aided schools were held to be covered by the expression 'other authorities' in article 12 on the ground that 95% of the expenses were received by way of grant from public exchequer and employees had received statutory protection and they were subject to regulations made by educational department.

The Judiciary

Though, judiciary is an organ of the State like the executive and legislature, but it is not specifically mentioned as a State within article 12 but at the same time it can hardly be supported that judiciary is not authority when it has not been expressly excluded in article 12.

Prem Chand Garg v. Excise Commissioner, U.P., MANU/SC/0082/1962 : AIR 1963 SC 996: (1963) 2 SCA 125: (1963) SUPP 1 SCR 885. The Supreme Court invalidated rule 12 of Order 35 of the Supreme Court Rules, 1950 made under article 145, as violative of fundamental rights of the petitioner under article 32 in so far as it relates to giving of security in proceedings under article 32.

In Bhudhan Chaudhary v. State of Bihar, MANU/SC/0047/1954 : AIR 1955 SC 191: 1955 Cr LJ 374: 1955 SCJ 163: (1955) 1 SCR 1045, S.R. Das J. who delivered the judgment of the court, observed-

"Judicial decisions must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination".

Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1: (1966) 2 SCA 363: (1966) 3 SCR 744. It has been held by the Supreme Court that when a matter is brought before a judge for adjudication he first decides the questions of facts on which parties at issue and then applies relevant law to such facts.

Mr. H.M. Seervai is of opinion that the judiciary should be included in the definition of "the State" and a judge acting as a judge is subject to the writ-jurisdiction of the Supreme Court.

A.R. Antulay v. R.S. Naik, MANU/SC/0002/1988 : AIR 1988 SC 1531: JT 1988 (2) SC 325: (1988) 2 SCC 602: 1988 SCC (Cri) 372. The Supreme Court observed that any decision or order of the court which violates fundamental rights shall be void though it will remain binding on parties until it is replaced by proper proceedings.

Article 13. Law Inconsistent with or in derogation of the fundamental rights.-

1. All laws in force in the territory of India immediately before the commencement of this Constitution, insofar as they are inconsistent with the provisions of this Part shall, to the extent of such inconsistency, be void.
2. The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall to the extent of the contravention, be void.

3. In this article, unless the context otherwise requires,-

(a) "law" includes any Ordinance, order, bye-law, rules, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by 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.

4. Nothing in this Article shall apply to any amendment of this Constitution made under article 368.

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressly provides for judicial review. This power has been conferred on the Supreme

Court (article 32) and the High Courts (article 226) which can declare a law unconstitutional and invalid on ground of contravention of any of the fundamental rights.

Article 13 expressly incorporates the doctrine of judicial review. Although American Constitution guarantees a Bill of Rights, there is no provision in the American Constitution comparable to article 13. A controversy arose there as to whether an act of congress could be declared invalid for violation of the Constitution. The Controversy was ultimately settled in *Marbury v. Madison*, (1803) 1 Cranch 137, Chief Justice Marshall held:

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of each such Government must be that an Act of the legislature, repugnant to the Constitution is void".

In *A.K. Gopalan v. State of Madras*, MANU/SC/0012/1950 : AIR 1950 SC 27, Kania, C.J. pointed out that it was only by way of abundant caution that the framers of our Constitution inserted the specific provisions in article 13. He observed - "In India, it is the Constitution that is supreme and that a statute law to be valid, must be in all conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is constitutional or not".

His Holiness Kesavananda Bharati Sripadgalvaru v. State of Kerala, MANU/SC/0445/1973 : AIR 1973 SC 1461: (1973) 4 SCC 225. It has been held that judicial review is the basic feature of the Indian Constitution and, therefore, it "cannot be damaged or destroyed by amending the Constitution under article 368 of the Constitution.

L. Chandra Kumar v. Union of India, MANU/SC/0261/1997 : AIR 1997 SC 1125: 1997 AIR SCW 1345: (1997) 3 SCC 261: 1997 (3) Supreme 147. The Supreme Court has held that power of judicial review of legislative action as vested in the High Court under, article 226 and in the Supreme Court under article 32 is part of the basic structure of the Constitution and cannot be ousted or excluded even by the constitutional amendment.

Clause (1). Existing Laws

Clause (1) deals with pre-constitution or existing law i.e., laws which were in force immediately before the commencement of the constitution. Under clause (1) of article 13, such existing laws, insofar as they are inconsistent with the fundamental rights, shall to the extent of the inconsistency become void from the date of the commencement of the Constitution.

(a) No Retrospective Effect

Fundamental Rights in Part III are meant to have only prospective operation and as such any existing law, which is inconsistent with the fundamental rights, will be void from the date of the commencement of the Constitution. For pre-Constitution acts or omissions such inconsistent law will remain a valid law.

Keshavan Madhava Menon v. State of Bombay, MANU/SC/0020/1951 : AIR 1951 SC 128: 1951 SCJ 182: 1951 SCR 228: 52 Cr LJ 860. The Supreme Court observed that all existing laws, insofar as they are inconsistent with the fundamental rights, shall be void to the extent of their inconsistency. They are not void for all purposes but they are void only to the extent they come into conflict with the fundamenta

rights. On and after the commencement of the Constitution no existing law will be permitted to stand in the way of the exercise of any of the fundamental rights.

Pannalal Binraj v. Union of India, MANU/SC/0020/1956 : AIR 1957 SC 397: 1957 SCA 660: 1957 SCR 233. Where the Income Tax assessment and recovery proceedings were completed before the commencement of the Constitution and, therefore, they could not be challenged under article 13 for violation of fundamental rights.

(b) The Rule of Severability

Define the rule of severability

Article 13 does not make the whole Act inoperative but only such provisions of it as are inconsistent with or violative of the fundamental rights. Where the valid parts are clearly dependent upon and so inseparably connected with the invalid parts that they cannot be separated without defeating the object of the statute they too must fall with invalid parts.

State of Bombay v. F.N. Balsara, AIR 1951 SC 318: 1951 SCJ 478: 52 Cr LJ 1361: 1951 SCR 682. Eight sections of the Bombay Prohibition Act, 1949, were held ultra vires on the ground that they infringed the fundamental rights of the citizens. But the Act minus the invalid provisions, was allowed to stand.

A.K. Gopalan v. State of Madras, MANU/SC/0012/1950 : AIR 1950 SC 27: 1950 SCJ 174: 51 Cr LJ 1383: 1950 SCR 88. Section 14 of the Preventive Detention Act was declared unconstitutional. Chief Justice Kania observed: "The impugned Act minus this section can remain unaffected. The omission of this section shall not change the nature or structure or object of the legislation. Therefore, the decision that section 14 is ultra vires does not affect the validity of the rest of the Act. In my opinion, therefore, Act IV of 1950 except section 14 is not ultra vires".

Romesh Thappar v. State of Madras, MANU/SC/0006/1950 : AIR 1950 SC 124: 1950 SCJ 418: 51 Cr LJ 1514: 1950 SCR 594. The Supreme Court observed that "Where a law purports to authorise the imposition of restriction on a Fundamental Right in language wide enough to cover restriction, both within or without the limits provided by the Constitution and where it is not possible to separate the two, the whole law is to be struck down. So long as the possibility of its being applied for purpose not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly void".

R.M.D.C. v. Union of India, MANU/SC/0020/1957 : AIR 1957 SC 628: 1957 SCJ 593: 1957 SCA 912. Certain provisions of Prize Competitions Act, 1955 were challenged on the ground that they violated Fundamental Right under article 19(1)(g) as section 2(d) defined prize competition so widely as to include competition in which success depends to a substantial degree on skill.

M. Ismail Faruqi v. Union of India, AIR 1955 SC 605: 1994 AIR SCW 4897. The validity of the acquisitions of certain areas under the Ayodhya Act, 1993 was challenged. The Supreme Court invalidated sub-section (3) of section 4 of the Act, which provided for an alternative dispute resolving mechanism. The Court held that this was an extinction of the remedy for resolution of dispute amounting to negation of rule of law.

Kihota Hollohon v. Zachilhu, MANU/SC/0753/1992 : AIR 1993 SC 412: 1992 AIR SCW 3497: (1992) 1 SCR 686: (1992) Supp 2 SCC 651. It has been held that section 10 of the Tenth Schedule minus para 7 remains valid and constitutional. Para 7

which has been declared unconstitutional is severable from the main provisions of the Tenth Schedule.

(c) The Doctrine of Eclipse

What is doctrine of eclipse?

The doctrine of eclipse is based on the principle that a law which violates fundamental rights is not nullity or void ab initio but becomes only unenforceable, i.e., remains in a moribund condition. It is over-shadowed by the fundamental rights and remains dormant, but it is not dead. An existing law inconsistent with a fundamental right, though becomes

inoperative from the date of the commencement of the Constitution, it is not dead altogether.

Bhikaji Narain v. State of Madhya Pradesh, MANU/SC/0016/1955 : AIR 1955 SC 781: (1955) 2 SCR 589: 1956 SCJ 48. In that case provision of C.P. and Berar Motor Vehicles (Amendment) Act, 1947 which authorized the State Government to take up the entire motor transport business in the Province to the exclusion of motor transport operators was challenged. This provision, though valid when enacted, become void on the coming into force of the Constitution in 1950 as they violated article 19(1)(g) of the Constitution.

According to the doctrine of eclipse an existing law i.e., a law made before the commencement of the constitution, remains eclipsed or dormant to the extent it comes under the shadow of the fundamental rights i.e., is inconsistent with the fundamental rights, but the eclipsed or dormant parts become operative and effective again if the prohibition brought about by the fundamental right is removed by an amendment of the Constitution.

Clause (2). Future Law

Article 13(2) deals with the post Constitution laws. It says that State shall not make any law which takes away or abridges fundamental rights. If the State make such laws then it will be ultra vires and void to the extent of the contravention.

Sagor Ahmed v. State of Uttar Pradesh, MANU/SC/0110/1954 : AIR 1954 SC 728: 1954 SCJ 819: 1955 SCR 707. In this case the validity of U.P. Road Transport Act, 1951 was questioned. By this Act, State sought to exclude all private bus owners from the field of transport business. The act was passed before the Constitution (First Amendment) Act which permitted State monopoly by adding a sub-clause to article 19(6). The Supreme Court held that a statute void for unconstitutionality is dead and cannot be vitalized by a subsequent amendment of the Constitution removing the constitutional objection, but must be re-enacted.

Does the doctrine of eclipse apply to a post-constitutional law

What are the post-constitutional law?

In Deepchand v. State of Uttar Pradesh, MANU/SC/0023/1959 : AIR 1959 SC 648: 1959 SCJ 1069: 1959 SCR Supp (2) 8, the Supreme Court held that a post-constitutional law which contravenes a fundamental right is nullity from its inception and a still-born law.

State of Gujarat v. Ambica Mills, MANU/SC/0092/1974 : AIR 1974 SC 1300: (1974) 4 SCC 656: 1974 (2) SCJ 211: (1974) 3 SCR 760. The Court held that the rule that any statute which takes away or abridges fundamental rights is still born or null and void requires qualifications in certain situations.

Doctrine of Waiver

Define doctrine of waiver with leading cases

Waiver is voluntary relinquishment or renunciation of some known right or foregoing or giving up of some benefit or advantage which the party would have otherwise enjoyed. Waiver of a right or benefit may be established by the action of declaration, acquiescence or silence of the party as well as by his express consent and approval.

Basheshar Nath v. Commissioner of Income-tax, Delhi and Rajasthan, MANU/SC/0064/1958 : AIR 1959 SC 149: 1959 SCJ 1207: 1959 SCR Supp (1) 528. The petitioner whose case was referred to the Income-tax Investigation Commissioner under section 5(1) of the Act was found to have concealed large amount of income. He, thereupon, agreed at a settlement in 1954 to pay Rs. 3 lakhs in monthly instalments by way of arrears of tax and penalty.

M.P. Sugar Mills v. State of Uttar Pradesh, MANU/SC/0336/1978 : AIR 1979 SC 621: (1979) 2 SCC 409: 1979 (2) SCJ 185: (1979) 2 SCR 641. In a non-fundamental right case the Court has held that a person cannot abandon his right unless he knows of it.

Nar Singh Pal v. Union of India, MANU/SC/0221/2000 : AIR 2000 SC 1401: 2000 AIR SCW 1141: (2000) 3 SCC 588: 2000 (2) Supreme 667. It is held that where a right or privilege guaranteed by the Constitution inheres in the individual

and is primarily intended for his benefit, it can be waived, provided such waiver is not forbidden by law and does not contravene public policy or public morals. The law is now settled that fundamental rights cannot be waived.

M. Ct. Muthiah v. Commissioner of Income-tax, Madras, MANU/SC/0022/1955 : AIR 1956 SC 269: 1956 SCJ 349: (1955) 2 SCR 1247. It is clear from the language of article 14 that it is a command issued by the Constitution to the State as a matter of public policy with a view to implement its object of ensuring the equality of status and opportunity and no person by his act or conduct relieve the State of this solemn obligation imposed upon the State by the Constitution.

Olga Tellis v. Bombay Municipal Corporation, MANU/SC/0039/1985 : AIR 1986 SC 180: (1985) 3 SCC 545: 1986 Cr LR (SC) 23. In this case the Bench of five Judges of Supreme Court again considered the matter and after due consideration, the Court held by majority that the fundamental rights cannot be waived.

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CHAPTER 7

Right to Equality

(Articles 14-18)

The Constitution of India guarantees the Right to Equality through articles 14 to 18. Equality is one of the magnificent corner-stone of Indian democracy. The doctrine of equality before law is a necessary corollary of rule of law which pervades the Indian Constitution. Article 14 deals with the general right to equality and equal protection of law whereas articles 15-18 guarantee equality in certain specified matters. Right to equality is the most important right for a democratic, socialist, secular, republic as envisaged in the Preamble to the constitution. Democracy cannot function properly without this minimum guarantee to individual member of the society. This principle has been recently reiterated by the Supreme Court in case of *M.G. Badappanavar v. State of Karnataka*, AIR 2001 SC 260: 2000 AIR SCW 4340: (2001) 2 SCC 666: 2001 (1) Supreme 306 in the following words - "Equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India".

Right to Equality and Equal Protection of Laws (Article 14)

What is the difference between equality before law and equal protection of law?

Article 14 declares that "The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India".

There are two concepts involved in article 14 viz., equality before law 'and equal protection of laws'. The first is a negative concept which ensures that there is no special privilege in favour of any one, that all are equally subject to the ordinary law of the land and no person whatever be his rank or condition is above the law. This is equivalent to the second corollary of the A.V. Dicey's concept of the Rule of Law in Britain. This principle is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. Every person, whatever be his rank or position, is subject to the jurisdiction of the ordinary courts. Prof. Dicey said, "with us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without any legal justification as any other citizen".

The second concept 'equal protection of laws' is positive in content. It does not mean that identically the same law should apply to all persons, or that every law must have a universal application within the country irrespective of differences of circumstances. Equal protection of the laws does not postulate equal treatment of all persons without distinction. It denotes equality of treatment in equal circumstances. It implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status or political influence. This concept is rather a corollary of the first expression and directs that equal protection shall be secured to all persons within the territorial jurisdiction of the union in the enjoyment of their rights and privileges without favouritism or discrimination. It has been said that 'equal protection of the laws' is a pledge of protection or guarantee of equal laws.

Chiranjit Lal Chowdhary v. Union of India, MANU/SC/0009/1950 : AIR 1951 SC 41: 1951 SCJ 29: 1950 SCR 869. Article 14 applies to all persons and is not limited to citizens. A corporation which is a juristic person, is also entitled to the benefit of this Article. The equality before law is guaranteed to all without regard to race, colour or nationality.

Legislative Classification

Define legislative classification

Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The principle of equality does not mean that every law must have universal application to all persons who are not by nature, attainment or circumstances in the same position.

Chiranjit Lal Chowdhary v. Union of India, MANU/SC/0009/1950 : AIR 1951 SC 41: 1951 SCJ 29: 1950 SCR 869. Fazal Ali observed-

"The guarantee of the equal protection of laws means the protection of equal laws. It forbids class legislation but does not forbid classification which rests upon reasonable grounds of distinction".

Kedar Nath Bajoria v. State of West Bengal, MANU/SC/0082/1953 : AIR 1953 SC 404: 1953 Cr LJ 1621: 1953 SCJ 580: 1954 SCR 30. The equal protection of the law guaranteed by article 14 of the Constitution does not mean that all the laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purpose of legislation.

R.K. Garg v. Union of India, AIR 1981 SC 2138: 1981 11 Tax Caw Rev 277 (SC). The reasonable classification must not be arbitrary, artificial or evasive but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation.

Test of Reasonable Classification

The doctrine of classification is only a subsidiary rule evolved to give practical content to the doctrine of equality, but over-emphasis on classification would result in substitution of doctrine of classification for doctrine of equality. In order to pass the test for permissible classification two conditions must be fulfilled, namely-

1. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and
2. The differentia must have a rational relation to the object sought to be achieved by the statute in question.

Define guidelines enumerated in Ram Krishna Dalmia v. Delhi Admn

Ram Krishna Dalmia v. Delhi Administration, MANU/SC/0024/1958 : AIR 1958 SC 538: 1959 SCJ 147: 1959 SCR 279. The Supreme Court has established certain important principles which holds the scope of permissible classification. These may be stated as below:-

1. A law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself.
2. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.
3. It must be presumed that the legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience.
4. The legislature is free to recognise the degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest.
5. There is no right to equality in illegal acts. Discretion cannot be alleged on the ground that somebody has obtained an illegal benefit.
6. A classification need not be scientifically perfect or logically complete.
7. In order to sustain the presumption of constitutionality, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.
8. The validity of a rule has to be judged by assessing its over-all effect and not by picking up exceptional cases. What the Court has to see is whether the classification made is just taking all aspects into consideration.
9. The Court must look beyond the ostensible classification and to the purpose of the law and apply the test of "palpable arbitrariness" in the context of the felt needs of the times and societal exigencies informed by experience to determine reasonableness of classification.

New Approach to Equality

Explain the E.P. Royappa case

Explain the guidelines in case Vishaka case

E.P. Royappa v. State of Tamil Nadu, MANU/SC/0380/1973 : AIR 1974 SC 555: (1974) 4 SCC 3: (1974) 2 SCR 348. The Supreme Court pronounced the new principle in article 14 in the following words.

"Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of article 14".

Maneka Gandhi v. Union of India, MANU/SC/0133/1978 : AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621: 1978 (2) SCJ 312. Bhagwati, J., very clearly laid down the principle of reasonableness in article 14. He said--

"Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which logically as well as philosophically, is an essential element of equality or non-arbitrariness pervades article 14 like a brooding omnipresence".

R.K. Garg v. UOI, AIR 1981 SC 2138: 1981 11 Tax Caw Rev 277 (SC) (Bearer Bonds case). The Special Bearer Bonds Immunities and Exemptions Act, 1981, which, in order to canalize black money for productive purposes authorized investment of such money in bearer bonds with full immunity and exemptions under the Income-tax, Wealth-tax and Gift-tax Acts as well as from disclosure of sources to the investors in such bonds was upheld, among others, on the ground that it made a reasonable classification between those who had and who did not have black money and that this classification had a nexus with the object of the law, namely, to canalize black money for productive purposes.

Ajay Hasia v. Khalid Mujib Sehravardi, MANU/SC/0498/1980 : AIR 1981 SC 487: (1981) 1 SCC 722: (1981) 2 SCR 79. The Supreme Court observed that 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.

A.V. Nachane v. Union of India, MANU/SC/0251/1982 : AIR 1982 SC 1126: (1982) 1 SCC 205: (1982) 1 SCWR 203 (Popularly Known as LIC Bonus case). The Supreme Court upheld the constitutional validity of LIC Amendment Act, 1981 and the ordinance preceding it and the rules framed thereunder relating to bonus payable to class III and IV employees. It has been held that IMNS is distinct and separate class by itself, even though it is a part of the Indian Army. In other words, permissible classification would include a class even though it is a part of a largest class.

D.S. Nakara v. UOI, MANU/SC/0237/1982 : AIR 1983 SC 130: (1983) 1 SCC 305: 1983 UJ (SC) 217: 1983 (1) SCJ 188. The Supreme Court held that the fundamental principle is that article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the two tests of classification being founded on an intelligible differentia which distinguished persons or things that are grouped together.

Mithu v. State of Punjab, MANU/SC/0065/1983 : AIR 1983 SC 473: 1983 Cr LJ 811: (1983) 2 SCC 277: 1983 (1) SCJ 327. The Court struck down section 303 of the Indian Penal Code as unconstitutional on the ground that the classification between persons who commit murders whilst under the sentence of the imprisonment and those who commit murders whilst they were not under the sentence of life imprisonment for the purpose of making the sentence of death mandatory in the case of the former class and optional in the latter class was not based on any rational principle.

Air India v. Nargesh Meerza, MANU/SC/0688/1981 : AIR 1981 SC 1829: (1981) 4 SCC 335. A regulation providing for termination of service of an air hostess in Air India International on her first pregnancy has been held to be arbitrary and abhorrent to the notions of a civilized society.

Sanjit Ray v. State of Rajasthan, MANU/SC/0254/1983 : AIR 1983 SC 328: 1983 UJ (SC) 161: (1983) 1 SCC 525: (1983) 1 SCWR 346. Exclusion from the Minimum Wages Act, of the workmen employed by government on famine relief work, and payment to them of wages lower than the minimum wages, violates article 14. The rights of all the workers will be the same whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere.

K. Nagaraj v. State of Andhra Pradesh, AIR 1985 SC 524: (1985) 1 SCC 523. The Court held that the reduction of age of retirement was not arbitrary and unreasonable and violative of article 14 as it was taken by the Government after due consideration and with a view to providing employment opportunities to younger sections of society.

Revathi v. Union of India, MANU/SC/0562/1988 : AIR 1988 SC 835: JT 1988 (1) SC 419. The Supreme Court held that section 497 of IPC, the offence of adultery can be committed only by a male and not by a female who cannot even be punished as an abettor. As this provision makes a special provision for women the Supreme Court held that sex is a sound classification and although there can be no discrimination in general on that ground. The Constitution itself provides for special provisions in the case of women and children.

Vishaka v. State of Rajasthan, MANU/SC/0082/1997 : AIR 1997 SC 301: 1997 AIR SCW 3043: (1997) 6 SCC 241: 1997 (3) SCJ 584. The Supreme Court laid down the guidelines to prevent sexual harassment of working women in places of their work until a legislation is enacted for this purpose. Gender equality includes protection from sexual harassment and right to work with dignity, which is universally recognised basic human right. The Court has laid down the following guidelines-

1. All employees or persons in-charge of work place in the public and private sector should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation. He should take the following steps-
 - (a) Express prohibition of sexual harassment which include physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornographic or any other unwelcome physical, verbal or non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.
 - (b) The rules and regulation of Government and Public Sector bodies relating to conduct and discipline should include Rules prohibiting sexual harassment and provide for appropriate penalties against the offender.
 - (c) As regard to private employees, the above prohibitions should be included in standing order under the Indian Employment (Standing Orders) Act, 1946.
 - (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work.
2. Where such conduct amounts to specific offences, under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law making a complaint with appropriate authority.
3. The victims of sexual harassment should have option to seek transfer of the perpetrator or her own transfer.

Equal Pay for Equal Work

What is equal pay for equal work?

Although the principle of equal pay for equal work has not been declared as fundamental right in part-third of our Constitution, article 39(d) contains directive principles of equal pay for equal work for both men and women.

In Randhir Singh v. Union of India, MANU/SC/0234/1982 : AIR 1982 SC 879: (1982) 1 SCC 618: 1982 UJ (SC) 193: 1982 (1) SCJ 283. Supreme Court has laid down that directive principles should be read into the fundamental rights as a matter of interpretation of articles 14 and 16. The Court said-

"Construing articles 14 and 16 in the light of the Preamble and article 39(d) we are of the view that the principle of equal pay for equal work is deducible from those articles and may be properly applied to cases of unequal scales of pay based on irrational classification".

D.S. Nakara v. Union of India, MANU/SC/0237/1982 : AIR 1983 SC 130: (1983) 1 SCC 305: 1983 (1) SCJ 188: (1983) 1 SCWR 390.

Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this court in Randhir Singh case.

Daily Rated Casual Labour Employed under P and T Department v. Union of India, MANU/SC/0434/1987 : (1988) 1 SCC 122: AIR 1987 SC 2342: JT 1987 (5) SC 164. It has been held that the daily rated casual labourer in P&T Department who were doing similar work as done by the regular workers of the department were entitled to minimum pay in the pay scale of the regular workers plus D.A. but without increments.

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

Explain article 15

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

2. No citizen shall on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

3. Nothing in this article shall prevent the State from making any special provision for women and children.

4. Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

5. Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, or the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institution, whether aided or unaided by the State, other than the minority educational institution referred to in clause (1) of article 30.

Clause (1) - Article 15(1) prohibits differentiation on certain grounds mentioned above. In Valsamma Paul v. Cochin University, MANU/SC/0275/1996 : AIR 1996 SC 1011: 1996 AIR SCW 492: (1996) 3 SCC 545: (1996) 1 SCR 128, the Supreme Court observed that article 15(1) prohibits discrimination on ground of religion or caste identities so as to foster national identity which does not deny pluralism of Indian culture but rather to preserve it.

Article 15(1) is an extension of article 14. Article 15(1) expresses a particular application of the general principle of equality embodied in article 14. Article 15 is a facet of article 14. Like article 14, article 15(1) also covers the entire range of state activities. But, in a way, the scope of article 15 is narrower than that of article 14 in several respects.

One - While article 14 is general in nature in the sense that it applies both to citizens as well as non-citizens, article 15(1) covers only the Indian citizens, and does not apply to non-citizens. No non-citizen can claim any right under article 15, though he can do so under article 14.

Two - While article 14 permits any reasonable classification on the basis of any rational criterion, under article 15(1) certain grounds mentioned therein can never form the basis of classification.

The expression 'discriminate against' means, according to the Oxford Dictionary "to make an adverse distinction with regard to, to distinguish unfavorably from others".

Nainsukh v. State of Uttar Pradesh, MANU/SC/0061/1953 : AIR 1953 SC 384: 1953 SCJ 546: 1953 SCR 1184. It was held that a law providing for election to municipalities on the basis of separate electorates for members of different religious communities was unconstitutional for violation of article 15(1).

Madhu Limaye v. Superintendent, Tihar Jail, Delhi, MANU/SC/0150/1975 : AIR 1975 SC 1505: (1970) 1 SCC 525: 1975 SCC (Cri) 235: (1975) 3 SCR 582. Article 15 prohibits classification on the basis of racial superiority.

D.P. Joshi v. State of Madhya Pradesh, MANU/SC/0012/1955 : AIR 1955 SC 334: 1955 SCJ 298: 1955 SCR 1215. The Supreme Court held that a law which discriminate on the

ground of residence does not infringe article 15. In this case the resident of Madhya Pradesh were exempted from payment of a capitation fee for admission to the State Medical College, while the non-residents were required to pay the same. The Supreme Court negated the plea of discrimination by the non-residents under article 15(1) because the ground of exemption was 'residence' and not 'place of birth'. Residence and place of birth are two distinct concept. Article 15(1) prohibits discrimination on the basis of place of birth but not on residence.

Pradeep Jain v. Union of India, MANU/SC/0047/1984 : AIR 1984 SC 1420: (1984) 3 SCC 654. In this case, the residential requirement for admission to medical colleges was challenged. The Supreme Court has held that such conditions are inconsistent with the idea of national unity and integration and though in given circumstances may be justified both under articles 14 and 15(1) at the moment not more than 70% of seats should be reserved on ground of residence at the M.B.B.S. level. There should be no reservation on the basis of residence at the M.S. and M.D. Levels.

Clause (2) - Article 15(2) contain the provision of a general nature and is not confined to the State only. On the basis of this provision it has been held that if a section of the public puts forward a claim for an exclusive use of public well, it must establish that the well was dedicated to the exclusive use of that particular section of the public and not to the use of general public. (Arumugha v. Narayana, AIR 1958 Mad 282)

Clause (2) is intended to eradicate certain customs prevailing in the Indian society which did not allow persons of certain castes and religion to use wells, ghats and other public places. They were meant exclusively for higher castes of Hindus. Clause (2) provide that no citizen shall on grounds only of religion, race, caste, sex, place of Birth or any of them be subjected to any disability, liability, restriction or condition with regard to access and use of places mentioned in clauses (a) and (b).

On ground 'only'

The word 'only' connotes that what is discountenanced is discrimination purely and solely on account of any of the grounds mentioned. A discrimination based on any of these grounds and also on other grounds is not hit by articles 15(1) and 15(2) though it may be hit by article 14.

State of Bombay v. Bombay Education Society, MANU/SC/0029/1954 : AIR 1954 SC 561: 1954 SCJ 678: 1955 SCR 568. In that case the issue was the validity of the Bombay Government Order directing schools having English as medium of instruction to admit only Anglo-Indians and citizens of Asiatic descent. The Court held the order invalid since the result of the order was the denial of admission to all pupils whose mother tongue was not English i.e., they were discriminated on the ground of language only.

Clause 3 - Articles 15(3) and 15(4) constitutes exceptions to articles 15(1) and 15(2). According to article 15(3), the State is not prevented from making any 'special provision for women and children'.

Articles 15(1) and 15(2) prevent the State from making any discriminatory law on the ground of gender alone. The Constitution vests on equality of status and it negates gender bias. Article 15(3) recognises the fact that the women in India have been socially and economically handicapped for centuries and as a result thereof, they cannot fully participate in the socio-economic activities of the nation on the footing of equality. The purpose of article 15(3) is to

eliminate this socio-economic backwardness of women and to empower them in such a manner as to bring about effective equality between men and women.

Yusuf Abdul Aziz v. State of Bombay and Husseinbhoj Laljee, MANU/SC/0124/1954 : AIR 1954 SC 321: 1954 Cr LJ 886: 1954 SCJ 385: 1954 SCR 930. The validity of section 497 of the Indian Penal Code was challenged on the ground that it discriminates on the ground of sex insofar as it punishes a man for adultery but does not punish the wife. It was held that the law was valid because discrimination was not based on the ground of sex only but also on the other considerations.

Clause 4. This clause was not in the article as originally enacted. It was added by the Constitution (First Amendment) Act, 1951. The object of the amendment was to bring articles 15 and 29 in line with article 16(4).

State of Madras v. Champakam Dorairajan, MANU/SC/0007/1951 : AIR 1951 SC 226: 1951 SCJ 313: 1951 SCR 525. In that case the reservation of seats for non-Brahmins, Backward Hindus, Harijans, Anglo-Indians, Indian Christians and Muslims was held to offend articles 15(1) and 29(2). The Court held that the omission of a clause like 16(4) from article 29 indicated the intention of the constitution makers not to introduce communal consideration in matters of admission to educational institutions.

Define Indra Sawhney case

Indra Sawhney v. Union of India, MANU/SC/0104/1993 : AIR 1993 SC 477: 1992 AIR SCW 3682: JT 1992 (6) SC 273: 1993 (1) SCJ 353. Clause (a) enables the State to make special provisions for the advancement of socially and educationally Backward Classes of citizens or for the Scheduled Castes and Scheduled Tribes. Such provisions include reservations or quotas and can be made in the exercise of executive powers without any legislative support.

Thus under clause 15(4) two things are to be determined-

- (i) Who are socially and educationally backward classes?
- (ii) What is the limit of reservation?

What is backward or more backward classes?

Though, article 340 contemplates appointment of a Commission to investigate the conditions of 'socially and educationally backward classes' but no such definition of the backward classes is there anywhere in the Constitution.

M.P. Balaji v. State of Mysore, MANU/SC/0080/1962 : AIR 1963 SC 649: (1963) 2 SCA 1: (1963) SUPP 1 SCR 439. The object of article 15(4) is to advance the interest of the society as a whole by looking after the interest of the weaker sections of the society. In this case Supreme Court held that the caste of a group of persons cannot be the sole or even predominant factor though it may be a relevant test for ascertaining whether a particular class is a backward class or not backwardness under article 15(4) must be social and educational and that social backwardness is in the ultimate analysis, the result of poverty. The Court held that the sub-classification made by the order between 'backward classes' and 'more backward classes' was not justified under article 15(4).

"Backwardness" as envisaged by article 15(4) must be both social and educational and not either social or educational. Though caste may be a relevant factor but it cannot be the sole test for ascertaining whether a particular class is a backward class or not.

D.N. Chanchala v. State of Mysore, AIR 1971 SC 1765: 1971 (Supp) SCR 608. The reservation under clause 5 though apparently appearing on the high side not having shown as unreasonably excessive, the contention with regard to it must fail.

E.V. Chinnaiah v. State of Andhra Pradesh, MANU/SC/0960/2004 : AIR 2005 SC 162: 2004 AIR SCW 6419: (2005) 1 SCC 394: 2004 (8) Supreme 810. The Apex Court held that reservation of posts and appointment must be with reasonable limits viz. 50% at the maximum. Reservation to a backward class is not a constitutional mandate, but a prerogative of the State. The Court also said that article 341 indicates that there can be only one list of Scheduled Castes in regard to a State and that list should include all specified castes, races or tribes or part or groups notified in

that Presidential List. In the entire Constitution wherever there is a reference about Scheduled Caste, it refers to a list prepared by the President under article 341.

Valsamma Paul v. Cochin University, AIR 1996 SC 345. It was held that the appellant as a member of Latin Catholic would not be entitled to reservation under article 15(4) because she as a member of forward caste had an advantageous start in life and after completing her education and becoming major married a Latin Catholic. Therefore, she would not be entitled to reservation given to Latin Catholic Backwards.

Dr. Neelima v. Dean of PG Studies, AP Agriculture University, Hyd., MANU/AP/0040/1993 : AIR 1993 AP 229: 1993 (1) AP LJ 140: 1993 (1) Andh LT 458. In this case Appellant belonged to caste Raddy by birth. She married to a boy belonging to Scheduled Tribe. It was held that she was not entitled to reservation. The Court held that the high caste girl marrying a boy belonging to ST is not entitled to the benefit of reservation available to Scheduled Tribes.

Ajay Kumar v. UOI, MANU/SC/0978/2006 : AIR 2006 SC 1177: 2006 AIR SCW 888: (2006) 3 SCC 257: 2006 (2) SCJ 472. A tribal woman married a non-tribal by court marriage and her son was brought up in forward family. The Supreme Court held that offshoots of such marriage cannot claim status of Scheduled Tribe. Casual visit to village in holidays cannot constitute acceptance by the community.

Clause 5 - The clause (5) is added by the Constitution (93rd Amendment) Act, 2006. Which provides for reservation of backward and Scheduled Caste and Scheduled Tribes classes in educational institutions including private educational institutions.

P.A. Inamdar v. State of Maharastra, MANU/SC/0482/2005 : AIR 2005 SC 3226: 2005 AIR SCW 3923: (2005) 6 SCC 537: 2005 (5) SCJ 746. The Supreme Court ruled that there cannot be reservation in private educational institutions, which are not receiving aid from the government. To make this decision ineffective Ninety-third Amendment to the Constitution was made which inserted clause (5) in article 15.

Ashok Kumar Thakur v. UOI, 2008 AIR SCW 2899: AIR 2008 SC (Supp) 1, a five-judge Bench of the Supreme Court headed by Chief Justice K.G. Balakrishnan held that the Constitution (93rd Amendment) Act, 2006 providing 27 per cent. reservation in admission to OBC Candidates in higher educational institutions like IIT's and IIM's is constitutional. The court held that reservation must be reviewed after five years.

Equality of Opportunity in matters of public employment (Article 16)

Define 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.
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.
3. Nothing in this article shall prevent Parliament from making 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.
4. Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state is not adequately represented in the services under the state.
- 4A. Nothing in this article shall prevent the state from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

4B. Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled-up on any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

5. Nothing in this article shall affect the operation of any law which provides that the 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".

Article 16 guarantees equality of opportunity in matter of employment under the state. This right is available to citizen only. It does not however prevent the state from prescribing the necessary qualifications and selective tests for recruitment for Government services.

General Right of Equal Opportunity. Clause (1) -

Clause (1) provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. It confers a general right of equality of opportunity for all citizens in matters of employment under the state. The equality of opportunity takes within its fold all stages of services from initial appointment to its termination, but equality is relative not absolute.

All-India Station Masters' and Assistant Station Masters' Association, Delhi v. General Manager, Central Railway, MANU/SC/0192/1959 : AIR 1960 SC 384: (1960) 2 SCR 311. Equality of opportunity in matter of employment can be predicted only as between who are either seeking the same employment or have obtained the same employment and the equality of opportunity in matters of employment under article 16(1) means equality between members of the same class of employees and not equality between members of separate independent classes.

State of Mysore v. H. Srinivasamurthy, MANU/SC/0457/1976 : AIR 1976 SC 1104: (1976) 1 SCC 817: (1976) 3 SCR 255. It has been held by Supreme Court that equality is violated if it rests on some reasonable basis. A reasonable classification should include all those who are similarly situated and none who is not and in deciding who are similarly situated one has to look to the object sought to be achieved by the legislation in question and mischief sought to be eliminated by it.

Ajay Hasia v. Khalid Mujib Sehravardi, MANU/SC/0498/1980 : AIR 1981 SC 487: (1981) 1 SCC 722: (1981) 2 SCR 79. An arbitrariness in selection process will violate articles 14 and 16. Thus, it has been noted that allotment of excessive marks in competitive tests may lead to arbitrariness but the same test may not be applied in cases of selection/promotion of persons already in service for a higher post.

Akhil Bhartiya Shoshit Karamchari Sangh (Railway) v. UOI, MANU/SC/0058/1980 : AIR 1981 SC 298: (1981) 1 SCC 246: (1981) 2 SCR 185. The categorization of Scheduled Castes and Scheduled Tribes as a class on the basis of which the classification could be justified as just and reasonable within the meaning of articles 15(1) and 16(1) because these classes stand on a substantially different footing from the rest of the Indian community in our Constitution.

Kishor Mohanlal Bakshi v. Union of India, MANU/SC/0389/1961 : AIR 1962 SC 1139: 1962 44 ITR 532. The rules made Income-Tax Officer of class I eligible for appointment as Assistant Commissioner, but Income-Tax Officer of class II were made eligible for appointment as Income-Tax Officer class I but not for promotion to the post of Assistant Commissioner. The rules were held valid because there can be no question of equality of opportunity between persons holding posts in different grades.

Vijay Kumar Sharma v. Chairman Social Service Commission, MANU/SC/0279/2001 : AIR 2001 SC 1691: 2001 AIR SCW 1744: (2001) 4 SCC 289: 2001 (3) Supreme 451. Life of selection panel for general category was extended but despite the fact that there were vacancies, life of selection panel for OBC category was not extended. It was held that non-extension of life of panel for OBC category was not justified.

B.C.P.P. Mazdoor Sangh v. N.T.P.C., MANU/SC/8013/2007 : AIR 2008 SC 336: 2007 AIR SCW 6879: (2007) 12 SCALE

204: 2007 (7) Supreme 704. The employees were recruited and appointed by PSU (NTPC) and governed by service terms and conditions as applicable to NTPC employees. The court held that the contract of service cannot be changed retrospectively without tripartite agreement and pre-decision hearing to employee. The court held that it amounted to arbitrariness and is violative of article 14 of the Constitution of India.

Clause (2) -

Clause (2) of article 16 rules out some bases of classification. It provides that no citizen shall on ground only of religion, race, caste, sex descent, place of birth, place of residence or any of them be ineligible for or discriminated against in respect any office or employment under the State. Thus, it prohibits categorization of employees for subjecting them to differential treatment solely on the aforesaid grounds unless the case comes within clauses (3) to (5).

B. Venkataraman v. State of T.N., MANU/SC/0080/1951 : AIR 1951 SC 229: 1951 SCJ 318. Reservation of posts in favour of Hindus, Muslims, Christian was held to be violative of article 16(2).

Gazula Dasaratha Rama Rao v. State of AP, MANU/SC/0040/1960 : AIR 1961 SC 564: (1961) 2 SCR 931. The office of the hereditary village munsif is an office under the State because the appointment is made by the Collector, emoluments are granted by the State, and the Collector has the power to remove, suspend or dismiss him.

C.B. Muthamma v. Union of India, AIR 1979 SC 1868: (1979) 4 SCC 260. The Supreme Court invalidated rule 8(2) of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 and observed that if the family and domestic commitments of a woman member of the service is likely to come in the way of efficient discharge of duties a similar situation may well arise in the case of a male member.

Gazula Dasaratha Rama Rao v. State of Andhra Pradesh, MANU/SC/0040/1960 : AIR 1961 SC 564: (1961) 2 SCR 931. Madras Hereditary Village Offices Act, 1895 was held to be void because it provided for selection for a new office from among the families of the last holder of the office which had been abolished and, therefore, made discrimination on ground of descent.

Clause (3) -

Clause (3) of article 16 authorizes Parliament to prescribe requirement of residence in a State or Union territory for certain employment under the government or local authorities within that State or Union territory. The purpose of clause (3) is to provide for an opportunity of employment to residents of an underdeveloped State where in the normal condition they could not compete with the residents of more developed States.

A.V.S. Narasimha Rao v. State of Andhra Pradesh, MANU/SC/0494/1969 : AIR 1970 SC 422: (1970) 1 SCA 51: 1970 (1) SCJ 365: (1970) 1 SCR 115. The Supreme Court declared that part of the Act unconstitutional which prescribed a residence qualification for government services in Telangana, a part of the State of Andhra Pradesh. The Court took the view that under article 16(3), Parliament can impose a residential qualification for services in the whole State, but not in a part of the State.

Clause (4) -

Under article 16(4) the state may make reservation of appointment or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the public services under the State. The term 'State' denotes both the Central and the State Governments and their instrumentalities.

1. M.R. Balaji v. State of Mysore, MANU/SC/0080/1962 : AIR 1963 SC 649: (1963) 2 SCA 1: (1963) Supp 1 SCR 439. The Supreme Court has held that the caste of a person cannot be the sole test for ascertaining whether a particular class is a backward class or not. Though caste of a person cannot be the sole test for determining the backwardness of a class, but if an entire caste is found to be socially and educationally backward it may be included in the test of backward classes.

2. T. Devadasan v. Union of India, MANU/SC/0270/1963 : AIR 1964 SC 179: (1964) 4 SCR 680. In this case the Court

was called upon to pronounce upon the constitutionality of the carry forward rule framed by the Central Government to regulate appointment of persons belonging to backward classes in public services. The Court by majority did not invalidate the rule of carry forward as such but the rule as amended in 1955 on the ground that the power vested in the State Government under article 16(4) cannot be so exercised as to deny reasonable equality of opportunity in matter of public employment to members of classes other than backward.

3. Mohan Kumar Singhania v. Union of India, AIR 1992 SC 426: 1992 SCC (L&S) 455: (1992) Supp 1 SCC 594. The Supreme Court has stated that article 16(4) is an enabling provision conferring a discretionary power on the State for making any provision or reservation of appointments or parts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service of the State. Article 16(4) neither impose any constitutional duty nor confers any fundamental right on anyone for claiming reservation.

4. State of Kerala v. N.M. Thomas, MANU/SC/0479/1975 : AIR 1976 SC 490: (1976) 2 SCC 310: (1976) 1 SCR 906: 1976 SCWR 207. The Supreme Court held that it was permissible to give preferential treatment to Scheduled Castes and Scheduled Tribes under article 16(1) outside article 16(4). The Court observed that article 16(4) is not in the nature of an exception of article 16(1). It is a facet of article 16(1) which fosters and further the idea of equality of opportunity with special reference to an under privileged and deprived class of citizens.

5. Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India, MANU/SC/0058/1980 : AIR 1981 SC 298: (1981) 1 SCC 246: (1981) 2 SCR 185. The Court again upheld reservation of posts at various levels and making of various concession in favour of the Members of the Scheduled Castes and Scheduled Tribes. Thus the classification between SC and ST candidates from the rest of the communities for the purpose of reservation is just and reasonable because they constitute a class by themselves because of their social backwardness.

Explain the guidelines given by the Supreme Court in Indira Sawhney case

Indira Sawhney v. Union of India, MANU/SC/0104/1993 : AIR 1993 SC 477: 1992 AIR SCW 3682: JT 1992 (6) SC 273: 1993 (1) SCJ 353. Known as Mandal Commission case, is a very significant pronouncement of the Supreme Court on the question of reservation of posts for backward classes. The court has dealt with this question in a very exhaustive manner and summarized as follows-

1. Backward class of citizens in article 16(4) can be identified on the basis of caste and not only on economic basis.
2. Article 16(4) is not exception to article 16(1). It is an instance of classification. Reservation can be made under article 16(1).
3. Backward classes in article 16(4) are not similar to as socially and educationally backward on article 15(4).
4. Creamy-layers should be excluded from backward classes.
5. Article 16(4) permits classification of backward classes into backward and more backward classes.
6. A backward class of citizens cannot be identified only and exclusively with reference to economic criteria.
7. Reservation shall not exceed 50%.
8. Reservation can be made by executive order.
9. No reservation in promotion.
10. Permanent statutory body to examine complaints of over-inclusion or under-inclusion.
11. There is no need to express any opinion on the correctness or adequacy of the exercise done by the Mandal Commission.
12. Disputes regarding new criteria can be raised only in the Supreme Court.

In this case, the Supreme Court has taken cognizance of many complex but very momentous questions having a bearing on the future welfare and stability of the Indian society. The Court has delivered very thoughtful, creative and exhaustive opinion dealing with various aspects of the reservation problem.

After the pronouncement of the Indira Sawhney case, it has been observed that the court was not able to completely eliminate the caste factor in identifying the backward classes. However, the court has sought to keep the caste factor within limits. Caste can be one factor but cannot be the sole factor, to assess backwardness.

After Indira Sawhney, two Constitutional Amendments have been incorporated in Article 16(4) to tone down the impact of the Supreme Court pronouncement.

Article 16(4A) -

This clause has been added to the Constitution by the 77th Amendment Act, 1995 which provides that rule of reservation can now apply not only to initial recruitment but also to promotion as well where the State is of the opinion that the Scheduled Castes and Scheduled Tribes are not adequately represented in promotional posts in services under the State.

Union of India v. Virpal Singh Chauhan, MANU/SC/0113/1996 : AIR 1996 SC 448: 1995 AIR SCW 4309: JT 1995 (7) SC 231: MANU/SC/0113/1996 : (1995) 6 SCC 684. The Supreme Court held that seniority between reserved category candidates and general candidates shall continue to be governed by their panel position prepared at the time of selection.

Ajit Singh (II) v. State of Punjab, MANU/SC/0575/1999 : AIR 1999 SC 3471: 1999 AIR SCW 3460: (1999) 7 SCC 209: 1999 (8) Supreme 211. The Court has now stated that the primary purpose of article 16(4) is due representation of certain classes in certain posts. But, along with article 16(4), there are articles 14, 16(1) and 335 as well. Articles 14 and 16 lay down the permissible limits of the affirmative action by way of reservation which may be taken under articles 16(4) and 16(4A). Article 335 ensures that the efficiency of administration is not jeopardized.

Articles 16(4) or 16(4A) contains no directive or command, it is only an enabling provision. It imposes no constitutional duty on the state and confers no fundamental right on any one. It is necessary to balance article 16(1) and articles 16(4) and 16(4A). The interest of the reserved classes must be balanced against the interests of other segment of society.

M.G. Badappanavor v. State of Karnataka, AIR 2001 SC 260: 2000 AIR SCW 4340: (2001) 2 SCC 666: 2001 (1) Supreme 306. The Supreme Court has again confirmed and directed that the seniority lists as between the general and reserved promotees, and promotions, be reviewed in the light of the ruling of earlier cases. The Court directed that the seniority of the general candidates be restored accordingly.

Ashok Kumar Thakur v. State of Bihar, MANU/SC/0011/1996 : (1995) 5 SCC 403: AIR 1996 SC 75: 1995 AIR SCW 3731: 1995 (3) SCJ 705. The Supreme Court has quashed the economic criteria laid down by the Bihar and Uttar Pradesh Governments for identifying the affluent sections of the backward classes and exclude them for the purpose of job reservation and held that the criteria for identification of creamy layer is violative of article 16(4) and article 14 and against the law laid down by this Court in Mandal Commission case.

Article 16(4B) -

By the Constitution (Eighty-first Amendment) Act, 2000 a new clause (4B) has been inserted in article 16 which provides that nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled-up in that year in accordance with any provisions for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled-up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are filled-up for determining the ceiling of fifty per cent. reservation or total number of vacancies of that year.

This amendment envisages that the unfilled reserved vacancies in a year are to be carried forward to the subsequent years and that these vacancies are to be treated as distinct and separate from the current vacancies during any year.

The rule of 50% reservation laid down by the Supreme Court is to be applied only to the normal vacancies and not to the posts of backlog of reserved vacancies. This means that the unfilled reserved vacancies are to be carried forward year to year without any limits are to be filed separately from the normal vacancies.

Clause (5) -

Article 16(5) says that a law which provides that the 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 shall not be treated to be repugnant to this article.

Abolition of untouchability (Article 17)

Define Article 17

Article 17. Abolition of untouchability.-

"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".

Untouchability in a wider sense would include persons who are treated as untouchables temporarily or otherwise for various reasons, such as suffering from an epidemic or contagious disease or on account of social customs. Abolition of untouchability in itself is complete and its affect is all pervading and applicable to state action as well as acts or omission by individuals, institutions or juristic body of persons.

The main object of article 17 is to bar the practice of untouchability in any form. To give effect to article 17, Parliament enacted the Untouchability (Offences) Act, 1955, prescribing punishment for practicing untouchability in various forms. In 1976, the Act was renamed as the Protection of Civil Right Act, 1955.

Article 35 operates primarily as a restriction on the legislative power of the State Legislature, and since the Constitution is prospective in its operation, it does not render any existing criminal law forbidding the practice of untouchability void.

Nepal Singh v. State of Uttar Pradesh, MANU/SC/0283/1984 : AIR 1985 SC 84: (1985) 1 SCC 56: 1985 UJ (SC) 287: (1985) 2 SCR 1. It was held that the subject-matter of article 17 is not untouchability in its liberal or grammatical sense but the practice as it developed historically in India. The Court emphasized that the word 'untouchability' in article 17 was placed in inverted commas.

State v. Gulab Singh, MANU/UP/0230/1953 : AIR 1953 All 483. The High Court held that article 35 refers to future laws and does not render past laws in the matter void.

People's Union for Democratic Rights v. Union of India, MANU/SC/0038/1982 : AIR 1982 SC 1473: 1982 UJ (SC) 553: (1982) 2 SCC 494: (1982) 2 SCWR 202. The Supreme Court has held that the fundamental rights under article 17 are available against private individuals and it is the constitutional duty of the State to take necessary steps to see that these fundamental rights are not violated.

State of Karnataka v. Appa Balu Ingale, MANU/SC/0151/1993 : AIR 1993 SC 1126. The Court held that the object of article 17 is to liberate the society from blind and ritualistic adherence and traditional belief which has lost all legal or moral base. It seeks to establish new ideas for society.

Abolition of Titles (Article 18)

Define abolition of titles

Article 18. Abolition of titles.-

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".

In 1954, the Government of India introduced four awards - Bharat Ratna, Padma Vibhushan, Padma Bhushan, Padma Shri for exceptional and distinguished service in any field including public service. These awards were abolished in 1977 but were re-instated in 1980.

Balaji Raghavan v. Union of India, MANU/SC/0211/1996 : AIR 1996 SC 770: 1996 AIR SCW 86: (1996) 1 SCC 361: (1996) 1 UJ (SC) 197. The Supreme Court held that all national awards awarded by the Government of India are not titles within the meaning of article 18(1). These awards are not violative of the principle of equality as guaranteed by articles 14 and 18.

CHAPTER 8

Right to freedom

(Articles 19-22)

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

1. 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) Omitted by the Constitution (Forty-fourth Amendment) Act, 1978;
- (g) to practise any profession or to carry on any occupation, trade or business.

2. Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, insofar as such law imposes reasonable restriction on the exercise of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

3. Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interest of the sovereignty and integrity of India, security of the state, public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

4. Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the state from making any law imposing, in interest of the sovereignty and integrity of India or public order or morality, reasonable restriction on the exercise of the right conferred by the said sub-clause.

5. Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the state from making any law imposing, reasonable restriction on the exercise of any of the rights conferred by the said sub-clause either in the interest of the general public or for the protection of the interest of any Scheduled Tribe.

6. Nothing in sub-clause (g) of the said clause, shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing in the interests of the general public, reasonable restriction on the exercise of the right conferred by the said sub-clause and in particular, nothing in said sub-clause shall affect the operation of any existing law insofar as it relates to, or prevent the state from making any law relating to-

- (i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation trade or business, or
- (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 of citizens or otherwise."

Clauses (a) to (g) of article 19(1) guarantees to the citizen of India six freedoms, viz., of speech and expression, peaceful assembly or association, free movement, residence, and practicing any profession and carrying on any business.

These freedoms are necessary not only to promote certain basic rights of the citizens but also certain democratic

values, and the oneness and unity of the country. Article 19 guarantees some of the basic values and natural rights inherent in a person.

A.K. Gopalan v. State of Madras, MANU/SC/0012/1950 : AIR 1950 SC 27: 1950 SCR 88. Patanjali Shastri, J., observed that man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals.

However, the freedom guaranteed by article 19(1) are not absolute as right can be. Each of these right is liable to be controlled, curtailed and regulated to some extent by laws made by Parliament or State legislatures. Accordingly clauses (2) to (6) of article 19 lays down the grounds and purposes for which a legislature can impose reasonable restrictions on the rights guaranteed by articles 19(1)(a) to (g).

Unlike articles 14 and 21 the rights guaranteed under article 19 also not available to all persons. The right under article 19 can be claimed by citizens only. The word citizens refers to natural persons, who are entitled to citizenship under the law of the land. Citizens under article 19 mean only natural persons and not legal persons such as corporation or companies.

R.C. Cooper v. Union of India, MANU/SC/0074/1970 : AIR 1970 SC 1318: (1971) 1 SCR 512: (1970) 2 SCC 298 (Bank Nationalisation case). It was held that a shareholder, a depositor or a director is not entitled to move a petition for infringement of the rights of the company, unless by the action impugned by him, his rights are also infringed.

Bennett Coleman and Co. Ltd. v. Union of India, MANU/SC/0038/1972 : AIR 1973 SC 106: (1972) 2 SCC 788: 1973 (1) SCJ 177. The Court said that the fundamental rights of citizens are not lost when they associate to form a company. When the fundamental rights of shareholders are impaired by State actions their rights as shareholders are protected.

The Chairman, Railway Board v. Mrs. Chandrima Das, MANU/SC/0046/2000 : AIR 2000 SC 988: 2000 Cr LJ 1473: 2000 AIR SCW 649: 2000 (3) SCJ 1. Right to life under article 21 extends to a foreigner in India.

Reasonable Restriction

The restriction which may be imposed under any of the clauses must be reasonable restriction. The restrictions cannot be arbitrary. Hence a restriction to be constitutionally valid must satisfy the following two tests-

1. the restriction must be for the purpose mentioned in clauses (2) to (6), and
2. the restriction must be reasonable.

State of Madras v. V.G. Row, MANU/SC/0013/1952 : AIR 1952 SC 196: 1952 SCJ 253: 1952 Cr LJ 966: 1952 SCR 597. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases.

FREEDOM OF SPEECH AND EXPRESSION [ARTICLES 19(1)(A), 19(2)]

Explain the freedom of speech and expression

Freedom of speech is the bulwork of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty.

Article 19(1)(a) secures to every citizen the freedom of speech and expression. The freedom of speech and expression 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 plays a crucial role in the formation of public opinion on social, political and economic matters. Freedom of speech and expression, just as equality clause and the guarantee of life and liberty has been very broadly construed by the Supreme Court right from the 1950's. It has been described as basic human right, a natural right.

Romesh Thappar v. State of Madras, MANU/SC/0006/1950 : AIR 1950 SC 124: 1950 SCJ 418: 51 Cr LJ 1514: 1950 SCR

594. Patanjali Shastri, C.J., observed that:

"Freedom of speech and of the press lays the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible".

Maneka Gandhi v. Union of India, MANU/SC/0133/1978 : AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621: 1978 (2) SCJ 312. Bhagwati, J., emphasised in these words-

"Democracy is based essentially on free debate and open discussion for that is the only corrective of government action in a democratic setup. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential."

Prabhu Dutt v. Union of India, MANU/SC/0087/1981 : AIR 1982 SC 6: 1982 Cr LJ 148: (1982) 1 SCC 1: 1982 (1) SCJ 169: 1982 SCC (Cri) 41: (1982) 1 SCR 1184. The Supreme Court has held that the right to know news and information regarding administration of the government is included in the freedom of press.

Freedom of Propagation and Circulation

What is freedom of press?

The freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication.

Sakal Papers Ltd. v. Union of India, MANU/SC/0090/1961 : AIR 1962 SC 305: 1962 (2) SCJ 400: (1962) 3 SCR 842. The right to propagate one's idea is inherent in the conception of freedom of speech and expression.

Commercial Advertisements

Advertisements undoubtedly are form of speech because they bring activities to the notice of the public. Advertisement when it takes the form of commercial advertisement no longer falls within the concept of freedom of speech for the object of such advertisement is not the propagation of ideas-social, political or economic or furtherance of literature or human thought.

Hamdard Dawakhana v. Union of India, MANU/SC/0016/1959 : AIR 1960 SC 554 (563): 1960 Cr LJ 735: 1960 SCJ 611: (1960) 2 SCR 671. The advertisement in the instant case relates to commerce or trade and not to propagating of ideas and advertising of prohibited drugs or commodities of which the sale is not in the interest of the general public cannot be speech within the meaning of article 19(1)(a).

Tata Press Ltd. v. MTNL, MANU/SC/0745/1995 : (1995) 5 SCC 139: AIR 1995 SC 2438: 1995 (3) SCJ 571: 1995 AIR SCW 3602: JT 1995 (5) SC 647. It has been held that commercial speech (advertisement) is a part of the freedom of speech and expression granted under article 19(1)(a).

Freedom of Press

In India, freedom of the press is implied from the freedom of speech and expression guaranteed by article 19(1)(a). There is no special provision ensuring freedom of the press as such. The freedom of the press is regarded as a "species of the genus freedom of expression".

Sakal Papers v. Union of India, MANU/SC/0090/1961 : AIR 1962 SC 305: 1962 (2) SCJ 400: (1962) 3 SCR 842. It has been held in this case that article 19(1)(a) guarantees not only what a person circulates but also the volume of circulation. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons is each an integral part of the freedom of speech and expression.

Bennett Coleman & Co. Ltd. v. Union of India, MANU/SC/0038/1972 : AIR 1973 SC 106: (1972) 2 SCC 788: 1973 (1)

SCJ 177. The Court maintained that the freedom of the press embodies the right of the people to speak and express. The freedom of speech and expression is not only in the volume of circulation but in the volume of news and views. The press has the right of free publication and their circulation without any obvious restraint on publication. In the words of Court "freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in context".

Indian Express Newspaper (Bom) Pvt. Ltd. v. Union of India, AIR 1986 SC 515: (1985) 1 SCC 641: (1985) 2 SCR 287. The fundamental principle involved was the 'people's right to know'. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of the people in the administration. The court noted that with a view to checking malpractices interfering with the free flow of information, democratic constitutions world over make provisions guaranteeing freedom of speech and expression and laying down the limits of interference therewith.

Ajay Goswami v. Union of India, MANU/SC/5585/2006 : AIR 2007 SC 493: 2007 AIR SCW 15: (2007) 1 SCC 143: (2006) 14 Scale 317: 2007 (1) SCC (Cri) 298. The Court held that in order to shield minors and children the State should not forget that the same content of a newspaper might not be offensive to the sensibilities of adult men and women.

Right against Tapping of Telephone Conversation

Explain the right against tapping of telephone conversation

The freedom of speech and expression means the right to express one's convictions and opinion freely by word of mouth, writing, printing, picture or in any other manner. When a person is talking on telephone, he is exercising his right to freedom of speech and expression.

People's Union for Civil Liberties v. Union of India, MANU/SC/0149/1997 : AIR 1997 SC 568: 1997 AIR SCW 113: JT 1997 (1) SC 288: MANU/SC/0149/1997 : (1997) 1 SCC 301: 1996 (4) SCJ 565. Telephone tapping violates article 19(1) (a) unless it comes within grounds of restriction under article 19(2).

Right to Fly National Flag and Sing National Anthem

National Anthem, National Flag and National Song are secular symbol of the nationhood. They represent the supreme collective expression of commitment and loyalty to the nation as well as patriotism for the country.

Bjoe Emmanuel v. State of Kerala, MANU/SC/0061/1986 : (1986) 3 SCC 615: AIR 1987 SC 748: 1986 JT 115: 1986 (3) Supreme 344: 1986 (3) SCJ 395 (National Anthem case). The Supreme Court has held that no person can be compelled to sing the National Anthem, if he has genuine conscientious objections based on his religious faith.

Union of India v. Naveen Jindal, MANU/SC/0072/2004 : AIR 2004 SC 1559: 2004 AIR SCW 705: JT 2004 (2) SC 1: MANU/SC/0072/2004 : (2004) 2 SCC 510: (2004) 1 SCALE 677: 2004 (1) Supreme 880. The Supreme Court considered in detail that right to speech and expression under article 19(1)(a) includes flying the National Flag.

Right to Silence

The right to speech implies the right to silence. It implies freedom, not to listen, and not to be forced to listen. The right comprehends the freedom to be free flow what one desires to be free from.

Noise Pollution (N) In Re, MANU/SC/0415/2005 : AIR 2005 SC 3136: 2005 AIR SCW 3525: JT 2005 (6) SC 210: MANU/SC/0415/2005 : (2005) 5 SCC 733: 2005 (5) SCJ 165: (2005) 5 SCALE 475: 2005 (5) Supreme 77. A loudspeaker forces a person to hear what he wishes not to hear. The use of a loudspeaker may be incidental to the exercise of the right but, its use is not a matter of right or part of the rights guaranteed by article 19(1).

Right to Vote

Define right to vote

Union of India v. Association for Democratic Reforms, MANU/SC/0394/2002 : AIR 2002 SC 2112: 2002 AIR SCW 2186:

JT 2002 (4) SC 501: MANU/SC/0394/2002 : (2002) 5 SCC 294: (2002) 4 SCALE 297: 2002 (4) Supreme 1. In this case Supreme Court held that voters have fundamental rights to know about their candidates. It has been held that the amended Electoral Reforms law passed by Parliament is unconstitutional as being violative of citizen's right to know under article 19(1)(a).

Jyoti Basu v. Debi Ghosal, MANU/SC/0144/1982 : AIR 1982 SC 983: 1982 UJ (SC) 186: (1982) 1 SCC 691: 1982 (1) SCJ 245. It was held by the Apex Court that though right to elect is fundamental to the democracy. It is neither a fundamental right nor a common law right. It is pure and simple a statutory right.

Right to Travel Abroad

Maneka Gandhi v. Union of India, MANU/SC/0133/1978 : AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621: 1978 (2) SCJ 312. Justice Bhagwati held that freedom of speech and expression guaranteed by article 19(1) is exercisable not only in India but outside as well. The right to travel abroad is not specifically named as fundamental right but it is an integral part of fundamental rights and partakes the basic structure of the Constitution.

Censorship of Films

K.A. Abbas v. Union of India, MANU/SC/0053/1970 : AIR 1971 SC 481: (1971) 2 SCR 446: 1971 (2) SCJ 242. The Supreme Court has upheld censorship of films under article 19(1)(a) on the ground that films have to be treated separately from other forms of art and expression because motion picture is able to stir up emotions more deeply than any other product of art.

Right to Telecast

Secretary Ministry of Information and Broadcasting v. Cricket Association of West Bengal, MANU/SC/0246/1995 : (1995) 2 SCC 161: AIR 1995 SC 1236: 1995 AIR SCW 1856. It was held by the Supreme Court that right to impart and receive information is a species of the right to freedom of speech and expression guaranteed by article 19(1)(a). A citizen has a right to use best means of receiving or importing information and as such have an access to telecasting subject to limitations on account of the use of public property.

Right to Know

State of Uttar Pradesh v. Raj Narain, MANU/SC/0032/1975 : AIR 1975 SC 865: (1975) 4 SCC 428: (1975) 3 SCR 333. Mathew J., observed "The right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any role have no repercussion on public security".

Right to Information Act, 2005

Explain the salient features of RTI, 2005

The Right to Information Act, 2005 repeals the Freedom of Information Act, 2002 which is passed by the NDA Government. The object of the Act is to promote openness, transparency and accountability in administration.

S.P. Gupta v. President of India, MANU/SC/0080/1981 : AIR 1982 SC 149: 1981 Supp SCC 87: (1982) 2 SCR 365. The right to know, receive and impart information has been recognised within the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose.

Picketing, Demonstration and Strike

Within certain limits, picketing or demonstration may be regarded as the manifestation of one's freedom of speech and expression. Peaceful picketing is free speech. Non-violent acts like words, picketing and demonstration is a non-violent act of persuasion.

Communist Party of India (M) v. Bharat Kumar, AIR 1998 SC 184: 1997 AIR SCW 4147: (1998) 1 SCC 201: (1997) 7

SCALE 21: 1997 (9) Supreme 415: 1998 (1) UJ (SC) 60. A full Bench of the Kerala High Court has declared 'Bandhs' organised by political parties from time-to-time as unconstitutional being violative of the fundamental rights of the people. A call for bandh is clearly deferent from a call for general strike or hartal. There is destruction of public property during a bandh. The High Court has also directed the State and all its law enforcement agencies to do all that may be necessary to give effect to the court order.

Grounds of Restrictions

What are the grounds of restriction under Article 19(2)?

While it is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some restriction on this freedom for the maintenance of social order. No freedom can be absolute or completely unrestricted. Accordingly, under article 19(2), the State may make a law imposing reasonable restrictions.

Clause (2) of article 19 specifies the limits upto which the freedom of speech and expression may be restricted. It enables the legislature to impose reasonable restrictions on the right to free speech under the following heads-

- (1) Security of the State;
- (2) Friendly relation with foreign States;
- (3) Public Order;
- (4) Decency and Morality;
- (5) Contempt of Court;
- (6) Defamation;
- (7) Incitement to an offence;
- (8) Sovereignty and integrity of India.

FREEDOM TO ASSEMBLE [ARTICLE 19(1)(B), ARTICLE 19(3)]

Freedom of assembly is an essential element in a democratic government. In the words of Chief Justice Waite of the Supreme Court of America "the very plea of a government, republican in form, implies a right on the part of citizens to meet peaceably for consultation in respect of public affairs". The purpose of public meetings being the education of the public and the formation of opinion on religious, political, economic or social problems, the right of assembly has a class affinity to that of free speech under clause (1)(a).

Article 19(1)(b) guarantees to the citizen of India the right to assemble peaceably and without arms. The Constitution secures this right to the citizen subject to the two limitations.

- (1) Assembly must be unarmed;
- (2) It must be peaceful i.e., it must not be tumultuous or riotous in character.

Further under clause (3) the State may impose reasonable restrictions as may be necessary-

- (1) In the interest of public order;
- (2) In the interest of sovereignty and integrity of India.

Babulal Parate v. State of Maharashtra, MANU/SC/0155/1961 : AIR 1961 SC 884: (1961) 2 Cr LJ 16: 1961 (1) SCJ 524: (1961) 3 SCR 423. The right guaranteed under article 19(1)(b) includes right to take out procession through public roads subject of course to directions of the Magistrate so as not to be a threat to public peace and order.

Himat Lal K. Shah v. Commissioner of Police, Ahmedabad, MANU/SC/0583/1972 : AIR 1973 SC 87: 1973 Cr LJ 204:

(1973) 1 SCC 227: 1973 SCC (Cri) 280. The Supreme Court upheld the provisions as reasonable restriction in the interest of public order but the rule made under the Act which empowered the commissioner to refuse permission was struck down as ultra vires section 33(1)(o) on the ground that section 33(1)(o) gives power to regulate meetings and processions but does not authorise to prohibit all meetings and processions.

Freedom to form Association or unions [ARTICLE 19(1)(C), ARTICLE 19(4)]

Article 19(1)(c) guarantees to the citizens of India the right to form associations or unions. Under article 19(4), reasonable restriction in the interest of public order or morality or sovereignty and integrity of India may be imposed this right by law.

The right to form associations is the very lifeblood of democracy. Without such a right political parties cannot be formed and without such parties a democratic and parliamentary form of government cannot be run properly. The right to form an association necessarily implies that the persons forming association have also right to continue to be associated with only those whom they voluntarily admit in their association.

State of Madras v. V.G. Row, MANU/SC/0013/1952 : AIR 1952 SC 196: 1952 SCJ 253: 1952 Cr LJ 966: 1952 SCR 597. The Supreme Court declared that the test of reasonableness should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases.

Damyanthi Naranga v. Union of India, MANU/SC/0726/1971 : AIR 1971 SC 966: (1971) 3 SCR 840: 1971 UJ (SC) 409. In this case, it has been held that the law in question did not merely regulate the affairs of the society, it altered its composition. Any law altering the composition of the association compulsorily will be a breach of the right to form the association of the original members guaranteed under article 19(1)(c) such a law is not protected under article 19(4).

Ous Kutilingal Achudan Nair v. Union of India, MANU/SC/0057/1975 : AIR 1976 SC 1179: 1976 UJ (SC) 43: (1976) 1 SCWR 79: MANU/SC/0057/1975 : (1976) 2 SCC 780: (1976) 2 SCR 769: 1976 (2) SCJ 453. The Question arose as to whether the chowkidars, barbers, carpenters, mechanics, tailors, bootmakers, etc., in the armed forces can be prevented by Parliament from forming associations or unions in exercise of their fundamental right under article 19(1)(c).

The Supreme Court held that although these employees are non-combatant and are in some matters, governed by civil service rules, yet they are integral part of the armed forces and their duty is to accompany the Armed Personnel on active service or in camp or on march. Therefore, the Central Government is competent to make rules restricting on curtailing their fundamental rights under article 19(1)(c).

Delhi Police Non-Gazetted Karamchhari Sangh v. Union of India, MANU/SC/0068/1986 : AIR 1987 SC 379: 1986 JT 920: (1987) 1 SCC 115: 1987 (1) Supreme 9: (1987) 1 UJ (SC) 234: 1987 (1) SCJ 144. The Supreme Court has upheld the validity of the

Police-Force (Restriction of Rights) Act, 1966, which imposes certain restrictions on the enjoyment of fundamental rights on members of the police force. The Act has been enacted under article 33 but it is also valid under article 19(4).

Tika Ramji v. State of Uttar Pradesh, MANU/SC/0008/1956 : AIR 1956 SC 676: 1956 SCJ 625: 1956 SCR 393. The Supreme Court held that assuming that right to form association implies a right not to form association, it does not follow that the negative right must be regarded as fundamental right. The court, thus left the question in a doubtful state of authority.

Freedom of Movement [Article 19(1)(d), Article 19(5)]

Article 19(1)(d) guarantees to all citizens of India the right "to move freely throughout the territory of India." The right to move means the right of locomotion and the qualifying adverb 'freely' connotes that the freedom to move is without a restriction and is absolute i.e., to move wherever one likes, whenever one likes, however, subject to any valid law enacted under clause (5).

These constitutional provisions guarantee to the Indian citizen the right to go or to reside wherever they like within the Indian territory. A citizen can move freely from one State to another, or from one place to another within a State. These rights underline the concept that India is one unit so far as the citizens are concerned.

N.B. Khare v. State of Delhi, MANU/SC/0004/1950 : AIR 1950 SC 211: 1950 SCJ 328: 1950 SCR 519. The petitioner was served with an order of externment by the DM, Delhi to remove himself immediately from Delhi district and not to return there for a period of three months. The order was made under the East-Punjab Safety Act, 1949.

The Supreme Court held that the mere fact that the power to make the order of externment was given to the State Government or District Magistrate where satisfaction was final, did not make the restriction unreasonable because the desirability of passing such an order in emergency had to be left to an officer.

Kharak Singh v. State of Uttar Pradesh, MANU/SC/0085/1962 : AIR 1963 SC 1295: (1963) 2 Cr LJ 329: (1964) 1 SCR 332: 1964 (2) SCJ 107. The Court ruled by majority that no aspect of police surveillance fell within the scope of article 19(1)(d). The purpose of secret picketing was only to identify the visitors to the suspect so that police might have some idea of his activities and this did not affect his right of movement. It was argued that if a person suspected that his movements were being watched by the police, it would induce in him a psychological inhibition against movement and this would infringe article 19(1)(d) which should restrain a person's freedom.

Ajay Canu v. Union of India, MANU/SC/0010/1988 : (1988) 4 SCC 156: AIR 1988 SC 2027: JT 1988 (3) SC 523. A rule was made under the Motor Vehicles Act requiring compulsory wearing of helmet by a person driving a scooter or a motorcycle. The rule was challenged as infringing the free movement of the driver of a two-wheeler guaranteed under article 19(1)(d) but the court negated that the rule has been framed for the benefit and welfare of and safe journey by a person driving a two-wheeler vehicle. The rule is made to prevent accident and not to curtail freedom of movement.

Rajneesh Kapoor v. Union of India, MANU/SC/8567/2006 : AIR 2007 SC 204. It has been held that the requirement of wearing helmet is not a restriction on free movement of citizen, the paramount objective of wearing helmet is to save life.

State of Uttar Pradesh v. Kaushilya, MANU/SC/0091/1963 : AIR 1964 SC 416: (1964) 1 SCWR 276: (1964) 4 SCR 1002. The validity of section 20 of the U.P. Suppression of Immoral Traffic in Women and Girls Act, 1956 was challenged. Under that section, Magistrate could compel a prostitute to remove herself from the place where she resided or frequented. He could also prohibit her from re-entering the place without his permission. Though it affects right to move throughout the territory of India and to reside and settle anywhere within the territory of India guaranteed by article 19(1)(d), yet the section was upheld as constitutional because the restriction was considered to be reasonable in the interest of the general public.

Grounds of Restrictions

The State may under clause (5) of article 19 impose reasonable restrictions on the freedom of movement on two grounds-

- (i) in the interest of general public;
- (ii) for the protection of the interest of Scheduled Tribes.

FREEDOM OF RESIDENCE, ARTICLES 19(1)(E) AND 19(5)

The purpose of this clause is also to remove internal barriers within the territory of India so as to enable every citizen to travel freely and settle down in any part of a State or union territory. This freedom is subject to reasonable restrictions in the interests of general public or for the protection of the interest of any Scheduled Tribe.

State of Uttar Pradesh v. Koushilya, MANU/SC/0091/1963 : AIR 1964 SC 416: (1964) 1 SCWR 276: (1964) 4 SCR 1002. Prostitutes may be restricted to carry on their trade within a specified area and accordingly may be required to reside in or to remove from particular areas.

Hasan Ali Raihani v. Union of India, MANU/SC/8021/2006 : AIR 2006 SC 1714: 2006 Cr LJ 2106: 2006 AIR SCW 1572: MANU/SC/8021/2006 : (2006) 3 SCC 705: 2006 SCJ 803: (2006) 3 SCALE 293: 2006 SCC (Cri) 33: 2006 (3) Supreme 135. When the residence visa permit of a person who entered India on the basis of a valid permit was cancelled, the Supreme Court held that having regard to the fact that he has entered the country legally, the competent authority must inform him of the reasons for his proposed deportation.

Dhan Bahadur Gharti v. State, AIR 1953 Ass 61, A custom prevailing in a tribal area that no Nepali or foreigner would be allowed to stay in the area without the permission of the Deputy Commissioner, was held valid under article 19(5) as being a reasonable restriction in the interests of the protection of the Scheduled Tribes.

Freedom of Profession, Occupation, Trade or Business ARTICLES 19(1)(G) AND 19(6)

Explain the freedom of profession with the help of relevant cases

Article 19(1)(g) guarantees to all citizens the right to practise any profession, or to carry on any occupation, trade or business. Clause (6) provides that nothing in sub-clause (g) shall affect the operation of any existing law insofar as it imposes or prevent the State from making any law imposing in the interest of the general public, reasonable restrictions on the exercise of such right. Nothing in clause (g) shall affect the operation of any existing law relating to professional or technical qualification for practising any profession or carrying on any business or occupation and law relating to State monopoly.

State of Bombay v. R.M.D. Chamarbaugwalla, MANU/SC/0019/1957 : AIR 1957 SC 699: 1957 SCJ 607. It was contended on behalf of the respondent that even a criminal or immoral activity, if it yield profit on income, must be treated as trade or business protected by article 19(1)(g). The Supreme Court held that crime cannot be a business.

State of Uttar Pradesh v. Kartar Singh, MANU/SC/0060/1964 : AIR 1964 SC 1135: (1964) 1 SCWR 435: (1964) 2 Cr LJ 229: 1964 (2) SCJ 666. It was held that there is no fundamental right to carry on trade in adulterated food stuffs. Similarly, no one can claim fundamental right to trade in smuggled goods.

Sadan Singh v. New Delhi Municipal Committee, AIR 1989 SC 1988: (1989) 4 SCC 155: (1989) 2 SCR 1038. The Supreme Court held that hawkers have a fundamental right to carry on trade on pavement of roads but subject to reasonable restrictions. The Court observed that the word 'occupation' has a wide meaning such as any regular work, profession, job, principal activity, employment, business or calling in which an individual is engaged.

Khoday Distilleries v. State of Karnataka, MANU/SC/0572/1995 : (1995) 1 SCC 574: AIR 1996 SC 911: 1995 AIR SCW 313: JT 1994 (6) SC 588. The Supreme Court concluded that a citizen has no fundamental right to trade or business in intoxicating liquors. Article 47 of the Constitution directs the State to endeavour to bring about prohibition of intoxicating liquors and all other drugs injurious to health.

T.M.A. Pai Foundation v. State of Karnataka, MANU/SC/0905/2002 : AIR 2003 SC 355: 2002 AIR SCW 4957: JT 2002 (9) SC 1: MANU/SC/0905/2002 : (2002) 8 SCC 481: (2002) 8 SCALE 1: 2002 (8) Supreme 62. The court held that the establishment and running of an educational institution where a large number of persons are employed as teachers and administrative staff and an activity is carried on which results in the imparting of knowledge to students, must necessarily be regarded as an occupation even if these is not for the purpose of profit generation.

Kuldeep Singh v. Government of N.C.T. Delhi, MANU/SC/8215/2006 : AIR 2006 SC 2652: 2006 AIR SCW 3627: (2006) 5 SCC 702: 2006 (7) SCJ 342: (2006) 6 SCALE 588: 2006 (5) Supreme 742. The Supreme Court held that the matter relating to grant of licence for dealing in liquor is within the exclusive domain of the State. If the State had the right to adopt a policy decision it indisputably had a right to vary amend or repeal the same.

Excel Wear v. Union of India, MANU/SC/0263/1978 : AIR 1979 SC 25: (1978) 4 SCC 224: 1979 (1) SCJ 292: (1979) 1 SCR 1009: (1978) 2 SCWR 382. The Court emphasized that while there may be greater emphasis on nationalisation and State ownership of industries, private ownership of industries is recognised. Private enterprise forms a large portion of Indian economic structure. Socialism cannot go to the extent of ignoring the interest of all such persons.

protection in respect of conviction for offences (Article 20)

Article 20. Protection in respect of Conviction for offences

1. No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor 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.
2. No person shall be prosecuted and punished for the same offence more than once.
3. No person accused of any offence shall be compelled to be a witness against himself.

1. Ex post facto law: Article 20(1)

Explain ex post facto law with the help of leading cases

An ex post facto law is a law which imposes penalties retrospectively that is, upon acts already done or which increases the penalty for the past acts. The right as secured by clause (1) corresponds to the provisions against ex post facto law of the American Constitution which declared that no ex post facto laws shall be passed. The ex post facto law are laws which nullified and punished what had been lawful when done.

Article 20(1) has two parts. Under the first part, no person is to be convicted of an offence except for violating a 'law in force' at the time of the commission of the act charged as an offence. A person is to be convicted for violating a law in force when the act charged is committed.

Pareed Lubha Muhammed Lubha v. K.K. Neelambaran, MANU/KE/0064/1967 : AIR 1967 Ker 155: ILR (1967) 1 Ker 110: 1967 Cr LJ 891: 1967 Ker LJ 403. It was held that if the non-payment of the Panchayat Tax was not an offence on the day it fell due, the defaulter could not be convicted for the omission to pay under a law passed subsequently even if it covered older dues.

Sakshi v. Union of India, MANU/SC/0523/2004 : AIR 2004 SC 3566: 2004 Cr LJ 2881: 2004 AIR SCW 3449: 2004 (3) Crimes 177: MANU/SC/0523/2004 : (2004) 5 SCC 518: (2004) 6 SCALE 15: 2004 SCC (Cri) 1645: 2004 (5) Supreme 68. Article 20 relates to the constitutional protection given to persons who are charged with a crime before a criminal court. The protection under clause (1) is available only against conviction on sentence for a criminal offence under ex post facto law and not against the trial.

Hathisingh Mfg Co., Ltd., Ahmedabad v. Union of India, MANU/SC/0303/1960 : AIR 1960 SC 923: 1961 (1) SCJ 22: (1960) 3 SCR 528. Article 20(1) does not bar a civil liability being imposed retrospectively. An Act passed in June, 1957, imposed on the employers, closing their undertaking, a liability to pay compensation to their employees since November 28, 1956. Their liability could be enforced by coercive process leading to imprisonment in case of failure to discharge it. The Supreme Court held that the liability imposed by the law was a civil liability which was not an offence and so article 20(1) could not apply to the liability for the period of November, 28, 1956 to June, 1957.

The second part of article 20(1) immunize a person from a penalty greater than what he might have incurred at the time of his committing the offence. Thus a person cannot be made to suffer more by an ex post facto law than what he would be subjected to at the time he committed the offence.

Kedar Nath v. State of West Bengal, MANU/SC/0082/1953 : AIR 1953 SC 404: 1953 Cr LJ 1621: 1953 SCJ 580: 1954 SCR 30. The accused committed an offence in 1947, which under the Act then in force was punishable by imprisonment, or fine or both. The Act was amended in 1949 which enhanced the punishment for the same offence by an additional fine equivalent to the amount of money procured by the accused through the offence. The Supreme Court held that the enhanced punishment could not be applicable to the act committed by the accused in 1947 and hence set aside the additional fine imposed by the amended Act.

Sarla Mudgal, President, Kalyani v. Union of India, MANU/SC/0290/1995 : (1995) 3 SCC 635: AIR 1995 SC 1531: 1995 AIR SCW 2326: 1995 Cr LJ 2926: JT 1995 (4) SC 331: MANU/SC/0290/1995 : (1995) 3 SCC 635: 1995 SCC (Cri) 569. It

is settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because the court does not legislate but only interprets an existing law.

T. Barai v. Henry An Hoe, MANU/SC/0123/1982 : (1983) 1 SCC 177: AIR 1983 SC 150: 1983 Cr LJ 164: 1983 SCC (Cri) 143: 1983 UJ (SC) 132 (2): (1983) 1 SCR 905. It has been held that the accused could take advantage of the beneficial provision of the Central Amendment Act and thus he had the benefit of the reduced punishment.

Rattanlal v. State of Punjab, MANU/SC/0072/1964 : AIR 1965 SC 444: 1965 (1) SCJ 779: (1965) 1 Cr LJ 360: (1964) 7 SCR 676: (1964) 2 SCWR 161. An ex post facto law which only mollifies the rigours of a criminal law is not within the prohibition of article 20(1). An accused should have the benefit of a retrospective or retroactive criminal legislation reducing punishment for an offence.

2. Double Jeopardy article 20(2)

Define Double Jeopardy

When a person has been convicted for an offence by a competent court, the conviction serves as a bar to any further criminal proceedings against him for the same offence. The idea is that as one ought to be punished twice for one and the same offence. If a person is indicted for the same offence in a court he can plead as a complete defence. He can take the plea of *autrefois acquit* or *autrefois convict*.

This principle is based on the English Maxim "*nemo debet vis vexari*" which means that a man may not be put twice in peril for the same offence. But under article 20(2) the protection against double punishment is given only when the accused has not only been prosecuted but double punishment is given only when the accused has not only been prosecuted but also punished and is sought to be prosecuted second time for the same offence.

Maqbool Hussain v. State of Bombay, MANU/SC/0062/1953 : AIR 1953 SC 325: 1953 SCJ 456: 1953 Cr LJ 1432: 1953 SCR 730. The Supreme Court held that sea custom authorities were not a court or judicial tribunal and the adjudging of confiscation under the Sea Custom Act, did not constitute a judgment of judicial character necessary to take the plea of the double jeopardy. Hence the prosecution under the Foreign Exchange Regulation Act, is not barred.

S.A. Venkataraman v. Union of India, MANU/SC/0133/1954 : AIR 1954 SC 375: 1954 Cr LJ 993: 1954 SCJ 461: 1954 SCR 1150. The constitutional right guaranteed by article 20(2) against double jeopardy can be successfully invoked only where the prior proceedings on which reliance is placed are of a criminal nature instituted or continued before a court or law or a tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.

A.A. Mulla v. State of Maharashtra, MANU/SC/0339/1997 : AIR 1997 SC 1441: 1997 Cr LJ 353: 1997 AIR SCW 63: JT 1996 (9) SC 551: (1996) 11 SCC 606: 1997 SCC (Cri) 305. The appellants were charged with section 409, IPC and section 5 of the Prevention of Corruption Act, for making false panchnama disclosing of recovery of 90 gold biscuits although according to prosecution case the appellant had recovered 99 gold biscuits. They were tried for retaining 9 gold biscuits before the special judge but appellants were acquitted on the ground that the prosecution had failed to prove misappropriation. The appellants were again tried under the Customs Act and FERA. The appellants challenged the validity of their second trial on the ground that it was violation of article 20(2) of the Constitution. It was held that the second trial was not barred as not only the ingredients of the offence of two trials were different but the factual situation of offences in the first and the second trial were also different.

State of Bombay v. S.L. Apte, AIR 1961 SC 678: 1961 (1) SCJ 685: (1961) 1 Cr LJ 725: (1961) 3 SCR 107. The respondents were convicted and sentenced under section 409 of the IPC and section 105 of the Insurance Act, by the Magistrate. The Supreme Court held that the second persecution was not for the same offence and, therefore article 20(2) was not attracted.

State of Rajasthan v. Hat Singh, 2003 AIR SCW 217: MANU/SC/0006/2003 : AIR 2003 SC 791: 2003 Cr LJ 884: 2003 (1) Crimes 356: JT 2003 (1) SC 77: (2003) 2 SCC 152: (2003) 1 SCR 38: (2003) 1 SCALE 43: 2003 SCC (Cri) 451: 2003 (1) Supreme 215: 2003 (1) UJ (SC) 407. It has been held that the offence of glorification of Sati under section 5

of the Rajasthan Sati Prevention Act, 1907, is different from offence of violation of prohibitory order under section 6 of the Act.

State (NCT of Delhi) v. Navjot Sandhu, MANU/SC/0465/2005 : AIR 2005 SC 3820: 2005 Cr LJ 3950: 2005 AIR SCW 4148: 2005 (3) Crimes 87: 2005 (6) SCJ 210: (2005) 6 SCALE 177: 2005 SCC (Cri) 1715: 2005 (5) Supreme 414. The Supreme Court held that ingredients of offence under section 302 IPC and sections 3(2) and 3(3) of POTA are substantially different and that an offence falling within ambit of section 3(1) of POTA may not be squarely covered by the offence under section 300 of the IPC. Therefore, article 20(2) was held inapplicable.

Jitendra Panchal v. Intelligence Officer, NCB, MANU/SC/0123/2009 : AIR 2009 SC 1938: 2009 AIR SCW 1559: 2009 (1) Crimes 338: MANU/SC/0123/2009 : (2009) 3 SCC 57: (2009) 2 SCALE 202: 2009 (1) SCC (Cri) 986. The offence for which the accused was tried and convicted in a foreign country (USA) was in respect of a charge of conspiracy to possess a contraband substance with the intention of distributing the same punishable under US law. The offence for which he was tried in India was relating to the importation of the contraband article from Nepal into India and exporting the same for sale in USA punishable under sections 3 and 4 of the Penal Code read with section 3(38) of the General Clauses Act. The offences for which the appellant was tried and convicted in the USA, and for which he is now being tried in India are distinct and separate and do not therefore, attract the provisions of article 20(2) of the Constitution.

Mukhtiar Ahmed Ansari v. State (NCT of Delhi), MANU/SC/0309/2005 : AIR 2005 SC 2804: 2005 Cr LJ 2569: 2005 AIR SCW 2379: 2005 (2) Crimes 107: JT 2005 (4) SC 503: (2005) 5 SCC 258: 2005 (4) SCJ 526: (2005) 4 SCALE 269: 2005 SCC (Cri) 1037: 2005 (3) Supreme 370. In connection with an incident of kidnapping and extortion the accused was booked under the Arms Act as well as under TADA. He was also charged in kidnapping case along with two brothers. He was acquitted in kidnapping case. The Supreme Court set aside the sentence passed against the accused under TADA as also under the Arms Act on the ground that once the accused was acquitted in kidnapping case the doctrine of autrefois acquit get attracted.

Prohibition against Self-incrimination - Article 20(3)

What are the rights of an accused under article 20(3)

Clause (3) of article 20 declares that "person accused of an offence shall be compelled to be a witness against himself." This provision embodies the principle of protection against compulsion of self-incrimination which is one of the fundamental canons of the British system of criminal jurisprudence and which has been adopted by the American system and incorporated in the federal Constitution. The characteristic features of this principle are-

- (1) That the accused is presumed to be innocent;
- (2) That it is for the prosecution to establish his guilt;
- (3) That the accused need not make any statement against his Will.

On analysis, the provision will be found to contain the following components-

- (i) It is a right available to a person "accused of an offence";
- (ii) It is a protection against 'compulsion' to be a witness;
- (iii) It is protection against such 'compulsion' resulting in his giving evidence 'against himself'.

(i) Accused of an offence

The privilege under clause (3) is confined only to the accused i.e., a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in the prosecution.

M.P. Sharma v. Satish Chandra, District Magistrate, Delhi, MANU/SC/0018/1954 : AIR 1954 SC 300: 1954 Cr LJ 865: 1954 SCJ 428: 1954 SCR 1077. The Supreme Court taking a broad view of article 20(3) stated that to limit article

20(3) to the oral evidence of a person standing trial for an offence is to confine the content of the constitutional guarantee to its barely 'literal import', and so to limit article 20(3) would be to rob the guarantee of its substantial purpose and to miss the substance. It covers not only oral testimony or statements in writing of the accused but also production of a thing or of evidence by other modes.

Nandini Satpathy v. P.L. Dani, MANU/SC/0139/1978 : AIR 1978 SC 1025: 1978 Cr LJ 968: (1978) 2 SCC 424: 1978 SCC (Cri) 236. The court held that the expression "accused of an offence" no doubt includes a person formally brought into police diary as an accused person but it also includes a suspect. Adverting to several of its earlier decisions, the court did not agree with the restrictive view of the expression 'accused of an offence' taken therein and extended the application of article 20(3) to police interrogations.

Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat, MANU/SC/0473/1991 : (1991) 4 SCC 406: AIR 1991 SC 2176: 1991 Cr LJ 3086: 1991 AIR SCW 2419: 1991 (3) Crimes 232: JT 1991 (3) SC 617: (1991) 3 SCR 936. It has been held that mere issue of notice on pendency of contempt proceedings are not in the nature of criminal proceedings for an offence, the pendency of contempt proceedings cannot be regarded as criminal proceedings merely because it may end in imposing punishment on the contemnor.

(ii) To be a Witness

"To be a witness" means making of oral or written statement in or out of court by a person accused of an offence. It means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing made or given in a court or otherwise. Such statements are not confined to confession but also cover incriminatory statements i.e., to the statements which have a reasonable tendency strongly to point out to the guilt of the accused.

M.P. Sharma v. Satish Chandra, District Magistrate, Delhi, MANU/SC/0018/1954 : AIR 1954 SC 300: 1954 Cr LJ 865: 1954 SCJ 428: 1954 SCR 1077. The compulsory taking of finger impressions or specimen handwriting of an accused would come within the mischief of article 20(3).

State of Bombay v. Kathi Kalu Oghad, MANU/SC/0134/1961 : AIR 1961 SC 1808: (1961) 2 Cr LJ 856: (1962) 3 SCR 10. The court held that "to be a witness" in article 20(3) means to impart knowledge about relevant facts by an oral statement or statement in writing made as given in court or otherwise by giving of thumb impression or impression of foot, palm, or fingers or specimen writing or signature or showing parts of body by way of identification are not included in the expression 'to be witness' in article 20(3).

Parshadi v. Uttar Pradesh, MANU/SC/0100/1956 : AIR 1957 SC 211: 1957 Cr LJ 328. An accused who was charged with committing of a murder stated to the police that he would give clothes of the deceased which he had placed in a pit and thereafter he dug out the pit in presence of witnesses and took out the clothes which were identified as the clothes belonging to the deceased. It was held that the statement of the accused to the police is admissible.

(iii) Compulsion to give evidence "against himself"

In order to bring the evidence within the inhibition of article 20(3), it must be shown that not only the person making the statement was an accused at the time of making the statement and it had a material bearing on the criminality of the maker of the statement, but also that he was compelled to make the statement.

Nandini Satpathy v. P.L. Dani, MANU/SC/0139/1978 : AIR 1978 SC 1025: 1978 Cr LJ 968: (1978) 2 SCC 424: 1978 SCC (Cr) 236. In this case the Court has widened the scope of compulsion and held that compulsory testimony is evidently procured not merely by physical threats or violence, but also by psychic, torture, interrogative proximity, overbearing, intimidating methods and the like.

Kalawati v. State of Himachal Pradesh, MANU/SC/0030/1953 : AIR 1953 SC 131: 1953 Cr LJ 668: 1953 SCJ 144: 1953 SCR 546. The Supreme Court has held that article 20(3) does not apply at all to a case where the confession is made by an accused without any inducement, threat or promise. Similarly retracted confession although they have little probative value, are not repugnant to this clause.

Mohd. Dastagir v. State of Madras, AIR 1980 SC 756: 1960 Cr LJ 1159: 1960 SCJ 726: (1960) 3 SCR 116. The Supreme

Court has held that the accused was not compelled to produce the notes as no duress was applied on him to produce the notes. The appellant was not an accused at the time the currency notes were seized from him.

Amrit Singh v. State of Punjab, MANU/SC/8642/2006 : AIR 2007 SC 132: 2007 Cr LJ 298: 2006 AIR SCW 5712: 2006 (4) Crimes 380: (2006) 11 SCALE 309: 2007 (2) SCC (Cri) 397: 2006 (8) Supreme 710. It has been held that asking an accused of his hair for the purpose of identification amounts to testimonial compulsion. The accused has right to refuse to give specimen of his hair for the purpose of identification. He can not be made witness against himself in view of article 20(3) of the Constitution.

Protection of life and Personal Liberty (Article 21)

Article 21. Protection of life and personal liberty

Explain the facts in A.K. Gopalan case

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

A.K. Gopalan v. Union of India, MANU/SC/0012/1950 : AIR 1950 SC 27: 1950 SCJ 174: 51 Cr LJ 1383: 1950 SCR 88. In that case the petitioner A.K. Gopalan, Communist leader was detained under the Preventive Detention Act, 1950 the petitioner challenged the validity of his detention under the Act on the ground. That it was violative of his right to freedom of movement under article 19(1) which is the very essence of personal liberty guaranteed by article 21 of the Constitution. He argued that the words "personal liberty" includes the freedom of movement also and therefore the Preventive Detection Act, 1950 must also satisfy the requirement of article 19(5).

The Supreme Court by majority held that the 'personal liberty' in article 21 means nothing more than the liberty of the physical body, that is, freedom from arrest and detention without the authority of law. According to Prof. A.V. Dicey "Personal liberty means freedom from physical restraint and coercion which is not authorised by law".

Maneka Gandhi v. Union of India, MANU/SC/0133/1978 : AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621: 1978 (2) SCJ 312. The Supreme Court overruled the Gopalan's case and Justice Bhagwati observed - "The expression personal liberty in article 21 is of widest amplitude and it covers a variety of rights which go to constitute the fundamental liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under article 19".

Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746: 1981 Cr LJ 306: (1981) 1 SCC 608: 1981 SCC (Cri) 212: 1981 (2) SCJ 18: (1981) 2 SCR 516. Bhagwati J. stated that right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing and mingle with fellow human beings.

Bandhua Mukti Morcha v. Union of India, MANU/SC/0051/1983 : AIR 1984 SC 802: (1984) 3 SCC 161. It is the fundamental right of everyone in this country to live with human dignity, free from exploitation. This right to live with human dignity enshrined article 21 derives its life breath from the directive principles of state policy.

Peoples Union for Democratic Rights v. Union of India, MANU/SC/0038/1982 : AIR 1982 SC 1473: MANU/SC/0038/1982 : AIR 1982 SC 1473: 1982 UJ (SC) 553: MANU/SC/0314/1982 : (1982) 2 SCC 494: (1982) 2 SCWR 202 (Asiad Project Case). The Supreme Court has held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and is violative of article 21 of the Constitution.

Kharak Singh v. State of Uttar Pradesh, MANU/SC/0085/1962 : AIR 1963 SC 1295: (1963) 2 Cr LJ 329: (1964) 1 SCR 332: 1964 (2) SCJ 107. It was held that the term personal liberty in article 21 includes all varieties of rights which make-up the personal liberties of man other than those mentioned in article 19(1).

Satwant Singh Sawhney v. D. Ramarathnam, A.P.O. New Delhi, MANU/SC/0040/1967 : AIR 1967 SC 1836: 1968 (1) SCJ 178: (1967) 3 SCR 525. It was held that personal liberty in article 21 includes right of locomotion. It does not include

right to move throughout the territory of India as it is expressly guaranteed by article 19 but right to go abroad is included in article 21.

Neeraja Choudhary v. State of Madhya Pradesh, MANU/SC/0060/1984 : AIR 1984 SC 1099: (1984) 3 SCC 243: 1984 (2) Crimes 511. The Supreme Court observed that it is the plaintiffs requirement of articles 21 and 23 that the bonded labour should not only be identified and released but also suitably rehabilitated.

Olga Tellis v. Bombay Municipal Corporation, MANU/SC/0039/1985 : AIR 1986 SC 180: (1985) 3 SCC 545. The Supreme Court held that if there is an obligation upon the state to secure to citizens adequate means to livelihood and right to work.

Delhi Transport Corporation v. DTC. Mazdoor Congress, MANU/SC/0031/1991 : AIR 1991 SC 101: JT 1990 (3) SC 725: 1991 SCC (Lands) 1213: (1991) Supp 1 SCC 600. The Supreme Court held that right to life includes right to livelihood and therefore right to livelihood cannot hang on to the fancies of individuals in authority. Deprivation of livelihood must be through procedure prescribed by law which must be just fair and reasonable and not fanciful, oppressive or at vagary.

Chandra Rajakumari v. Police Commissioner, Hyderabad, MANU/AP/0153/1998 : AIR 1998 AP 302: 1998 (1) Andh LD 810: 1998 (1) Andh LT 329. It has been held that the right to live with human dignity or decency is included in article 21 and therefore, holding of beauty contest is repugnant to dignity or decency of women and offends article 21 of the Constitution.

Peoples Union for Civil Liberties v. Union of India, (2003) 3 SCALE 263: MANU/SC/0234/2003 : AIR 2003 SC 2363: 2003 AIR SCW 2353: JT 2003 (2) SC 528: MANU/SC/0234/2003 : (2003) 4 SCC 399: (2003) 2 SCR 1136: 2003 (3) Supreme 93. It has been held that right to life in article 21 includes right to food.

Consumer Education and Research Centre v. Union of India, MANU/SC/0175/1995 : (1995) 3 SCC 42: 1995 AIR SCW 759: 1995 Lab IC 1368: MANU/SC/0175/1995 : AIR 1995 SC 922. The Supreme Court held that right to health and medical care to protect ones health and vigour while in service or post retirement is a fundamental right of a workers.

Subhash Kumar v. State of Bihar, MANU/SC/0106/1991 : AIR 1991 SC 420: 1991 AIR SCW 121: JT 1991 (1) SC 77: MANU/SC/0106/1991 : (1991) 1 SCC 598: (1991) 1 SCR 5: 1991 (1) UJ (SC) 533. The Supreme Court held that the protection and improvement of environment has been included in the right to life under article 21.

Susetha v. State of Tamil Nadu, MANU/SC/8403/2006 : AIR 2006 SC 2893: 2006 AIR SCW 4026: (2006) 6 SCC 543: (2006) 7 SCALE 640: 2006 (6) Supreme 193. It has been held that right to water is envisaged as part of right to life under article 21. The same has been recognised in articles 47 and 48A. Article 51A(g) makes it a fundamental duty of every citizen to protect and improve natural environment including forests, lakes, rivers and wildlife.

Animal and Environment Legal Defence Fund v. Union of India, MANU/SC/0249/1997 : AIR 1997 SC 1071: 1997 AIR SCW 1078: JT 1997 (3) SC 298: MANU/SC/0249/1997 : (1997) 3 SCC 549: 1997 (1) SCJ 522: (1997) 2 SCR 728: (1997) 2 SCALE 493: 1997 (2) Supreme 713. The Supreme Court held that right to life in article 21 includes protection and preservation of environment.

T.N. Godavarman v. Union of India, MANU/SC/0960/2002 : AIR 2003 SC 724: 2003 AIR SCW 23: JT 2002 (9) SC 200: (2002) 10 SCC 606: (2002) 8 SCALE 204: 2002 (7) Supreme 620. The Supreme Court pointed out that two salutary principles governing environment are (I) principle of sustainable development and (II) precautionary principle. It was held that convention of Biological Diversity having been acceded to by India, the Government should, in the absence of compelling reasons, keep in view the international obligation while exercising its discretionary power under Forest Conservation Act.

Research Foundation For Science Technology National Resources Policy v. Union of India, (2005) 10 SCC 510. The right to healthy environment is an internationally recognized essential and is a fundamental rights guaranteed under article 21, the right to information and community participation for protection of environment and human health.

Intellectual Forum Tirupathi v. State of Andhra Pradesh, MANU/SC/8047/2006 : AIR 2006 SC 1350: 2006 AIR SCW

1309: (2006) 3 SCC 549: 2006 (2) SCJ 293: 2006 (2) Supreme 292. The Supreme Court has held that article 21A is the constitutional obligation of the Governments to protect and preserve the environment. The Court held that the tanks are important for protection of environment and supply of water to those areas. The Government is responsible to protect and preserve historical tanks on the basis of sustainable development and public trust.

Murli S. Deora v. Union of India, MANU/SC/0703/2001 : AIR 2002 SC 40: 2001 AIR SCW 4505: JT 2001 (9) SC 364: MANU/SC/0703/2001 : (2001) 8 SCC 765: 2002 (1) SCJ 85: (2001) 8 SCALE 6: 2001 (8) Supreme 326. A non-smoker is afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places where people make. It is indirectly depriving of his life without any due process of law.

Sukhwant Singh v. State of Punjab, MANU/SC/0866/2009 : (2009) 7 SCC 559. It has been observed that right to regulation of a person's valuable asset is a facet of his right under article 21 that the court has inherent power to grant interim bail pending the disposal of the regular bail.

R.M. Malkani v. State of Maharashtra, MANU/SC/0204/1972 : AIR 1973 SC 157: 1973 Cr LJ 228: (1973) 1 SCC 471: 1973 SCC (Cri) 389: (1973) 2 SCWR 776. The Supreme Court state that the telephonic conversation of an innocent person would be protected by the courts against wrongful or high-handed interference by tapping of the conversation by the police.

People's Union for Civil Liberties v. Union of India, MANU/SC/0149/1997 : AIR 1997 SC 568: 1997 AIR SCW 113: JT 1997 (1) SC 288: MANU/SC/0149/1997 : (1997) 1 SCC 301: 1996 (4) SCJ 565: 1997 (1) UJ (SC) 187. The court has rule that right to privacy is a part of the right to life and personal liberty. Telephone conversation is an important facet of a man's private life. The right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy".

R. Rajagopal alias R. R. Gopal v. State of Tamil Nadu, MANU/SC/0056/1995 : AIR 1995 SC 264: (1994) Supp 3 SCC 644: 1994 (2) UJ (SC) 661: 1994 AIR SCW 4420: JT 1994 (6) SC 514. The Supreme Court asserted that in recent times the right to privacy has acquired constitutional status. It is implicit in the right to life and liberty guaranteed to the citizen's by article 21. It is right to be let alone. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.

Chairman, Railway Board v. Chandrima Das, MANU/SC/0046/2000 : AIR 2000 SC 988: 2000 Cr LJ 1473: 2000 AIR SCW 649: JT 2000 (1) SC 426: (2000) 2 SCC 465: 2000 (3) SCJ 1: (2000) 1 SCALE 279: 2000 (1) Supreme 265. The Court observed that rape is a crime not only against the person of a women, it is a crime against the entire Society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. Rape is therefore, the most hated crime. It is crime against human right and is violative of the victim's most cherished right, namely, right to life which includes right to live with human dignity contained in article 21.

Vishaka v. State of Rajasthan, MANU/SC/0786/1997 : AIR 1997 SC 3011: 1997 AIR SCW 3043: 1997 (3) Crimes 188: JT 1997 (7) SC 384: (1997) 6 SCC 241: 1997 (3) SCJ 584: (1997) 5 SCALE 453: 1997 SCC (Cri) 932: 1997 (7) Supreme 323. The Supreme Court has declared sexual harassment of a working women at her place of work as amounting to violation of rights of gender equality and right to life and liberty guaranteed under articles 14, 19 and 21.

In this case, the Supreme Court has laid down the exhaustive guidelines to prevent sexual harassment of working women in places of their work until a legislation is enacted for the purpose.

Apparel Ex-port Promotion, Council v. A.K. Chopra, MANU/SC/0014/1999 : AIR 1999 SC 625: 1999 AIR SCW 274: JT 1999 (1) SC 61: MANU/SC/0014/1999 : (1999) 1 SCC 759: (1999) 1 SCJ 265: (1999) 1 SCALE 57: 1999 (1) Supreme 110: 1999 (1) UJ (SC) 508. The Supreme Court observed that there is no gainsaying that each incident of sexual harassment, at the place of work results in violation of the fundamental right to gender equality and right to life and liberty, the two most previous fundamental rights guaranteed by the Constitution of India.

Parmanand Katara v. Union of India, MANU/SC/0423/1989 : AIR 1989 SC 2039: 1990 Cr LJ 671. The Supreme Court observed that article 21 of the Constitution casts an obligation on the State to preserve life. The patient whether he be an innocent or be a criminal liable to punishment under the law of the society. It is the responsibility of those who

are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished.

Surjit Singh Thind v. Kanwaljit Kaur, AIR 2003 P&H 353: 2004 (1) Cur LJ (CCR) 52: 2004 (2) Marri LJ 108. The Punjab and Haryana High Court has held that allowing medical examination of a woman to prove her virginity amounts to violation of her right to privacy and personal liberty enshrined under article 21 of the Constitution.

Right to Die Not included in article 21

Whether right to die is included in right to life? Explain with the help of case laws

State of Maharashtra v. Maruti Sripati Dubal, MANU/SC/0115/1997 : AIR 1997 SC 411: (1996) 6 SCC 42. The Bombay High Court held that section 309 of the Penal Code which provides for punishment for attempt to commit suicide is not in violation of articles 14 and 21.

Chenna Jagdishwar v. State of Andhra Pradesh, 1988 Cr LJ 549. The Andhra Pradesh High Court held that right to die is not a fundamental right within the meaning of article 21 and hence section 309, IPC is not unconstitutional.

P. Rathinam/Nagbhusan Patnaik v. Union of India, MANU/SC/0433/1994 : (1994) 3 SCC 394: AIR 1994 SC 1844: 1994 Cr LJ 1605: 1994 AIR SCW 1764: 1994 (2) Crimes 228: JT 1994 (3) SC 392: 1994 (2) SCJ 545: (1994) 3 SCR 673: 1994 SCC (Cri) 740. A two Judges Bench of the Supreme Court also held that the right to life under article 21 included right not to live a forced life i.e., to commit suicide and therefore section 309 of the Penal Code was held to be unconstitutional.

Gian Kaur v. State of Punjab, MANU/SC/0335/1996 : (1996) 2 SCC 648: AIR 1996 SC 946: 1996 Cr LJ 1660: 1996 AIR SCW 1336: 1996 (1) Crimes 197: JT 1996 (3) SC 339: (1996) 3 SCR 697: 1996 SCC (Cri) 374. A Bench of five Judges held that the right to life is a natural right embodied in article 21 but suicide is an unnatural termination or extinction of life. Article 21 which guarantees protection of life cannot be constructed so as to read therein extinction of life or right to die.

Mr. Justice J.S. Verma observed - "Any aspect of life which makes it dignified may be read into article 21 of the Constitution but not that which extinguishes it and is, therefore inconsistent with the continued existence of life resulting in effacing the right itself."

Right to life is a natural right embodied in article 21 but suicide is an unnatural termination or extinction of life and incompatible and inconsistent with the concept of right to life.

Right to Education

Define right to education

Mohini Jain v. State of Karnataka, MANU/SC/0357/1992 : (1992) 3 SCC 666: AIR 1992 SC 1858: 1992 AIR SCW 2100: JT 1992 (4) SC 292: 1992 (3) SCJ 152: (1992) 3 SCR 658: 1992 (2) UJ (SC) 331. The Supreme Court held that the right to education is a fundamental right under article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as the capitation fee. The right to education flows directly from right to life. The right to life under article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

Unni Krishnan, J.P. v. State of Andhra Pradesh, MANU/SC/0333/1993 : (1993) 1 SCC 645: AIR 1993 SC 2178: 1993 AIR SCW 863: JT 1993 (1) SC 474: (1993) 1 SCR 594: 1993 (1) UJ (SC) 721. The majority held that admission to all recognised private educational institutions particularly medical or engineering shall be based on merit, but 50% of the seats in all professional colleges be filled by candidates prepared to pay a higher fee. The Court held that imparting of education is not and cannot be allowed to become commerce. Citizens have the right to establish educational institutions but not to own them as commercial institutions.

TMA Pai Foundation v. State of Karnataka, MANU/SC/0905/2002 : AIR 2003 SC 355: 2002 AIR SCW 4957: JT 2002 (9)

SC 1: MANU/SC/0905/2002 : (2002) 8 SCC 481: (2002) 8 SCALE 1: 2002 (8) Supreme 62. The Constitutional Bench of Supreme Court has overruled the Unni Krishnan decision partly. The Court held that the scheme relating to admission and the fixing of fee were not correct and to that extent, they are overruled.

Jayendra Vishnu v. State of Maharashtra, MANU/SC/0926/2009 : (2009) 7 SCC 104. Article 21 envisages a fair trial, a fair procedure and fair investigation. By reason of such a right alone the appellant was entitled not only to be informed about his fundamental right and statutory rights but it was obligatory on the part of the Special Public Prosecutor to place on record the requisite materials before the designated judge to show that the appellant, after his arrest in Delhi case on 23-7-1993 was not an absconder and thus the provisions of section 299 of the Code was not attracted.

DLF Power Limited v. Central Coalfields Ltd., MANU/SC/0532/2009 : AIR 2009 SC 2189: 2009 AIR SCW 2881: (2009) 6 SCC 258: (2009) 5 SCALE 429. The Supreme Court observed that free and fair trial is sine qua non of article 21. The apprehension of denial must be reasonable but not imaginary. Reasonableness would obviously depend on the facts and circumstances of a case and their evaluations by the courts.

Joginder Kumar v. State of Uttar Pradesh, MANU/SC/0311/1994 : AIR 1994 SC 1349: 1994 Cr LJ 1981: 1994 AIR SCW 1886: 1994 (2) Crimes 106: JT 1994 (3) SC 423: 1994 (2) SCJ 230: (1994) 3 SCR 661: 1994 SCC (Cri) 1172. The Supreme Court has laid down guidelines governing arrest of a person during investigation. This has been done with a view to strike a balance between the needs of law enforcement on the one hand and protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies.

Madhav Hayawadanrao Hoskot v. State of Maharashtra, MANU/SC/0119/1978 : AIR 1978 SC 1548: 1978 Cr LJ 1678: (1978) 3 SCC 544: 1978 SCC (Cri) 468. The Supreme Court observed the State should provide free legal aid to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. The Supreme Court emphasized that right to appeal from the Sessions Court to the High Court is essential where criminal conviction is brought about with long loss of liberty.

Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, MANU/SC/0121/1979 : AIR 1979 SC 1369: 1979 Cr LJ 1045: (1979) 3 SCR 532: MANU/SC/0121/1979 : (1980) 1 SCC 98: 1980 SCC (Cri) 40. The Supreme Court has taken a big innovative step forward humanizing the administration of criminal justice by suggesting that free legal aid be provided by the State to poor prisoners facing a sentence. When an accused has been sentenced by a court, but he is entitled to appeal against the verdict, he can claim legal aid. If he is indigent and is not able to afford the counsel, the State must provide a counsel to him.

Sunil Batra v. Delhi Administration, MANU/SC/0184/1978 : AIR 1978 SC 1675: 1978 Cr LJ 1741. The petitioner, sentenced to death on charges of murder and robbery, was being kept in solitary confinement pending his appeal before the High Court. He filed a writ petition in the Supreme Court under article 32. The Court emphasized that article 21 means that law must be right, just and fair and not arbitrary, fanciful or oppressive. Otherwise, it would be no procedure at all and the requirements of article 21 would not be satisfied.

Kishor Singh Ravinder Dev v. State of Rajasthan, MANU/SC/0072/1980 : AIR 1981 SC 625: 1981 Cr LJ 17: (1981) 1 SCC 503: 1981 SCC (Cri) 191: 1981 (2) SCJ 97. The Supreme Court held that the use of third degree method by police is violative of article 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. The court also held that the punishment of solitary confinement for a long-period from 8 to 11 months and putting bar fetters on the prisoner in jail for several days on flimsy ground like loitering in the prison, behaving insolently and in uncivilized manner, tearing of his history ticket etc., must be regarded as barbarous and against human dignity and violative of articles 14, 19 and 21 of the Constitution.

Bachan Singh v. State of Punjab, MANU/SC/0111/1980 : AIR 1980 SC 898: 1980 Cr LJ 636: (1980) 2 SCC 684: 1980 SCC (Cri) 580. The Supreme Court held that the provision of death penalty under section 302, IPC as an alternative punishment for murder is not violative of article 21. Article 21 of the Constitution recognises the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law. The death penalty for the offence of murder does not violate the basic features of the Constitution.

Naval v. Union of India, MANU/RH/0821/2008 : AIR 2009 RAJ 63: 2009 (3) ALJ (NOC) 502: 2009 (1) Raj LW 865: 2009 (2) WLC 507. The petitioner gave birth to a child despite sterilization operation. It was prima facie negligence on the part of the doctor. The petitioner was entitled to compensation.

R.D. Upadhyay v. State of Andhra Pradesh, MANU/SC/2061/2006 : AIR 2006 SC 1946: 2006 AIR SCW 2274: 2006 (2) Crimes 138: (2006) 4 SCALE 336: 2006 (3) Supreme 546. The Supreme Court observed that the place of birth of child born in prison not to be recorded as "prison" in birth certificate. It shall be registered in a local birth registration office. Child above 6 years are not to be kept with female prisoners.

Procedure Established by Law

What is the difference between procedure established by law and due process of law?

The Supreme Court has ruled in the A.K. Gopalan case that in article 21 the expression "procedure established by law" meant the procedure as laid down in the law as enabled by the legislature and nothing more. A person could thus be deprived of his life or personal liberty in accordance with the procedure laid down in Maneka Gandhi case.

This term 'procedure established by law' means procedure laid down by statute or procedure prescribed by the law of the State. Thus article 21 requires the following conditions to be fulfilled before a person is deprived of the property-

- (1) there must be a law justifying interference with the person's life or personal liberty;
- (2) the law should be a valid law;
- (3) the procedure laid down by the law should have been strictly followed.

Maneka Gandhi v. Union of India, MANU/SC/0133/1978 : AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621: 1978 (2) SCJ 312. The Court observed-

"The law must, therefore, now be settled that article 21 does not exclude article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty, and there is consequently no infringement of the fundamental right conferred by article 21 such a law insofar as abridges or takes away any fundamental right under

article 19 would have to meet the challenges of that article. Thus a law depriving a person of personal liberty has not only to stand the test of article 21 but it must stand the list of article 19 and article 14 of the Constitution.

Right to Education (article 21A)

Article 21A. Right to Education.-

The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law determine.

This article has been added in the chapter of Fundamental Rights by the Constitution (86th Amendment) Act, 2002.

Prohibition against arrest and detention (Article 22)

Article 22. Protection against arrest and detention in certain case.-

- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.
- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply-

(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.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

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

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) 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.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) 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 Board in accordance with the provisions of sub-clause (a) of clause (4);

(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 any Advisory Board in an inquiry under sub-clause (a) of clause (4)

The protection of the individual from oppression and abuse by the police and other enforcement officers is a major interest in a free society. Arrest and detention in police lock-up may be very traumatic for a person. It can cause him incalculable harm by way of loss of his reputation. Denying a person of his liberty is a serious matter.

Joginder Kumar v. State of Uttar Pradesh, MANU/SC/0311/1994 : AIR 1994 SC 1349: 1994 Cr LJ 1981: 1994 AIR SCW 1886: 1994 (2) Crimes 106: JT 1994 (3) SC 423: 1994 (2) SCJ 230: (1994) 3 SCR 661: 1994 SCC (Cri) 1172. No arrest can be made in a routine manner or on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.

A.K. Gopalan v. State of Madras, MANU/SC/0012/1950 : AIR 1950 SC 27: 1950 SCJ 174: 51 Cr LJ 1383: 1950 SCR 88. To the extent the procedure is prescribed by article 22 the same is to be observed; otherwise article 21 will apply. But if certain procedural safeguards are expressly stated as not required, or specific rules on certain points of procedure are prescribed, it seems improper to interpret these points as not covered by article 22 and left open for consideration under article 21. To the extent the points are dealt with, and included or excluded, article 22 is a complete code. On the points of procedure which expressly or by necessary implication are not dealt with by article 22, the operation of article 21 will remain unaffected.

R.C. Cooper v. Union of India, MANU/SC/0074/1970 : AIR 1970 SC 1318: (1971) 1 SCR 512: (1970) 2 SCC 298. A law relating to preventive detention must now satisfy not only the requirement of article 22 but also the requirement of article 21 of the Constitution. In other words, the procedure prescribed under the preventive detention law must be reasonable, just and fair under articles 14, 19 and 21 of the Constitution.

Maneka Gandhi v. Union of India, MANU/SC/0133/1978 : AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621: 1978 (2) SCJ 312. Now article 21 itself has become an almost inexhaustible source of restraint upon the legislature. Consequently, the relationship between articles 21 and 22 has drastically changed, rather reversed.

What are the rights of accused person under article 22?

Article 22 provides the following rights of accused persons-

1. Right to be informed of the grounds.-

Clause (1) of article 20 provided that no person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds of such arrest. Section 50 (1) of the Code of Criminal Procedure in compliance to this constitutional principle lays down that every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

In re Madhu Limaye, AIR 1969 SC 1014: (1969) 3 SCR 154: 1969 Cr LJ 1440: (1969) 1 SCWR 470: MANU/SC/0047/1968 : (1969) 1 SCC 292. It is not necessary to furnish the arrested person with full details of the offence, but the information should be sufficient to enable him to understand why he has been arrested and to give him an idea of the offence which he is alleged to have committed.

Joginder Kumar v. State of Uttar Pradesh, MANU/SC/0311/1994 : (1994) 4 SCC 260: MANU/SC/0311/1994 : AIR 1994 SC 1349: 1994 Cr LJ 1981: 1994 AIR SCW 1886: 1994 (2) Crimes 106: JT 1994 (3) SC 423: 1994 (2) SCJ 230: (1994) 3 SCR 661: 1994 SCC (Cri) 1172. The Court has held that a person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the police officer effecting the arrest that such arrest was necessary and justified.

2. Right to Consult lawyer-

Article 22(1) also postulates that there is an accusation against the person arrested against which he should be able to defend himself by engaging a legal practitioner of his choice. Section 303 of the Code of Criminal Procedure also provides that any person accused of an offence before a criminal court or against whom proceedings are instituted under the Code has a right to be defended by a pleader of his choice.

Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, MANU/SC/0122/1979 : AIR 1979 SC 1377: 1979 Cr LJ 1052: (1979) 1 SCC 108: (1979) 3 SCR 760: 1979 SCC (Cri) 50. The Supreme Court has held that it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence to have legal service provided to him by the State and the State is under constitutional duty to provide a lawyer to such person if the needs of justice so require.

3. Right to be produced before a Magistrate within 24 hours.-

Clause (2) of article 22 provides that every person who is arrested and detained in custody shall arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.

State of Uttar Pradesh v. Abdul Samad, MANU/SC/0102/1962 : AIR 1962 SC 1506: (1962) 2 Cr LJ 499: (1962) Supp 3 SCR 915. This is a mandatory provision. Article 22 issues an injunction in clear and unambiguous term, it is not permissible to read into that provision exception other than the two specific

exceptions provided in clause (3) of article 22. An arrest and detention for the purpose of deportation is not outside the scope of the constitutional protection under article 22(2).

4. No detention beyond 24 hours except order of the Magistrate.-

After expiry of 24 hours the person detained has right to be freed unless the Magistrate, before whom he is produced, authorized the further detention. Section 167 of the Code of Criminal Procedure provides that whenever it appears that investigation cannot be completed within 24 hours of the arrest, police officer may sent the accused to the nearest judicial Magistrate along with a copy of entries in the diary.

Khatri v. State of Bihar, MANU/SC/0518/1981 : AIR 1981 SC 928: 1981 Cr LJ 470: (1981) 1 SCC 627: 1981 UJ (SC) 72: (1981) 2 SCR 408: 1981 (2) SCJ 185. The Supreme Court strongly urged that the constitutional requirement to produce an arrested person before a judicial Magistrate within 24 hours of his arrest must be strictly and scrupulously observed.

Non-application of articles 22(1) and 22(2) -Article 22(3) makes two exceptions. Article 22(1) and (2) do not apply to:

(a) enemy alien, and

(b) to persons arrested or detained under a law providing for preventive detention.

Preventive Detention laws (clauses 4 to 7)

Explain preventive detention laws

Preventive detention means detention of a person without trial and conviction by a court, but merely on suspicion in the mind of an executive authority. Preventive detention is fundamentally and qualitatively different from imprisonment after trial and conviction in a criminal court. Preventive detention and prosecution for an offence are not synonymous. Preventive detention is preventive, not punitive. Punitive detention is to punish an individual for any wrong done by him, but preventive detention is curtailing the liberty of a person with a view to prevent him from committing certain injurious activities in future.

State of Tamil Nadu v. Senthil Kumar, MANU/SC/0050/1999 : AIR 1999 SC 971: 1999 Cr LJ 1343: 1999 AIR SCW 591: 1999 (1) Crimes 46: JT 1999 (1) SC 201: (1999) 2 SCC 646: 1999 (1) SCJ 384: (1999) 1 SCALE 226: 1999 SCC (Cri) 299: 1999 (1) Supreme 271. The Supreme Court observed that whereas punitive incarceration is after trial on the allegation made against a person, preventive detention is without trial into the allegations made against him.

Clause (4). Limitation as to period of detention and provision for Advisory Board-A detainee under preventive detention is not detained after trial and conviction of an offence by a competent court. To provide safeguard against arbitrary arrest, clause (4) states that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an Advisory Board constituted of persons who are, or have been or are qualified to be High Court Judge has reported before the expiration of the said period of three months. The confirmation of the opinion of the Advisory Board to continue the detention beyond three months must be within three months from the date of detention in conformity with the mandate of clause (4) of article 22.

Clause (5). Communication of grounds to the detainee-Article 22(5) has two limbs - one-The detaining authority is to communicate to the detainee the grounds of his detention "as soon as may be". Two - The detainee is to be afforded "the earliest opportunity" of making a representation against the order of detention. This is natural justice Woven into the fabric of preventive detention by the Constitution.

Lallubhai Jogibhai Patel v. Union of India, MANU/SC/0216/1980 : (1981) 2 SCC 427: AIR 1981 SC 728: 1981 Cr LJ 288: 1981 SCC (Cri) 463: 1981 (2) SCJ 37: (1981) 2 SCR 352. The detainee did not know English but the grounds of detention were written in English and the detaining order stated that the Police Inspector while serving on the grounds of detention fully explained the grounds in Gujarati to detainee, but no translation of the grounds of detention into Gujarati was given to the detainee. It was held that there was no sufficient compliance of article 22(5).

Clause (5) Right to Make Representation.-

The detaining authority is under a constitutional duty to furnish reasonably definite grounds to the detainee as well as adequate particulars of the grounds of detention. Article 22(5) requires that the detainee shall be afforded the earliest opportunity of making representation against the order of detention. No inordinate delay, no shortfall in the materials communicated shall stand in the way of the detainee in making an effective or comprehensive representation in regard to all basic facts and materials which may have influenced the detaining authority in making the order of detention depriving him of his freedom.

CHAPTER 9

Right against exploitation

(Articles 23, 24)

Article 23. Prohibition of traffic in human being and forced labour

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, 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.

According to article 23(1), there are three evil practices:

- (a) begar,
- (b) traffic in human beings, and
- (c) forced labour.

A significant features of article 23 is that it protects the individual not only against the State but also against private citizens. Most of the fundamental rights operates as limitation on the power of the State and impose negative obligations on the State not to encroach on individual liberty and the rights are only enforceable against the State.

(a) Begar

What is Begar?

Begar means involuntary work without payment. It is a fundamental right of a person, citizen or non-citizen, not to be compelled to work without wages, the only exception being commonly imposed public service.

People's Union for Democratic Rights v. Union of India, MANU/SC/0038/1982 : AIR 1982 SC 1473: 1982 UJ (SC) 553: (1982) 2 SCC 494: (1982) 2 SCWR 202. Popularly known as Asiad Workers case, where non-payment of minimum wages to construction workers was successfully challenged, among others, for violation of article 23, the Supreme Court held that the prohibition against traffic in human beings and begar and other similar forms of forced labour is a general prohibition, total in its effect and all pervasive in its range.

(b) Traffic in human beings

It is commonly known as slavery and implies the buying and selling of human beings as if they are chattels and such a practice is constitutionally abolished. Traffic in human being means to deal in men and women like goods, such as to sell or let or otherwise dispose them off. It would include traffic in women and children for immoral or other purposes. The Immoral Traffic (Prevention) Act, 1953 is a law made by Parliament under article 35 of the Constitution for the purpose of punishing acts which results in traffic in human beings.

Gaurav Jain v. Union of India, MANU/SC/0789/1997 : AIR 1997 SC 3021: 1997 AIR SCW 3055: 1997 (3) Crimes 40: JT 1997 (6) SC 305: (1997) 8 SCC 114: 1997 (2) SCJ 334: (1997) 4 SCALE 657: 1998 SCC (Cri) 25: 1997 (6) Supreme 394.

(c) Forced Labour

The word 'forced labour' in article 23(1) are to be interpreted ejusdem generis. The kind of 'forced labour' contemplated by the article has to be something in the nature of either traffic in human being or begar. It may be physical force compelling a person to provide labour or service to another, or it may be force exerted through a legal provision, such as a provision for imprisonment or fine for failure to provide forced labour or service. It may even be compulsion arising from hunger and poverty, want and destitution.

Deena alias Deen Dayal v. Union of India, MANU/SC/0094/1983 : AIR 1983 SC 1155: 1983 Cr LJ 1602. It was held that labour taken from prisoners without paying proper remuneration was forced labour and violative of article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and Court is under duty to enforce their claim.

Bandhua Mukti Morcha v. Union of India, MANU/SC/0051/1983 : AIR 1984 SC 802: (1984) 3 SCC 161. The Supreme Court held that when an action is initiated in the Court through public interest litigation alleging the existence of bonded labour the government should welcome it as it may give the Government an opportunity to examine whether bonded labour system exists and as well as to take appropriate steps to eradicate that system.

Clause 2 of 23

Clause (2) of article 23 makes an exception in favour of the State and enables it to impose compulsory service for public purposes provided that in imposing such service the State does not make any discrimination on ground only of religion, race, caste or class or any of them.

Article 24. Prohibition of employment of children in factories etc

Explain Article 24

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

A critical human and economic problem is that of child labour. Poor parents seek to augment their meager income through employment of their children. Employers of children also stand to gain financially. Article 24 puts only a partial restriction on employment of child labour.

People's Union for Democratic Rights v. Union of India, MANU/SC/0038/1982 : AIR 1982 SC 1473: 1982 UJ (SC) 553: (1982) 2 SCC 494: (1982) 2 SCWR 202. The Supreme Court held that article 24 embodies a Fundamental Right which is plainly and indubitably enforceable against everyone. By reason of the compulsive mandate in article 24, no one can employ a child below the age of 14 years in a hazardous employment like construction work.

M.C. Mehta v. State of Tamil Nadu, MANU/SC/0169/1997 : AIR 1997 SC 699: 1997 AIR SCW 407: (1996) 6 SCC 756: 1997 (1) Supreme 207: 1997 (1) UJ (SC) 243. The Supreme Court has held that children below the age of 14 years cannot be employed in any hazardous industry, mines or other works and has laid down exhaustive guidelines how the State authorities should protect economic, social and humanitarian rights of millions of children, working illegally in public and private sectors.

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CHAPTER 10

Right to Freedom of Religion

(Articles 25-28)

Article 25. Freedom of Conscience and free profession, practice and propagation of religion

Explain right to freedom of religion

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

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

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

(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.

Explanation I.-The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.-In sub-clause (b) of clause (2), the reference to Hindu 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.

The term 'religion' has not been defined in the Constitution and it is a term which is not susceptible of any precise definition.

Commr., Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt, MANU/SC/0136/1954 : AIR 1954 SC 282: 1954 SCJ 335: 1954 SCR 1005. The Supreme Court has observed that religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. Religion is the belief which binds spiritual nature of men to super-natural being. It includes worship, belief, faith, devotion etc., and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it.

S.R. Bommai v. Union of India, MANU/SC/0444/1994 : AIR 1994 SC 1918: 1994 AIR SCW 2946: JT 1994 (2) SC 215: MANU/SC/0444/1994 : (1994) 3 SCC 1: 1994 (2) SCR 644. The Supreme Court has held that secularism is a basic feature of the Constitution. The State treats equally all religions and religious denomination. Religion is a matter of individual faith and cannot be mixed with secular activities. A government, which is anti-secular, cannot be said to be government according to the provisions of the Constitution.

Clause (1) of 25 -Article 25(1) guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practice and propagate religion. This right is subject in every case to public order, morality, health and other provision of Part III. Freedom of Conscience connotes a person's right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual well-being. (Ratilal Panachand Gandhi v. State of Bombay, MANU/SC/0138/1954 : AIR 1954 SC 388: 1954 SCJ 480: 1954 SCR 1055.

Bajaj Emmanuel v. State of Kerala, MANU/SC/0061/1986 : AIR 1987 SC 748: (1986) 3 SCC 615: 1986 JT 115: 1986 (3) Supreme 344: 1986 (3) SCJ 395. The Supreme Court held that article 25 is an article of faith in the Constitution recognising the principle that real test of true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution.

A.S. Narayana Deekshitulu v. State of Andhra Pradesh, MANU/SC/0455/1996 : AIR 1996 SC 1765: 1996 AIR SCW 2029: JT 1996 (3) SC 482: MANU/SC/0455/1996 : (1996) 9 SCC 548: (1996) 3 SCR 543. The Court held that the word 'religion' used in articles 25 and 26 of the Constitution is personal to the person having faith and belief in the religion

and held that an Act was constitutional which regulated only the secular activities connected with religion and not matters which are integral part of religion.

Restrictions on Freedom of Religion

What are the restrictions on freedom of religion?

1. Religious liberty subject of public order, morality and health.-

In the name of religion no act can be against public order, morality and health of the public. Thus section 34 of the Police Act prohibits the slaughter of cattle or indecent exposure of one's person in a public place. Right to propagate one's religion does not give right to anyone to forcibly convert any person to one's own religion.

Rev. Stainislaus v. State of Madhya Pradesh, MANU/SC/0056/1977 : AIR 1977 SC 908: 1977 Cr LJ 551: (1977) 1 SCC 677: 1977 UJ (SC) 156: 1977 SCC (Cri) 147: 1977 (1) SCJ 478: (1977) 2 SCR 611. Article 25(1) guarantees freedom of conscience to every citizen and not merely to the followers of one particular religion. This article postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, that would impinge on the freedom of conscience guaranteed to all citizens of the country alike.

Javed v. State of Haryana, AIR 2003 SC 3047: 2003 AIR SCW 3892: JT 2003 (6) SC 183: MANU/SC/0523/2003 : (2003) 8 SCC 369: (2003) 5 SCALE 602: 2003 (5) Supreme 371. The Supreme Court has held that section 175(1)(q) of the Haryana Panchayati Raj Act, 1994 which disqualified person having more than two children from contesting election for the post of Sarpanch and Panch in Panchayat does not violate article 25 of the Constitution.

2. Regulation of economic, financial, political and secular activities associated with religious practices [clause (2)(a)].-

The freedom to practice extends only to those activities which are the essence of religion. It does not cover such activities which do not form the essence of religion.

Mohd. Hanif Quareshi v. State of Bihar, MANU/SC/0027/1958 : AIR 1958 SC 731: 1958 SCJ 975: 1959 SCR 629. The court held that the sacrifice of cow on the Bakrid day was not an essential part of the Mohammedan religion and hence could be prohibited by State.

S.P. Mittal v. Union of India, AIR 1983 SC 1: (1983) 1 SCC 51: 1983 (1) SCJ 45: (1983) 1 SCR 729. The Supreme Court held that the memorandum of association of society and repeated uttering of Sri Aurobindo and the mother that the society and Auroville were not religious institutions and other documents make it clear that neither the society nor Auroville constituted a "religious denomination" and the teachings of Sri Aurobindo did not constitute a 'religion'.

Social Welfare and Social reforms (Clause 2(b)).- Under this clause State is empowered to make laws for social welfare and social reforms. This clause declares that where there is conflict between the need of social welfare and reforms and religious practice, religion must yield. Under this clause, the State is empowered to throw open all Hindu religious institutions of a public character, to all classes and sections of Hindus.

Article 26. Freedom to manage religious affairs

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

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matter of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

While article 25 confers the particular rights on all persons, article 26 is confined to religious denomination or any section thereof. Article 26 thus guarantees collective freedom of religion. The term 'religious denomination' in article 26 means a religious sect having a common faith and organization and designated by the distinctive name. There must be common faith of the community based on religion, and the community members must have common religious tenets peculiar to themselves.

Azeez Basha v. Union of India, MANU/SC/0039/1967 : AIR 1968 SC 662: (1968) 1 SCR 833. The Supreme Court held that the Aligarh University was not established by the Muslim Minority and therefore it could not claim the right to maintain it. It was established under a statute passed by the Parliament.

T.M.A. Pai Foundation v. State of Karnataka, MANU/SC/0905/2002 : AIR 2003 SC 355: 2002 AIR SCW 4957: JT 2002 (9) SC 1: MANU/SC/0905/2002 : (2002) 8 SCC 481: (2002) 8 SCALE 1: 2002 (8) Supreme 62. "The right to establish and maintain educational institutions may also be sourced to article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain for religious and charitable purposes, subject to public order, morality and health.

Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, MANU/SC/0072/1962 : AIR 1962 SC 853: 1963 (2) SCJ 519: (1962) Supp 2 SCR 496. The term "matters of religion" used in article 26(b) is synonymous with the term 'religion' in article 25(1). It thus includes not only religious belief but also such religious practices and rites as are regarded to be an essential and integral part of religion.

S.P. Mittal v. Union of India, AIR 1983 SC 1: (1983) 1 SCC 51: 1983 (1) SCJ 45: (1983) 1 SCR 729. Under clauses (c) and (d) of article 26 a religious denomination has the right to acquire and own property and to administer such property in accordance with law. The right to administer property owned by a religious denomination is a limited right. The right of a religious denomination to manage its property. The former is a fundamental right which cannot be taken away except on grounds mentioned in article 25 while the latter can be regulated by law, i.e., it can be abridged or taken away by a valid law.

Article 27.-Freedom as 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.

Jagannath Ramanuj Das v. State of Orissa, MANU/SC/0137/1954 : AIR 1954 SC 400: 1954 SCJ 329: 1954 SCR 1046. In this case the validity of Orissa Hindu Religious Endowments Act was challenged. The Act levied an annual contribution on every muth or temple having annual income of more than Rs. 250 for meeting the expenses of the commissioner and his office. The provision was enacted for better administration of religious endowments. The Act was upheld on the ground that the contribution imposed by it was not tax but fee.

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

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

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

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

D.A.V. College, Jullundur v. State of Punjab, MANU/SC/0039/1971 : AIR 1971 SC 1737: 1971 (Supp) SCR 688: (1971) 2 SCC 269. The Court stated that religious instruction is that which is imparted for inculcating the tenets, the rituals, the observances, ceremonies and modes of worship of a particular sect or denomination.

Aruna Roy v. Union of India, AIR 2002 SC 3176: 2002 AIR SCW 3670: JT 2002 (7) SC 103: (2002) 7 SCC 368: 2002 (4)

SCJ 235: (2002) 6 SCALE 408: 2002 (6) Supreme 437. The Supreme Court has ruled that article 28 does not ban a study of religions. There is no prohibition on study of religious philosophy and culture, particularly for having value-based social life in a society which is degenerating for power, post or property.

CHAPTER 11

Cultural and Educational Rights

(Articles 29-30)

Article 29. Protection of interests of minorities

What are the cultural and educational rights?

(1) 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.

(2) No citizen shall be denied admission into educational institution maintained by the State or receiving aid out of State funds on ground only of religion, race, caste, language or any of them."

Clause (1).-

Clause (1) gives protection to every section of the citizen having a distinct language, script or culture by guaranteeing their right to conserve the same. If such sections desires to preserve their own language and culture, the State would not stand in their way. Article 29(1) includes the right to agitate for the protection of the language. Making promises by a candidate to work for the conservation of the electorate's language does not amount to a corrupt practice.

The Supreme Court has emphasized that the purpose and object of the linguistic States, which have now come to stay in India, is to provide greater facility for the development of the people of the area educationally, socially and culturally in the regional language. The concerned State or the University has every right to provide for the education of the majority in the regional medium.

D.A.V. College, Jullundur v. State of Punjab, MANU/SC/0039/1971 : AIR 1971 SC 1737: 1971 (Supp) SCR 688: (1971) 2 SCC 269. The Supreme Court observed that this provision cannot be read as requiring the minority institutions affiliated to the Guru Nanak University to teach in the Punjabi language, or in any way impeding their right to conserve their language, script and culture.

Clause (2).-

The right to admission into an educational institution is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens.

State of Bombay v. Bombay Education Society, MANU/SC/0029/1954 : AIR 1954 SC 561: 1954 SCJ 678: 1955 SCR 568. An order issued by the Bombay Government banning admission of those whose language was not English to a school using English as a medium of instruction was declared invalid under article 29(2).

Distinction between article 29(2) and article 15(1).-

Article 15(1) also prohibits discrimination on ground of religion, race, sex, caste or place of birth. There are, however, significant differences between article 15(1) and article 29(2). While article 15(1) protects all citizens against discrimination by the State on the grounds stated therein, article 29(2) extends protection against the State, or anybody else, who denies the right conferred by it. Article 15(1) prohibits discrimination on the grounds of sex or place of birth whereas article 29(2) does not mention these grounds.

Article 30. Right of minorities to establish and administer educational institution

Define the rights of minorities with the help of cases

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institution of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution

established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) 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.

The expression 'minority' in article 30 remains undefined though the Court has observed that it refers to any community which is numerically less than 50 per cent. of the population of a particular State as a whole when a law in consideration of which the question of minority right is to be determined is a State law.

D.A.V. College, Bhatinda v. State of Punjab, MANU/SC/0038/1971 : AIR 1971 SC 1731: 1971 (Supp) SCR 677: (1971) 2 SCC 269. The University declared that Punjabi would be the sole medium of instruction in the affiliated colleges. The Court held that the right of the minority to establish and administer educational institutions of their choice includes the right to have a choice of medium of instruction also.

State of Bihar v. Syed Asad Raza, MANU/SC/0616/1997 : AIR 1997 SC 2425: 1997 AIR SCW 2339: JT 1997 (5) SC 97: MANU/SC/0616/1997 : (1997) 11 SCC 442: 1997 (2) SCJ 304: (1997) 3 SCR 658: (1997) 3 SCALE 723: 1997 (4) Supreme 587. It has been held that for creation of post in a minority institution for appointment, prior approval of the vice-chancellor is not necessary and the persons so appointed would be entitled to grant-in-aid.

CHAPTER 12

Saving of Certain Laws

(Articles 31A, 31B, 31C)

Article 31A.-

Clause (1) of article 31A provides that notwithstanding anything in article 13 and the provisions of articles 14 and 19 no law shall be void if it is enacted for-

- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- (c) 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
- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasures, managing directors, directors or managers of corporations or of any voting rights of shareholders thereof, or
- (e) 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 oil, or the premature termination or cancellation of any such agreement, lease, or licence.

For protection under article 31A, the law must satisfy three conditions-

- (1) It must relate to any of the matters contained in sub-clauses (a) to (e).
- (2) Where such law is enacted by State legislature, it must have been reserved for consideration of the President and received his assent.
- (3) Where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure provides for payment of compensation at a rate which shall not be less than the market value thereof. This condition was added by the Constitution (Seventeenth Amendment) Act, 1964.

The expression 'estate' and 'rights' in relation to an estate have been explained in clause (2) of article 31A.

Article 31B.-

Article 31B was also added by the Constitution (1st Amendment) Act, 1951. It provides that none of the Acts and regulations mentioned in the Ninth Schedule to the Constitution, shall be deemed to be void on the ground that they are inconsistent with anyone of the rights conferred by Part III of the Constitution.

His Holiness Kesavananda Bharati Sripadgalvaru v. State of Kerala, MANU/SC/0445/1973 : AIR 1973 SC 1461: (1973) 4 SCC 225. Article 31B represents a novel, innovative and drastic technique of constitutional amendment. Legislative enactments are incorporated into the Constitution and immunized against all attacks on the ground of breach of any of the fundamental rights.

I. R. Coelho v. State of Tamil Nadu, MANU/SC/0595/2007 : AIR 2007 SC 861: 2007 AIR SCW 611: (2007) 2 SCC 1: (2007) 1 SCALE 197: 2007 (1) Supreme 137. Supreme Court held that any law which infringes the basic

structure of the Constitution can be struck down. Parliament has power to amend Part III so as to abridge or take away fundamental rights but that power is subject to the limitation of basic structure doctrine.

Article 31C. Saving of laws giving effect to certain directive principles

Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

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

The twenty-fifth Amendment inserted article 31C which made articles 14 and 19 inapplicable to certain categories of laws made by Parliament or by any Legislature. It was also added that a declaration in the law that it is to implement the directive principles enshrined in article 39(b) and (c) cannot be questioned in a court of law. Thus article 31C grants complete immunity from judicial scrutiny to a law if the President certified that it was enacted to promote the policy laid down in article 39(a) and (b), and the courts will not be able to scrutinise whether the law is enacted in fact to promote that policy.

The validity of the twenty-fifth Amendment introducing article 31C was questioned in *Keshvananda Bharti v. State of Kerala*, Sikri C.J. held that since Parliament cannot under article 368 abrogate fundamental rights, equally it cannot enable the legislature to abrogate them. Therefore article 31C must be declared unconstitutional.

Minerva Mills Ltd. v. Union of India, MANU/SC/0075/1980 : AIR 1980 SC 1789: (1980) 2 SCC 591: 1980 UJ (SC) 727. The extended version of article 31C was struck down by the Supreme Court. The Court ruled that the extension of the shield of article 31C to all the Directive Principles was beyond the amending power of Parliament under article 368 because by giving primacy to all Directive Principles over the Fundamental Rights in articles 14 and 19, the basic or essential features of the constitution viz., judicial review has been destroyed.

Waman Rao v. Union of India, MANU/SC/0092/1980 : AIR 1981 SC 271: (1980) 3 SCC 587: 1980 UJ (SC) 742: (1981) 2 SCR 1. The Supreme Court maintained that article 31C as it stood prior to the 42nd Amendment Act made in 1978, was valid as its constitutionality had been upheld in *Keshvananda Bharti* case.

Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd., MANU/SC/0040/1982 : AIR 1983 SC 239: (1983) 1 SCC 147: 1983 UJ (SC) 81: 1983 (1) SCJ 233: (1983) 1 SCR 1000. The Supreme Court struck down article 31C as unconstitutional (Amended portion in 42nd Amendment Act) on the ground that it destroys the "basic features" of the Constitution. The goal set out in Part IV have to be achieved without abrogating the means provided for by Part III. Thus there is no conflict between the directive principles and the fundamental rights. These are meant to supplement one another. The Court held that article 31C as originally introduced by the 25th Amendment is constitutionally valid.

I.R. Coelho v. State of Tamil Nadu, MANU/SC/0595/2007 : AIR 2007 SC 861: 2007 AIR SCW 611: (2007) 2 SCC 1: (2007) 1 SCALE 197: 2007 (1) Supreme 137. The Supreme Court held that any law which infringes basic structure of the Constitution can be struck down. Parliament has power to amend Part III so as to abridge or take away fundamental rights but that power is subject to the limitation of basic structure doctrine.

CHAPTER 13

Right to Constitutional Remedies

(Articles 32-35)

Article 32. Remedies for enforcement of rights conferred by this Part

What are the constitutional remedies?

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided by this Constitution.

According to article 13 fundamental rights are enforceable and any law inconsistent with a Fundamental Right is void. Article 13 is the key provision as it makes Fundamental Right justiciable. Article 13 confers a power and imposes a duty and an obligation on the courts to declare a law void if it is inconsistent with a fundamental right. Article 32 confers power on the Supreme Court to enforce fundamental rights.

Daryao v. State of Uttar Pradesh, MANU/SC/0012/1961 : AIR 1961 SC 1457: 1962 (1) SCJ 702: (1962) 1 SCR 574. The Supreme Court observed that the fundamental rights are included not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of the Fundamental Rights are the very essence of the democratic way of life adopted by the Constitution and it is the privilege and the duty of this court to uphold those rights. This would naturally refuse to circumvent them or to curtail them except as provided by the Constitution itself.

Premchand Garg v. Excise Commissioner, Uttar Pradesh, MANU/SC/0082/1962 : AIR 1963 SC 996: (1963) 2 SCA 125: (1963) SUPP 1 SCR 885. The Supreme Court has described the significance of article 32 in the following words:-

"The Fundamental Rights to move this court can therefore be appropriately described as the cornerstone of the democratic edifice raised by the Constitution. That is why it is natural that this court should regard itself as the protector and guarantor of Fundamental Rights and should declare that it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protections".

Define PIL with the help of case laws

Public Interest Litigation.-

The concept of Public Interest Litigation requires that a legal wrong or legal injury is caused to a person or a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law, where any such legal injury or illegal burden is threatened, and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court, any other person, on his or their behalf, can approach the Supreme Court under article 32 or the High Court under article 226.

Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India, MANU/SC/0058/1980 : AIR 1981 SC 298: (1981) 1 SCC 246: 1981 SCC (Lab) 50: (1981) 2 SCR 185. It was held that Akhil Bharatiya Soshit Karamchari

Sangh (Railway), though an unregistered association could maintain a writ petition under article 32 for the redressal of a common grievance.

S.P. Gupta v. President of India, MANU/SC/0080/1981 : AIR 1982 SC 149: 1981 Supp SCC 87: (1982) 2 SCR 365. The Court held that any member of the public having 'sufficient interest' can approach the court for enforcing constitutional or legal rights of other persons and redress of a common grievance.

Bandhua Mukti Morcha v. Union of India, MANU/SC/0051/1983 : AIR 1984 SC 802: 1992 AIR SCW 2212: JT 1991 (3) SC 408: MANU/SC/0618/1991 : (1991) 4 SCC 177: (1991) 3 SCR 524. The Supreme Court entertained a matter concerning release of bonded labour raised by the organisation dedicated to the cause of release of bonded labour. The court emphasized that PIL is not in the nature of advisory litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable section of the society.

Balco Employees' Union (Regd) v. Union of India, AIR 2009 SC 350: 2001 AIR SCW 5135: JT 2001 (10) SC 466: MANU/SC/0779/2001 : (2002) 2 SCC 333: 2002 (1) SCJ 123: (2001) 8 SCALE 541: 2001 (8) Supreme 660. The court reminded that the only ground on which a person can maintain a PIL is where there has been an element of violation of article 21 or human rights or where the litigation has been initiated for the benefit of the poor and the under-privileged who are unable to come to the court due to some disadvantage.

Article 33. Power of Parliament to modify the rights conferred by this part in their application to Forces etc

What are the powers of Parliament relating to Forces?

Parliament may, by law, determine to what extent any of the rights conferred by this part shall, in their application to-

- (a) the members of the armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Article 33 is an exception to the fundamental rights conferred by Part III of the Constitution. The article empowers the Parliament to restrict or abrogate by law fundamental rights. The object of this restriction is to ensure the proper discharge of their duties and maintenance of discipline amongst them.

Union of India v. A. Hussain, MANU/SC/0874/1998 : AIR 1998 SC 577: 1998 AIR SCW 171: (1998) 1 SCC 537: 1997 (5) SCJ 55: (1997) 7 SCALE 477: 1998 SCC (Cri) 437: 1997 (10) Supreme 377: 1998 (1) UJ (SC) 165. The Supreme Court described a

court-martial as follows: "It has been rightly said that court-martial remains to a significant degree a specialized mechanism by which the military discipline is preserved. A court-martial has also the same responsibility as any court to protect the rights of the accused charged before it and follow the procedural safeguard".

Article 34. Restriction on right conferred by this Part while martial law in force is in any area

Notwithstanding anything in the foregoing provisions of this part, Parliament may by law indemnify any person in the service of the Union, or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Article 35. Legislation to give effect to the provisions of this Part

Notwithstanding anything in this Constitution-

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws-

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offence, under this part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (1) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adoptions and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation: In this article, the expression 'law in force' has the same meaning as in article 372.

A.D.M., Jabalpur v. S. Shukla, MANU/SC/0062/1976 : AIR 1976 SC 1207: (1976) 2 SCC 521: 1976 Cr LJ 945: 1976 UJ (SC) 610: MANU/SC/0179/1976 : (1976) 3 SCC 454: (1976) 3 SCR 929: 1976 Supp SCR 172. Article 34 is primarily concerned with granting indemnity by law in respect of acts done during operation of martial law. The Constitution does not have a provision authorising proclamation of martial law. Declaration of martial law does not ipso facto result in suspension of the writ of habeas corpus.

Chapter 14

Directive Principles of State Policy

Part IV

(Articles 36-51)

Article 36. Definition

Define the fundamentals in the governance of the country

In this Part, unless the context otherwise requires, "the state has the same meaning as in Part III.

Article 37. Application of the principles contained in this Part

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The Directive Principles of State Policy contained in Part IV of the Constitution set out the aims and objectives to be taken up by the States in the governance of the country. This novel features of the Constitution is borrowed from the Constitution of Ireland which had copied it from the Spanish Constitution.

In the Directive Principles set forth in this part are intended for the guidance of the State. While these principles shall not be cognizable by any court they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State.

Part IV (Articles 36-51) contains what may be described as the active obligation of the State. The State shall secure a social order in which social, economic and political justice shall inform all the institutions of national life. The State shall endeavour the means of livelihood for all and equal pay for equal work, the right to work, to education, to secure the health and strength of workers, a uniform civil code, and free and compulsory education for children.

The Directive Principles State Policy detailed in articles 36 to 51 of the Constitution possess two characteristics. First, they are not enforceable in any court and therefore, if a directive is not obeyed or implemented by the State, its obedience or implementation cannot be secured through judicial proceedings. Second, they are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

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

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

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

Air India Statutory Corp. v. United Labour Union, MANU/SC/0163/1997 : AIR 1997 SC 645: 1997 AIR SCW 430: (1997) 9 SCC 377: 1997 (3) Serv LJ 81 SC: 1997 (2) Supreme 165. The court envisages not only legal justice but socio-economic justice as well. The Supreme Court has observed: "The Constitution commands justice, liberty, equality and fraternity as supreme value to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstone of social democracy." Thus social justice is an integral part of justice in the generic sense. Justice is the genus of which social justice is one of its species."

Article 39. Certain principles of policy to be followed by the State

The State shall, in particular, direct its policy towards securing-

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

- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Clause (f) was modified by the Constitution (42nd Amendment) Act, 1978, with a view to emphasize the constructive role of the State with regard to children.

M.C. Mehta v. State of Tamil Nadu, MANU/SC/0169/1997 : AIR 1997 SC 699: 1997 AIR SCW 407: (1996) 6 SCC 756: 1997 SCC (LandS) 49: 1997 (1) Supreme 207: 1997 (1) UJ (SC) 243, (Known as Child Labour Abolition Case). The Supreme Court held that children below the age of 14 years cannot be employed in any hazardous industry, or mines or factory.

Randhir Singh v. Union of India, MANU/SC/0234/1982 : AIR 1982 SC 879: (1982) 1 SCC 618: 1982 SCC (Lab) 119: 1982 UJ (SC) 193: (1982) 1 SCWR 260: 1982 (1) SCJ 283. The Supreme Court held that equal pay for equal work though not a fundamental right is certainly a constitutional goal, and, therefore, capable of enforcement through constitutional remedies under article 32 of the Constitution. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wages basis.

Article 39A. Equal justice and free legal aid

Define equal justice and free legal aid

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

This article has been inserted in the Constitution by 42nd Amendment Act, 1976. This article ordains the State to secure a legal system which promotes justice on the basis of equal opportunity. The language of article 39A is couched in mandatory terms as is clear by the use of word 'shall' twice therein.

The Supreme Court has emphasized that legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life and personal liberty is a constitutional imperative mandated not only by article 39A but also by articles 14 and 21.

Article 40. Organisation of village panchayats

Explain the organisation of village panchayat

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

The Constitution 73rd Amendment Act, 1992 introducing the panchayats in Part IX (articles 243-243-O) is a major step in the direction of implementing this directive principle.

The idea underlying this constitutional provision is to introduce democracy at the grassroots. This provision does not prescribe as to what powers should be given to the panchayats or what their structure should be and so the panchayat laws may vary from one State to another. The village panchayats are envisaged by the article as the basic

democratic institutions of a pyramid of the democratically organised and functioning self-governing units.

Article 41. Right to work, to education and to public assistance incertain cases

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

The State is directed by this article to ensure to the people within the limits of its economic capacity and development: (I) employment, (II) education, (III) public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want.

Article 42. Provision for just and humane conditions of work and maternity relief

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

D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh, MANU/SC/0038/1974 : AIR 1974 SC 2092: 1974 SCC (Cri) 803: 1975 Cr LJ 556: MANU/SC/0367/1974 : (1975) 3 SCC 185: (1975) 2 SCR 24. The Supreme Court has suggested that article 42 may 'benevolently' be extended to living conditions in jails. The barbarous and subtle form of punishment to which convicts and undertrials are subjected to, offend against the letter and spirit of the Constiution.

Article 43. Living wages etc., for workers

Explain the living wages for workers

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

A 'living wage' is such a wage as enables the male earner to provide for himself and his family not merely the bare essential of food, clothing and shelter, but a measure of frugal comfort including education for children, protection against ill-health and requirement of essential social needs.

D.S. Nakara v. Union of India, MANU/SC/0237/1982 : AIR 1983 SC 130: (1983) 1 SCC 305: 1983 SCC (Lab) 145: 1983 UJ (SC) 217: (1983) 1 SCWR 390: 1983 (1) SCJ 188. The Constitutional Bench of the Supreme Court has held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance it is a social welfare measure rendering socio-economic justice.

Article 43A. Participation of workers in management of industries

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

This article has been inserted in the Constitution by 42nd Amendment Act, 1976.

Article 44. Uniform civil code for the citizens

Define uniform civil code with the help of decided cases

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

This provision was made to promote unity and integrity which are cherished goal enshrined in the Preamble to our Constitution. Hindu law of marriage, succession etc., have been drastically changed in the first decade of the commencement of the Constitution but there has been resistance from Muslim community in this respect and for avoiding any resentment on their part political parties in power remained reluctant to enforce a uniform civil code.

Sarla Mudgal, President, Kalyani v. Union of India, MANU/SC/0290/1995 : (1995) 3 SCC 635: 1995 Cr LJ 2926 (SC): AIR 1995 SC 1531: 1995 AIR SCW 2326: JT 1995 (4) SC 331: 1995 SCC (Cri) 569. The Supreme Court observed that

article 44 is based on the concept that there is not necessarily a connection between religion and personal laws.

Article 45. Provision for early childhood care and education to children below the age of six years

The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.

This article has been substituted by the Constitution (Eighty-sixth Amendment) Act, 2002 which received assent of the President on December, 12, 2002.

M.C. Mehta v. State of Tamil Nadu, MANU/SC/0169/1997 : AIR 1997 SC 699: 1997 AIR SCW 407: (1996) 6 SCC 756: 1997 SCC (LandS) 49: 1997 (1) Supreme 207: 1997 (1) UJ (SC) 243. Child labour is a big problem and remained intractable, even after about 50 years of our having become independent, despite various legislative enactments..... Prohibiting employment of a child in a number of occupations and avocations.

Article 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

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

State of Madras v. Champakam Dorairajan, MANU/SC/0007/1951 : AIR 1951 SC 226: 1951 SCJ 313: 1951 SCR 525. The Supreme Court refused to let the fundamental right declared in article 29(2) to be whittled down by this article. In that case, although the object of the impugned 'communal order' of the Madras Government was to advance the interest of educationally backward classes of citizens, the Supreme Court held the order void for the violation of fundamental right under article 29(2).

R. Chandavarappa v. State of Karnataka, MANU/SC/0805/1995 : (1995) 6 SCC 309: (1995) 5 SCALE 620: JT 1995 (7) SC 93. The Court observed that the economic empowerment to the poor dalits and tribes is an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to life, quality and of status and dignity to the poor, weaker sections, dalits and tribes.

Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health

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

AIIMS Students' Union v. AIIMS, MANU/SC/0480/2001 : AIR 2001 SC 3262: 2001 AIR SCW 3143: JT 2001 (7) SC 12: MANU/SC/0480/2001 : (2002) 1 SCC 428: 2001 (4) SCJ 590: (2001) 5 SCALE 430: 2001 (6) Supreme 367. The Supreme Court observed that the improvement of public health being one of the primary duties of the State, public health can be improved by having the best of doctors, specialists and super specialists.

In a welfare state the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people as an essential part of the obligations undertaken by the Government in a welfare State.

Article 48. Organisation of agriculture and animal husbandry

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

State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, MANU/SC/1352/2005 : AIR 2006 SC 212: 2005 AIR SCW 5723: (2005) 8 SCC 534: 2005 (7) SCJ 701: (2005) 8 SCALE 661: 2005 (8) Supreme 697. Upholding total ban on the

slaughter of cows, calves, bulls and bullocks irrespective of their age, the Supreme Court held that a milch cattle goes through a life cycle during which it is sometimes milch and sometimes it becomes dry. This does not mean that as soon as a milch cattle ceases to produce milk, for a short period as part of its life cycle, it goes out of the purview of articles 48, and can be slaughtered. A drought cattle may lose its utility on account of injury or sickness and may be rendered useless as a drought cattle during that period. This would not mean that if a draught cattle ceases to be of utility for a short period on account of sickness or injury, it is excluded from the definition of 'drought cattle' and deprived of the benefit of article 48.

Article 48A. Protection and improvement of environment and safe-guarding of forests and wild life

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

M.C. Mehta v. Union of India, MANU/SC/0271/2003 : AIR 2003 SC 3469: 2003 Cr LJ 2045: 2003 AIR SCW 1975: JT 2003 (3) SC 505: (2003) 5 SCC 376: (2003) 3 SCALE 575: 2003 (3) Supreme 44. The court has said "articles 39(e), 47 and 48A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment".

This article has been inserted in the Constitution by the 42nd Amendment Act, 1976.

Article 49. Protection of monuments and places and objects of national importance

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

M.C. Mehta v. Union of India, AIR 2007 SC 1087: 2007 AIR SCW 1025: 2007 (1) Crimes 375: MANU/SC/5296/2006 : (2007) 1 SCC 110: (2006) 12 SCALE 391: 2007 (1) SCC (Cri) 264: 2007 (1) Supreme 219. Having regard to article 49 and clause (g) of article 51A of Constitution of India the Supreme Court in a public interest litigation, prevented the "Taj Heritage Corridor Project", one of the main purposes of which was to divert river Yamuna and to reclaim 75 acres of land between Agra Fort and the Taj Mahal from using the reclaimed land for constructing food plazas, shops and amusement activities.

Article 50. Separation of Judiciary from executive

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

Baldev Raj Guliani v. Punjab and Haryana High Court, MANU/SC/0537/1976 : AIR 1976 SC 2490: (1976) 4 SCC 201: 1976 SCC (Lab) 571: (1977) 1 SCR 425. The Supreme Court has interpreted this provision to further enhance the prestige, dignity and independence of the subordinate judiciary.

Article 51. Promotion of international peace and security

The State shall endeavour to-

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

People's Union for Civil Liberties v. Union of India, MANU/SC/0274/1997 : AIR 1997 SC 1203: 1997 AIR SCW 1234: 1997 (1) Cr CJ 374: 1997 (1) Crimes 190: JT 1997 (2) SC 311: (1997) 3 SCC 433: 1997 (1) SCJ 480: (1997) 1 SCR 923: (1997) 1 SCALE 706: 1997 SCC (Cri) 434: 1997 (2) Supreme 429. International Law today is not confined to regulating the relation between the States. Today matters of social concerns such as health, education and economics apart

from human rights falls within the ambit of the international regulations.

Addl. Distt. Magistrate, Jabalpur v. Shivakant Shukla, MANU/SC/0062/1976 : AIR 1976 SC 1207: (1976) 2 SCC 521: 1976 Cr LJ 945: 1976 UJ (SC) 610: MANU/SC/0179/1976 : (1976) 3 SCC 454: (1976) 3 SCR 929: 1976 Supp SCR 172. Khanna, J. observed that if there be a conflict between the municipal law on the one side and the international law or the provisions of any treaty obligations on the other, the court would give effect to municipal law.

Relation Between Fundamental Rights and the Directive Principles

Explain the relation between fundamental rights and DPSP and also explain the supremacy over the other

The directive principles differs from fundamental rights in this respect that while Fundamental Rights are justiciable but Directive Principles of State Policy are non-justiciable. Fundamental rights are mostly rights of the individuals against the State, whereas Directive Principles are guidelines for the State to be followed for general welfare of the society as a whole. According to article 37, Directive Principles, though they are fundamental in the governance of the country and it shall be duty of the State to apply these principles in making law, but they are non-justiciable.

State of Madras v. Champakam Dorairajan, MANU/SC/0007/1951 : AIR 1951 SC 226: 1951 SCJ 313: 1951 SCR 525. The Supreme Court held that the Directive Principles of State Policy have to conform to and run as subsidiary to the chapter of Fundamental Rights because the latter are enforceable in the courts while the former are not. The chapter on Fundamental Rights is sacrosanct and not liable to be abridged by legislative or executive act or orders, except to the extent provided in the appropriate article in Part III.

In Re Kerala Education Bill, MANU/SC/0029/1958 : AIR 1958 SC 956: 1959 SCJ 321: 1959 SCR 995. The Supreme Court observed that though the directive principles cannot override the fundamental rights, in determining the scope and ambit of the Fundamental Right the court may not entirely ignore the Directive Principles but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.

Chandra Bhawan Boarding and Lodging, Bangalore v. State of Mysore, MANU/SC/0308/1969 : AIR 1970 SC 2042: (1970) 2 SCR 600: 1970 Lab IC 1632. The Court held that it did not see any conflict on the whole between the provisions contained in

Part III and Part IV and that they are complementary and supplementary to each other.

His Holiness Kesavananda Bharati Sripadgalvaru v. State of Kerala, MANU/SC/0445/1973 : AIR 1973 SC 1461: (1973) 4 SCC 225. The Supreme Court has said that fundamental rights and directive principles aim at the same goal of bringing about a social revolution and establishment of a welfare State and they can be interpreted and applied together. They are supplementary and complimentary to each other. It can well be said that Directive Principles prescribe the goal to be attained and the Fundamental Rights lay down the means by which that goal is to be achieved.

Minerva Mills Ltd. v. Union of India, MANU/SC/0075/1980 : AIR 1980 SC 1789: (1980) 2 SCC 591: (1980) 3 SCC 625: 1980 UJ (SC) 727. The Supreme Court held that harmony and balance between Fundamental Right and Directive Principles of State Policy, is an essential feature of the basic structure of the Constitution. It has been observed that the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution.

Bandhua Mukti Morcha v. Union of India, MANU/SC/0051/1983 : AIR 1984 SC 802: (1984) 3 SCC 161: 1984 SCC (Lab) 389. The Court observed that though the Directive Principles are unenforceable by the courts and the courts cannot direct the legislature or executive to enforce them, once a legislation in pursuance of them has been passed, the courts can order the State to enforce the law, particularly when non-enforcement of the law leads to denial of fundamental rights.

Unni Krishnan J.P. v. State of Andhra Pradesh, MANU/SC/0333/1993 : (1993) 1 SCC 645: 1993 AIR SCW 863: JT 1993 (1) SC 474: MANU/SC/0333/1993 : (1993) 1 SCC 645: (1993) 1 SCR 594: 1993 (1) UJ (SC) 721. The Supreme Court has reiterated the same principle that the Fundamental Rights and Directive Principles of State Policy are

supplementary and complementary to each other and the provisions in Part III should be interpreted having regard to the Preamble and Directive Principles of State Policy.

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CHAPTER 15

Fundamental Duties

Part IVA)

(Article 51A)

Article 51A. Fundamental Duties

Explain the fundamental duties

It shall be the duty of every citizen of India-

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Whether the fundamental duties enforceable or not?

The fundamental duties were added by the forty-second Amendment of the Constitution in 1976. The last duty (k) was added by the Constitution 86th Amendment Act, 2002.

In a democratic socialism, people must realise that while they have some rights, they also owe some duties and responsibilities to others and the nation. These duties have been incorporated with a view to inculcate a sense of responsibility in the people.

Bijoe Emmanuel v. State of Kerala, MANU/SC/0061/1986 : AIR 1987 SC 748: (1986) 3 SCC 615: 1986 JT 115: 1986 (3) Supreme 344: 1986 (3) SCJ 395. Article 51A(a) enjoins a duty on Indian citizens to show respect to National Anthem. A person shows no disrespect to the National Anthem if he stands up respectfully when the National Anthem is sung but does not join in the singing.

Union of India v. Naveen Jindal, MANU/SC/0072/2004 : AIR 2004 SC 1559: 2004 AIR SCW 705: JT 2004 (2) SC 1: MANU/SC/0072/2004 : (2004) 2 SCC 510: (2004) 1 SCALE 677: 2004 (1) Supreme 880: 2004 (2) UJ (SC) 955. Every citizen has the right to fly the National Flag subject to the restrictions specified in article 51A(c).

AIIMS Students' Union v. AIIMS, MANU/SC/0480/2001 : AIR 2001 SC 3262: 2001 AIR SCW 3143: JT 2001 (7) SC 12:

MANU/SC/0480/2001 : (2002) 1 SCC 428: 2001 (4) SCJ 590: (2001) 5 SCALE 430: 2001 (6) Supreme 367. The Supreme Court observed that article 51A does not expressly cast any fundamental duty on the State, the duty of every citizen of India is the collective duty of the State.

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Chapter 16

The Union executive

(Articles 52-78)

(A) the President

Article 52. The President of India

Who is the executive head of the State?

There shall be a President of India.

The central executive consists of the President and the Council of Ministers headed by the Prime Minister. It is of the parliamentary type insofar as the Council of Ministers is responsible to the Lok Sabha. The President is the Head of the State and the formal executive. All executive action at the centre is expressed to be taken in his name. The office of the President came into existence immediately after the Constitution was adopted on 26th November, 1949.

Article 53. Executive power of the union

What are the executive powers of the union?

(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command for the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall-

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

Rai Sahib Ram Jawaya Kapur v. State of Punjab, MANU/SC/0011/1955 : AIR 1955 SC 549: 1955 SCJ 504: (1955) 2 SCR 225. Executive functions comprises both determination of policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact, the carrying on or supervision of the general administration of the State. Executive function embraces the direction of general policy.

Jayantilal Amritlal Shodhan v. F.N. Rana, MANU/SC/0046/1963 : AIR 1964 SC 648: (1964) 2 SCA 284: (1964) 5 SCR 294. The executive now exercises the powers of subordinate legislation and of administrative justice. It cannot be assumed that the legislative functions are exclusively performed by the legislature, executive functions by the executive and judicial functions by the judiciary alone.

Article 54. Election of President

Define the process and manner of election of President

The President shall be elected by the members of an electoral college consisting of-

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States.

Explanation.-In this article and in article 55, 'State' includes the National Capital Territory of Delhi and the Union Territory of Pondicherry.

Article 55. Manner of election of President

(1) As far as practicable, there shall be uniformity in the scale of the representation of the different States at the election of the President

(2) For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner-

(a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of single transferable vote and the voting at such election shall be by secret ballot.

Explanation.-In this article, the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 1971 census.

In *Re, Presidential Election, 1974*, AIR 1974 SC 1682: (1974) 2 SCC 33: (1975) 1 SCR 504. The Supreme Court has ruled that the election of the President can be held when a State Assembly has been dissolved under article 356 and its members are unable to participate in the election.

Article 56. Term of office of President

Define terms, eligibility and qualification for election as President

(1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that-

(a) the President may, by writing under his hand addressed to the Vice-President, resign his office;

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

Article 57. Eligibility for re-election

A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

Article 58. Qualification for election as President

(1) No person shall be eligible for election as President unless he:-

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Government.

Explanation.-For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

This article lays down the qualification which a person must possess for being elected to the office of the President of India. The person must be a citizen of India and of 35 years of age, and must be qualified for election as a member of the House of the People. Thus, a person contesting for the office of the President must be a voter in any Parliamentary constituency.

Article 59. Conditions of President's office

(1) The President shall not be a member of either House of Parliament or a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

The President's salary has been raised to Rs. 1,50,000 per month from Rs. 50,000 per month. His salary and allowances cannot be diminished during his term of office.

Article 60. Oath or affirmation by the President

Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say-

"I, A.B., do that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

Before entering upon his office, the President has to make and subscribe to an oath or affirmation in the prescribed form in the presence of the Chief Justice of India or, in his absence, the seniormost judge of the Supreme Court available. In his oath, the President undertakes to protect and defend the Constitution and the law and to devote himself to the service and well-being of the people.

Article 61. Procedure for impeachment of the President

What is the procedure for impeachment of the President?

- (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless-

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

There is, however, only a remote possibility of this provision being invoked because the President acts on the advice of his ministers who are responsible to Parliament. So long as he acts in this manner, the majority in Parliament need not invoke the provision regarding impeachment as it can easily remove the Council of Ministers. The power to impeach might possibly be invoked in the event of the President acting independently of, or contrary to, ministerial advice, or for treason, bribery or other high crimes or misdemeanours.

Impeachment is a political instrument. What constitutes 'violation of the Constitution' is a matter to be decided by the House which tries the charge and the House is essentially a political organ.

Article 62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy

(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

In re Presidential Election case, AIR 1974 SC 1982: (1974) 2 SCC 33: (1975) 1 SCR 504. The Supreme Court held that election to fill the vacancy in the office of the President must be completed before the expiration of the term of the President having regard to articles 62(1), 54 and 55 of the Constitution. Article 56(1)(c) applies to a case where a successor has not entered in his office and only in such circumstances can a President whose term has expired continue in his office.

Article 361. Protection of President

Define Vice-President and also explain election, terms and qualification required for Vice-President

(1) The President shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceeding against the Government of India.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President in any court during his term of office.

(3) No process for the arrest or imprisonment of the President shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, until the expiration of two months next after notice in writing has been delivered to the President or left at his office stating the nature of the proceedings, the cause of action, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

The ambit of this immunity is very extensive. No court can compel the President to exercise or not to exercise any power, or to perform or not to perform any duty nor can a court issue any writ in respect of the President's official acts or omission. He is not amenable to any mandate, writ or direction from any court. No court can compel him to show cause or defend his action. In the case of official acts, an absolute immunity from the process of the court is given to the President. When any official act of the President is challenged on the ground of mala fide, the immunity under article 361 extends to him and he cannot be called upon personally to defend himself against such an allegation. Nevertheless, the validity of the act can be questioned and the Government has to defend it.

(B) the Vice-President

Article 63. The Vice-President of India

There shall be a Vice-President of India.

Article 64. The Vice-President to be ex-officio Chairman of the Council of States

The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit.

Provided that during any period where the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

Article 65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence of President

(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

Article 66. Election of Vice-President

(1) The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any

State, and if a member of either House of Parliament or of a House the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he-

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.-For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

Dr. Ambedkar, Chairman of the Drafting Committee, said:

"The President is the head of the State and his power extends both to the administration by the centre as well as to the States. It is necessary that in his election, not only members of Parliament should play their part, but the members of the State legislatures should have a voice, but when we come to the Vice-President, his normal functions are to preside over the Council of States.

Article 67. Terms of office of Vice-President

The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that-

- (a) a Vice-President may, by writing under his hand addressed to the President, resign his office;
- (b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolutions for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;
- (c) A Vice-President shall, notwithstanding the expiration of his term continue to hold office until his successor enters upon his office.

The normal tenure of office of the Vice-President is five years from the date he enters upon his office. He may, however, resign his office before the expiry of the term by writing to the President. He may also be removed from office by a resolution of the Council of States passed by a majority of all the then members of the House and agreed to by the House of the People.

Article 68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy

Vice-President and the term of office of person elected to fill casual vacancy.-An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term. An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Article 69. Oath or affirmation by the Vice-President

Every Vice-President shall, before entering upon his office, make and subscribe before the President or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say-

"I. A.B., do that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter".

Article 70. Discharge of President's functions in other contingencies

Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this chapter.

Article 71. Matters relating to, or connected with, the election of a President or Vice-President

(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

Charan Lal Sahu v. Neelam Sanjeeva Reddy, MANU/SC/0401/1978 : AIR 1978 SC 499: 1978 UJ (SC) 134: (1978) 2 SCC 500: 1978 (2) SCJ 51. Under section 14 of the Presidential and Vice-Presidential Election Act, 1952, the petitioner challenged the election of Sh. Reddy as President of India at the Presidential election held on July 19, 1977. A question was raised whether the petitioner had locus standi to maintain the petition in view of sections 5B and 5C of the Act and whether he could challenge the validity of these sections. It was held by the Supreme Court that the petitioner was not duly nominated nor was one who could claim to be so nominated and that his nomination paper was rightly rejected by the returning officer as required under the Act.

Indira Nehru Gandhi v. Raj Narain, (1976) 2 SCR 347: MANU/SC/0304/1975 : AIR 1975 SC 2299: 1975 Supp SCC 1. In this case, the Supreme Court struck down article 329A

clause (4) of the Constitution on the ground that it violated the basic structure of the Constitution. Clause (3) of article 71 did not affect the basic structure.

Dr. Narayan Bhaskar Khare v. Election Commission of India, MANU/SC/0022/1957 : AIR 1957 SC 694: 1957 SCC 344: 1957 SCJ 663. Clause (4) of this article was introduced by the Constitution (Eleventh Amendment) Act, 1961 to foreclose any challenge of the kind made in this case that the Presidential election should be stayed till all vacancies in Parliament and State legislature are filled.

Powers of the President

What are the powers of the President?

Executive Powers of President

(a) Powers as head of the State.-According to article 53, the executive power of the Union vests in the President, and according to article 77 executive actions of the Government of India are to be taken in his name. In foreign countries, he represents the nation. He sends and receives ambassadors and other diplomatic agents. All treaties and international agreements are made in his name though their implementation may require legislation by Parliament. He can declare a State of war with any country or that a state of war with any country ended.

(b) As Supreme Commander of Armed Forces.-Article 53(2) declares that the Supreme Command of Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(c) Power to appoint certain commissions and officials.-All important appointments will be made by him including those of the Prime Minister and other Central Ministers, Governors, Judges of the Supreme Court and the High Courts, Chairmen and Members of the Union Public Service Commission, the Attorney-General, the Chief Election Commissioner and other election Commissioners and the Comptroller and Auditor-General of India. He also appoint the Finance Commission, National Commission for the Scheduled Castes and Scheduled Tribes and other commissions.

(d) Powers in relation to Council of Ministers.-The President appoints Prime Minister and other members of the Council of Ministers and they hold their offices during the pleasure of the President. Article 77(3) empowers the President to make rules for some convenient transaction of the business of the Government of India and for allocation of such business among the members.

(e) Power to grant Pardon.-Under clause (1) of article 72 - The President shall have the power to grant pardons, reprieves, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence-

(a) in all cases where the punishment or sentence is by a court-martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

Clause (2) of article 72 provides that nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a court-martial.

Clause (3) of article 72 provides that nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

Explain the pardoning power of President with the help of decided case laws

Pardon.-Pardon means to forgive a person of his offence. A pardon is an act of grace. It cannot be demanded as a matter of right. A pardon not only removes the punishment but places the offender in the same position as if he had never committed the offence. It is a purely executive act.

Kuljeet Singh alias Ranga v. Lt. Governor of Delhi, AIR 1981 SC 2239. It was contended that President cannot exercise his discretion arbitrarily, particularly in case of death sentence. A pardon may be absolute or conditional. A pardon is conditional where it does not become operative until the grantee has performed some specified act, or where it becomes valid when some specified event happens.

Pardon can be granted at any stage after the commission of the offence, before legal proceedings are taken, during pendency of proceedings or after the conviction.

Reprieve.-Reprieve means temporary suspension of punishment fixed by law e.g., where he files a mercy petition or a woman pleads pregnancy.

Respite.-Respite means postponement of the execution of sentence to a future date.

Commute.-Commute means to change the nature of punishment e.g., to commute a death penalty into life imprisonment or rigorous imprisonment into a simple one.

Remit.-Remit means to reduce the amount of punishment without changing the nature of the punishment e.g., to reduce 10 years' imprisonment to that of 5 years.

K.M. Nanavati v. State of Bombay, MANU/SC/0063/1960 : AIR 1961 SC 112: (1961) 1 Cr LJ 173: (1961) 1 SCA 54:

(1961) 1 SCR 497: 1961 (2) SCJ 100. It was held that the power to suspend a sentence is subject to the rules made by the Supreme Court with respect to cases which are pending before it in appeal.

Kehar Singh v. Union of India, MANU/SC/0240/1988 : (1989) 1 SCC 204: 1989 Cr LJ 941: JT 1988 (4) SC 693: MANU/SC/0240/1988 : (1989) 1 SCC 204: 1989 (1) Crimes 238: 1989 SCC (Cri) 86. Article 72 is of the widest amplitude, can contemplate myriad kinds and categories of cases with facts and situations varying from case-to-case, in which the merit and reasons of State may be profoundly assisted by prevailing occasion and passing time.

The Court observed in this case that article 72 falls squarely within the Judicial domain and can be examined by the court by way of judicial review.

Legislative Power of the President

Explain the ordinance making power of President

(a) Participation of the Executive in the Legislative Process.-The Council of ministers being an integral part of Parliament participates intimately in the legislative process, and discharges important functions in relation to Parliament. This concept is underlined by making President a component part of Parliament. The executive's power to convene and prorogue Parliament, to dissolve Lok Sabha, presentation of Bills to Parliament and the requirement of Presidential assent for transforming a Bill passed by the two Houses into an Act are some of the factors which denote the intimate role played by the executive in relation to the legislative process.

President may address any or both Houses of Parliament and send message to either House with respect to a Bill pending in Parliament or otherwise. There are several provisions in the Constitution which require prior recommendation of the President for introducing legislation or some matters in a House of Parliament. As for example-

- (i) President's recommendation is required to introduce in either House a Bill for the formation of new States or alteration of areas, boundaries or names of existing States (Article 3).
- (ii) A money Bill cannot be introduced without the recommendation of the President [Article 117(1)].
- (iii) President's recommendation is required for consideration by a House of a Bill involving expenditure from the Consolidated Fund of India [Article 117(3)].
- (iv) Prior recommendation of the President is required for introducing in either House of Parliament any Bill affecting any tax in which States are interested (Article 274).

(b) Rule-Making Powers.-Several Constitutional provisions confer rule-making powers on the Central Executive enabling it to prescribe detailed provisions for several matters, as for example:

- (a) authentication of orders and instruments made and executed in the name of the President [Article 77(2)];
- (b) the more convenient transaction of the government's business [Article 73(3)];
- (c) conditions of services etc., of Audit and Account Department [Article 148(5)] Chairman and Members of the Union Public Services Commission [Article 318], secretariat and staff and House of Parliament [Article 98(3)];
- (d) consultation with the UPSC regarding appointment of officials of the Supreme Court [Article 146(1)];
- (e) dual membership of Parliament and State Legislatures [article 101(2)].
- (f) procedure to be followed at the joint meeting of the two Houses of Parliament [Article 118(3)];
- (g) regulating the requirement and conditions of service of person appointed to services and posts in connection with the affairs of the Union [Proviso to Article 309].

(c) Ordinance making powers.-(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exists which render it necessary for him to take immediate action, he may promulgate such ordinance as the circumstances appears to him to require.

(2) An Ordinance promulgated by the President under article 123 shall have the same force and effect as an Act of Parliament, but every such Ordinance-

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament; or if before the expiration of that period resolution disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation: Where the Houses of Parliament are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) if and so far as an ordinance under the article makes any provision while Parliament would not under this Constitution be competent to enact, it shall be void.

R.C. Cooper v. Union of India, MANU/SC/0011/1970 : AIR 1970 SC 564: (1970) 3 SCR 530: (1970) 1 SCC 248. The constitutional validity of the Banking Companies (Acquisition and Transfer of Undertaking) Ordinance, 1989, was challenged. By the Ordinance, the Central Government nationalised a number of private banks. It was argued that the Ordinance was invalid because the condition precedent to the exercise of the power under article 123 does not exist. The Government's argument was that the condition of satisfaction of the President is "purely subjective" and the Government was under no obligation to disclose to existence of, or to justify the circumstances.

The Court ruled that the satisfaction of the President is subjective and the only way in which the exercise of power by the President can be challenged is by establishing 'bad faith or mala fide and corrupt motive.

A.K. Roy v. Union of India, MANU/SC/0051/1981 : AIR 1982 SC 710: 1982 Cr LJ 340: (1982) 1 SCC 27: 1982 SCC (Cri) 152: 1982 (2) SCJ 68. The Supreme Court has emphasized that an Ordinance is law and is a product of exercise of legislative power. It is 'law' for the purposes of article 21.

Emergency Power of President.-If the President is satisfied that a grave emergency exists whereby security of India or any part thereof is threatened, emergency may be proclaimed by him under article 352. During the period the proclamation is in force. President may make modifications in distribution of revenues between Union and States and suspend enforcement of fundamental rights when on report of the Governor or otherwise, he is satisfied that Government of State cannot be carried on in accordance with the provisions of the Government. During financial emergency under article 360, President is empowered to issue necessary directions requiring Money Bills or other Bills of State to be reserved for his consideration and reduction of salaries of persons serving under the Union or States.

Article 73. Extent of executive power of the Union

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extends-

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority, jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the Commencement of this Constitution.

(c) Council of Ministers

Define the election of Prime Minister and other Ministers

Article 74. Council of Ministers to aid and advice President

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President who shall, in the exercise of his functions, act in accordance with such advice:

Provided that the President may request the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether, any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

Article 75. Other provisions as to Ministers

Explain in detail the S.R. Bommai case

(1) The Prime Minister shall be appointed by the President and other Ministers shall be appointed by the President on the advice of the Prime Minister.

(1A) The total number of Ministers including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected whichever is earlier.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time-to-time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule."

According to article 53 the executive power of the union is vested in the President and is exercisable by him in accordance with the Constitution. Article 74 expressly provides for a Council of Ministers with a Prime Minister at the head to aid and advice the President in the exercise of his functions. The President is only a constitutional head and acts on the aid and advice of the Council of Ministers.

Articles 74 and 75 which deal with the composition and status of the Council of Ministers are sketchy and very generally worded. The framers of the Indian Constitution left these matters undefined so that these may be regulated by practices and conventions.

U.N. Rao v. Indira Gandhi, MANU/SC/0059/1971 : AIR 1971 SC 1002: (1971) 1 Civ Ap J (SC) 176: 1971 (Supp) SCR 46. The Supreme Court held that even after the dissolution of Lok Sabha, the Council of Ministers does not cease to hold office. Article 74(1) is mandatory one and, therefore, the President cannot exercise the executive power without the aid and advice of the Council of Ministers. Any exercise of executive power without such aid and advice will be unconstitutional in view of article 75(1).

Samsher Singh v. State of Punjab, MANU/SC/0073/1974 : AIR 1974 SC 2192: 1974 Serv LR 701: 1974 SCC (Lab) 550:

(1975) 1 SCR 814. The Supreme Court held that the President and the Governor are only "constitutional or formal heads". They exercise their powers and functions under the Constitution only with the aid and on the advice of the Council of Ministers. The Court said that our Constitution embodies generally the Parliamentary or cabinet system of Government on the British Model, both for the Union and the States.

In article 74, the proviso was added by the 44th Amendment Act, 1978 which intended to prevent the recurrence of the situation which arose in 1975 when the President had to sign the Emergency Proclamation only on the advice of the then Prime Minister, Indira Gandhi, without consulting her cabinet colleagues.

S.R. Bommai v. Union of India, MANU/SC/0444/1994 : AIR 1994 SC 1918: 1994 AIR SCW 2946: JT 1994 (2) SC 215: MANU/SC/0444/1994 : (1994) 3 SCC 1: (1994) 2 SCR 644. The Supreme Court has clarified the implications of article 74(2) and observed that no court is concerned with what advice was tendered by the Minister to the President. The court is only concerned with the validity of the order. An order cannot be challenged on the ground that it is not in accordance with the advice tendered by the Minister or that it is not based on an advice.

Article 74(2) protects and preserves the secrecy of the deliberations between the President and his Council of Ministers. Its scope is limited. It does not immunize orders and acts done by the President in exercise to his functions. Article 74(2) cannot override the basic provisions of the Constitution relating to judicial review when any action taken by the President in exercise of his functions is challenged, it is for the Council of Ministers to justify the same, since the President acts under article 74(1).

The Prime Ministers appointed by the President under article 75(1). This is one act which the President performs in his discretion without the advice of the Council of Ministers or the Prime Minister. Clause (1A) and (1B) of article 75 was added by the 91st Amendment Act, 2003. The new clause (1A) provides that the total number of Ministers, include the Prime Minister, in the Council of Ministers shall not exceed 15% of the total number of members of the House of the people.

The new clause (1B) of article 75 provides that a member of either House of Parliament belonging to any political party who is disqualified for being a member of that House on the ground of defection under paragraph 2 of Tenth Schedule shall also be disqualified to be appointed as a Minister under

clause (1) of 75, till he is again elected.

The Council of Ministers consists of three categories of Ministers Minister of Cabinet Rank, Minister of State and Deputy Ministers. The Cabinet is the smaller body of the Council of Ministers. The Cabinet is the supreme policy making body. All senior most Ministers are the Members of the Cabinet.

Removal of Ministers.-Clause (2) lays down that Ministers hold office during the pleasure of the President. Each Minister holds his office at the President's pleasure indicates that his office is at all time at the Prime Minister's disposal. The President acts on the advice of the Prime Minister. Clause (2) only applies to the dismissal of Ministers. It does not apply to the dismissal of the Council of Ministers.

Collective Responsibility.-Clause (3) provides the basic principle of Parliamentary Government is the collective responsibility of Minister to a statutory form. The Council of Ministers are responsible to the Lok Sabha or the House of the People not as individuals alone, but collectively also.

Common Cause, A Registered Society v. Union of India, (1996) 6 SCC 667. The Supreme Court observed that collective responsibility has two meanings: The first meaning which can legitimately be ascribed to it that all members of a Government are unanimous in support of its policies and would exhibit that unanimity in public occasions although while formulating the policies.

The Council of Ministers work as a team and all decisions taken by the Cabinet are the joint decisions of all its members. No matter whatever be their personal differences of opinion within the cabinet, but once a decision has been taken by it, it is the duty of each and every Minister to stand by it and support it both in the Legislature and outside.

Article 78. Duties of Prime Minister as respects the furnishing of information to the President etc

What are the duties of Prime Minister in respect of President?

It shall be the duty of the Prime Minister-

- (a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the union and proposals for legislation;
- (b) to furnish such information relating to the administration of the affairs of the Union and proposal for legislation as the President may call for; and
- (c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Clause (a) makes it clear that though the President takes no part in the formal deliberations of Ministers, he is constitutionally entitled to criticise the conduct of the executive, and for these purposes decisions of the Council of Ministers relating to the administration of the affairs of the Union are communicated to the President. Under clause (b), it is the duty of the Prime Minister to furnish such information relating to the Union administration and legislative proposals as the President may call for. Clause (c) expressly affirms the doctrine of collective responsibility. It shall be the duty of the Prime Minister, if the President so requires, to submit for reconsideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council of Ministers.

(d) Attorney-General For India

Explain the Attorney-General of India

Article 76. Attorney-General

- (1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.
- (2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time-to-time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.
- (3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.
- (4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

In England office of the Attorney-General is regarded as political. He is a member of the Ministry. In India, Attorney-General is not a member of Council of Ministers. There is distinct post of Minister who is member of the Council of Ministers. According to article 88, every Minister and Attorney-General for India shall have the right to speak and otherwise take part in the proceedings of either House of Parliament or any joint sitting of both Houses and any committee of which he may be named as a member but he shall not be entitled to vote.

The appointment of Attorney-General is made on the basis of professional competence and not on political considerations. He is non-party man, is appointed because of his competence as a lawyer and he is not a member of the cabinet.

Article 77. Conduct of business of the Government of India

- (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.
- (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such

manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Rai Sahib Ram Jawaya Kapur v. State of Punjab, MANU/SC/0011/1955 : AIR 1955 SC 549: 1955 SCA 577: 1955 SCJ 504: (1955) 2 SCR 225. The decision taken by the officers authorised under the rules of business is regarded as the decision of the Government of India. The wheels of the Government will stop if all decisions were required to be taken by the President or even by the Ministers.

A. Sanjeevi Naidu v. State of Madras, MANU/SC/0381/1970 : AIR 1970 SC 1102: (1970) 2 SCJ 582: (1970) 2 Andh WR (SC) 98. These rules have statutory force and are binding. Therefore, sanction for prosecution of an employee of the Central Government under the Prevention of Corruption Act, was held not valid when it was granted by a Ministry other than the one authorised to do so under the rules of business.

Union of India v. Naveen Jindal, MANU/SC/0072/2004 : AIR 2004 SC 1559: 2004 AIR SCW 705: JT 2004 (2) SC 1: MANU/SC/0072/2004 : (2004) 2 SCC 510: (2004) 1 SCALE 677: 2004 (1) Supreme 880: 2004 (2) UJ (SC) 955. Business rules cannot override a provision made by an Act or by any statutory rules.

CHAPTER 17

The Parliament

Articles 79-122

Article 79. Constitution of Parliament

How Parliament is constituted under article 79?

There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

India's Parliament is bicameral. The lower House is designated as the House of the people or Lok Sabha and the upper house as the Council of States or Rajya Sabha. The two Houses along with the President constitutes Parliament. All these three organs are essential to the process of legislation by Parliament.

Article 80. Composition of the Council of States

Explain the composition of council of States

(1) The Council of States shall consist of:

- (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and
- (b) not more than two hundred and thirty-eight representative of the States and of the Union territories.

(2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:

Literature, science, art and social science.

(4) The representative of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representative of the Union territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

Rajya Sabha is constituted by indirect elections. Rajya Sabha is designed to fulfil a number of purposes. First. It has been envisaged as a forum to which seasoned and experienced public men might get access without undergoing the din and bustle of a general election which is inevitable for finding a seat in the Lok Sabha. The value of the Upper House, lies in the talent, experience and knowledge which it can harness to the service of the country which might be lost otherwise. Secondly. Rajya Sabha serves as a debating chamber to hold dignified debates and acts as a revising chamber over the Lok Sabha which being a popular chamber, may at times be swayed to act hastily under pressure of public opinion or in the heat of passion of the moment. Lastly. The Rajya Sabha is designed to serve as a chamber where the States of the Union of India are represented as State in keeping with the federal principle.

Article 81. Composition of the House of the People

Explain the composition of the House of the People

(1) Subject to the provisions of article 331, the House of the people shall consist of-

- (a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide-

(2) For the purpose of sub-clause (a) of clause (1)-

(a) there shall be allotted to each State a number of seats in the House of the people in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.

(3) In this article, the expression 'population' means the population as ascertained in the last preceding census of which the relevant figures have been published:

Provided that the reference in this clause to the last preceding census of which the relevant. Figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published be construed,-

(i) for the purpose of sub-clause (a) of clause (2) and the proviso to that clause, as a reference to the 1971 census; and

(ii) for the purposes of sub-clause (b) of clause (2) as a reference to the 2001 census.

Lok Sabha is the popular chamber and is elected directly by the people. Lok Sabha has been organized on practically similar lines as the lower chambers in Britain, U.S.A. Canada and Australia. The House of Commons in Britain, like the Lok Sabha, is elected directly by the People for five years by adult suffrage. All citizens without disabilities have a right to vote and voting is compulsory. Seats in the House are distributed among the States according to population, with a minimum of five to each State.

This article describes the composition of the House of the people. It shall consist of:

(a) not more than 530 members directly elected by the voters,

(b) not more than 20 members to represent the Union territory to be chosen in such manner as Parliament may be law provide, and

(c) not more than two members belonging to the Anglo Indian Community appointed by the President under article 311.

Article 82. Readjustment after each census

Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment.

Article 83. Duration of Houses of Parliament

(1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House:

Provided that the said period may, while a proclamation of emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate."

The Council of States is a permanent body, one-third, of its members retires every second year. The House of People runs for five years unless it is sooner dissolved.

Article 84. Qualification for membership of Parliament

Explain the qualification for membership in Parliament

A person shall not be qualified to be chosen to fill a seat in Parliament unless he-

(a) is a citizen of India, and makes and subscribes before some person authorized in that belief by the Election Commission an oath or affirmation according to the form set out for the purpose in the third Schedule

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and in the case of a seat in the House of the People, not less than twenty-five years of age, and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

The object of this article is to prescribe qualifications for a person who wants to be a candidate on election. Generally, the rule is that a person who is a voter, becomes entitled to stand as a candidate for election. The qualification for a member of Parliament are that he should:

(a) be a citizen of India,

(b) make and subscribe an oath and affirmation,

(c) be not less than 30 years of age in the case of Council of States and not less than 25 years of age in case of House of the People,

(d) possessing such other qualification as may be laid down by Parliament.

Article 85. Sessions of Parliament, prorogation and dissolution

Define the different sessions in Parliament with relevant case laws

(1) The President shall from time-to-time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time-to-time-

(a) prorogue the Houses or either House;

(b) dissolve the House of the People".

(1) Summoning.-

The President shall from time-to-time summon each House of Parliament to meet at such time and place as he

thinks fit. The summoning of the House simply means its convocation when its meeting is considered necessary. A session of the Parliament commences from the day it has been summoned to meet by the President. The right of the President to summon a House is subject to the condition that six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

Indira Nehru Gandhi v. Raj Narain, (1975) Supp SCC 1: MANU/SC/0304/1975 : AIR 1975 SC 2299: (1976) 2 SCR 347. The validity of the Constitution (39th Amendment) Act, 1975, was challenged on the ground that the constitution of the House which passed the amendment was illegal. The Supreme Court held that constitution of the House which passed the Constitution (39th Amendment) Act, was not illegal on the ground that a number of members of Parliament of the two Houses were in detention under the preventive detention laws.

(2) Prorogation.-

A prorogation ends a session. Prorogation is the act of terminating a Parliamentary session. The power to prorogue the House is vested in the President. It differs from adjournment because the adjournment does not end the session but suspend the sitting of the House. The power to adjourn the House belongs to the House, but prorogation of a session can be effected by the President alone.

(3) Dissolution.-

Dissolution terminates a House i.e., the life of a House is brought to an end and a general election must then be held to elect a new House of the People. The President has the power to dissolve the House of the People. A dissolution ends the very life of the House while a prorogation ends a session.

Article 86. Right of President to address and send messages to Houses

Explain the office of Chairman and Deputy Chairman in council of States

(1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

Article 86 confers on the President the power to issue summons for the ensuing session of Parliament and to address either House of Parliament or both Houses as therein specified. These articles cannot be construed to confer any right as such on individual members or impose any obligation on them.

Article 87. Special address by the President

When President address the said Houses of Parliament?

(1) At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year, the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address.

The President's address fulfils two functions. First it underlines responsibility of the Government to Parliament for it consists of the Government's review of the international and internal situation and a statement of its general policy together with an indication of its legislative programme for the ensuing session. Secondly it provides a solemn yet simple ceremony with which the session of a House begins. The practice of the President addressing Parliament has been adopted in India from Britain.

Article 88. Rights of Ministers and Attorney-General as respects Houses

Every Minister and the Attorney-General for India shall have the right to speak in, and otherwise to take part in the proceedings of either House, any joint sitting of the Houses, and any committee of Parliament or which he may be named a member, but shall not by virtue of this article be entitled to vote.

Officers of Parliament

(Articles 89-98)

(A) Chairman/Deputy Chairman

Article 89. The Chairman and Deputy Chairman of the Council of States

- (1) The Vice-President of India shall be ex-officio Chairman of the Council of States.
- (2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

Article 90. Vacation and resignation of, and removal from the office of Deputy Chairman

A member holding office as Deputy Chairman of the Council of States-

- (a) shall vacate his office if he ceases to be a member of the Council;
- (b) may, at any time, by writing under his hand addressed to the Chairman, resign his office, and
- (c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Article 91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman

Define procedure for removal of the Chairman and Deputy Chairman?

- (1) While the office of chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the council of States as the President may appoint for the purpose.
- (2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

Article 92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration

- (1) At any sitting of the Council of States while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, the Deputy Chairman, is absent.
- (2) The Chairman shall have the right to speak in, and otherwise to take part in proceedings of, the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in article 100 shall not be entitled to vote at all on such resolution or on any other matter during such proceedings."

Under the Rule of Procedure of the House, the Chairman enjoys powers to regulate the proceedings of the House similar to those enjoyed by the speaker in relation to the Lok Sabha.

(B) Speaker/Deputy Speaker

Article 93. The Speaker and Deputy Speaker of the House of the People

How are the Speaker and Deputy Speaker appointed in the House of the People?

The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to the Speaker or Deputy Speaker, as the case may be.

Article 94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker

A member holding office as Speaker or Deputy Speaker of the House of the people-

- (a) shall vacate his office if he ceases to be a member of the House of the people;
- (b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and
- (c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

Article 95. Power of the Deputy Speaker, or other person to perform the duties of the office of, or to act as, Speaker

- (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.
- (2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

Article 96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration

- (1) At any sitting of the House of the People while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provision of clause (2) of article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or as the case may be, the Deputy Speaker, is absent.
- (2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Article 97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker

Explain Speaker Protem

There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

The Speaker is much more than merely a presiding officer of the House. He is the representative and spokesman of the House in its collective capacity and is the chief custodian of its power and privileges.

Kihoto Harlohan v. Zachilhu, MANU/SC/0753/1992 : AIR 1993 SC 412: 1992 AIR SCW 3497: JT 1992 (1) SC 600: (1992) 1 SCR 686: (1992) Supp 2 SCC 651. The office of the Speaker is held in the highest esteem and respect in Parliamentary traditions. The evaluation of the institution of Parliamentary democracy has the pivotal institution of the Speaker. The Speaker holds a high, important and ceremonial office. The speaker is said to be the very embodiment of propriety and impartiality.

Speaker Protem.-According to article 95 when the office of the Speaker as Deputy Speaker is vacant, the duties of the office shall be performed by such member of House who is appointed by the President.

The person so appointed is known as speaker protem. He continues to function till the Speaker is elected by Lok Sabha. The name of the person to be appointed as Speaker protem is suggested by the Prime Minister who may consult his Cabinet before suggesting the name. Normally, the senior-most member of the House is appointed as Speaker protem but there have been certain departure.

Article 98. Secretariat of Parliament

(1) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretariat staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

Article 99. Oath or affirmation by members

Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

The election of the Speaker must be preceded by the taking of the oath. To expedite the oath taking in the newly elected House of the People normally the President appoints more than one person from amongst the senior and leading member of that House.

Article 100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum

(1) Save as otherwise provided in this Constitution all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a

casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum."

The quorum of each House of Parliament is one-tenth of the total membership of the House. If at any time there is no quorum, it shall be the duty of the Chairman or the Speaker to adjourn the House to suspend the meeting until there is a quorum.

Disqualification of members

Article 101. Vacation of Seats

Article 101 enumerates the situations in which the seat of a member of either House of Parliament becomes vacant. These are the following-

- (a) where person is a member of two Houses of legislature/both Houses of Parliament; or Parliament and House of a State Legislature his seat in one of the House is vacated;
- (b) if a member of either House of Parliament becomes subject to any of the disqualifications laid down in article 102;
- (c) if a member of either House of Parliament resigns his seat;
- (d) if, for a period of sixty days, a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant.

Article 102. Disqualifications for membership

What are the disqualifications for membership to remove office?

- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-
 - (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
 - (b) if he is of unsound mind and stands so declared by a competent court;
 - (c) if he is an undischarged insolvent;
 - (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
 - (e) if he is so disqualified by or under any law made by Parliament.

Explanation.-For the purpose of this clause, a person shall not be deemed to hold an office of profit under the Government of India or Government of any State by reason only that he is a minister either for the Union or for such State.

- (2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Explain the office of profit with the help of leading case laws

Office of Profit.-

An office of profit ordinarily means an office capable of yielding some profit to the holder of the office. This disqualification arises when a person-

- (a) holds an office,
- (b) the office is under the Central or State Government,
- (c) the office is one of profit.

The expression 'office of profit' has not been defined in the Constitution. It is, therefore, for the courts to explain the significance and meaning of this concept and decide in the context of specific factual situations whether a person is disqualified or not. Article 102(1)(a) which debars a holder of an office of profit under the government from being elected to a House of Parliament, is that there should not be any conflict between the duties and the interest of an elected member and to see that the elected member carries on his duties freely and fearlessly without being subjected to government pressure.

A similar restriction is imposed by article 191(1)(a) in respect of the membership of the State legislature, article 243F in respect of panchayats and article 243V in respect of municipalities.

Abdul Shakur v. Rikhab Chand, MANU/SC/0074/1957 : AIR 1958 SC 52: 1958 SCA 279: 1958 SCJ 329: 1958 SCR 387. The office of profit must be under the Central or any State Government. For deciding this there are five tests-

- (1) Whether Government has power of appointment,
- (2) Whether the Government has the right to remove or dismiss the holder of office,
- (3) Whether the Government pays the remuneration,
- (4) Whether the functions which the holder performs are for government,
- (5) Whether the government exercise control over the performance of those functions.

Jaya Bachchan v. Union of India, MANU/SC/2395/2006 : AIR 2006 SC 2119: 2006 AIR SCW 2601: (2006) 5 SCC 266: 2006 (5) SCJ 1: (2006) 5 SCALE 511: 2006 (4) Supreme 378. It was held that the decisive factor in determining whether one is holding an office of profit or not, is whether pecuniary gain is in fact received or receivable in connection with that office. Actual receipt of the pecuniary gain is not necessary.

The court held that an office of profit is an office which is capable of yielding a profit or pecuniary gain. Nature of the payment must be considered as a matter of substantive rather than of form. Nomenclature is not important. In fact, mere use of "honorarium" cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient payment of honorarium, in addition to daily allowances in the nature of the compensatory allowances, rent free accommodation and chauffeur driven car at State expenses are clearly in the nature remuneration and a source of pecuniary gain and hence constitute profit.

Shibu Soren v. Dayanand Sahay, MANU/SC/0372/2001 : AIR 2001 SC 2583: 2001 AIR SCW 2626: JT 2001 (5) SC 504: MANU/SC/0372/2001 : (2001) 7 SCC 425: 2001 (4) SCJ 338: (2001) 4 SCALE 395: 2001 (5) Supreme 193. An office held under some body distinct from and independent of the Government is not regarded as an office under the Government and so does not attract the disqualification under discussion.... If the government exercise control over the concerned body, the office held under it may or may not be regarded as an office under the Government depending on how much control the Government exercises over it.

Disqualifications under the Representation of People Act, 1951.-Under the Act disqualification are as follows:-

- (i) Corrupt practices at an election.
- (ii) Conviction for an offence resulting in imprisonment for two or more years.

- (iii) Feature to lodge an account for election expenses.
- (iv) Having an interest or share in the contract for supply of goods or execution of any work or performance of any service of the government.
- (v) Being a director or managing agent or Manager or Secretary in any company or corporation (not being a Co-operative Society) in the capital of which Government has not less than 25% share.
- (vi) Dismissal from Government service for corruption or disloyalty to the State.

Kihoto Harlohan v. Zachilhu, MANU/SC/0713/1991 : (1992) 1 SCC 309; MANU/SC/0753/1992 : AIR 1993 SC 412; 1992 AIR SCW 3497; JT 1992 (1) SC 600; (1992) 1 SCR 686; (1992) Supp 2 SCC 651. The Supreme Court has struck down para 7 of the anti-defection law (Tenth Schedule) which provided that the Speaker's decision regarding the disqualification shall be final and no court can examine its validity. The court held that the function of the Speaker, while applying the anti-defection law is like that of a tribunal and therefore is open to judicial review.

Article 103. Decision on question as to disqualifications of members

- (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause 11 of article 102, the question shall be referred for the decision of the President and his decision shall be final.
- (2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

Election Commission of India v. Saka Venkata Rao, MANU/SC/0060/1953 : AIR 1953 SC 210; 1953 SCA 203; 1953 SCJ 293; 1953 SCR 1144. The words "has become" in article 103 refer to disqualification incurred by the members subsequent to the election. This article does not deal with the disqualifications which arise at the time of the election. The question whether a person is disqualified at the time of election can be decided by the courts.

Article 104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified

If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 99 or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

POWERS, PRIVILEGES, AND IMMUNITIES OF PARLIAMENT AND ITS MEMBERS

Article 105. Powers, Privileges, etc., of the Houses of Parliament and of the members and committees thereof

What are the powers and privileges of the member of Parliament?

- (1) Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament there shall be freedom of speech in Parliament.
- (2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
- (3) In other respects, the powers, the privileges and immunities of each House of Parliament and of the members and the committees of each House, shall be such as may from time-to-time be defined by Parliament by law and, until so defined, [shall be those of that House and its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.
- (4) The provisions of clauses (1), (2), (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of Parliament or any committee thereof as

they apply in relation to members of Parliament.

Kihoto Harlohan v. Zachilhu, MANU/SC/0713/1991 : (1992) 1 SCC 309; MANU/SC/0753/1992 : AIR 1993 SC 412; 1992 AIR SCW 3497; JT 1992 (1) SC 600; (1992) 1 SCR 686; (1992) Supp 2 SCC 651. The Supreme Court observed, Democracy is a part of the basic structure of the Constitution and free and fair elections with provision for resolution of disputes relating to the same as also for adjudication of those relating to subsequent disqualification by an independent body outside the House are essential features of the democratic system in our Constitution.

The Chairman or Speaker held a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take for reaching decisions in the functioning of Parliamentary democracy.

(1) Freedom of Speech.-

This article thus gives absolute immunity from courts for anything said within the four walls of the House during the course of proceedings of the House or its committee. It is to be noted that clause (1) of article 105 is expressly made the constitutional restriction on freedom of speech is imposed by article 121. Article 121 prohibits any discussion in Parliament with respect to the conduct of a Judge of the Supreme Court or High Court in discharge of his duties. The freedom of speech is also subject to the rules of procedure of a House made under article 203.

Article 105(1) confers immunity in respect of anything said in Parliament during the sitting of Parliament and in the course of the business in Parliament. Once it is proved that Parliament was in sitting and its business was being transacted, anything said during the course of that business is immune from proceedings in any court.

(2) Right of Publication of Proceedings.-

Article 105(2) expressly declares that no person shall be liable in respect of the publication, by order under the authority of a House of Parliament, of any report, paper, votes or proceedings.

P.V. Narasimha Rao v. State (CBI/SPE), MANU/SC/0293/1998 : AIR 1998 SC 2120; 1998 Cr LJ 2930; 1998 AIR SCW 2001; 1998 (2) Crimes 124; JT 1998 (3) SC 318; (1998) 4 SCC 626; 1998 (1) SCJ 529; (1998) 2 SCR 870; 1998 SCC (Cri) 1108; 1998 (4) Supreme 1. The Supreme Court held that the scope of protection of immunity available to the Members of Parliament is quite wide and is not confined only against judicial proceedings but is available to them against all civil action and criminal proceedings for anything said or any vote given by them in the House of Parliament. The object of the protection is to enable members to speak their mind in Parliament freely and fearlessly.

Other Privileges.-

Originally article 105(3) provided that the privileges of the Houses of Parliament and its members were to be those which were enjoyed by the members of the House of the Commons in England on January 26, 1950 until defined by Parliament by law. Clause (3) as amended by Constitution (42nd Amendment) Act, 1976 sought to provide that they should be such as may be evolved by House from time-to-time but before the amended clause (3) could be enforced.

Under the residuary provision of clause (3) in article 105, the following privileges can be claimed-

- (a) Freedom from arrest.
- (b) Right to exclude strangers from its proceedings and hold secret sessions.
- (c) Right to prohibit publication of its reports and proceedings.
- (d) Right to regulate internal proceedings.
- (e) Right to punish members or outsiders for contempt.

Parliamentary Privileges and Fundamental Rights

Pandit M.S.M. Sharma v. Sri Krishna Sinha, MANU/SC/0021/1958 : AIR 1959 SC 395: 1959 SCJ 925: (1959) SCR Supp 1 806. It is observed by the Supreme Court that the privileges are not subject to the provisions of Part III of the Constitution. Freedom of speech under article 105 is different from the freedom of speech and expression under article 19 which is subject to restriction. The right under article 105 is an independent right and is not subject to restriction under clause (2) of article 19.

Article 106. Salaries and allowances of members

Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time-to-time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

Legislative Procedure Articles (107-117)

(A). Ordinary Bills.-

An ordinary Bill i.e., other than a money or a financial Bill, may originate in either House of Parliament. It becomes an act when it is passed by both Houses and is assented to by the President. The procedure for passage of a Bill in a House is contained in the rules of procedure of each House. Usually, a Bill passes through three stages in a House.

Article 107. Provisions in to introduction and passing of Bills

What are the ordinary bills and what is the procedure of introduction and passing of bills

- (1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other Financial Bills, a Bill may originate in either House of Parliament.
- (2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.
- (3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.
- (4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.
- (5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.

(B). Joint Session of House.-

Article 108 lays down the procedure for resolving deadlocks between the two Houses of Parliament. It will be recalled that the normal rule under article 107 is that every Bill, other than a money Bill, must be agreed to by both Houses. If there is disagreement between the two Houses, the Bill will not be deemed to have been passed, unless it is passed at a joint sitting of the two Houses in accordance with the provisions of this article.

Article 108. Joint Sitting of both Houses in certain cases

When is the joint sitting of both Houses conducted by President

- (1) If after a Bill has been passed by one House and transmitted to the other House-
 - (a) the bill is rejected by the other House, or

(b) the House have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it, the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting-

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed; and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the people has intervened since the President notified his intention to summon the Houses to meet therein.

Since the commencement of the Constitution, the provision regarding the joint session of the two Houses has been invoked only a few, times. The first joint session of the two Houses was held on may 6 and 9, 1961, to pass the Dowry Prohibition Bill regarding certain provisions of which there were disagreement between the two Houses. Another joint session of the two Houses of Parliament was held on May 16, 1978 to enact the Banking Services Commission (Repeal) Bill. The Bill had earlier been passed by the Lok Sabha but was later rejected by the Rajya Sabha and so a joint session had to be called to override the dead lock. The Bill was approved in joint Session. The third joint session was held on March 26, 2002. The Prevention of Terrorism Bill, 2002 was approved by Lok Sabha by a margin of more than 100 votes but it was defeated in Rajya Sabha by 15 votes. The joint Session was held to break the inter-House deadlock on the Bill and it was passed in the joint session.

(C). Money Bills

From the point of view of Parliamentary procedure, the Constitution distinguished between Money Bill, Financial Bill and an ordinary Bill involving expenditure.

Article 110. Definition of "Money Bills"

Explain "Money Bills". What is the procedure for introduction and passing the Money Bills?

(1) For the purposes of his chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely-

- (a) the imposition, abolition remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- (c) the custody of the consolidated fund or the contingency fund of India, the payment of moneys into or the withdrawal of moneys from any such fund;
- (d) the appropriation of moneys out of the consolidated fund of India;
- (e) the declaring of any expenditure to be expenditure charged on the consolidated fund of India or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the consolidated fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the union or of a State, or
- (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Article 109. Special Procedure in respect of Money Bills

(1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the people it shall be transmitted to Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses of Parliament with amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States. The Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

Article 111. Assent to Bills

When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

(D). Financial Bill.-

A Bill which makes provisions for any of the matters other than mentioned in article 110(1), is called financial Bill. A financial Bill is thus really a money Bill to which some other matters has also been tagged on.

Article 117. Special provisions as to financial Bills

(1) A Bill or amendment making provision for any of the matters specified in sub-clause (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the consolidated fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

Distinction between Money Bills and Financial Bills

Explain the distinction between Money Bills and Financial Bills

(1) Money Bills are simply a species of Financial Bills. All Money Bills are Financial Bills but all Financial Bills are not Money Bills.

(2) Money Bills are those Bills which deal only with matters specified in sub-clause (a) to (g) of clause (1) of article 110, when any other matter is tagged to it, it becomes Financial Bill.

(3) Clause (3) of 117 mentioned another category of Financial Bill which are in fact ordinary Bills but if enacted and brought into operation they would involve expenditure from the consolidated fund of India.

(4) All Money Bills can be introduced in the House of the People only. But some Financial Bills may be introduced in the Council of States also. For instance, Financial Bills coming under clause (3) of article 117 need not necessarily be introduced in the House of the People.

(5) All Money Bills and Financial Bills dealing with matters enumerated in sub-clauses (a) to (f) of clause (1) of article 110 require prior recommendation of the President before they are moved in the House but Financial Bills coming under clause (3) of article 117 do not require prior recommendation of the President. They can be introduced without President's recommendation but before they are passed recommendation will be necessary.

(6) For passing Money Bills special procedure has been prescribed in article 109 but Financial Bills are passed by procedure prescribed for ordinary Bills.

(7) Money Bills cannot be referred to joint committee of the Houses, the procedure to resolve deadlock prescribed in article 108 applies to them.

Define Budget

(E) Annual Financial Statement - Budget

Article 112.-

(1) The President shall in respect of every financial year cause to be laid before both Houses of Parliament, a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately:-

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon consolidated fund of India; and

(b) the sums required to meet other expenditure proposed to be made from the consolidated fund of India and shall distinguish expenditure on revenue account from other expenditure.

(3) the following expenditure shall be expenditure charged on the consolidated fund of India

(a) the emoluments and allowances of the President and other expenditures relating to his office;

(b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) (i) the salaries, allowances, and pensions payable to or in respect of Judges of the Supreme Court;

(ii) the pension payable to or in respect of Judges of the Federal Court;

(iii) the pension payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in Governor's Province of the Dominion of India;

(e) the salary allowances and pension payable to or in respect of the Comptroller and Auditor-General of India;

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

So much of the estimates as relates to expenditure charged upon the consolidated fund of India is not to be submitted to vote of Parliament but Houses can discuss these estimates. [article 113(1)].

So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand or to assent to any demand subject to a reduction of the amount specified therein. [article 113(2)]. No demand for a grant shall be made except on the recommendation of the President. [article 113(3)].

Appropriation Bill.-

Clause (1) of article 114 provides that as soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the consolidated

fund of India all moneys required to meet-

(a) the grants so made by the House of the People; and

(b) the expenditure charged on the consolidated fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

Clause (2) provides that no amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the consolidated fund of India and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

Except in cases mentioned in articles 115 and 116 money can be withdrawn from the consolidated fund of India only under appropriation made by law in accordance with the provisions of article 114.

Supplementary, additional or excess grants.-If amount authorised by appropriation law under article 114 to be expended for a particular service for the current financial year is found insufficient for purposes of that year or need arises for supplementary or additional expenditure during the year on some new service not contemplated in the budget or money has been spent or on any service during a financial year in excess of amount granted for that year, the President shall cause to be laid before both House of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such access, as the case may be. [article 115(1)].

Votes on account.-

According to article 114(3), no money can be withdrawn from the consolidated fund of India except by law for appropriation made in accordance with article 114 but the Government may need money to be spent before such law is passed. In such a situation the House of the People has power to make grants in advance in respect of the estimated expenditure for a part of any financial year pending the formalities of voting of such grants under article 113 and for passing of law under article 114.

Votes on credit.-

Under article 116(1)(b), the House of the People has power to make a grant for meeting an unexpected demand upon resources of India when on account of magnitude or the indefinite character of a service, the demand cannot be stated with details as ordinarily given in the budget.

Exceptional grants.-Under sub-clause (c) of clause (1) of article 116, the House of the People has power to make exceptional grants, which form no part of the current service of any financial year.

Article 116 also empowers Parliament to authorise by law withdrawals of money from the consolidated fund of India for any of the purposes for which House of the People makes grants by votes on account or votes on credit or exceptional grants.

Procedure Generally.-

Article 118 empowers each House of Parliament to make rules for regulating its procedure and conduct of its business. This rule-making power of the Houses is, however, subject to the provisions of the Constitution. Parliament may for the purpose of the timely completion of financial business, regulate by law the procedure and conduct of business, in each House of Parliament in relation to any financial matter or to any Money Bill (article 119). The business of Parliament shall be transacted in Hindi or in English. However, the Chairman of the Rajya Sabha or the Speaker of the Lok Sabha, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.

Article 120. Language to be used in Parliament

(1) Notwithstanding anything in Part XVII, but subjected to the provisions of article 348, business in Parliament shall

be transacted in Hindi or in English:

Provided that the Chairman of the Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of the Constitution have effect as if the words "or in English" were omitted therefrom.

Article 121. Restriction on discussion in Parliament

No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge.

Article 122. Courts not to inquire into proceedings of Parliament

(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Pandit M.S.M. Sharma v. Dr. Shree Krishna Sinha, AIR 1968 SC 1168: 1959 (Supp) 1 SCR 806: (1961) 1 SCR 96: 1961 (2) SCJ 73: (1961) 2 SCA 582. The Supreme Court has observed, "The validity of the proceedings inside the legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed.....No court can go into these questions which are within the special jurisdiction of the legislature itself, which has the power to conduct its own business".

Parliamentary Financial Committees.-Constitution creates mechanisms for ensuring the Parliamentary control over executive in financial matters. The Lok Sabha has created two committees under its rules.

Explain Public Accounts Committee

(a) Public Accounts Committee.-The Public Accounts Committee in India is close replica of the British model. It consists of fifteen members elected by the Lok Sabha every year from amongst its members. A Minister cannot be its member. Seven members of Rajya Sabha are also associated with the committee. A member of the opposition acts as its Chairman.

The committee examines the account showing the appropriation of the sums granted by Parliament for government's expenditure. The committee also examines the accounts of the government corporations and autonomous and semi-autonomous bodies. The committee has power to hear officials or take evidence connected with the accounts under examination. The basic purpose of the committee is to see that the grants made to the various departments are used only for the purposes set out in the estimates. The committee thus review the transactions of the departments after the Budget has been executed with a view to ensure that money is spent as Parliament intended, and that no waste or extravagance or losses occur in expenditure.

Explain Estimate committee

(b) Estimate Committee.-

The Estimate Committee consists of 30 members elected by Lok Sabha for one year from amongst its members. A Minister cannot be its member. Unlike the Public Accounts Committee, members of Rajya Sabha are not associated with the Estimates Committee.

The committee is authorised to take evidence connected with the estimate under examination. The committee,

like its counterpart in Britain, examines the details of the estimates presented to Lok Sabha in the Budget with a view to secure economy and efficiency in administration, but it does not go so much into the policy which is regarded as government's responsibility.

(c) Other Parliamentary Committee.-

Under its rules of procedure and conduct of business, each House has instituted an elaborate committee system with a view to better organize its work and discharge its functions effectively. The committee system helps in conserving the time of the House, increasing expertise and enables the House to exert some control over the Government. Lok Sabha has the following committees-

- (i) Committee on Private Members Bills and Resolutions.
- (ii) Committee on Petitions.
- (iii) Committee on Public Accounts.
- (iv) Committee on Estimates.
- (v) Committee on Leave of Absence from Sitting of the House.
- (vi) Committee of Privilege.
- (vii) Committee of Subordinate Legislation.
- (viii) Business Advisory Committee.
- (ix) Committee on Government Assurances.

COMPTROLLER AND AUDITOR-GENERAL OF INDIA (articles 148-151)

Article 148. Comptroller and Auditor-General of India

Discuss in detail the office of CAG

(1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule:

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

149. Duties and powers of the Comptroller and Auditor-General

The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

150. Form of accounts of the Union and of the States

The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe.

151. Audit reports

(1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

CHAPTER 18

The Union Judiciary

(Articles 124-147)

India has a unified Judicial System with the Supreme Court standing at the apex. There are High Courts below the Supreme Court, under each High Court there exist a system of subordinate courts. The Supreme Court thus enjoys the topmost position in the judicial hierarchy of the country. It is the Supreme interpreter of the Constitution and the guardian of the people's Fundamental Rights. It is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of the land, and thus helps in maintaining a uniformity of law throughout the country.

Judiciary has also the significant function of protecting and enforcing the Fundamental Rights of the people guaranteed by the Constitution.

Union of India v. Sankalchand Himatlal Sheth, MANU/SC/0065/1977 : AIR 1977 SC 2328: 1978 (7) SCJ 265: 1978 Serv LJ 314: (1978) 1 SCR 423. The Supreme Court observed that the Supreme Court is a watching tower above all the big structure of the other limbs of the State from which it keeps a watch like a sentinel on the functions of the other limbs of the State as to whether they are working in accordance with the law and the constitution, the constitution being Supreme.

124. Establishment and Constitution of Supreme Court

How is Supreme Court established and constituted? Explain its detail with the help of case law

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that-

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and-

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I.-In this clause "High Court means a High Court which exercise, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.-In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district Judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed

after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

Clause (1) provides for the establishment of a Supreme Court of India. The court consists of Chief Justice and other judges as prescribed by the Parliament. The Chief Justice of the Court is designated as the Chief Justice of India. Parliament has now increased the number of other Judges to 30.

Subhash Sharma v. Union of India, MANU/SC/0643/1990 : AIR 1991 SC 631: 1991 AIR SCW 128: 1991 (2) Civ LJ 532: JT 1990 (4) SC 245: (1991) Supp 1 SCC 574. The Court has held that the number of judges should be commensurate to the amount of work, otherwise the judiciary cannot perform its constitutional obligation. There is no minimum number of judges prescribed, but clause (3) of article 145 lays down that no case involving a substantial question of law as to the interpretation of the Constitution or a reference under article 143 shall be decided by less than five judges.

Union of India v. S.P. Anand, MANU/SC/0493/1998 : AIR 1998 SC 2615: 1998 AIR SCW 2656: JT 1998 (5) SC 359: MANU/SC/0493/1998 : (1998) 6 SCC 466: (1998) 3 SCR 1046: 1999 (1) SRJ 110: (1998) 4 SCALE 433: 1998 (6) Supreme 309: (1998) 2 UJ (SC) 483: 1999 Writ LR 1. The Supreme Court sits at Delhi under article 130. The Supreme Court stated that it is an enabling provision and does not cast a mandatory obligation on the Chief Justice of India to appoint any place other than Delhi as the seat of the Supreme Court.

Article 124(2) provides that every Judge of the Supreme Court shall be appointed by the President under his hand and seal after consultation with such of the Judges of the Supreme Court and of High Courts in the States as the President may deem necessary.

Union of India, Appellant v. Sankalchand Himatlal Sheth, MANU/SC/0065/1977 : AIR 1977 SC 2328: 1978 (7) SCJ 265: 1978 Serv LJ 314: (1978) 1 SCR 423. It was held that the word 'consultation' means full and effective consultation. For a full and effective consultation it is necessary that the three constitutional functionaries must have their consideration on identical facts on the basis of which they would be able to take a decision. The President, however, has a right to differ from them and take a contrary view. Consultation does not mean concurrence and the President is not bound by it.

S.P. Gupta v. President of India, MANU/SC/0080/1981 : AIR 1982 SC 149: 1982 Rajdhani LR 389: 1981 Supp SCC 87. (Popularly known as Judges, Transfer case). The Supreme Court by majority expressed the view that all the constitutional functionaries involved in appointment are on the same pedestal so far as consultation is concerned. Consultation cannot be equated with concurrence.

The Supreme Court has also held once that the independence of the judiciary is a basic feature of the Constitution and any attempt to curtail it directly or indirectly even by an amendment of the Constitution is invalid.

Supreme Court Advocates-on-Record Association v. Union of India, MANU/SC/0073/1994 : AIR 1994 SC 268: 1993 AIR SCW 4101: JT 1993 (5) SC 479: MANU/SC/0073/1994 : (1993) 4 SCC 441: (1993) 5 Serv LR 337. (Judges Transfer case II). The Court has laid down detailed guidelines governing appointment and transfer of judges and held that great significance should be attached to the view of the Chief Justice of India formed after taking into account the views of two senior-most judges of the Supreme Court. It thus has reduced to the minimum individual discretion conferred upon

the Prime Minister and the Chief Justice of India so as to ensure that neither political bias nor personal favouritism nor animosity should play and part in the appointment of Judges of the Supreme Court and High Courts.

The Constitution expressly requires him to consult such of the Judges of the Supreme Court, and of the High Courts as he may deem necessary. It also requires him to always consult the Chief Justice of India in the appointment of a judge other than the Chief Justice of India.

In re Presidential Reference, MANU/SC/1146/1998 : AIR 1999 SC 1: 1998 AIR SCW 3400: JT 1998 (7) SC 304: MANU/SC/1146/1998 : (1998) 7 SCC 739: 1998 (4) SCJ 200: (1998) 5 SCALE 629: 1998 (8) Supreme 140. In this case the Supreme Court delivered an advisory opinion on a reference made by the President under article 143. In its opinion, the Court has laid down the following propositions in regard to the appointment of Supreme Court Judges:

- (1) In making his recommendation for appointment to the Supreme Court the Chief Justice of India ought to consult four senior-most puisne judges of the Supreme Court. Thus, the collegium to make recommendation for appointment should consist of the Chief Justice and senior-most puisne judge.
- (2) The opinion of all members of the collegiums in respect of each recommendation should be in writing.
- (3) The views of the senior-most Supreme Court Judge who hails from the High Court from where the person recommended comes must be obtained in writing for the consideration of the collegiums.
- (4) If the majority of the collegium is against the appointment of a particular person, that person shall not be appointed.
- (5) A High Court Judge of outstanding merit can be appointed as a Supreme Court Judge regardless of his standing in the seniority list.
- (6) A High Court Judge may be appointed as a Supreme Court Judge for good reasons from amongst several judges of equal merit, the particular region of the country.

Clause (3) lays down the qualification of a Judge of the Supreme Court. He must have been for at least five years a judge of High Court in India or an advocate of ten years standing or must be, in opinion of the President, a distinguished jurist. This would enable the Supreme Court to get the benefit of the talents of distinguished non-practicing lawyers. While it may be debatable if an academic person is suited to decide ordinary civil or criminal cases, there is little doubt that he is eminently suited to decide cases involving points of Constitutional Law. To ensure independence and complement of the Judiciary great emphasis has been laid on the merit of the person to be appointed as judge.

What is the procedure to remove the judges?

Removal of Judges: Impeachment under Article 124(4) and (5).-

Clauses (4) and (5) of article 124 deal with the procedure for removal of Supreme Court Judges. The same procedure applies to High Court Judges. Clause (4) of article 124 provides that a Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. The constitutional provision does not prescribe how this investigation is to be carried on. It leaves it to Parliament to settle and lay down by law the detailed procedure according to which the address may be presented and the charge of misconduct or incapacity against the Judge investigated and proved. In America, the Judges of Supreme Court hold office for life. They can, however, be removed by impeachment in cases of treason, bribery or other high crimes and misdemeanour.

K. Veeraswami v. Union of India, (1991) 3 SCC 855: 1991 SCC (Cri) 734. A five Judges Bench of the Supreme Court held that a Judge of the Supreme Court and High Court can be prosecuted and convicted for criminal misconduct.

The word 'proved' in this provision indicates that the address can be presented by Parliament only after the alleged

charge of misbehaviour or incapacity against the Judge has been investigated, substantiated and established by an impartial tribunal. The constitutional provision does not prescribe how this investigation is to be carried on.

In accordance with the above provision, Parliament has enacted the necessary law for the purpose. The Judges (Inquiry) Act, 1968 now regulate the procedure for investigation and proof of misbehaviour or incapacity of a Supreme Court judge for presenting an address by the Houses of Parliament to the President for his removal.

Clause (6) requires every person appointed to be a Judge of the Supreme Court before he enters upon his office, to make and subscribe before the President, or some person appointed in that behalf by him an oath or affirmation according to Third Schedule.

Clause (7) deprives a person who has held the office of a Judge of the Supreme Court of the liberty to plead or act in any court or before any authority within the territory of India.

Salary.-The salary payable to Supreme Court Judge was specified in the Constitution [article 125(1)] and the Second Schedule. But then by the Fifty-fourth Constitutional Amendment, Parliament has been given power to determine the salary payable to a Supreme Court Judge by law.

Parliament is also authorised to determine, from time-to-time by law such questions as the privileges, allowances, rights in respect of leave of absence and pension for these judges. None of these can, however, be varied by Parliament to the disadvantage of a judge after his appointment to the court [article 125(2) and the proviso]. All these matters are now regulated by the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958.

Acting Chief Justice.-

The President can appoint a Supreme Court Judge as the acting Chief Justice in case the office falls vacant, or the Chief Justice is unable to perform his duties due to absence or otherwise (article 126).

Ad hoc-Judge.-

The Chief Justice may call a Judge of a High Court to act as an ad hoc Judge of the Supreme Court, for such period as may be necessary, if the quorum of the Supreme Court Judges is insufficient to hold or continue a session of the court. The judge so appointed should be qualified to act as a Supreme Court Judge.

Before making such an appointment the Chief Justice of India has to consult the Chief Justice of the High Court concerned and also obtain the prior consent of the President [article 127(1)]. It is the duty of the High Court Judge so appointed, in priority to other duties of his office, to attend the sitting of the Supreme Court at such time and for such period for which his attendance is required there. While so attending the Supreme Court, an ad hoc Judge enjoys all the jurisdiction, power and privileges of, and discharge all such duties like, any other Supreme Court Judges [article 127(2)].

Article 128. Retired Supreme Court Judge

This article enables the retired Judge of the Supreme Court, the federal court and the High Court to sit and act as Judges of the Supreme Court when, so requested by the Chief Justice. It will be necessary for the Chief Justice to obtain the previous consent of the President before insisting any such person to act as Judge of the Supreme Court, but there can be no compulsion on the retired judges to accept the invitation.

Article 129. Supreme Court to be Court of Record

What is court of record?

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Wharton Law Lexicon.-

The following definition is given:

"Courts are either of record when their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison, or not of record being courts of inferior dignity, and in a less proper sense the king's courts - and these are not entrusted by law with any power to fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament Their proceedings are not enrolled or recorded.

Naresh Shridhar Mirajkar v. State of Maharashtra, MANU/SC/0044/1966 : AIR 1967 SC 1: (1966) 2 SCA 363: (1966) 3 SCR 744. Supreme Court has asserted that in the absence of any express provision in the Constitution the Apex Court being a court of record has jurisdiction in every matter and if there be any doubts, the court has power to determine its jurisdiction.

Om Prakash Jaiswal v. D.K. Mittal, MANU/SC/0118/2000 : AIR 2000 SC 1136: 2000 Cr LJ 1700: 2000 AIR SCW 722: JT 2000 (2) SC 293: (2000) 3 SCC 171: 2000 (1) SCJ 581: (2000) 2 SCALE 28: 2000 (1) Supreme 574: 2000 (1) UJ (SC) 524. Availability of an independent judiciary and an atmosphere wherein Judges may act independently and fearlessly in the source of existence of civilization in society the writ issued by the court must be obeyed. It is the binding efficacy attaching with the commands of the court and the respect for the orders of the court which deter the aggrieved persons from taking the law in their own hands because they are assured of an efficacious civilized method of settlement of dispute.

Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat, MANU/SC/0478/1991 : AIR 1991 SC 2176: 1991 Cr LJ 3086: 1991 AIR SCW 2419: 1991 (3) Crimes 232: JT 1991 (3) SC 617: (1991) 4 SCC 406: (1991) 3 SCR 936. The Supreme Court has held that its power to contempt in article 129 is not confined to its own contempt. It extend to all courts and tribunals subordinate to it in the country.

D.C. Saxena v. Chief Justice of India. MANU/SC/0627/1996 : (1996) 5 SCC 216: 1996 Cr LJ 3274: 1996 AIR SCW 3082: JT 1996 (6) SC 529: MANU/SC/0627/1996 : (1996) 5 SCC 216. The fundamental right to freedom of speech and expression under article 19(1)(a) may sometimes be raised as a defence against contempt of court. But apart from the fact that every speech is not protected by article 19(1)(a) and fair and objective criticism of courts does not amount to contempt of court, article 19(2) makes an exception in favour of contempt of court.

Supreme Court Bar Association v. Union of India, MANU/SC/0291/1998 : (1998) 4 SCC 409: AIR 1998 SC 1895: 1998 AIR SCW 1706: 1998 (2) SCJ 629: (1998) 2 SCR 795: 1998 (4) Supreme 251. It was held that though contempt of court was a serious misconduct on the part of a lawyer for which he could be deprived of his license to practice before the courts, he could be so deprived only by the Bar Council in view of clear provisions to that effect in the Advocates Act and rules made under it.

Article 130. Seat of Supreme Court

The Supreme Court shall sit in Delhi, or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time-to-time, appoint.

Jurisdiction of the Supreme Court

Articles 32, 131 to 139A and 143 deal with the jurisdiction of the Supreme Court. Articles 32, 131 to 136 and 143 define various types of jurisdiction which may for the sake of convenience be classified as follows:-

Jurisdiction of the Supreme Court

Original Appellate Advisory (Article 143)

Writ Exclusive

Jurisdiction Jurisdiction

Interpretation of Civil Criminal Federal SLP

the Constitution Matters Court's (article 136)

(Article 132) (133) (134) Jurisdiction

not caused by

articles (131-135)

(A) Original Jurisdiction

Explain the original jurisdiction with the help of case laws

Article 131.-

Subject to the provisions of this constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

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

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

(c) between the two or more States.

if and insofar as the dispute involve any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

State of Bihar v. Union of India, MANU/SC/0062/1969 : AIR 1970 SC 1446: (1970) 2 SCR 522: 1970 (2) SCJ 717. The Supreme Court observed that the express words of clauses (a), (b) and (c) of article 131 exclude the idea of a private citizen, a firm or a corporation fighting as a disputant either alone or even along with a State or with Government of India in the category of a party to the dispute.

State of Karnataka v. Union of India, 1978 (2) SCJ 190: MANU/SC/0144/1977 : AIR 1978 SC 68: (1977) 4 SCC 608: (1978) 2 SCR 1. The Supreme Court had the occasion to consider the nature, scope and applicability of article 131 on the question of whether any legal right of the State is involved when the Central Government notified the appointment of a commission of inquiry on charges of corruption etc., against the Chief Minister and other Ministers of the State, and whether the suit brought by the State Government was maintainable.

M/s Tashi Delek Gaming Solutions Ltd. v. State of Karnataka, MANU/SC/2391/2005 : AIR 2006 SC 661: 2005 AIR SCW 6477: JT 2005 (10) SC 458: MANU/SC/2391/2005 : (2006) 1 SCC 442: 2006 (1) SCJ 399: (2005) 10 SCALE 104: 2006 (8) Supreme 770. The enlarged definition of "State" in article 12 does not apply under article 131. Even statutory corporations are not State under article 131.

Article 32. Enforcement of Fundamental Rights

Article 32 confers original jurisdiction on the Supreme Court to enforce Fundamental Rights. Under article 32 every citizen has a right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights. The Supreme Court is given power to issue directions or orders or writs including writs in nature of Habeas Corpus, Mandamus, prohibition and certiorari whichever be appropriate.

(B) Appellate Jurisdiction

Article 132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation.-For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

This article symbolises the Supreme Court as the final court of constitutional interpretation. Question of constitutional interpretation are thus placed in a special category irrespective of the nature of the proceeding in which they arise. Such question can always be taken in appeal to the Supreme Court so that this court may have the last say.

State of Jammu and Kashmir v. Thakur Ganga Singh, MANU/SC/0011/1959 : AIR 1960 SC 356: (1960) 2 SCR 346: (1960) 1 Mad LJ (SC) 67: 1960 SCJ 231. The principle underlying the article is that final authority of interpreting the Constitution must rest with the Supreme Court. With that object the article is freed from other limitations imposed under articles 133 and 134 and the right of the widest amplitude is allowed irrespective of the nature of the proceedings in a case involving only a substantial question of law as to the interpretation of the Constitution.

An appeal lies to the Supreme Court after a High Court grants a certificate. Such certificate can be granted if the following conditions are fulfilled-

(1) An appeal lies only from any judgement, decree or final order of a High Court. No appeal lies from an interim order of a High Court.

State of Orissa v. Madan Gopal Rungta, MANU/SC/0012/1951 : AIR 1952 SC 12: (1951) 2 Mad LJ 645: 1951 SCJ 764: MANU/SC/0012/1951 : 1952 SCR 28. The Supreme Court treated the High Court order as final as it finally disposed of the writ petition and the fact that the order was to operate for a limited duration would not make it other than a final order for the purpose of appeal under article 132 against such order.

(2) Article 132(1) uses the expression 'civil' criminal or other proceeding. The purpose of referring to other proceedings is to emphasize that adjudicating made in proceedings which cannot be included in the description of civil or criminal would still fall under article 132(1) in case they raise a substantial question of law as to the interpretation of the Constitution.

Ramesh v. Gendalal Motilal Patni, MANU/SC/0039/1966 : AIR 1966 SC 1445: 1966 (2) SCJ 152: (1966) 2 SCA 83: 1966 (2) SCJ 762: (1966) 2 SCWR 682: (1966) 3 SCR 198. Article 132 excludes no decision if it involves a substantial question of constitutional interpretation provided that the decision may be characterized as a judgment, decree or final order.

(3) The case ought to involve a question of law as to interpretation of the Constitution. It means that decision on the question of constitutional law should be necessary for the proper decision of the case.

(4) The question involved must be a "substantial question". A question is not substantial when the law on the subject has been finally and authoritatively settled by the Supreme Court, and what remains to be done by the High Court is only to apply that interpretation to the facts before it.

Article 133. Appellate jurisdiction of Supreme Court in appeal from High Courts in regard to civil matters

What is the appellate jurisdiction of Supreme Court in civil cases as well in criminal cases?

(1) An appeal shall lie to the Supreme Court from any judgment decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134A-

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of the one Judge of a High Court.

Dhananjay Shanker Shetty v. State of Maharashtra, MANU/SC/0620/2002 : AIR 2002 SC 2787: 2002 Cr LJ 3729: 2002 AIR SCW 3155: 2002 (3) Crimes 59: JT 2002 (5) SC 559: (2002) 6 SCC 596: (2002) 5 SCALE 387: 2002 SCC (Cri) 1444: 2002 (5) Supreme 148: 2002 (2) UJ (SC) 1176. Accused was alleged to have been seen by the police constable on patrolling duty. According to prosecution he was running away along with others with weapons shouting that he had killed the deceased. The constable informed the police station immediately, but in station diary his name was not mentioned. Later on, he was arrested. He was found injured and medical examination was done. During investigation two other persons were arrested. The Sessions Judge convicted the accused Dhananjay Shankar under section 302 read with section 34 of the Indian Penal Code but acquitted the two. On appeal, the High Court confirmed his conviction.

The Supreme Court acquitted him for the following discrepancies-

- (1) No explanation was given for not mentioning his name in the station diary.
- (2) Accused was arrested in injured condition but his injuries were not explained.
- (3) As accused was a named accused, the test identification parade was meaningless.
- (4) Bloodstained clothes found with the accused were examined but blood group did not tally with that of the deceased.
- (5) There was no allegation or evidence of motive to commit the crime.

Mahadeo Sahni v. State of Bihar, MANU/SC/0671/2002 : AIR 2002 SC 3032: 2002 Cr LJ 4065: 2002 AIR SCW 3381: 2002 (3) Crimes 187: JT 2002 (6) SC 87: (2002) 6 SCC 656: (2002) 5 SCALE 577: 2002 SCC (Cri) 1453: 2002 (5) Supreme 413. The Supreme Court held that only in case of miscarriage of justice and perversity the Apex Court can re-appropriate the evidence so that technically should not outweigh the course of justice and in the instant case refused to interfere.

Civil proceedings.-

The expression 'civil proceedings' means proceedings in which a party asserts the existence of a civil right. A civil proceeding is one in which a person seeks to remedy by an appropriate process the alleged infringement of his civil right against another person or the state and which, if the claim is proved, would result in the declaration express or implied, of the right claimed and relief, such as payment of debt, damage, compensation, etc.

If the order of the court is directed against a proceeding which is criminal in character, i.e., if the proceeding is carried to a conclusion which may end in imprisonment for an offence, then the proceeding in the High Court must be taken to be a criminal proceeding.

Management of Hindustan Commercial Bank Ltd., Kanpur v. Bhagwan Dass, MANU/SC/0213/1964 : AIR 1965 SC 1142: (1965) 2 SCR 265: 1965 (I) LLJ 466. No appeal shall lie to the Supreme Court from the judgment, decree or final order of a single Judge of a High Court. This prohibition may, however be, removed by a law made by Parliament under this article. Such a law will not be an amendment of the Constitution.

Article 134. Appellate jurisdiction of Supreme Court in regard to criminal matters

(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court-

- (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
- (c) certifies under article 134A that the case is a fit one for appeal to the Supreme Court.

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order, or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Article 134 confers a limited criminal appellate jurisdiction on the Supreme Court. The Supreme Court hears appeals only in exceptional criminal cases where justice demands interference by the Apex Court. It was necessary to restrict the flow of criminal appeals to the Supreme Court otherwise a large number of such appeals would have made it physically impossible for the court to cope with them.

Tarachand Damu Sutar v. State of Maharashtra, MANU/SC/0132/1961 : AIR 1962 SC 130: (1962) 1 Cr LJ 196: (1962) 2 SCR 775: 1963 (2) SCJ 17. The accused was charged for murder under section 302, IPC. The Trial Court convicted him under section 304, IPC instead of section 302. On appeal, the High Court reversed the order of the Trial Court and convicted under section 302, IPC and sentenced him to death. The Supreme Court held that the accused was entitled to appeal under article 134(1)(a) as the word 'acquittal' therein does not mean complete acquittal.

State of Bihar v. Bhagirath Sharma, MANU/SC/0067/1973 : AIR 1973 SC 2198: 1973 Cr LJ 1184: (1973) 1 SCWR 655: MANU/SC/0067/1973 : (1973) 2 SCC 257: 1973 SCC (Cri) 809. Under article 134(1)(c), prima facie, a High Court appears to enjoy an unqualified power to grant fitness certificates in criminal cases. But to control the flow of criminal appeals to itself, the Supreme Court has laid down certain guiding norms for the High Court to follow for granting such certificates.

Parliament is empowered under clause (2) of this article to enlarge the appellate jurisdiction of the Supreme Court in regard to criminal matters. Parliament may, for instance, provide that in all cases of death sentences, there shall be a right to appeal to the Supreme Court. Several members of the Constituent Assembly were in favour of giving to the person condemned to death the right to prefer an appeal to the Supreme Court.

Article 134A. Certificate for appeal to the Supreme Court

Every High Court, passing or making a judgment, decree or final order or sentence referred to in clause (1) of article 132 or clause (1) of article 133 or clause (1) of article 134-

- (a) may, if it deems fit so to do, on its own motion; and
- (b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgement, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

State Bank of India v. S.B.I. Employees' Union, MANU/SC/0146/1987 : AIR 1987 SC 2203: JT 1987 (4) SC 579: (1987) 4 SCC 370: 1987 Rajdhani LR 552. The Supreme Court revoked a certificate issued by a Single Judge of the High Court because clearly the appeal did not fall within article 132 and 134 and though it could fall within article 133(1), it contravened clause (3) of that Article which denies appeal from the judgment, etc., of a single judge of a High Court.

Under article 134 it is obligatory on the High Court to consider the question of granting certificate immediately on the delivery of the judgment, decree, final order or sentence concerned either on oral application by the party aggrieved, or, if it deems fit to do so, on its own motion.

Article 135. Jurisdiction and powers of the Federal Court

Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133, or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the federal court immediately before the commencement of this constitution under any existing law.

Garikapati Veeraya v. U.N. Subbiah Choudhry, MANU/SC/0008/1957 : AIR 1957 SC 540: 1957 SCA 495: 1957 SCJ 439: 1957 SCR 399: 1957 SCJ 501. An appeal will lie to the Supreme Court from a judgment, decree or final order of the High Court given in a suit or proceeding instituted before the commencement of the Constitution if it satisfy the conditions of valuation under the law existing at the commencement of the Constitution.

Article 136. Special leave to appeal by the Supreme Court

What is Special Leave Petition? Define with the help of case laws

(1) Notwithstanding anything in this chapter, the Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Force.

Pritam Singh v. State, MANU/SC/0015/1950 : AIR 1950 SC 169: 86 CLJ 120: 51 Cr LJ 1270: 1950 SCR 453. By virtue of this article we can grant special leave in civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals and any variety of other cases. The only conditions are: firstly the determination or order sought to be appealed from must have the character of a judicial adjudication purely administrative or executive direction is not contemplated to be made the subject-matter of appeal to the Supreme Court. Secondly the authority whose act is contemplated against must be a court or tribunal Unless both the conditions are satisfied, article 136(1) cannot be invoked.

Kunhayammed v. State of Kerala, MANU/SC/0432/2000 : AIR 2000 SC 2587: 2000 AIR SCW 2608: JT 2000 (9) SC 110: MANU/SC/0432/2000 : (2000) 6 SCC 359: (2000) 5 SCALE 167: 2000 (5) Supreme 181: 2000 (2) UJ (SC) 1158. The power given to the Supreme Court by article 136(1) is in the nature of residuary power. The power is plenary in the sense that there are no words in article 136 qualifying that power, it is a sweeping power, exercisable outside the purview of ordinary law to meet the pressing demand of justice. The Supreme Court has characterized its power under article 136 as a untrammelled reservoir of power incapable of being confined to definitional bounds, the discussion and good sense of justice of the judges.

Narpat Singh v. Jaipur Development Authority, MANU/SC/0357/2002 : AIR 2002 SC 2036: 2002 AIR SCW 2085: JT 2002 (1) SC (Supp) 481: MANU/SC/0357/2002 : (2002) 4 SCC 666: (2002) 4 SCALE 31: 2002 (3) Supreme 449: 2002 (2) UJ (SC) 820. The exercise of jurisdiction conferred by article 136 of the Constitution on this court is discretionary. It does not confer a right to appeal on a party to litigation, it only confers a discretionary power of widest amplitude on this court to be exercised for satisfying the demands of justice. On the one hand, it is an exceptional power to be exercised sparingly, with caution and care and to remedy extraordinary situations or situations occasioning gross failure of justice. On the other hand, it is an overriding power where under the court may generously step in to impart justice and remedy injustice.

What are the guidelines which are enumerated with the Jagdish Chanana case?

Jagdish Chanana v. State of Haryana, MANU/SC/7455/2008 : AIR 2008 SC 1968: 2008 Cr LJ 2237: 2008 AIR SCW

2279: (2008) 4 SCALE 411. The scope of article 136(1) is very comprehensive and it invests the Supreme Court with a plenary jurisdiction to hear appeals. Article 136(1) is covered in the widest possible terms. The broad and overriding nature of article 136 will be evidenced from its following features:-

- (1) Under article 136 in suitable cases, the Supreme Court can even disregard the limitations contained in articles 132-134 on its appellate jurisdiction and hear appeal which it could not otherwise hear under these provisions.
- (2) Articles 132 to 134 permit appeals only against decision of the High Court. Article 136 on the other hand, does not impose any such restriction.
- (3) The word 'order' in article 136(1) has not been qualified by the adjective final as is the case in articles 132, 133 and 134. The Supreme Court thus has power to hear an appeal even from an interlocutory or an interim order.
- (4) Article 136(1) does not define the nature of proceedings from which the Supreme Court may hear appeals and, therefore, it could hear appeals in any kind of proceedings whether civil, criminal or relating to income-tax, revenue or labour disputes etc.
- (5) Article 136(1) confers on the Supreme Court power to hear appeals from orders and determination of any tribunal, other than a military tribunal.
- (6) Under article 136(1), the Supreme Court may hear appeal even though the ordinary law pertaining to the dispute makes no provision for such an appeal.
- (7) Being a jurisdiction conferred by the Constitution, it cannot be diluted or circumscribed by ordinary legislative process, it can be curtailed or modified only by constitutional process.
- (8) The Supreme Court may hear an appeal even where the Legislature declares the decision of a court or tribunal as final.
- (9) Under article 136(1), the Supreme Court has plenary jurisdiction to grant leave, and hear appeals against any order of a Court or Tribunal.
- (10) The scope of this special appellate jurisdiction of the Supreme Court is very flexible. There are no words in article 136 itself qualifying the power of the Supreme Court. The matter lies within the complete discretion of the Supreme Court.
- (11) Article 136 confers no right of appeal upon any party, it only vests a discretion in the Apex Court to intervene by granting leave to a petitioner to enter in its appellate jurisdiction not open otherwise and as of right.
- (12) A special leave petition can be filed under article 136 by a person who is a party to the decision against which the appeal is sought to be filed.

Kunhayammed v. State of Kerala, MANU/SC/0432/2000 : AIR 2000 SC 2587: 2000 AIR SCW 2608: JT 2000 (9) SC 110: MANU/SC/0432/2000 : (2000) 6 SCC 359: (2000) 5 SCALE 167: 2000 (5) Supreme 181: 2000 (2) UJ (SC) 1158. The Supreme Court has observed that it is not the policy of this court to entertain special leave petitions and grant leave under article 136 of the Constitution save in these cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment.

Dubaria v. Har Prasad, MANU/SC/1638/2009 : (2009) 9 SCC 346. It would be open to the Supreme Court to interfere with concurrent findings of fact if the infirmity of excluding ignoring and overlooking the abundant materials and the evidence, if considered in proper perspective would have led to a conclusion contrary to the one taken by courts below.

What is Tribunal-In the modern era of 'social welfare' State, there is a vast extension in government operation, activities and responsibilities so much so that it is known as the administrative age. Many functions undertaken by a modern Government give rise to opportunities for adjudication and, thus, India along with other democratic countries has come to have a host of varied adjudicatory bodies outside the regular judicial hierarchy.

A tribunal is a body or authority, though not a court in the strict sense, which is invested with the judicial power to adjudicate on question of law or fact affecting the rights of citizens in a judicial manner.

Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank, Ltd., Delhi, MANU/SC/0030/1950 : AIR 1950 SC 188: 86 CLJ 230: 1950 SCR 459. Tribunal is a body of authority although not a court having all the attributes of a court, which is vested with judicial power to adjudicate on question of law or fact affecting the rights to citizen in a judicial manner.

Clerks and Depot Cashiers of the Calcutta Tramways Co. Ltd. v. Calcutta Tramways Co. Ltd., MANU/SC/0061/1956 : AIR 1957 SC 78: 1957 SCJ 23: 1956 SCR 772: 1956 SCC 518. It was held that the Supreme Court can normally interfere, with the decisions arrived at by these tribunals on the following grounds, where:-

- (1) the Tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction;
- (2) there is an apparent error on the face of the decision;
- (3) the awards are made in violation of principles of natural justice causing substantial and grave injustice to parties;
- (4) the Tribunal has erroneously applied well-accepted principle of jurisdiction.

Article 143. Power of President to consult Supreme Court

Explain the power of the President to consult Supreme Court? Also explain the leading case laws

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

Article 143 authorises the President to refer to the Supreme Court a question of law or fact which in his opinion is of such a nature and of such public importance that it is expedient to obtain its opinion upon it. The words of article 143 are quite wide and therein no condition that it is only in respect of matters falling within the power, functions and duties of the President that it would be competent to hear to frame questions for the advisory opinion of the Supreme Court.

The following reference have been made by the President under this article.

- (1) In re Delhi Laws Act, 1912. The Supreme Court's pronouncement in the Delhi Laws Act case gave timely guidance to the Central Executive regarding the scope and extent of its legislative power under the Delhi Laws Act. It thus avoided embarrassment to the Central Government and difficulties to the people which might have arisen had the Act extended to Delhi or any other Part C State were to be declared ultra vires.
- (2) In re Kerala Education Bill, 1957, MANU/SC/0029/1958 : AIR 1958 SC 956: 1959 SCJ 321: 1959 SCR 995. This case sought the Supreme Court's opinion on the constitutional validity of certain provisions of the Kerala Education Bill which had been reserved by the Governor for the President's Consideration.
- (3) In re Berubari Union, MANU/SC/0049/1960 : AIR 1960 SC 845: 1960 SCJ 933: (1961) 1 SCA 22: (1960) 3 SCR 250. In this case under the Indo-Pak agreement, Berubari Union No. 12 was to be given to East Bengal and some other territories were to be exchanged. The Supreme Court advised that in case Government of India wants to give any territory to a foreign country, that can be done only through an amendment under article 368.

(4) In re Keshav Singh, MANU/SC/0048/1964 : AIR 1965 SC 745: 1965 (1) SCJ 847: (1965) 1 SCA 441: (1965) 1 SCR 413. The Supreme Court observed that it is the Constitutional obligation of this court to make a report on that reference embodying its advisory opinion, in a reference made under article 143(1) there is no such obligation. In dealing with this latter class of reference it is open to this court to consider whether it should make a report to the President giving its advisory opinion on the questions under reference.

(5) In re Presidential Election, 1974, AIR 1974 SC 1682: (1974) 2 SCC 33: (1975) 1 SCR 504. In this case the question was whether it is mandatory to hold elections for the post of the President before it falls vacant because of expiration of term of office. It is for the Supreme Court to decide upon the validity of the election of the President. It was therefore, advisable that the opinion of the Court be sought beforehand to that any future embarrassment could be avoided in case the court later declared the President's election invalid on the ground of non-existence of a State Legislature.

(6) In re Special Court Bill, MANU/SC/0039/1978 : AIR 1979 SC 478: (1979) 1 SCC 380: 1979 (2) SCJ 35: (1979) 2 SCR 476. In Special Court Bill provisions were made for special court to try offences committed by persons holding high public or political offices during the period when proclamation of emergency remained in operation. The Bill was upheld on the ground that the classification was based on intelligible differentia and differentia had rationed relation with object sought to be achieved i.e., speedy trial which could not be possible in ordinary courts due to congestion of work.

(7) Special Reference No. 1 of 1982.-This reference was regarding validity of Jammu and Kashmir Resettlement Act. No opinion was expressed for 19 years and in November 2001 it was returned without any opinion. Then the State Government decided to implement the Act, but on a writ petition by Bhim Singh the Supreme Court stayed the implementation on 1-2-2002.

(8) In re Cauvery Water Dispute Tribunal, MANU/SC/0097/1992 : AIR 1992 SC 522: 1992 AIR SCW 119: JT 1991 (4) SC 361: (1993) Supp 1 SCC 96. The main question referred to the court for its advisory opinion was whether the Tribunal established under the Inter-State water Dispute Act, 1956 has power to grant an interim relief to the parties to the dispute.

The court observed that advisory opinion is entitled to due weight and respect and normally it will be followed. We feel that the said view which holds the fields today may usefully continue to do so till a more opportune time.

(9) Special Reference No. 1 of 1993. In this case court was asked to give opinion as to whether there was any Hindu temple or other Hindu religious structure was there in the place of Babri Masjid. For the first time the court in this case categorically refused to give opinion.

(10) Presidential Reference No. 1 of 1998, MANU/SC/1146/1998 : AIR 1999 SC 1: 1998 AIR SCW 3400: JT 1998 (7) SC 304: MANU/SC/1146/1998 : (1998) 7 SCC 739: 1998 (4) SCJ 200: (1998) 5 SCALE 629: 1998 (8) Supreme 140. The reference was made by the President in July, 1998. In Advocates-on-record Association v. Union of India, MANU/SC/0073/1994 : AIR 1994 SC 268: MANU/SC/0073/1994 : (1993) 4 SCC 441, the Supreme Court had laid down the procedural norms for the appointment of the judges of the Supreme Court and the High Court. The decision was rendered by a Bench of 9 Judges.

(11) In Special Reference No. 1 of 2002, MANU/SC/0891/2002 : AIR 2003 SC 87: 2002 AIR SCW 4492: JT 2002 (8) SC 389: MANU/SC/0891/2002 : (2002) 8 SCC 237: (2002) 7 SCALE 614: 2002 (7) Supreme 437. The court held that the Supreme Court was well within its jurisdiction to answer or advice the President in a reference made under article 143(1) if the questions referred are likely to arise in future or such question are of public importance or there is no decision of the Supreme Court which has decided the question referred to the court for its advisory opinion. In thin reference the question was whether the Election Commission was bound to hold election of the Gujarat Assembly which was dissolved before the expiry of its five years time, within 6 months as mandated by article 174 of the Constitution.

Article 141. Law declared by the Supreme Court to be binding on all courts

Define the principle given in the Bengal Immunity case by Supreme Court

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

The expression "all courts within the territory of India" clearly means courts other than the Supreme Court. Thus, the Supreme Court is not bound by its own decision and may in proper cases reverse its previous decisions.

Bengal Immunity Co. Ltd. v. State of Bihar, MANU/SC/0083/1955 : AIR 1955 SC 661: 1955 SCA 1140: 1955 SCJ 672: (1955) 2 SCR 603. The Supreme Court held that there is nothing in the Indian Constitution which prevents the Supreme Court departing from its previous decision if it is convinced of its error and its beneficial effect on the general interest of public.

Article 137. Review of judgements or orders by the Supreme Court

Whether Supreme Court can review its judgments or orders?

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

According to the rules of the court, in a civil proceeding review of a court decision will be on the following grounds-

- (a) discovery of new and important matter of evidence,
- (b) mistake or error apparent on the face of the records,
- (c) any other sufficient reason e.g., that there are in the judgment certain unmerited observations against the petitioner.

S. Nagraj v. State of Karnataka, (1993) Supp (4) SCC 595. Review hitherto means examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality.

Lily Thomas v. Union of India, AIR 2000 SC 1650: 2000 Cr LJ 2433: 2000 AIR SCW 1760: JT 2000 (5) SC 617: (2000) 6 SCC 224: (2000) 4 SCALE 176: 2000 SCC (Cri) 1056: 2000 (3) Supreme 601: 2000 (2) UJ (SC) 1113. The power of review can be exercised for correction of a mistake and to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

Article 138. Enlargement of the jurisdiction of the Supreme Court

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

Article 139. Conferment on the Supreme Court of powers to issue certain writs

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

Article 139A. Transfer of Certain cases

What type of cases can be transferred from one High Court to another?

(1) Where cases involving the same or substantially the same question of law are pending before the Supreme Court and one or more High Court or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General for India or by a party to any such case that such questions are substantial question of general importance, the Supreme Court may withdrawn the case or cases pending before the the High Courts or High Court and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal other proceedings pending before any High Court to any other High Court.

Article 140. Ancillary powers of Supreme Court

Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

The object of this article is to enable Parliament to confer such supplementary power on the Supreme Court as may appear necessary to enable it to perform effectively the functions placed upon it under the Constitution.

Article 142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Article 144. Civil and judicial authorities to act in aid of the Supreme Court

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Article 145. Rules of court, etc

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including-

- (a) rules as to the persons practicing before the court;
- (b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the court are to be entered;
- (c) rules as to the proceedings in the court for the enforcement of any of the rights conferred by Part III;
- (cc) rules as to the proceedings in the court under article 139A;
- (d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;
- (e) rules as to the conditions subject to which any judgment pronounced or order made by the court may be reviewed and the procedure for such review including the time within which applications to the court for such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such court shall refer the question for opinion to a court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

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CHAPTER 19

The States

Part VI

(A) (Articles 152-237)

(Articles 152-167)

Explain Governor, appointment of Governor and qualifications

The Governor.-

The pattern of the Government in the State is the same as that for the union i.e., Parliamentary system. The Constitution of India by article 153, creates the office of the Governor. Thus each State shall have a Governor. The executive power of the State is vested in the Governor. He shall exercise the executive power either directly or through officers subordinate to him. The expression "officers subordinate to him" include a Minister of the State.

Appointment of a Governor.-

The Governor of State is appointed by the President of India (Article 155). He is neither elected by the direct vote of the people nor by an indirect vote by specially constituted electoral college.

Qualifications.

According to article 157, a person to be eligible to be appointed as Governor must be-

- (a) citizen of India,
- (b) must have completed the age of 35 years.

The Governor must not be a member of either House of Parliament and House of the Legislature of any State. He shall not hold any other office of profit. (Article 158)

The salary of the Governor has been raised to Rs. one lakh ten thousand per month from Rs. 36,000 per month. He is also entitled to free use of his official residence. The salary and allowances of the Governor cannot be reduced during his term of office [article 158(4)]. The Governor is required to take an oath or affirmation in the presence of the Chief Justice of the High Court or if he is not present, in the presence of the senior-most Judge of the High Court.

How can the Governor be removed from his office?

Tenure and removal.-

Article 156 of the Constitution says that the Governor shall hold office during the pleasure of the President. Subject to this rule, the tenure of the office of the Governor is fixed for five years from the date on which he entered upon his office. He may be removed from his office at any time by the President. The Governor may resign his office by writing to the President. The five years' terms provided for the Governor under clause (3) is subject to exercise of pleasure by the President under clause (1) of article 156.

Discharge of his functions in certain contingencies.-

Under article 160 of the Constitution, the President is authorised to make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency.

Explain in details the powers of the Governor

Powers of the Governor.-

The powers of the Governor of a State are analogous to those of the President excepting that the Governor has no diplomatic, military or emergency power. The powers of the Governor can be classified under four heads-

(a) Executive Power.-

The executive power of the State is vested in the Governor and is to be exercised by him directly or through officers subordinate to him (article 154). Article 162 says that the executive power of the State extends to matters with respect to which the legislature of the State has power to make laws. All executive actions of the Government of a State shall be expressed to be taken in the name of the Governor. The validity of an order or instrument which is so authenticated shall not be called in question on the ground that it was not made or executed by the Governor [article 166(1)(2)]. Under article 166(3), the Governor is authorised to make rules for the more convenient transaction of the business of the Government of the State and for its allocation among Minister.

Tarlochan Dev Sharma v. State of Punjab, MANU/SC/1466/2001 : AIR 2001 SC 2524: 2001 AIR SCW 2689: JT 2001 (5) SC 645: MANU/SC/1466/2001 : (2001) 6 SCC 260: 2001 (4) SCJ 277: (2001) 4 SCALE 472: 2001 (5) Supreme 361. The Supreme Court held that in a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for a term for which he has been elected unless his election is set aside by a prescribed procedure known to law. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office.

Rai Sahib Ram Jawaya Kapur v. State of Punjab, MANU/SC/0011/1955 : AIR 1955 SC 549: 1955 SCA 577: 1955 SCJ 504: (1955) 2 SCR 225. The Supreme Court held that our Constitution has adopted the British system of Parliamentary form of Government and the basic principle of this type of Government is that the President and Governors are constitutional heads and the real executive powers are vested in the Council of Ministers.

Samsher Singh v. State of Punjab, AIR 1974 SC 2193: 1974 SCC (Lab) 550: (1975) 1 SCR 814. The Supreme Court has held that the President and the Governors are only constitutional heads and they exercise their powers and functions with the aid and advice of the Council of Ministers and not personally save in cases where the Governor is required by the Constitution to exercise the functions in his discretion.

(b) Financial Powers.-

A Money Bill cannot be introduced in the Legislature of the State without the recommendation of the Governor. No denial of grants can be made except on the recommendation of the Governor. [Article 203(3)]. The Governor is required to cause to be laid before the House of the Legislature the Annual Financial Statements (Article 202).

(c) Legislative Power.-

The Governor summons the Houses or each House of the Legislature of State to meet at such time and place as he thinks fit. However six months should not lapse between the last sitting in one session and the first sitting in the next session. He may prorogue the Houses or either House and dissolve the Legislative Assembly [article 174(1) and (2)]. He has right to address the State Legislature. No Bill can become law without the assent of the Governor. He has right to reserve certain Bills for the assent of the President (article 200). He nominates 1/6 of the members of the Legislative Council (Article 171).

What is the difference between the pardoning power of the President and the Governor?

(d) Pardoning Power.-

Article 161 says that the Governor shall have the powers to grant pardons, reprieves, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to matter to which, the executive power of the State extends. The executive power of the State extends to matters with respect to which the Legislature of the State has power to make laws (Article 162).

The President's pardoning power under article 72 is wider than that of the Governor of States. Firstly the President has exclusive power to grant pardon in case where the sentence is a death sentence where the Governor cannot grant pardon in case of a death sentence. Secondly the President can grant pardon for punishments of sentences inflicted by Court Martial. The Governors have no such power. In respect of suspension, remission and commutation of sentence of death both have concurrent power.

K.M. Nanavati v. State of Bombay, MANU/SC/0063/1960 : AIR 1961 SC 112: (1961) 1 Cr LJ 173: (1961) 1 SCA 54: (1961) 1 SCR 497: 1961 (2) SCJ 100. The Court held that the power to suspend a sentence by the Governor under articles 161 was subject to the rule made by the Supreme Court with respect to cases which were pending before it in appeal. It is open to the Governor to grant a full pardon at any time even during the pendency of the case in the Supreme Court in exercise of what is ordinarily called Mercy Jurisdiction.

Explain the ordinance-making power of Governor

(e) Ordinance-making Power.-

The ordinance-making power of the Governor under article 213 is similar to that of the President under article 123.

The Governor can issue ordinance only when two conditions are fulfilled-

(a) The Governor can only issue ordinance when the Legislative Assembly of a State is not in session or where there are two Houses in a State both Houses are not in session.

(b) The Governor must be satisfied that circumstances exist which render it necessary for him to take immediate action. The court cannot question the validity of the ordinance on the ground that there was no necessity or sufficient ground for issuing the ordinance by the Governor. The existence of such necessity is not a justiciable issue. The exercise of ordinance-making power is not discretionary. The Governor exercises the power on the advice of the Cabinet.

The ordinance shall be laid before the Legislative Assembly of the State or where there is a Legislative Council in the State, before both Houses and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, unless it is approved earlier by the Legislature. The ordinance may be withdrawn at any time by the Governor. The Governor can only issue ordinance on the subjects on which the State Legislature is empowered to make laws e.g., State List and Concurrent List. According to article 213(3), therefore, an ordinance will be invalid to the extent, it makes any provision which would be invalid if enacted by the State Legislatures. But such an ordinance will not be invalid if enacted by the Governor in pursuance of instructions from the President.

D.C. Wadhwa v. State of Bihar, MANU/SC/0072/1986 : (1987) 1 SCC 378: AIR 1987 SC 579: 1987 JT 70: 1986 (4) Supreme 465. The five Judges of the Supreme Court held that such a practice was a subversion of the democratic process and colourable exercise of power and amounted to fraud upon the Constitution and therefore unconstitutional. The court called it

usurpation by the executive of the law making function of the Legislature. The power to promulgate an ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be perverted to serve political ends.

Explain the Council of States and what type of relationship exist between the Governor and the Council of Ministers?

The Council of Ministers.-

Article 163(1) says that there shall be a Council of Ministers with the Chief Minister as the head to "aid and advise" the Governor in exercise of his functions. The Council of Ministers in the States is constituted and functions in the same way as the Cabinet.

91st Amendment, 2003.-

This amendment has added two new clauses 1A and 1B to article 164 of the Constitution. The amendment makes two important changes.

(1) Maximum size of Ministers.-

The new clause (1A) puts a maximum limit of number of Ministers to be appointed to the Council of Ministers. It provides that the total number of Ministers, including the Chief Minister in the Council of Ministers in a State shall not exceed 15 per cent. of the total number of members of the Legislative Assembly of that State provided that the number of Ministers, including the Chief Minister in a State, shall not be less than 12 for smaller States. In those States where the total number of Ministers is more than 15% at the time of the commencement of the 91st Amendment Act, 2003 it shall be reduced to 15 per cent. with 6 months from the date on which the President notifies the date for application of the amendment.

(2) Disqualification on ground of defection.-

The new clause (1B) provides that where the 1/3 members of the original political party defect from the party their membership of the legislature will automatically come to an end. Such a member cannot be appointed as a Minister.

Relationship between the Governor and Council of Ministers.-

In general, the relation between the Governor and his Ministers is the same as that between the President and his Ministers, with this important difference that while the Constitution does not empower the President to exercise any function it authorises the Governor to exercise some function 'in his discretion'.

Article 163 says that there shall be a Council of Ministers with the Chief Minister as the head to aid and advice the Governor. The exercise of his functions, except insofar as he is by or under the Constitution required to exercise his functions on his discretion.

Sunil Kumar v. Government of West Bengal, AIR 1950 Cal 274: 51 Cr LJ 1110. The Governor under the present Constitution cannot act except in accordance with the advice of his Ministers. Under the Government of India Act, 1935, the position was different.....Under the present Constitution, the power to Act in his discretion or in his individual capacity has been taken away and the Governor, therefore, must act on the advice of his Ministers.....

In the following circumstances the Governor will be called upon to exercise his discretion-

- (a) appointment of the Chief Minister,
- (b) the dismissing of a Minister,
- (c) the dissolution of Legislative Assembly,
- (d) advising the President for the proclamation of an emergency under article 356 of the Constitution.

M. Karunanidhi v. Union of India, MANU/SC/0159/1979 : AIR 1979 SC 898: 1979 Cr LJ 773: (1979) 3 SCC 431: 1979 SCC (Cri) 691. The question raised before the Supreme Court was whether a Chief Minister or a Minister was a public servant within the meaning of section 21(12) of the Indian Penal Code. The Court held that the first part of the section 21(12) of I.P.C. signifies a relationship of master and servant and not applicable to a Chief Minister. A Chief Minister or Minister is a public servant within the meaning but upheld the validity of section 21(12) of the I.P.C. and therefore can be prosecuted and no prior sanction of Governor is necessary.

Mahabir Prasad v. Prafulla Chandra, MANU/WB/0035/1969 : AIR 1969 Cal 198: 72 Cal WN 328. The Court said that article 164(1) does not impose any restitution or condition upon the powers of the Governor to appoint a Chief Minister and to dismiss a ministry. This is a matter entirely in the discretion of the Governor. The right of the Governor to withdraw the pleasure during which the Ministers hold office is absolute and unrestricted.

(B) The State Legislature (Articles 168-212).-

The Constitution provides for a Legislature for every State in the Union. The Legislature of every State consists of the Governor and House or Houses. The Legislatures in the State are either bicameral i.e., consists two Houses or unicameral i.e., consists of one House. The Legislature in Bihar, Tamil Nadu, Maharashtra, Karnataka and Uttar Pradesh, is bicameral. In the remaining States the Legislature is unicameral consisting of only one House i.e., the Legislative Assembly (Article 168).

Under article 169 Parliament may by law provide for the abolition of the Legislative Council in a State where it already exists and also for the creation of such a Council in a State where such a Council does not exist if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than

two-third of the members of the Assembly present and voting. No such law making provision for the creation and abolition of the Legislative Council shall be deemed to be an amendment of the Constitution and, therefore, it can be passed like an ordinary piece of Legislation [Article 168(b)].

Explain Legislative Assembly of State?

Legislative Assembly (Vidhan Sabha).-

The Legislative Assembly in a State is popular House. The minimum number of seats of the Legislative Assembly is fixed at 60 and the maximum number is fixed at 500. The members of Legislative Assembly are chosen directly by the people on the basis of adult franchise from territorial constituencies in the State [Article 170(1)]. The representation in the House is on the basis of population in respect of each territorial constituency in the State.

In the Legislative Assembly of each State seats will be reserved for the Scheduled Tribes and Scheduled Castes on the basis of population (Article 332) and also if the Governor of a State is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly he may nominate such member of the community to the Assembly as he considers appropriate (Article 333).

Originally, all such reservation of the seats for the Scheduled Castes, the Scheduled Tribes and representatives of the Anglo-Indian community were to cease after ten years from the commencement of the Constitution. The Constitution (8th Amendment) Act, 1959, extended all such reservations and nominations for another ten years i.e., for 20 years. The Constitution (Twenty-third Amendment) Act, 1969, further extended this period from 20 years to 30 years. This period has been extended from 30 years to 40 years by the Constitution (45th Amendment) Act, 1980.

The normal tenure of the Legislative Assembly of every State is of five years but it may be dissolved earlier by the Governor (Article 172). During the proclamation of emergency the life of the Assembly may be extended by an Act of Parliament for a period of one year at the time but in no case beyond a period of six months after the proclamation has ceased to operate (Article 172).

Define Legislative Council

Legislative Council (Vidhan Parishad).-

The total number of members in the Legislative Council of a State having such a council shall not exceed one-third of the total number of members in the Legislative Assembly of that State. But the total number of members in the Legislative Council of a State shall in no case be less than 40. Parliament may by law provide for the composition of the Legislative Council until Parliament passes such a law, the composition of the Legislative Council shall be as follows: of the total numbers of members in the Legislative Council of a State - (a) 1/3 are to be elected by electorates consisting of members of Municipalities, District Board and other local authorities in the State as Parliament by law specify, (b) 1/2 are to be elected by electorates consisting of graduates by three years standing residing in the State, (c) 1/2 are to be elected by electorate consisting of persons who have been teaching for at least three years in educational institution not lower in standard than secondary schools (d) 1/3 are to be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly, (e) the remainder i.e., 1/6 are to be nominated by the Governor from persons having special knowledge or practical experience in respect of such matters as Literature, science, art co-operative movement and social service.

The Legislative Council is not subject to dissolution but after every two

years 1/3 of its members retire. Like the Rajya Sabha in the Centre it is a permanent body.

Explain the qualification and disqualification for membership in State Legislature

Qualifications of Membership.-

A person to be qualified to be chosen as member in the State Legislature-

- (a) must be a citizen of India, and must make and subscribe before some persons authorised by the Election Commission an oath or affirmation prescribed in the Third Schedule;
- (b) must not be less than 25 years of age in the case of the Legislative Assembly and must not be less than 30 years of age in the case of Legislative Council;
- (c) must possess such other qualification as may be prescribed by Parliament by law; (Article 173).

Disqualification of membership.-

A person is disqualified for being chosen as a member of the Legislature of a State-

- (a) if he holds any office of profit under the Central or State Government, or
- (b) if he is of unsound mind, or
- (c) if he is an undischarged insolvent, or
- (d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance or adherence of a foreign State, or
- (e) if he is so disqualified by or under any law of Parliament (article 190).

The necessary qualifications and disqualifications are prescribed by Parliament in the Representation of the People Act, 1951

Article 190 deals with the disqualification incurred by a member after he has been elected as member. It says that no one can be a member of both the Houses of the Legislature of a State or a member of the Legislature of two or more States to the same time. If a person is chosen a member of the Legislatures of two or more States then at the expiry of the specified period under rules made by the President his seat in the Legislature shall fall vacant unless he resigns his seat in all but one of the States. If a member of the State Legislature

absents himself, without the permission of House from all meetings for a period of sixty days, the House may declare his seat vacant [article 190(3)(4)]. If a member becomes disqualified under clause (1) of article 191 his seat shall become vacant.

Decisions on Qualifications.-

According to article 192 if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the qualifications mentioned in article 191(1), the question shall be referred to the Governor and his decision shall be final. The Governor is required to obtain the opinion of Election Commission before giving the decision on such questions.

Before taking his seat in the House, every member of State Legislature has to take oath or affirmation before the Governor or some person appointed by him for that purpose (article 188). Member of a State Legislature shall be entitled to receive such salaries and allowances as may from time-to-time be determined by the Legislature of the State by law (Article 195).

Session of State Legislature.-

According to article 174, the Governor shall from time-to-time summon a House of the Legislature to meet at such time and place as he thinks fit. But six months should not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. This means that the Assembly must meet at least twice a year and not more than six months elapse between two sessions.

The Governor may from time-to-time prorogue the House, or either Houses. [Article 174(2)(a)]. The Governor may dissolve the Legislative Assembly of a State [Article 174(2)(b)]. In case of dissolution and prorogation, the Governor can exercise his discretion to some extent. His discretion is non-justiciable and cannot be challenged even on the ground of mala fide.

Under article 175, the Governor has right to address either House of the Legislature of a State or both Houses assembled together. He may send message to the Houses or House of the Legislature in respect of a Bill pending in the Legislature or otherwise. When a message is so sent, it is the duty of the House to consider any matter required by the message to be taken into consideration.

Articles 175 and 176 are exactly similar to those of articles 86 and 87 relating to the functions of the President. Thus the position of the Governor in relation to State Legislature is the same as that of the President in relation to Parliament.

Speaker and Deputy Speaker.-The Speaker is the Chief Presiding Officer of the Legislative Assembly of a State. He is elected by the members of the Assembly from their own members. The Assembly elects its Deputy Speaker also from its own members (Article 178). The Deputy Speaker performs the duties of the Speaker when the Speaker is absent or while the office of the Speaker is vacant. Both Speaker and Deputy Speaker vacate their offices when they cease to be members of the Assembly. They may also resign from their offices.

They can be removed from their offices, by the resolution of the Assembly passed by a majority of all the members of the Assembly [Article 180(1)]. For moving such a resolution fourteen days' notice is required (Article 179). The Speaker does not vacate his office on the dissolution of the Assembly. He continues in office until a new Speaker is elected before the new House meets.

Powers and Functions of Speaker.-The position, duties and powers of the Speaker of a State Legislature are the same as those of the Speaker of the Lok Sabha.

Chairman and Deputy Chairman of Legislative Council (Articles 182, 183, 184, 185).-The Legislative Council of each State elect its Chairman and Deputy Chairman from among its own members. Like the Vice-President in the Rajya Sabha, the Governor is not the ex-officio Chairman of the Legislative Council. Like the Speaker and Deputy Speaker, the Chairman and Deputy Chairman may resign their offices, vacate their offices when they

cease to be members of the Council and may be removed from their offices.

Legislative Procedure.

The procedure of legislation in a State Legislature is broadly similar to that in the Parliament.

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CHAPTER 20

The state judiciary

(Articles 214-237)

Judiciary is considered to be the guardian of Fundamental Rights _ Explain

The primary duty of the judiciary is to uphold the Constitution and the laws without fear or favour, without being biased by political ideology or economic theory. Article 214 says that there shall be a High Court in each State. Parliament may, however, establish by law a common High Court for two or more States [article 231(1)]. High Court plays very significant role in the scheme of administration of justice. The High Courts enjoy civil as well as criminal, ordinary as well as extraordinary, and general as well as special jurisdiction. The High Court enjoys an original jurisdiction in respect of testamentary, matrimonial, company and guardianship matters.

According to article 215, every High Court is declared to be a court of record. There are two characteristics of a court of record: (I) The records of such a court are admitted to be of evidentiary value and they cannot be questioned when produced in a court, and (II) It has the power to punish for contempt itself.

The High Court also have the power to review and correct their decisions, even though no specific power of review is conferred on the High Court as is conferred on the Supreme Court under article 137.

Article 216 provides for Constitution of High Court. It reproduced the provisions of section 220(1) of the Government of India Act, 1935. This article differs from article 124, which provides for the Constitution of Supreme Court, in two, respects-

- (i) article 124 fixes a maximum limit of number of judges, article 216 does not fix any limit;
- (ii) number of Judges can be increased or decreased under article 216 by the President but under article 124 increase of judges beyond the maximum limit of 7 judges is left to Parliament to be determined by law.

S.P. Gupta v. President of India, MANU/SC/0080/1981 : AIR 1982 SC 149: 1982 Rajdhani LR 389: 1981 Supp SCC 87: (1982) 2 SCR 365. The court held that the President is under a constitutional obligation to review the strength of each High Court vis-a-vis the arrears of cases pending therein.

Article 217 provides for qualifications for appointment of a High Court Judge. According to this article for appointment to the post of a High Court Judge. The candidate must possess the following qualification:-

- (1) He must be a citizen of India,
- (2) He must-
 - (i) have held a judicial office for at least 10 years, or
 - (ii) be an advocate of a High Court or High Courts of at least 10 years standing.

Constitution (Forty-second Amendment) Act, 1976 had amended article 217 inserting sub-clause (c) in clause (2) which made an eminent jurist eligible to become a Judge of a High Court but the Constitution (Forty-fourth Amendment) Act, 1978 has deleted sub-clause (c). An eminent Jurist can be appointed as Judge of the Supreme Court but he cannot be appointed as Judge of a High Court.

Removal of High Court Judges.-

The object of article 218 is to secure the independence of High Courts. With this object in view, it provides for the application of clauses (4) and (5) of article 124 to Judges of High Court also. These clauses relate to removal of Supreme Court Judges. This article thus ensures the same security to the High Court Judges as is available to Supreme Court Judges under articles 124(4) and 124(5).

Article 219. Oath or affirmation by Judges of High Court

Every person appointed to be a Judge of the High Court shall before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule".

Article 220. Restriction on practice after being a permanent judge

No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

Explanation. In this article, the expression "High Court" does not include a High Court for a State specified in Part B of the First Schedule or it existed before the commencement of the Constitution (Seventh Amendment) Act, 1956.

Article 221. Salaries etc., of Judges

(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time-to-time to be determined by or under law made by Parliament and, until so determined to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Article 222. Transfer of Judge from one High Court to another

Explain the procedure of transfer of Judge from one High Court to another

(1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.

(2) When a Judge has been or is so transferred, he shall during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and until so determined. Such compensatory allowance as the President may by order fix.

In re Presidential Reference, MANU/SC/1146/1998 : AIR 1999 SC 1: 1998 AIR SCW 3400: JT 1998 (7) SC 304: MANU/SC/1146/1998 : (1998) 7 SCC 739: 1998 (4) SCJ 200: (1998) 5 SCALE 629: 1998 (8) Supreme 140. A nine-judge Bench of the Supreme Court has unanimously held that in case of transfer of High Court Judges, the Chief Justice of India must consult four, senior-most Judges of the Supreme Court and in addition to the collegium of four Judges the CJI is required to consult the Chief Justice of the two High Courts. The collegium should make the decision in consensus and unless opinion of the collegium is in confirmity with that of the CJI no recommendation is to be made.

Article 223. Appointment of acting Chief Justice

When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the court as the President may appoint for the purposes.

Article 224. Appointment of additional and acting Judges

(1) If by reason of any temporary increase in the business of High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason

unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty-two years.

Article 224A. Appointment of retired Judges at sittings of High Courts

Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.

226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

WRIT jurisdiction OF HIGH COURT

Explain the writ jurisdiction of High Court

Article 226 empowers High Court to issue within their territorial jurisdiction directions orders, or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari for the enforcement of fundamental rights or for any other purpose. Clause (4) provides that the power Conferred on the High Court shall not be in derogation of the powers conferred on the Supreme Court by clause (2) of article 32. People are, therefore, granted

double protection in cases of violation of fundamental rights. They can directly approach the Supreme Court under article 32 or High Court under article 226.

Relation between Articles 32 and 226

Explain the relation between articles 32 and 226

(1) Remedy under article 32 is itself a fundamental right and therefore, normally, the court cannot refuse to entertain the application. In *Romesh Thappar v. State of Madras*, MANU/SC/0006/1950 : AIR 1950 SC 124 1950 SCJ 418: 51 Cr LJ 1514: 1950 SCR 594, Patanjali Shastri, J., delivering the majority judgment observed:

"The article 32 does not merely confer power on the court as article 226 does on the High Courts to issue certain writs for the enforcement of the rights conferred by Part III or any other purpose as part of its general jurisdiction. Article 32 provides a remedy for the enforcement of those rights and this remedial right is itself made a fundamental right by being included in Part III. This court is thus constituted a protection and guarantor of fundamental rights and it cannot consistently with the responsibility so laid upon it."

(2) The Jurisdiction of the Supreme Court is throughout the territory of India but the territorial jurisdiction of the High Court is not so wide. A High Court can entertain a petition only if the cause of action arises within its local limits.

(3) The remedy provided under article 32 is available only for the enforcement of fundamental rights guaranteed in Part III. The High Court's jurisdiction under article 226 in this sense is wider. They are empowered to grant remedy under article 226 for enforcement of fundamental rights or for any other purpose.

Define "writ of certiorari". Explain the grounds on which it can lie with the help of relevant case laws

The question whether a judgment of the High Court under article 226 will attract the principle of res judicata under article 32 is discussed later.

(1) Writ of Certiorari.-

The writ of certiorari is an order of the High Court issued to inferior courts, tribunals or authorities to transmit to it the record of proceeding pending with them for scrutiny and if necessary, for quashing the same. It is observed by Atkin, L.J. that the writ of certiorari may issue "whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority."

Radheshyam Khare v. State of Madhya Pradesh, MANU/SC/0005/1958 : AIR 1959 SC 107: 1959 SCJ 6: 1959 Nag LJ 49: 1959 MPLJ 185: MANU/SC/0005/1958 : 1959 SCR 1440. The Supreme Court observed that it consists of four components viz, (a) a body of persons; (b) having legal authority; (c) to determine questions affecting the rights of subjects; and (d) having the duty to act judicially.

In determining the jurisdiction of writ of certiorari, the courts in India have some time been mainly guided by the principle laid down in *Nakudda Ali v. Jayaratne*, AIR 1951 AC 66. The Supreme Court simply demolishes the order of the inferior tribunal which it consider to be without jurisdiction or palpably erroneous, but it does not substitute its own views for those of the inferior tribunal.

Province of Bombay v. Khushaldas S. Advani, MANU/SC/0034/1950 : AIR 1950 SC 222: 1950 SCJ 451: 86 CLJ 330: 1950 SCR 621: (1950) 2 MLJ 703. The Supreme Court held that an error of law, which is apparent on the face of records can be corrected. The Superior Court simply demolishes the order of the inferior tribunal which it consider to be without jurisdiction.

Writ lies on Judicial Bodies.-

This writ can be availed of only to remove or to adjudicate upon the validity of judicial acts. The expression 'judicial acts' include the exercise of quasi-judicial functions by administrative bodies or authorities or persons obliged to exercise of quasi-judicial functions. But administrative bodies or authorities or persons obliged to

exercise such functions are used in contrast which are purely ministerial acts. The Supreme Court has laid down two propositioning for ascertains whether an authority is to act judicially-

(1) If the statute empowers an authority to decide disputes arising out of a claim made by one party under the statute, which claim is opposed by another party, then prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(2) If a statutory authority has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will be a quasi-judicial act provided the authority is required by the statute to act judicially.

Grounds on which writ can be issued.-

The writ of certiorari is issued to a judicial or quasi-judicial body on the following grounds-

- (a) where there is want or excess of jurisdiction,
- (b) where there is a violation of procedure or disregards of principles of natural justice,
- (c) where there is error of law apparent on the face of the record but not error of a fact.

(a) Want of or excess of jurisdiction.-

The writ of certiorari is issued to a body performing judicial or quasi-judicial function for correcting errors or jurisdiction, as when an inferior court or tribunal acts without jurisdiction, or in excess of it, or fails to exercise it. The want of jurisdiction may arise from the nature of the subject-matter so that the inferior court had no authority to enter on the enquiry or upon some part of it.

(b) For correcting error of law apparent on the face of record.-

The writ is also issued for correcting an error of law apparent on the face of record. It cannot be issued to correct an error of fact. What is an error of law apparent on the face of record is to be decided by the courts on the facts of each case.

Hari Vishnu Kamath v. Ahmad Ishaque, MANU/SC/0001/1954 : AIR 1955 SC 223: 1955 SCA 105: 1955 SCJ 267: 1955 SCR 1104. The Supreme Court held that no error could be said to be error on the face of the record if it was not self-evident and if it required an examination or argument to establish it. An error of law which is apparent on the face of the record can be corrected by a writ of certiorari but not on error of fact, howsoever, grave it may appear to be.

(c) Disregard of Principles of Natural Justice.-

A writ of certiorari also lies against a court or tribunal when it acts in violation of the principles of natural justice. Two principles of natural justice are generally accepted.-

- (1) the court or tribunal should be free from bias and interest,
- (2) Audi Altrum Partem i.e., the parties must be heard before the decision is given.

When it will not lie.-

The writ of certiorari cannot be issued against a private body. Co-operative Electricity Supply Society Limited incorporated under the Co-operative Societies Act, is a private body and not a public body discharging public function and the writ petition is, therefore, not maintainable against such a private society.

Define writ of prohibition and what is the difference between writ of certiorari and prohibition

(2) Writ of Prohibition.-

Writ of prohibition is issued by a superior court to an inferior court, tribunal or other public body having judicial or quasi-judicial function to prevent it from assuming jurisdiction which it does not possess or exceeding jurisdiction or acting in contravention of the law of the land or principles of natural justice. It commands such court, body or tribunal to refrain from doing something which it is about to do.

Against whom lies.-

The writ of prohibition was issued only against a public authority or an authority set up by a statute exercising judicial or quasi-judicial functions. It did not lie against a private authority. Where a statutory authority having no judicial or quasi-judicial function act illegally, mandamus may be issued and if it is about to act, injunction may be proper remedy, not prohibition. The writ of prohibition will not issue against a legislature to restrain from exercising legislative functions but it can issue against a body or authority used with or authorised to make or enforce subordinate legislation.

Who can apply.-

The person whose legal right is violated is entitled to apply for the writ of prohibition.

Conditions for issue of prohibition.-

- (1) Like writ of certiorari, prohibition can be issued only against authorities exercising judicial or quasi-judicial functions.
- (2) The writ can be issued only where such judicial or quasi-judicial authority assumes jurisdiction which does not have or exceeds the jurisdiction which it has or where proceedings are in contravention of law or principles of natural justice.
- (3) At the time of the issue of the writ, proceedings must be pending.
- (4) Where proceedings are partly within the jurisdiction of such authority and partly in excess of its jurisdiction, the writ will lie only against that part of the proceedings which is in excess of its jurisdiction.
- (5) The authority should also continue to function. If before the issue of the writ the authority becomes functus, officio, prohibition will not be appropriate remedy.
- (6) There should not be deliberate concealment or misstatement of material facts which may mislead the court.

Alternative Remedy.-

In case of certiorari, the existence of alternative remedy may be a ground for rejecting petition but where there is usurpation of jurisdiction, the fact that alternative remedy is available is irrelevant and prohibition has to be issued as a matter of right.

Bengal Immunity Company Ltd. v. State of Bihar, MANU/SC/0083/1955 : AIR 1955 SC 661: 1955 SCA 1140: 1955 SCJ 672: (1955) 6 STC 446: (1955) 2 SCR 603. The Supreme Court held that the existence of an alternative remedy may be more material in case of writ of certiorari, but where the inferior court assumes jurisdiction which it does not possess, writ of prohibition will issue as of right.

Prohibition to be rarely issued:-

The Supreme Court and the High Courts have power to issue writs including writ of prohibition. A writ of prohibition is normally issued only when the inferior court or tribunal-

- (1) Proceeds to act without or in excess of jurisdiction;
- (2) Proceeds to act in violation of rules of natural Justice;
- (3) Proceeds to act under the law which itself is ultra vires or unconstitutional;

(4) Proceeds to act in contravention of fundamental rights.

Explain the writ of mandamus?

(3). Mandamus:-

It is an order issued by the Supreme Court or a High Court to any government, Court, public authority or corporation or person invested with public duty commanding such government, court, public authority, corporation or person to perform some public duty in which the petitioner has sufficient legal interest.

It is in nature of command requiring any specific act to be done or not to be done by any person holding public office, permanent or temporary or by a corporation or inferior court.

The purpose of this writ is to protect legal rights, to enforce constitutional limitations, to correct error of law and violations of principles of natural justice and to compel any person or authority to perform a public duty cast upon him by law. It cannot be issued to enforce departmental instruction not having statutory force.

Who can apply.-

Only the person, whose legal right is directly affected by the non-performance of the public duty, can apply for writ of mandamus. He must advise evidence before the court that a demand for the performance of duty was made and the officer or public body concerned refused to do that duty.

Against whom mandamus lies.-

The writ of mandamus will lie against a person holding public office permanently or temporarily or public body or corporation or an inferior court or tribunal. It does not lie against a private individual. Mandamus will lie against a government or its officers where the government or the officer exceeds the limits of his powers or fails to comply with the conditions imposed by a statute for exercise of such powers.

Public Office.-

Public office refers to any position established by law to which certain duties or services are attached which incumbent officer is duty bound to perform. The duty in question being public, they involve exercise of some governmental or attests quasi-governmental authority by the incumbent officer.

Conditions of issue of mandamus.-

A writ of mandamus will be issued if the following conditions are satisfied-

- (1) The petitioner has a legal right to compel the opponent to perform legal duty cast on the opponent. In other words, he must have a judicially enforceable right.
- (2) The writ of mandamus and certiorari are issued for enforcement of an existing legal right, not for establishing it.
- (3) The duty must be of public nature.
- (4) The duty must be of a mandatory nature. Where the duty is not imperative but of discretionary nature mandamus will not lie.

What are the grounds or which quo warranto can lie?

(4) Quo warranto.-

By quo warranto proceedings a person holding any public office or franchise is called upon to show by what authority or right he holds that office. If the court finds that holder of the office has no valid title it will oust the person by issuing writ of quo-warrant.

The writ has two-fold purpose. It protects a citizen from being deprived of public office unlawfully by usurpers

and controls the executive action in matters of appointments of public officers.

Who can apply.-

In quo warranto proceedings, the petitioner does not necessarily seek to enforce his right but challenges the validity of the claim of the holder of a public office and as such can be applied for by any person whether he has any personal interest or not. For instance-offices of Advocate-General or a Speaker or public offices. Petition can be moved by any person on the ground that the holder of the office is an usurper without valid claim.

Conditions for issue of Quo warranto.-

A writ of quo warranto can be issued if the following conditions are satisfied:

(1) The office in question must be a public office. It must be established that the office held by the usurper is a public office. A public office means an office in which public have an interest. The writ of quo-warranto will not issue in respect of an office of private nature.

Jamalpur Arya Samaj v. Dr. D. Ram, AIR 1954 Pat 297: ILR 33 Pat 157. The writ of quo warranto against the members of the working committee of the Bihar Raj Arya Pratinidhi Sabha a private religious organization was refused because the office was not a public office.

(2) The office must be of substantive character. Quo warranto will lie only where office in dispute is of substantive character i.e., an office independent in title.

G.D. Karkare v. T.L. Shevde, MANU/NA/0099/1950 : AIR 1952 Nag 330: ILR (1952) Nag 409. A substantive office means an office independent in title as distinguished from a deputy or servant. It was held that quo warranto would issue if the office is permanent even if it is held by the holder at the pleasure of the State. The office may be high or low.

(3) The holder should not be legally qualified to hold the office. The purpose of the writ is to prevent usurpation of a public office. It will, therefore, not lie where the holder of the office is legally entitled to hold it. Even where a person initially occupies the office illegally but becomes qualified to hold it before the hearing, the court will refuse to issue quo warranto.

Hari Shankar Prasad Gupta v. Sukhdeo Prasad, MANU/UP/0128/1954 : AIR 1954 All 227: ILR (1954) 1 All 447: 1953 All LJ 678. The writ was refused on the ground that although the holder of the office was not qualified on the date of appointment, he acquired the necessary qualifications while the writ petition was pending.

(4) The holder of the office against whom writ is claimed must have assumed the office. But it is not necessary that he must have assumed the name of the office because whether a person has usurped an office or not is a question of substance.

(5) The holder of the office must have ceased to hold it once he cease to hold an office, the writ will become infructuous.

Explain the Habeas Corpus. Who can apply their writ?

(5). Habeas Corpus:-

Habeas Corpus literally means 'have the corpus or bring the body'. By issuing this writ the court orders the person detaining another person to produce the detainee before the court to enable it to examine the legality of the detention. This writ is the most important one from the point of view of maintaining liberty of movement. The main purpose of the writ is to set at large a person who has been illegally detained by any person or authority.

Who can apply?.-

A writ petition is normally filed by the person whose right is violated but an application for habeas corpus can also be moved by any other person who is related to or has interest in the detainee. Such other person will have to give reasons as to why the detainee could not make the affidavit himself.

An advocate in his capacity of an advocate cannot file application on behalf of the detainee unless he holds power-of-attorney from the detainee.

Against whom issued.-

Writ of Habeas Corpus is issued against any person or authority, who has illegally detained any person, unlike other writ habeas corpus can be issued even against a private individual.

Usha Devi v. Kailash Narain Dixit, MANU/MP/0008/1978 : AIR 1978 MP 24: 1977 MPLJ 311: 1977 Hindu LR 360. The petitioner's son aged four and a half years was forcibly detained by the respondent who was grandfather of the minor son. The writ was issued by the High Court on the ground that the petitioners being mother and father were natural guardian and entitled to the custody of the child.

Ghulam Sarwar v. Union of India, MANU/SC/0062/1966 : AIR 1967 SC 1335: (1967) 1 SCA 246: 1967 Cr LJ 1204: (1967) 2 SCR 271. In that case after the petition was dismissed by the High Court, the petitioner approached the Supreme Court under article 32. The Supreme Court held that High Court's order will not operate as res judicata and decided the petition. It will make no difference as to whether the application for habeas corpus in the High Court was filed under article 226 or section 300 of Cr.P.C.

Conditions for grant of habeas corpus.-

The writ of habeas corpus will be issued in the following circumstances:

- (i) Where the detention is prima facie illegal i.e., there is no law supporting it.
- (ii) Where the detention is under some provision of law:
 - (a) if the provision is unconstitutional, or
 - (b) If the detention is not in conformity with the procedure established by that law

When Habeas Corpus is refused?

(1) The essential ground for issue for the writ of habeas corpus is illegality of detention. If, therefore, detention is held legal, the writ will not be issued.

Batul Chandra Ghosh v. State of West Bengal, MANU/SC/0637/1972 : AIR 1974 SC 2285: 1974 Cr LJ 1314. The petitioner was detained under West Bengal (Prevention of Violent Activities) Act, 1970. He challenged the constitutional validity of his detention by a writ petition under article 32 of the Constitution. It was established that the detenu and his associates, armed with daggers and bombs and other lethal weapons attacked the house of a person and some of the inmates by hurling bombs and thereby created panic in the locality. The detention of the petitioner was held valid and his writ petition for habeas corpus was dismissed.

(2) At the time of issue of writ, illegal detention must continue. The purpose of the writ is to set at large a person who has been wrongly detained. If by the time the petition is decided, the detention is withdrawn and he is released, the writ becomes infructuous and the court will not issue the writ of habeas corpus.

Prosecution for criminal offence is no bar to issue of habeas corpus.-

A person cannot contend that the writ of habeas corpus should not issue merely because he was already proceeded against for criminal offence.

Capt. Dushyant Somal v. Smt. Sushma Somal, MANU/SC/0540/1981 : AIR 1981 SC 1026: 1981 Cr LJ 719:

(1981) 2 SCC 977: 1981 SCC (Cri) 413. The proceedings under section 363 of Indian Penal Code were launched against the father for snatching away the child from lawful custody of the mother. During the pendency of the proceeding the mother applied for writ of habeas corpus. The father contended that the writ should not issue because criminal proceedings were already started against him. The court rejected the contention and sentenced him to imprisonment for not obeying the direction of the court.

Article 227. Power of superintendence over all courts by the High Court

Explain the superintendence power of High Court

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

The power of Superintendence under article 227 is of an administrative as well as of judicial nature. If necessary the High Court can interfere with the administrative orders of inferior courts. Thus an order made under section 36 of the Legal Practitioner Act declaring a person to be a tout is made in exercise of administrative jurisdiction and will be open to revision under article 227. Judicial orders not only of courts in the ordinary sense but also of tribunals are amenable to the supervisory jurisdiction of the High Court, and it is in regard to the orders of tribunals the power of the High Court has very frequently been invoked.

Article 228. Transfer of certain cases to High Court

How can be a case transferred from one High Court to another High Court?

If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may-

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

Article 229. Officers and servants and the expenses of High Courts

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule

no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

230. Extension of jurisdiction of High Courts to Union territories

(1) Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory-

(a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

Article 231. Establishment of a common High Court for two or more States

(1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court,-

(a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts, be construed as a reference to the Governor of the State in which the Subordinate Courts are situate; and

(c) the reference in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat:

Provided that if such principal seat is in a Union territory, the references in articles 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.

(D) Subordinate Courts (Articles 233-237)

Explain the subordinate court

In each State, there is a system of subordinate courts below the High Court. The Constitution makes provisions in articles 233-237 to regulate the organization of these courts and to ensure independence of the subordinate judges.

The Supreme Court has emphasized again and again on the maintenance of independence and integrity of the subordinate judiciary which is close to the people. Accordingly, the court has through its various decisions provided the independence of these courts from executive control and, to this effect, has expanded the control of the High

Courts over the subordinate judiciary. So as to strengthen the independence of the subordinate courts from executive control.

The subordinate judiciary constitutes a very important segment of the judicial system as it is in these courts that the judiciary comes in close contact with the people. It is, therefore, so essential to maintain the independence and integrity of the subordinate judiciary and for this purpose articles 233-237 have been placed in the Constitution. These articles have been so interpreted by the Supreme Court as to strengthen the control of the High Court on the subordinate judiciary. It is thus incumbent on each High Court to maintain and uphold the honour and integrity of the subordinate judiciary in the concerned State.

All India Judges Association v. Union of India, MANU/SC/0251/2002 : AIR 2002 SC 1752: 2002 AIR SCW 1706: JT 2002 (3) SC 503: MANU/SC/0251/2002 : (2002) 4 SCC 247: 2002 (2) SCJ 598: (2002) 5 SRJ 246: (2002) 3 SCALE 291: 2002 (3) Supreme 180. The Supreme Court observed that an independent and efficient judicial system is one of the basic structures of the Constitution. If sufficient number of judges are not appointed justice would not be available to the people, thereby determining the basic structure.

Appointment of District Judge.-

Under article 233(1) appointment, posting and promotion of District Judge in a State are made by the Governor in consultation with the High Court. Under article 233(2), a person not already in the 'service of the State' is eligible to be appointed as a District Judge only if-

- (a) he has been for not less than seven years an advocate or a pleader, and
- (b) is recommended by the High Court for such appointment.

From the tenor of article 233, it appears that there are two sources of recruitment of District Judges viz.-

- (a) service of the Union or the State,
- (b) members of the Bar.

Chandra Mohan v. State of Uttar Pradesh, AIR 1966 SC 1987: (1967) 1 SCA 209: (1967) 1 SCWR 153: (1967) 1 SCR 77: 1967 (2) SCJ 717. Some judicial officers were appointed as District Judges. The Supreme Court held-

"The setting, viz., the chapter dealing with subordinate courts in which the expression the service appears indicates that the service mentioned therein means service pertaining to courts."

Appointment of Subordinate Judges.-

According to article 234 appointment of persons other than District Judge, to the State Judicial Service is made by the Governor in accordance with the rules made for the purpose after consultation with the State Public Service Commission and the High Court.

Consultation with the High Court under article 234 is mandatory. If rules are made by the State Government without consulting the High Court then such rules would be ultra vires.

Ashok Kumar Yadav v. State of Haryana, MANU/SC/0026/1985 : AIR 1987 SC 454: (1985) 4 SCC 417: 1986 SCC (Lab) 88: 1985 3 Serv LR 200: 1986 2 Lab LN 804. The Court has laid down a procedure to recruit Subordinate Judges where the High Court will have a substantial rate of play.

High Court Control over District and Subordinate Courts.-

According to article 235, the control over district and subordinate courts is vested in the High Court, including the posting and promotion of, and the grant of leave to, persons belonging to the State judicial service, and holding a post inferior to that of a District Judge. However, the High Court is not authorised to deal with any such person otherwise than in accordance with the conditions of service prescribed under the law.

CHAPTER 21

The Union Territories

(Articles 239-242)

Article 239. Administration of Union Territories

(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

Article 239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories

(1) Parliament may by law create for the Union territory of Puducherry-

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers, or both with such Constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

Article 239AA. Special provisions with respect to Delhi

(1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.

(2) (a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

(b) The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

(c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively; and any reference in articles 326 and 329 to "appropriate Legislature" shall be deemed to be a reference to Parliament.

(3) (a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List insofar as they relate to the said Entries 1, 2, and 18.

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

(4) There shall be a Council of Ministers consisting of not more than ten per cent. of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion:

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

(5) The Chief Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.

(6) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

(7) (a) Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto.

(b) Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending, this Constitution.

(8) The provisions of article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of Pondicherry, the administrator and its Legislature, respectively; and any reference in that article to "clause (1) of article 239A" shall be deemed to be a reference to this article or article 239AB, as the case may be.

Article 239AB. Provision in case of failure of constitutional machinery

If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied-

(a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions of article 239AA or of any law made in pursuance of that article; or

(b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do,

the President may by order suspend the operation of any provision of article 239AA or of all or any of the provisions of any law made in pursuance of that article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of article 239 and article 239AA.

Article 239B. Power of administrator to promulgate Ordinances during recess of Legislature

(1) If at any time, except when the Legislature of the Union territory of Puducherry is in session, the administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that no such Ordinance shall be promulgated by the administrator except after obtaining instructions from the President in that behalf:

Provided further that whenever the said legislature is dissolved, or its functioning remains suspended on account of any action taken under any such law as is referred to in clause (1) of article 239A, the administrator shall not promulgate any Ordinance during the period of such dissolution or suspension.

(2) An Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, but every such Ordinance-

(a) shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or if, before the expiration of that period, a resolution disapproving it is passed by the Legislature, upon the passing of the resolution; and

(b) may be withdrawn at any time by the administrator after obtaining instructions from the President in that behalf.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union territory made after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, it shall be void.

Article 240. Power of President to make regulations for certain Union territories

(1) The President may make regulations for the peace, progress and good Government of the Union territory of-

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

(c) Dadra and Nagar Haveli;

(d) Daman and Diu;

(e) Puducherry:

Provided that when any body is created under article 239A to function as a Legislature for the Union territory of Puducherry, the President shall not make any regulation for the peace, progress and good Government of that Union territory with effect from the date appointed for the first meeting of the Legislature:

Provided further that whenever the body functioning as a Legislature for the Union territory of Puducherry is dissolved, or the functioning of that body as such Legislature remains suspended on account of any action taken under any such law as is referred to in clause (1) of article 239A, the President may, during the period of such dissolution or suspension, make regulations for the peace, progress and good Government of that Union territory.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any other law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.

Article 241. High Courts for Union territories

(1) Parliament may by law constitute a High Court for a Union territory or declare any court in any such territory to be

a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifications or exceptions as Parliament may by law provide.

(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, in relation to any Union territory shall continue to exercise such jurisdiction in relation to that territory after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court for a State to, or from, any Union territory or part thereof.

Article 242. Coorg

Rep. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).

CHAPTER 22

The Panchayats

(Articles 243-243-O)

Article 243. Definitions

In this Part, unless the context otherwise requires,-

- (a) 'district' means a district in a State;
- (b) 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;
- (c) 'intermediate level' means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
- (d) 'Panchayat' means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;
- (e) 'Panchayat area' means the territorial area of a Panchayat;
- (f) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published;
- (g) 'village' means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

Article 243A. Gram Sabha

A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

Article 243B. Constitution of Panchayats

- (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.
- (2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

Article 243C. Composition of Panchayats

- (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

- (2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.
- (3) The Legislature of a State may, by law, provide for the representation-

- (a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within-

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of-

(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

Article 243D. Reservation of seats

(1) Seats shall be reserved for-

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

Article 243E. Duration of Panchayats, etc

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

Article 243F. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Article 243G. Powers, authority and responsibilities of Panchayats

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

Article 243H. Powers to impose taxes by, and Funds of, the Panchayats

The Legislature of a State may, by law,-

- (a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- (c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- (d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

Article 243-I. Constitution of Finance Commission to review financial position

(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to-

- (a) the principle which should govern-
 - (i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;
 - (ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats;
 - (iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;
- (b) the measures needed to improve the financial position of the Panchayats;
- (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.

(4) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

Article 243J. Audit of accounts of Panchayats

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

Article 243K. Elections to the Panchayats

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner

shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

Article 243L. Application to Union territories

The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

Article 243M. Part not to apply to certain areas

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.

(2) Nothing in this Part shall apply to-

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the hill areas in the State of Manipur for which District Councils exist under any law for the time being in force.

(3) Nothing in this Part-

(a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;

(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

(3A) Nothing in article 243D, relating to reservation of seats for the Scheduled Castes, shall apply to the State of Arunachal Pradesh.

(4) Notwithstanding anything in this Constitution-

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Article 243N. Continuance of existing laws and Panchayats

Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other

competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

Article 243-O. Bar to interference by courts in electoral matters

Notwithstanding anything in this Constitution-

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;
- (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

CHAPTER 23

The Municipalities

(Articles 243P-243ZG)

Article 243P. Definitions

In this Part, unless the context otherwise requires,-

- (a) 'Committee' means a Committee constituted under article 243S;
- (b) 'district' means a district in a State;
- (c) 'Metropolitan area' means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;
- (d) 'Municipal area' means the territorial area of a Municipality as is notified by the Governor;
- (e) 'Municipality' means an institution of self-government constituted under article 243Q;
- (f) 'Panchayat' means a Panchayat constituted under article 243B;
- (g) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published.

Article 243Q. Constitution of Municipalities

(1) There shall be constituted in every State,-

- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
- (b) a Municipal Council for a smaller urban area; and
- (c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

Article 243R. Composition of Municipalities

(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-

- (a) for the representation in a Municipality of-
 - (i) persons having special knowledge or experience in Municipal administration;

- (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;
- (iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;
- (iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

- (b) the manner of election of the Chairperson of a Municipality.

Article 243S. Constitution and composition of Wards Committees, etc

- (1) There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.
- (2) The Legislature of a State may, by law, make provision with respect to-
 - (a) the composition and the territorial area of a Wards Committee;
 - (b) the manner in which the seats in a Wards Committee shall be filled.
- (3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.
- (4) Where a Wards Committee consists of-
 - (a) one ward, the member representing that ward in the Municipality; or
 - (b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.
- (5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees.

Article 243T. Reservation of seats

- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.
- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
- (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.
- (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.
- (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.
- (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in

any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

Article 243U. Duration of Municipalities, etc

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed,-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved.

Article 243V. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality-

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Article 243W. Powers, authority and responsibilities of Municipalities, etc

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

Article 243X. Power to impose taxes by, and Funds of, the Municipalities

The Legislature of a State may, by law,-

- (a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- (c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and
- (d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys there from,

as may be specified in the law.

Article 243Y. Finance Commission

(1) The Finance Commission constituted under article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to-

- (a) the principles which should govern-
 - (i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;
 - (ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;
 - (iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the State;
- (b) the measures needed to improve the financial position of the Municipalities;
- (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

(2) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

Article 243Z. Audit of accounts of Municipalities

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

Article 243ZA. Elections to the Municipalities

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) Subject to provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

Article 243ZB. Application to Union territories

The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any

Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

Article 243ZC. Part not to apply to certain areas

- (1) Nothing in this Part shall apply to the Scheduled Areas referred to in Clause (1), and the tribal areas referred to in clause (2), of article 244.
- (2) Nothing in this part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.
- (3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Article 243ZD. Committee for district planning

- (1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.
- (2) The Legislature of a State may, by law, make provision, with respect to-
 - (a) the composition of the District Planning Committees;
 - (b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;
 - (c) the functions relating to district planning which may be assigned to such Committees;
 - (d) the manner in which the Chairpersons of such Committees shall be chosen.
- (3) Every District Planning Committee shall, in preparing the draft development plan,-
 - (a) have regard to-
 - (i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
 - (ii) the extent and type of available resources whether financial or otherwise;
 - (b) consult such institutions and organizations as the Governor may, by order, specify.
- (4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

Article 243ZE. Committee for Metropolitan planning

- (1) There shall be constituted in every Metropolitan area, a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.
- (2) The Legislature of a State may, by law, make provision with respect to-

- (a) the composition of the Metropolitan Planning Committees;
- (b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

- (c) the representation, in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;
- (d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;
- (e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,-

(a) have regard to-

- (i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;
- (ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
- (iii) the overall objectives and priorities set by the Government of India and the Government of the State;
- (iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

Article 243ZF. Continuance of existing laws and Municipalities

Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

Article 243ZG. Bar to interference by courts in electoral matters

Notwithstanding anything in this Constitution,-

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

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CHAPTER 24

The Scheduled and Tribal Areas

Article 244. Administration of Scheduled Areas and Tribal Areas

- (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.
- (2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram.

Article 244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both there for

- (1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and create therefor-
- (a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or
 - (b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law.
- (2) Any such law as is referred to in clause (1) may, in particular,-
- (a) specify the matters enumerated in the State List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of the Legislature of the State of Assam or otherwise;
 - (b) define the matters with respect to which the executive power of the autonomous State shall extend;
 - (c) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State;
 - (d) provide that any reference to a State in any article of this Constitution shall be construed as including a reference to the autonomous State; and
 - (e) make such supplemental, incidental and consequential provisions as may be deemed necessary.
- (3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub-clause (a) or sub-clause (b) of clause (2) shall have no effect unless the amendment is passed in each House of Parliament by not less than two-thirds of the members present and voting.
- (4) Any such law as is referred to in this article shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

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CHAPTER 25

Relation between union and the States

(Articles 245-263)

Legislative Powers (Articles 245-255)

Article 245. Extent of laws made by Parliament and by the Legislature of States

Explain the extent of law making power of Parliament and State Legislature

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of that State.

(2) No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.

Article 245 deals with the territorial distribution of Legislative Powers between Union and States. The Union has power to make laws for the whole or any part of the territory of India and State has power to make laws for the whole or any part of the territory of State. Clause (2) makes it clear that a law passed by Parliament shall not be deemed to be invalid on the ground that it has extra territorial operation i.e., in effective outside the territory of India.

Define the doctrine of territorial means with the help of case laws

Doctrine of Territorial nexus.-

The power to make a law having extra, territorial operation is conferred only on Parliament and not on the States Legislature. Hence, an Act of the State Legislature, if it gives extra-territorial operation to its provision can successfully be challenged in the courts, unless the extra-territorial operation can be sustained on the ground of territorial nexus.

Governor-General v. Raleigh Investment Co., MANU/FE/0015/1944 : AIR 1944 FC 51: 1944 FCR 229. It has been held that if there is a territorial nexus or connection between the person sought to be charged and the State seeking to tax, the taxing statute is upheld. Sufficiency of the territorial connection involves a consideration of two elements namely, (I) the connection must be real and not illusory, (II) the liability sought to be imposed must be pertinent to that connection.

A.H. Wadia v. Commissioner of Income-tax, Bombay, MANU/FE/0004/1948 : AIR 1949 FC 18: 17 ITR 63: 1948 FCR 121. Kania, C.J. observed that "question of extra-territoriality" of any enactment can never be raised in the municipal courts as a ground for challenging its validity. The legislature may offend the rules of international law.

State of Bombay v. R.M.D. Chamarbaugwala, MANU/SC/0019/1957 : AIR 1957 SC 699: 1957 2 Mad LJ (SC) 87: 1957 SCJ 607: 1957 SCA 867. The Bombay State levied a tax on lotteries and prize competitions. The tax was extended to a newspaper printed and published in Bangalore but had wide circulation in Bombay. The respondent conducted the prize competition through paper. The court held that there existed a sufficient territorial nexus to enable the Bombay State to tax the newspaper, if there is sufficient nexus between the person sought to be charged and the state seeking to tax him.

Tata Iron and Steel Co., Ltd. v. State of Bihar, AIR 1958 SC 452: (1958) 9 STC 267: 1958 SCA 469: 1958 SCJ 818: MANU/SC/0123/1958 : 1958 SCR 1355: 1959 BLJR 453. The doctrine of nexus was applied to sales tax.

State of Bihar v. Charusila Das, MANU/SC/0176/1959 : AIR 1959 SC 1002: (1959) 2 SCA 369: 1959 SCJ 1193: 1959 BLJR 785: 1959 SCR Supp (2) 601. It has been held that a State Legislature has the power to legislate with respect to charitable and religious trusts situate within its territory even though any part of the trust property, small or large, is situated in another State.

Article 246. Subject-matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Distribution of Law-making Power.-

The Constitution, in making the distribution of legislative powers between the Union and States follows the Government of India Act, 1935. There are three lists-

List-I - Union List - 97 Subjects.

List-II - State List - 66 Subjects.

List-III - Concurrent List - 47 Subjects.

Doctrine of pith and substance

Define the doctrine of pith and substance

The doctrine of pith and substance is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in different legislative lists, because a law dealing with a subject in one list within the competence of the legislature concerned is also touching on the subject in another list not within the competence of that legislature. In such a case, what has to be ascertained is the pith and substance of the enactment the true character and nature of the legislation.

Prafulla Kumar v. Bank of Commerce Ltd., Khulna, AIR 1947 PC 60: 74 Ind App paras 23. The doctrine was applied in interpreting provision of various List of VIII Schedule to Government of India Act, 1935. Entry 27 of List II empowered provisional Legislature to enact laws with respect to "money lending and money lenders" in the province. On the other hand. Entry 28 of the List I gave power to federal Legislature over cheques, bills of exchange and promissory notes, etc. The Bengal Legislature passed Bengal Money Lenders Act, 1946 which provided for limiting the rate of interest reasonable by a lender on loans advanced. It was contended that the Act was invalid insofar as it affected the rights of promissory note holders. This contention was rejected by the Privy Council. Applying the Pith and Substance test it held that the pith and substance of the Act was money-lending and therefore, it came within Entry 27 of List II. It could not be invalid merely because it incidentally affected promissory notes.

State of Bombay v. F.N. Balsara, AIR 1951 SC 381: 1951 SCJ 478: (1951) 2 MLJ 141: 52 Cr LJ 1361: MANU/SC/0009/1951 : 1951 SCR 682. The validity of the Bombay Prohibition Act was challenged. The Act was passed by State Legislature in exercise of powers under Entry 8 of List II which empowers State Legislature to legislate with respect to intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sales of liquors. It was contended that the prohibition would affect the import, which is within the power of the Union Legislature under Entry 41 of the List 1. The court upheld that the validity of the Act by applying the doctrine of pith and substance. It was held that the pith and substance of the Act fell in Entry 8 of the List II and the encroachment on the power of the Union under Entry 41 of List I was merely incidental.

Doctrine of Colourable Legislation

What is doctrine of colourable legislation? Also explain case laws

A colourable legislation is that which purports to be within the powers of the enacting Legislature but in fact transgresses its authority. The doctrine of colourable legislation is based on the maxim that "you cannot do indirectly what you cannot do directly." When the legislature is incompetent to legislate on a particular subject directly but if indirectly under the colour of some other subject within its powers, it tries to legislate upon the subject not within its powers, the legislation is said to be colourable.

State of Bihar v. Kameshwar Singh, MANU/SC/0020/1952 : AIR 1952 SC 252: 1952 SCJ 354: 1952 SCR 889: 1953 SCA 53. In that case, the constitutionality of provisions of Bihar Land Reforms Act was challenged. Section 4(b) of the Act provided that all seats, royalties and cess before the vesting of property in the Government will vest in the Government and will be realised by the Government. As the Government had no money to pay compensation it was provided that 50 per cent. of due rent will be paid as compensation.

Section 23(1)(d) provided that out of total assets some percentage will be deducted for the benefit of rayat. The court held that the legislature made colourable use of power under Entry 42 of the List II. Therefore, the Act was held invalid. In fact Zamindars were not paid any compensation though provision for compensation was there.

K. C. Gajapati Narayan Deo v. State of Orissa, MANU/SC/0014/1953 : AIR 1953 SC 375: 1953 SCJ 592: 1954 SCA 1: 1954 SCR 1. The Supreme Court observed that if the Constitution distributes the legislative power amongst different Legislative bodies, which have to act within their respective spheres. Marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of FR, question arise as to whether the Legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised or indirect, and it is to this latter class of cases that the doctrine colourable legislation has been applied in judicial pronouncement.

Article 247. Power of Parliament to provide for the establishment of certain additional courts

Notwithstanding anything in this chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws. with respect to a matter enumerated in the Union List.

Article 248. Residuary powers of legislation

Explain the Residuary Power of Parliament

(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent list or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those lists.

This article assigns residuary powers of legislation exclusively to Parliament. Entry 97 of List I of Schedule VII of the Constitution read with article 246(1) also lays down that Parliament has exclusive power to make laws with respect to any matter not enumerated in list II and III, including any tax not mentioned in either of those lists.

Article 249. Power of Parliament to legislate with respect to a matter in the State List in national interest

When can the Parliament legislate on the State subjects?

(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be

specified therein:

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

Article 249 provides a simple and quick method to cope with extraordinary situations which temporarily assume national importance. The article may also be availed of when speed is of the essence of the matter, and it is not considered necessary or expedient to invoke the emergency provisions contained in articles 352 and 356.

The strategy contained in article 249 can be used when national interest so demands and to tide over a temporary situation. For this unique feature of Indian Constitution, no parallelism is to be found in any other federal Constitution.

Article 250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation

What is the procedure to legislate on the subject of State List by Parliament in case of emergency?

(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have, power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Restriction on the legislative authority of the Union Parliament in relation to the subjects enumerated in the State List are removed during the period of Proclamation of Emergency is in operation. During the Emergency Parliament shall have power to make laws for the whole or any part of the territory of India with respect to all matters on the State List.

Farey v. Burvett, 1938 21 CLR 433, It was held

"It is enough if the measure can be capable of assisting in the nation's defence. The court is not concerned with the question whether it is desirable to resort to the measure at all and whether then resorted to it will assist in fact the defence. Those are maintain for Parliament and Government alone.

Article 251. Inconsistency between laws made by Parliament under articles 249, and 250 and laws made by the Legislatures of States

Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the legislature of the State shall prevail and law made by the Legislature of the State shall be to the extent of the repugnancy, but so long only as made by Parliament continues to have effect, be inoperative.

Article 252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State

(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to

which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

This article provides that if two or more States are desirous that on any particular matter in the State List there should be a single act which would apply in those states, they can invoke the aid of Parliament to make such an Act for them. When an Act passed by Parliament is adopted by a State Legislature by passing resolution and later an Act is repealed by Parliament, the Repealing Act, would not be applicable in that State unless State Legislature passes a resolution approving and adopting the repealing Act.

Under article 258, power to legislate is vested in Parliament only when two or more States pass a resolution authorising Parliament to make a law on a matter in List II which is not within the legislative domain of Parliament. The passing of the resolutions by the States is a condition precedent for vesting the Parliament with such power by the State Legislatures.

Article 253. Legislation for giving effect to international agreements

Notwithstanding anything in the foregoing provisions of this chapter Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Attorney-General for Canada v. Attorney General for Ontario, (1937) AC 326: MANU/PR/0031/1937 : AIR 1937 PC 82. It was sought to justify statutes dealing with minimum wages, working hours and weekly rests under section 132 of the British

North-America Act but the Privy Council held that if the Dominion could by treaty acquire powers of legislation under general head to deal with matters in section 92, such a result would appear to undermine the provisional autonomy.

Article 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

Which law prevail in case of inconsistency between law?

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

(a) Article 254(1).-

The Constitutional provision relevant for solving questions of repugnancy between a Central law and a

State law is to be found in article 254.

According to article 254(1), the power of Parliament to legislate in regard to matters in List III is supreme. Article 254(1) gives overriding effect to the provisions of a law made by Parliament which Parliament is competent to enact. A law made by the State is void if it is repugnant to Central law.

Hoechst Pharmaceuticals Ltd. v. State of Bihar, MANU/SC/0392/1983 : AIR 1983 SC 1019: 1983 UJ (SC) 617: (1983) 4 SCC 45: 1983 SCC (Tax) 248. "Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void.

M. Karunanidhi v. Union of India, MANU/SC/0159/1979 : AIR 1979 SC 898: 1979 Cr LR (SC) 219: 1979 Cr LJ 773: MANU/SC/0159/1979 : (1979) 3 SCC 431: 1979 SCC (Cri) 691. Fazal Ali summarized the test of repugnancy in the following situations-

- (1) It must be shown that there is clear and direct inconsistency between the two enactments Central and State Act, which is irreconcilable, so that they cannot stand together or operate in the same field.
- (2) There can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
- (3) Where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collusion with each other, no repugnancy results.
- (4) Where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

(b) Article 254(2).-

Article 254(1) lays down the general rule while

article 254(2) is an exception to the general rule laid down in article 254(1). Article 254(2) provides an exception to save a State law repugnant to a Central law on a matter in the concurrent list and thus release the rigidity of the rules of repugnancy contained in article 254(1).

Hoechst Pharmaceuticals Ltd. v. State of Bihar, MANU/SC/0392/1983 : AIR 1983 SC 1019: 1983 UJ (SC) 617: (1983) 4 SCC 45: 1983 SCC (Tax) 248. In short, the result of obtaining the assent of the President to a State Act, which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act, in their applicability to that State only.

Article 254(2) has been conceived with a view to save State laws falling in the Concurrent List from being superseded by the Central laws because of the operation of the rule of repugnancy. Article 254(2) operates when the following two conditions are satisfied-

- (a) There is a valid Central law on the same subject-matter occupying the same field in the Concurrent List to which the State law relates;
- (b) The state Legislature is repugnant to the Central law.

It means that if there is no Central law with respect to the subject-matter in the Concurrent List to which the state law relates, article 254(2) does not operate. The State law in such a situation prevails proprio vigore.

Proviso to Article 254(2).-

The proviso qualifies the exception contained in article 254(2) to article 254(1). The proviso thus enlarges the power of Parliament acting under the proviso, the Parliament can enact a provision repugnant to certain State law. Thus Presidents assent to the State law gives protection to it against a Central law only so long as Parliament does not thereafter, legislate again with respect to that matter making a provision conflicting with the State law. If it does, the state law would be void to the extent of repugnancy with the later Parliamentary law. The salient feature of this provision is that it not only enables Parliament to make subsequently a provision repugnant to the earlier State law but this also do impliedly repeal that State law.

Article 255. Requirement as to recommendations and previous sanctions to be regarded as matters of procedure only

No Act of Parliament or of the Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given-

- (a) where the recommendation required was that of the Governor, either by the Governor or by the President;
- (b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;
- (c) where the recommendation or previous sanction required was that of the President, by the President.

This article enacts that in case such articles 117, 207 and 304 where the Constitution required that a Bill shall not be introduced without the recommendation or previous sanction of the Governor, or the President, the subsequent assent of the authority, or in the case of the Governor or the President, shall prevent the latter from becoming void.

Administrative Relations (Articles 256-263)

Define administrative relations between Union and States

In a federal country both Centre and States have their separate legislative and executive machinery. So far as legislation is concerned, it is comparatively easier to demarcate the fields of operation for Centre and the units. A federal scheme involve the setting-up of dual Government and division of powers. But the success and strength of the federal policy depends upon the maximum of

co-operation and co-ordination between the governments.

Article 256. Obligation of the States and the Union

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

To ensure that a State Government by its actions or inactions does not interfere with the legislature and administrative polices of the Union and thereby undermine the unity of the nation. Certain powers of administrative control over the States have been given to the Central Government.

Article 257. Control of the Union over States in certain cases

(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

The preceding article empowers the Central Government to issue directions to the State Governments for the purpose of ensuring that due respect for the Central law is given in the States. This article gives authority to the Union to issue directions to the States in certain other matters. These are as follows:-

- (i) the manner in which the executive power of the State shall be exercised so as not to impede or abridge the executive power of the Union;
- (ii) the construction and maintenance of means of communication, declared to be of national or military importance.

The Constitution provides for a situation in which a State Government declines to carry out the directions it has received from the Union Government.

Article 258. Power of the Union to confer powers, etc., on States in certain cases

(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Governor of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

Under article 258, the Parliament may, with the consent of the State Government, entrust either conditionally or unconditionally to that Government or to its officers, functions relating to any matter falling within the executive powers of the Union. Under clause (2), Parliament is also empowered to use State machinery for the enforcement of the Union laws and for this purpose may confer power or impose duties upon the State or its officers or authorities thereof in respect of these matters to see that the laws are made applicable to the State. It is to be noted that while under clause (1) the delegate of power or made with the consent of the State the consent of the State is not necessary under clause (2) and delegation can be made by Parliament by law.

Article 258A. Power of the States to entrust functions to the Union

Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust with conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.

Article 258A empowers the Governor of a State to entrust executive functions of State to the Central Government with the consent of the Government of India.

Article 260. Jurisdiction of the Union in relation to territories outside India

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory but every such agreement shall be subject to and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

Control over the territories outside India can be exercised by the Union Government only, not by State Government. Article 260 provides that Government of India may by agreement with the Government of any territory outside India undertake any executive, legislative or judicial functions vested in the Government of such territory. But exercise of such functions by Government of India shall be regulated by Parliament by legislation.

Article 261. Public acts, records and judicial proceedings

Define full faith and credit.

Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

The provisions of articles 261(1) and (2) are collectively called "full faith and credit" clause. Clause (1) establishes a rule of evidence and does not deal with jurisdiction. It declares that full faith and credit shall be given throughout the territory of India to public acts and judicial proceedings of the Union and of every State.

Clause (3) provides that final judgments or orders of civil courts in any part of the territory of India shall be executable anywhere within the territory without the necessity of a fresh suit upon the judgment. The rule applies only to civil judgments. It does not require the courts of a State to enforce the penal laws of other States.

Article 262. Adjudication of disputes relating to waters of inter-State rivers or river valleys

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Parliament is authorised by article 262 to provide for the adjudication of any dispute or complaint in respect of use, distribution or control of waters of or in any inter-State river or river valley. It can exclude the jurisdiction of the Supreme Court or any other court in respect of any such dispute.

In exercise of power under article 262, the Parliament has passed Water Disputes Act, 1956. The Act empowers the Central Government to setup a tribunal for adjudication of such disputes. The tribunal is to consist of only one person nominated by the Chief Justice of India from amongst persons who are or have been Judges of Supreme Court or High Courts.

State of Tamil Nadu v. State of Karnataka, (1991) Supp 1 SCC 240: (1991) 2 SCR 501. Where a dispute relating to distribution or control of water of any inter-State river or river valley is referred by the Central Government to the tribunal constituted under inter-State Water Disputes Act, the Supreme Court in appeal cannot decide merits of the dispute.

Co-ordination between States

Explain Zonal Councils in States

(1) Five Zonal Councils Created by the States Reorganization Act.-The State Re-organization Act, 1956 divided India in five zones namely Eastern, Western, Northern, Southern and Central and provided for Constitution of a zonal council for each zone. Each zonal council was to have Home Minister as its chairman, the Chief Ministers of respective States included in the zone and in the event of State being under President's rule its Governor. The Governor to act as Vice-President on rotational basis for a year and some advisers including one person nominated by the Planning Commission, Chief Secretary of the Government of each State in the zone and development commission of each State. These advisers will not have right to vote at meetings.

2. North-eastern Council.-

North-eastern region today consists of seven States namely, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. They have strategic importance as they have common boundaries with China, Burma, Bangladesh, Bhutan and are connected with the rest of India by a narrow strip of land. Their problems are also peculiar.

The Council consists of Governors and Chief Ministers of seven member States and President may nominate a Minister of the Union to become member of the Council. The President also nominates one of the members of the Council to act as its Chairman.

Article 263. Provisions with respect to an inter-State Council

Explain Inter-State Council

If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of-

- (a) inquiring into and advising upon disputes which may have arisen between States;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

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CHAPTER 26

Finance, Property, Contracts and Suit

Part XII

(Articles 264-300A)

Chapter 1-Finance

(Articles 264-291)

Article 264. Interpretation

In this part 'Finance Commission' means a Finance Commission constituted under article 280.

Article 265. Taxes not to be imposed save by authority of Law

No tax shall be levied or collected except by authority of law.

This article imposes a restriction on the executive power of the States or the Union because law here means law made by the legislature. Tax cannot be levied or collected by mere executive action. There is another implied limitation that law providing for taxation must be a valid law. It means that it should be within the legislative competence of the legislature which enacts such a law and further, it should not violate other provisions of the Constitution.

Article 266. Consolidated Funds and public accounts of India and of the States

Define consolidated fund in Union and States

Explain public accounts of India and of States

(1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

This article makes provision for the consolidated funds of India and the States. It is laid down that all revenues received by the Government of India, all monies raised by loans and all money received in repayment of loans shall form one consolidated fund and will be called the consolidated fund of India. But such taxes as one assigned to the states do not form part of the consolidated fund of India.

No money out of the consolidated fund of India or a State shall be appropriated, except in accordance with law and for the purposes and in the manner provided in the Constitution.

All other public monies received by or on behalf of the Government of India or Government of a State shall be credited to the Public Account of India or Public Account of the State, for example. Article 284 enacts that all monies received by or deposited with any Union officer, other than revenues or public monies raised or received by the Government of India, or deposited with any court in India to the credit of any cause, matter, account or person shall be paid into the Public Account of India or of a State, as the case may be.

Article 267. Contingency Fund

What is contingency fund?

(1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under article 115 or article 116.

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under article 205 or article 206.

Article 267 provides for establishment of a contingency fund of India and also for each State in the nature of an imprest to meet unforeseen expenditures.

The contingency fund of India is to be established by an Act of Parliament and contingency fund of a State by an Act of Legislature of that State. Money to be credited from time-to-time to contingency fund shall be determined by such Act.

Contingency fund of India shall be placed at the disposal of the President of India and contingency fund of State shall be placed at the disposal of the Governor of that State to meet conferee expenditure pending formal authorisation by Parliament under articles 115 and 116 and in case of the State Legislature under articles 205 and 206.

Article 268. Duties levied by the Union but collected and appropriated by the States

(1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected-

- (a) in the case where such duties are leviable within any Union territory, by the Government of India, and
- (b) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

Article 268A. Service tax levied by Union and collected and appropriated by the Union and the States

(1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States in the manner provided in clause (2).

(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be-

- (a) collected by the Government of India and the States;
- (b) appropriated by the Government of India and the States,

in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.

Article 269. Taxes levied and collected by the Union but assigned to the States

(1) Taxes on the sales or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

Explanation.-For the purposes of this clause,-

(a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;

(b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

(3) Parliament may by law formulate principles for determining when a sale or purchase of, or consignment of, goods takes place in the course of inter-State trade or commerce.

Article 270. Taxes levied and distributed between the Union and the States

(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268, 268A and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, "prescribed" means,-

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

Article 271. Surcharge on certain duties and taxes for purposes of the Union

Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

Article 272. Taxes which are levied and collected by the Union and may be distributed between the Union and the States

[Rep. by the Constitution (Eightieth Amendment) Act, 2000, sec. 4 (w.e.f. 9-6-2000).]

Article 273. Grants in lieu of export duty on jute and jute products

(1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution, whichever is earlier.

(3) In this article, the expression "prescribed" has the same meaning as in article 270.

Article 274. Prior recommendation of President required to Bills affecting taxation in which States are interested

(1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian Income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to State, or which imposes any surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article, the expression "tax or duty in which States are interested" means-

- (a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or
- (b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

Article 275. Grants from the Union to certain States

(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to-

- (a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule; and
- (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(1A) On and from the formation of the autonomous State under article 244A,-

(i) any sums payable under clause (a) of the second proviso to clause (1) shall, if the autonomous State comprises of all the tribal areas referred to therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify;

(ii) there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam.

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament:

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

Article 276. Taxes on professions, trades, callings and employments

(1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two thousand and five hundred rupees per annum.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

Article 277. Savings

Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

Article 278. Agreement with States in Part B of the First Schedule with regard to certain financial matters

[Rep. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).]

Article 279. Calculation of "net proceeds", etc

(1) In the foregoing provisions of this Chapter, "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

Finance Commission**How is the Finance Commission constituted and what are the powers of the Commission?****Article 280. Finance Commission**

(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to-

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;

(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;

(d) any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

The Finance Commission envisaged by the Indian Constitution is a unique body. It is an expert body of non-political character. The commission is an advisory body and its recommendations are not binding on the Central Government. The Finance Commission (Miscellaneous Provisions) Act, 1951 has been enacted by Parliament. The Chairman of the Finance Commission is to be a person having experience in public affairs. Its other four members are to be selected from among persons qualified to be appointed as the High Court Judges, having special knowledge of government finances and account, having wide experience in financial matters and administration, or having special knowledge of economics.

A person is disqualified to be appointed as a member of the commission if he is of unsound mind, is an undischarged insolvent, has been convicted of an offence involving moral turpitude or has financial or other interests prejudicially affecting his functions as a member of the commission.

The functions of the Commission as prescribed by article 280(3) are to make recommendations to the President with regard to the following matters-

(a) The distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them and the allocation of the representative shares of such proceeds.

(b) The principle to govern the grants-in-aid of the revenue of the States out of the consolidated fund of India.

(c) The measures needed to augment the State consolidated fund to supplement the resources of the panchayats, in the State on the basis of the recommendation made by the State Finance Commission.

(d) The measures needed to augment the State consolidated fund to supplement the resources of the municipalities in the State on the basis of the recommendations made by the State Finance Commission.

(e) Any other matter referred to it by the President in the interest of sound finance.

Article 281. Recommendation of the Finance Commission

"The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

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CHAPTER 27

The State Liability

(Articles 299, 300)

Article 299. Contracts

(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Article 299 authorises the Government of India to enter into contract for any purpose subject to the mode and manner provided for it in article 299. A contract is binding on the Government of India if the following three conditions are fulfilled, that-

- (a) it must be expressed to be made by the President or by the Governor of the State as the case may be;
- (b) it must be extended on behalf of the President or the Governor as the case may be; and
- (c) its execution must by such person and in such manner as the President or Governor may direct or authorise.

Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh, MANU/SC/0060/1977 : AIR 1977 SC 2149: 1978 BLJR 22: (1978) 1 SCWR 268: (1978) 1 SCR 375. Failure to comply with these conditions nullifies the contract and renders it void and unenforceable. There is no question of estoppel or ratification of the provisions of article 299(1) of the Constitution.

Article 300. Suits and proceedings

(1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution-

- (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and
- (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

Article 300(1) consists of three parts. The first deals with the question about the form and the title for a suit intended to be filed by or against the Government of India or Government of a State. The second part provides, inter alia, that the Union of India or a State may sue or be sued in relation to its officers in cases like those in which the Dominion of India or a corresponding province or an Indian State as the case may be, might have sued or been sued if the Constitution had not been enacted. The third part provides that it would be competent to the Parliament or the Legislature of a State to make appropriate provisions in regard to the topic covered by article 300(1).

Explain in detail P&O Steam Navigation Co. case

P&O Steam Navigation Co. v. Secretary of State for India, (1861) 5 Bom HCR App 1. The facts of the case were that a servant of the plaintiff's (company) was travelling from Garden Reach to Calcutta in a carriage driven by a pair of horses. The accident took place when the coach was passing through the Kidderpore dockyard which was Government Dockyard. Some Government workmen employed in the Government Dockyard were carrying a heavy piece of iron rod for the purpose of repairing a steamer. The men carrying the

iron rod were going in the middle of the road. When the carriage of the plaintiff drove up nearer the coachman gave a warning to the men carrying the iron rod and the coachman slowed its speed. The men carrying the iron rod attempted to get out of the way, those in front tried to go to one side of the road while those behind tried to go to the other side of the road. The consequences of this was a loss of time, brought the carriage close up to them before they had left the centre of the road. Seeing the horses and carriage they got alarmed and suddenly dropped the iron rod and ran away. The iron rod fell with a great noise resulting in injuries to one horse, which started the plaintiff's horses which thereupon rushed forwards violently and fell on the iron rod. The company filed a suit against the secretary of State in Council for the damages for injury to its horse caused by the negligence of the servant employed by the Government of India.

The Supreme Court held that the Secretary of State for India was liable for the damages caused by the negligence of Government servants, because the negligent act was not done in the exercise of sovereign function. The court drew a distinction between acts done in the exercise of 'sovereign power' and acts done in the exercise of 'non-sovereign power' that is, acts done in the conduct of undertaking which might be carried on by private person. The liability could only arise in case of 'non-sovereign functions'.

State of Rajasthan v. Vidhyawati, MANU/SC/0025/1962 : AIR 1962 SC 933: (1962) 2 SCA 362. The driver of a jeep owned and maintained by the State of Rajasthan for the official use of the Collector of a district, drove it rashly and negligently while bringing it back from the workshop after repairs and knocked down a pedestrian and fatally injured him. As a result of the injuries the pedestrian died. His widow sued the State of Rajasthan for damages.

The Supreme Court held that the State was liable and awarded damages. The accident took place while the driver was bringing it back from the workshop to the Collector's residence. It cannot be said that he was employed on task which was based on delegation of sovereign or government powers of the State. His act was not an act in the exercise of a sovereign function. The court said that the employment of driver of a jeep for the use of civil servant was an activity which was not connected in any manner with the sovereign power of the State at all.

Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh, MANU/SC/0086/1964 : AIR 1965 SC 1039: 1965 (2) SCJ 318: (1965) 1 SCWR 995: (1965) 1 SCA 809: (1965) 2 Cr LJ 144: (1965) 1 SCR 375. A person was taken into custody on suspicion of being in possession of State property and taken to police station. His property including certain quantity of gold and silver was taken from him and kept out in the Malkhana till the disposal of the case. The gold and silver was misappropriated by a police constable who fled to Pakistan. The appellant sued the State of Uttar Pradesh for return of the gold and silver, and in the alternative claimed damages for loss caused by negligence of the Meerut police. The State contended that no liability would accrue for acts committed by a public servant where such acts were related to the exercise of a sovereign power of the State. The Supreme Court held that the State was not liable.

N. Nagendra Rao and Co. v. State of Andhra Pradesh, MANU/SC/0530/1994 : (1994) 6 SCC 205: AIR 1994 SC 2663: 1994 AIR SCW 3753: JT 1994 (5) SC 572: 1994 SCC (Cri) 1609. The Supreme Court has held that when due to the negligent act of the officers of a State a citizen suffers any damage the State will be liable to pay compensation and the principle of sovereign immunity of State will not absolve him from this liability. The court held that in the context of modern concept of sovereignty the doctrine of sovereign immunity stands diluted and the distinction between sovereign and non-sovereign functions no longer exists.

Rudal Shah v. State of Bihar, MANU/SC/0380/1983 : AIR 1983 SC 1086: 1983 Cr LJ 1644: (1983) 4 SCC 141: 1983 UJ (SC) 759: 1983 SCC (Cri) 798. The court directed the State of Bihar to pay compensation of Rs. 35,000 to the victim of tortuous acts done by Government employees during sovereign functions. The petitioner already had completed his sentence but the prison officials did not take care to release him. He was kept in jail for 14 years even after his

acquitted by the court.

Bhim Singh, MLA v. State of Jammu and Kashmir, MANU/SC/0064/1985 : AIR 1986 SC 494: 1986 Cr LJ 192: (1985) 4 SCC 677: 1986 SCC (Cri) 47: 1986 UJ (SC) 458: (1986) 1 APLJ (SC) 36. The Supreme Court awarded a sum of Rs. 50,000 to the petitioner as compensation for violation of his fundamental right of personal liberty under article 21 of the Constitution. The petitioner was an MLA was illegally arrested and detained in police custody and deliberately prevented from attending the session of the Legislative Assembly.

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CHAPTER 28

Right to Property

(Article 300A)

Explain Right to Property as a legal right

The Forty-Fourth Amendment of the Constitution in 1978 transferred the right to property from the category of Fundamental Rights by repealing article 31 and converted it into an ordinary constitutional right by enacting article 300A, instead. Article 300A says, "no person shall be deprived of his property save by authority of law."

Though article 300A is not a Fundamental Right, it does not make much of a difference except that a writ petitioner is not maintainable under article 32 in the Supreme Court to vindicate the right under article 300A. A person challenging violation of article 300A must go to a High Court under article 226, with his writ petition.

The constitutional right to property under article 300A is not a basic features or structure of the Constitution. After the Forty-Fourth Amendment of the Constitution right to property is a human right and a constitutional right but not a Fundamental Right.

State of Mysore v. K. Chandrasekhara Adiga, MANU/SC/0534/1976 : AIR 1976 SC 853: 1976 UJ (SC) 231: (1976) 2 SCC 495. Article 300A ensures that a person cannot be deprived of his property merely by an executive fiat. The rights in property can be curtailed, abridged or modified by the State only by exercising its legislative power. Deprivation of property can only be done according to law. Without law, there can be no deprivation of property. No law, no deprivation of property is the principle underlying article 300A. An executive order depriving a person of his property without being backed by law, is not constitutionally valid.

Dr. P.K. Tripathi says that now the right to property of both the citizens as well as non-citizens, is more firmly and comprehensively secured under the Constitution, than even before. It is secured more firmly than before because an amendment in the existing position will now require not only the procedure laid down in article 368, but also the consent of the states as prescribed in the proviso to article 368. He says that State will not now be able to acquire private property without showing public purpose and without paying full compensation or the market value of the property.

Jilabhai Nanbhai Khachar v. State of Gujarat, MANU/SC/0033/1995 : AIR 1995 SC 142: 1994 (72) Taxman 435: 1994 AIR SCW 4181: JT 1994 (4) SC 473. Article 31(1) provided that no person shall be deprived of his property except by authority of law. This means that the State has authority to take away the property of an individual but it can do so only by authority of law. The word 'law' as used in article 300A makes it clear that the deprivation of the property can only be made by the authority of law, be it an Act of Parliament or State Legislature, or a rule or statutory order having force of law, and not by an executive fiat or an order.

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CHAPTER 29

Trade, commerce and Intercourse within The territory of India

(Articles 301-307)

Article 301. Freedom of Trade, Commerce and Intercourse

Explain freedom of trade, commerce and intercourse

Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free.

Article 301 enacts the general rule that trade, commerce and intercourse throughout the territory of India shall be free. The freedom declared by article 301 may be defined as a right to free movement of persons or things, tangible or intangible, commercial or non-commercial, unobstructed by barriers, inter-State or intra-State or any other impediments operating as such barriers. All obstructions or impediments, whatever shape they may take to the free flow or movement of trade or non-commercial intercourse offend article 301 of the Constitution.

Welton v. Miss Quri, (1857) 91 US 272. The word 'commerce' was explained by Field J.-

"Commerce is a term of the largest import. It comprehends intercourse for the purpose of trade in any and all its forms including the transportation, purchase, sale and exchange of commodities between the citizen of our country and citizens of different States."

Explain Atiabari Tea Co. Ltd. case

Atiabari Tea Co. Ltd. v. State of Assam, MANU/SC/0030/1960 : AIR 1961 SC 232: ILR 1961 13 Assam 257: (1961) 1 SCR 809. In this case it is held that tax laws are not outside the purview of article 301. In that case, the applicants carried on the business of growing tea and exporting it to Calcutta via Assam. In the course of its passing through the State of Assam, the tea was liable to tax under the Assam Taxation Act, 1954 which imposed tax on goods carried by road or inland waterways in the State of Assam.

The Supreme Court held that the tax imposed on the goods directly restricted their transport or movement and thus offended article 301. The act was, therefore, held void and the State was restrained from levying the tax.

What principles enumerated by the Supreme Court in Automobile Transport Ltd. case?

Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, MANU/SC/0065/1962 : AIR 1962 SC 1406: (1962) 2 SCA 35: (1963) 1 SCR 491. The principles followed in this case are-

- (a) Article 301 assures freedom of inter-State as well as intra-State trade, commerce and intercourse.
- (b) Trade, commerce and intercourse have the widest connotation and taken in movement of goods and persons.
- (c) The freedom is not only from laws enacted in the exercise of the powers conferred by the legislative entries relating to trade and commerce or production, supply and distribution of goods, but also to all laws including tax laws.
- (d) Only those laws whose direct and immediate effect to inhibit or restrict freedom of trade or commerce will come with the mischief of article 301.
- (e) Laws which are merely regulatory or which impose purely compensatory taxes and hence intended to facilitate freedom of trade, are outside the scope article 301.

State of Bombay v. R. M. D. Chamarbaugwala, MANU/SC/0019/1957 : AIR 1957 SC 699: (1957) 2 Mad LJ (SC) 87: 1957 SCJ 607: 1957 SCA 867. Trade and Commerce which are protected by article 301 are only those activities which are regarded as lawful trading activities and are not against the public policy. In this case Supreme Court held that

gambling is not trade but *res extra commercium*.

B.R. Enterprises v. State of Uttar Pradesh, MANU/SC/0330/1999 : AIR 1999 SC 1867: 1999 AIR SCW 1526: JT 1999 (3) SC 431: MANU/SC/0330/1999 : (1999) 9 SCC 700: 1999 (7) SRJ 95: 1999 (4) Supreme 472. The Supreme Court has held that State-run lotteries are not different from private lotteries as regards their gambling nature. They are, therefore, equally excluded from the category of trade or commerce either under article 301 or article 303.

Article 302 Power of Parliament to impose restrictions on trade, commerce and intercourse

Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

Jalan Trading Co. (P) Ltd. v. D.M. Aney, MANU/SC/0267/1978 : AIR 1979 SC 233: 1978 Lab IC 1772: (1979) 3 SCC 220. Section 10 of the Bonus Act, was challenged for violation of articles 19(1)(g) and 301. The Act compelled an employer to pay a minimum statutory bonus to employees even in years in which management sustains losses. The Supreme Court held that the restriction was reasonable and in public interest under articles 19(6) and 302. Referring to DPSP the court said that what is directed by Founders of the Constitution cannot be regarded as unreasonable or against public interest.

Atiabari Tea Co. Ltd. v. State of Assam, MANU/SC/0030/1960 : AIR 1961 SC 232: ILR 1961 13 Assam 257: (1961) 1 SCR 809. Where Parliament exercise its power under article 302 and passes a law imposing restriction on the freedom of trade in the public interest. Whether or not the given law is in the public interest may not be justiciable and in that case Parliament is given the sole power to decide what restrictions can be imposed in the public interest as authorised by article 302.

Article 303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce

(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

State of Madras v. N.K. Nataraja Mudaliar, AIR 1969 SC 147: (1968) 3 SCR 829: (1968) 22 STC 376. The validity of Central Sales Tax Act, was challenged for violation of article 303(1). The Act provided for levy of sales tax in case of sales to an unregistered dealer at 7% or the rate applicable to sale of such goods in the State, whichever be higher. The tax was thus, to vary from State-to-State. The Supreme Court upheld the validity of the Act on the ground that any act imposing a tax, which was to be collected and retained by States, could not be said to be giving preference to one State over another or discriminating between them.

Article 304. Restrictions on trade, commerce and intercourse among States

What are the restrictions imposed on trade, commerce and intercourse among States?

Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law-

- (a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
- (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the

Legislature of a State without the previous sanction of the President.

State of Madhya Pradesh v. Bhailal Bhai, MANU/SC/0029/1964 : AIR 1964 SC 1006: 1964 Jab LJ 115: (1964) 15 STC 450: 1964 MPLJ 705: (1964) 1 SCWR 793: (1964) 6 SCR 261. The sales tax imposed by the State of Madhya Bharat on tobacco leaves, manufactured tobacco and tobacco used for bidi manufacturing payable at the point of sale by the importer in Madhya Bharat was held to be violative of article 301 on the ground that similar goods manufactured and produced in the state of Madhya Bharat was not subject to the same tax.

Article 305. Saving of existing laws

Article 305 provides that nothing in articles 301 and 303 shall affect the provisions of any existing law except insofar as the President may direct otherwise. Thus, even if an existing law gives preference to one state over the other or makes discrimination it shall not be invalid.

CHAPTER 30

Services under the Union and the States

(Articles 308-323)

Article 308. Interpretation

In this Part, unless the context otherwise requires, the expression "State" does not include the State of Jammu and Kashmir.

Article 309. Recruitment and conditions of service of persons serving the Union or a State

Subject to the provisions of this Constitution, Acts, of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public service and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

The law made by Parliament or legislature of a State under this article in subject to restrictions in other provisions of the Constitution e.g., fundamental rights or restrictions in article 311 and the rules made by the President and Governor have been expressly made subject to Act of Parliament and State Legislature respectively. Thus, if there is no law made by Parliament and rules are made by the President or person authorised by him and later on Parliament passes an Act the provisions of which are inconsistent with such rules, the rules will cease to be effective.

Article 310. Tenure of office of persons serving the Union or a State

(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Explain doctrine of pleasure with the help of relevant case laws

Doctrine of Pleasure.-

In England, the common law rule is that a civil servant holds his office during the pleasure of the crown. This connotes that there is no contract that gives the employee a remedy for its breach. His service can be terminated at any time without assigning any reason. For the same reason, a civil servant cannot claim arrears of salary due or damages for wrongful dismissal, nor can he enforce by action any of the conditions of service. The doctrine of pleasure is based upon public policy that a public servant whose continuance in office is not or is against the public interest must be relieved of it. On the same policy consideration of the doctrine of pleasure

has been introduced in article 310(1) of the Constitution with the notable qualification that it is subject to the express provisions of the Constitution.

Restrictions on the Doctrine of Pleasure.-

The Doctrine of Pleasure embodies in article 310, though not subject to legislative power is not, however, unlimited. On its exercise, the Constitution imposes the following several qualifications-

(1) The 'pleasure' under article 310 cannot be exercised in a discriminatory manner and is controlled by the fundamental rights, especially articles 14, 15 and 16.

Article 14 can be invoked when a person's services are terminated in a discriminatory manner. Article 15(1) comes into play if a person's services are terminated on account of religious, bigotry, social prejudice, casteism, provincialism or gender. Article 16(1) imposes equitable treatment and bars arbitrary discrimination.

(b) Under article 320(3)(c), the Union or the State Public Service Commission is to be consulted on all disciplinary matters affecting a person serving in a civil capacity under the Central or a State Government.

(c) When a person is appointed to a civil post or contract for a fixed term, the contract may be extended if it is necessary in order to secure the services of a person having special qualification provided for the payment of compensation to him.

State of Uttar Pradesh v. Babu Ram Upadhyaya, MANU/SC/0312/1960 : AIR 1961 SC 751: (1961) 1 SCA 593: (1961) 1 Cr LJ 773: (1961) 2 SCR 679: ILR (1961) 1 All 509. The Supreme Court observed that the power of the Governor to dismiss at pleasure, subject to the provisions of article 311, is not an executive power under article 154, but a constitutional power and is not capable of being delegated to officers subordinate to him.

Article 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

How is a civil servant dismissed, removed or reduced in rank. Explain the procedure

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

Define constitutional protection to civil servant. Explain in detail with case laws

Constitutional Protection to Civil Servants.-

The preceding article enacts the general principle that a government servant holds office during the pleasure of the Government. This article, which has been called "unique in world constitutionalism", places two restrictions on the prerogative of dismissal at pleasure, these are-

- (i) that persons employed in civil capacities under the Union or States shall not be dismissed or removed by an authority subordinate to that by which they were appointed, and
- (ii) no such person shall be dismissed or removed or reduced in rank except after an inquiry as provided in clause (2).

These restrictions are the constitutional safeguard for civil servants.

Persons who may claim protection of article 311.-

The two safeguards provided apply only to persons who are members of civil service of the Union or of an all-India service or of a civil service of a State or to persons who hold a civil post under the Union or a State. These safeguards are not applicable to members of defence forces or to any post connected with defence. Thus, the protection under article 311 is not available to military personnel who are governed by the Army Act. Their employment can be terminated without assigning any reasons.

Purshotam Lal Dhingra v. Union of India, MANU/SC/0126/1957 : AIR 1958 SC 36: 1958 MPC 165: 1958 SCA 37: 1958 SCJ 217: 1958 BLJR 285: 1958 All LJ 372: MANU/SC/0126/1957 : 1958 SCR 828. The appellant was appointed to officiate on a higher post. After two years' service the appellant was reverted to his original post on the ground of unsatisfactory work. It was said that the order of his reversion would not stand in the way of his being considered again for promotion if in the future his work and conduct justified.

The Supreme Court held that the appellant had no right to the post as he was merely officiating in the post and the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government. The appellant was not reduced in rank by way of punishment and therefore, he cannot claim the protection of article 311(2).

Define Civil Post

Civil Post.-

Article 311 is applicable only to one class of public officers i.e., those who hold a civil post under the union or the States. The term 'civil post' means an appointment to an office or employment on the civil side of the administration as distinguished from the military side. There must exist a relationship of master and servant between the states and the person said to be holding a post under it.

State of Uttar Pradesh v. Audh Narain Singh, MANU/SC/0274/1964 : AIR 1965 SC 360: (1964) 1 SCWR 506: 1964 All LJ 777: 1964 (2) SCJ 590: (1964) 7 SCR 89. The Supreme Court has held that a person holds a civil post if there exists a relationship of master and servant between the State and the person holding the post.

No Removal by Subordinate Authority.-

The first safeguard is that no member of a civil service or holding a civil post can be dismissed or removed by any authority subordinate to the authority by which he was appointed.

Mahesh Prasad v. State of Uttar Pradesh, MANU/SC/0045/1954 : AIR 1955 SC 70: 1955 Cr LJ 249: 1955 BLJR

98: 1955 All LJ 87: 1955 SCA 65: 1955 SCJ 153: MANU/SC/0045/1954 : 1955 SCR 965. The person appointed by the Divisional Personnel Officer, E.I.R. was dismissed by the Superintendent, Power EIR. The court held the dismissal valid as both the officers were of the same rank.

Reasonable opportunity to defend.-

Article 311(2) lays down that a civil servant cannot be dismissed or removed or reduced in rank unless he has been given a reasonable opportunity to show cause against the action proposed to be taken against him.

Managing Director, ECIL, Hyderabad v. B. Karunakar, MANU/SC/0237/1994 : (1993) 4 SCC 727: 1994 AIR SCW 1050: JT 1993 (6) SC 1: 1994 SCC (Lands) 1009: 1994 (1) SCT 319: 1993 (3) Serv LJ SC 193. The Supreme Court has held that when the enquiry officer is not disciplinary authority, the delinquent employee has a right to receive the copy of the enquiry officer's report so that he could effectively defend himself before the disciplinary authority. A denial of the enquiry officer's report before that disciplinary authority takes its decision on the charges, is a denial of the reasonable opportunity to the employee to prove his innocence and is a breach of the principle of natural justice.

In Parshotam Lal Dhingra v. Union of India, MANU/SC/0126/1957 : AIR 1958 SC 36, the Supreme Court has laid down two tests to determine whether the termination is by way of punishment-

(1) Whether the servant had a right to hold the post or the rank?

(2) Whether he has been visited with evil consequences?

The Supreme Court also held that the constitutional guarantee of reasonable opportunity is available to both permanent and temporary servants.

Khem Chand v. Union of India, MANU/SC/0120/1957 : AIR 1958 SC 300: 1958 SCA 222: 1958 SCJ 497: (1958) 1 Mad LJ (SC) 169: 1958 (I) LLJ 167: 1958 SCR 1080. The Supreme Court of India has said that reasonable opportunity envisaged to the Government servant by the provision contained in article 311(2) includes-

(a) an opportunity to deny his guilt and establish innocence which he can only do if he is informed about the charges levelled against him and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining any other witness in support of his defence.

Article 312. All-India Services

Define All-India Services

(1) Notwithstanding anything in Chapter VI of Part VI or Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services (including an all-India judicial service) common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

This article empowers Parliament to create new all-India services common to the Union and the States. But before

Parliament can setup an all-India service, it is necessary that a resolution in the Council of States supported by not less than two-thirds of the members present and voting should have been passed declaring that it is necessary or expedient in the national interest to do so.

The 42nd Amendment has amended to article 312 of the Constitution which provides for the creation of an All-India Judicial Service by Parliament. The new clause (3) says that such All India Judicial Service shall not include any post inferior to that of a District Judge as defined in article 236. The new Clause. (4) makes it clear that a law providing for the creation of the All-India Judicial Service shall not be deemed to be an amendment of this Constitution for the purpose of article 368.

The object of the creation of All-India Judicial Service is to ensure greater inter-State Co-ordination and implementation of the policies of the Central Government through these officers. This also enables the Central Government to exercise a control over States in matters of execution of Union laws. It is hoped that the these services should be left under the complete control of the Judiciary and not under the Government. This would, indeed, be essential for maintaining independence and impartiality of the Judiciary.

Article 315. Public Service Commissions for the Union and for the States

How is the Public Service Commission in Union and State constituted?

- (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.
- (2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.
- (3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.
- (4) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.
- (5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

The Constitution establishes a Public Services Commission in each State. It is possible for two or more States to have a Joint Public Service Commission. The basic policy of the Constitution is that each state should have its own Public Service Commission, but if for administrative or financial reasons it is not possible for each State to have Commission of its own, two or more States may have a joint Public Service Commission. The members of the Union are to be appointed by the President or of the State Commission are appointed by the Governor. But one-half of the members of every Public Service Commission shall be persons who, up to the dates of their respective appointments, have held office for at least ten years under the Government. Normally, a member hold a office for a term of six-years. But if a member of the Union Commission attains the age of sixty-five years and of a State Commission sixty-two, he shall have to retire though he may not completed the term of six years.

Article 316. Appointment and term of office of members

How the members of commission are appointed and explain term also?

- (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State.

State of Mysore v. R.V. Bidap, MANU/SC/0397/1973 : AIR 1973 SC 2555: (1973) 2 SCWR 373: 1973 SCC (Lab) 538:

MANU/SC/0397/1973 : 1973 II LLJ 418, A question about the expiration of the constitutionally guaranteed tenure of office of a members of the Public Service Commission arose, who in the middle of his term, is appointed as its Chairman and claims a fresh, six years spell, or in other words, does he continue as Chairman only for the remaining period of his initial six years spell. The Supreme Court held that a member, when appointed as Chairman in the middle of his term, starts a new six years term subject to other provisions of the constitution.

The tenure of his office starts under article 316(2) from the date on which he enters upon his office, which in the case of Chairman, appointed as such or originally as member and later elevated as chairman, begins when he starts functioning as Chairman.

Article 317. Removal and suspension of a member of a Public Service Commission

Define the procedure of removal and suspension of a member of Public Service Commission

(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,-

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.

In Re: Smt. Sayalee Sanjeev Joshi, MANU/SC/1293/2005 : AIR 2005 SC 4419: 2005 AIR SCW 5334: JT 2005 (10) SC 206: MANU/SC/1293/2005 : (2005) 8 SCC 501: 2005 (7) SCJ 578: (2005) 8 SCALE 452. The Court has propounded the approach to its exercise of jurisdiction on a reference. Its task is to find out as a fact whether materials disclosed conduct on the part of a member which, would constitute 'misbehaviour' within article 317(1) of the Constitution. It has to consider admissibility and relevance of evidence advanced and cannot proceed on the basis of suspicion instead of proof.

Article 318. Power to make regulations as to conditions of service of members and staff of the Commission

In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulations-

(a) determine the number of members of the Commission and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

Article 319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members

On ceasing to hold office-

- (a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
- (b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- (c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- (d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

According to article 319, the members of the Union and the State Public Service Commission are debarred from reappointment after the expiry of their term of office. They are also ineligible for any other employment under the Central or State Governments. This provision is necessary in order to ensure impartiality.

Article 320. Functions of Public Service Commission

What are the functions of Public Service Commission?

- (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.
- (2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- (3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted-
 - (a) on all matters relating to methods of recruitment to civil services and for civil posts;
 - (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
 - (c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;
 - (d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

Keshava v. State of Mysore, AIR 1956 Mys 20: ILR (1955) Mys 597. It is the duty of the UPSC to conduct examinations for appointment to the service of the Union. This does not mean that the examination should always be competitive and not selective. The object of holding the examination is to test the capacity of the candidates and just to have an idea whether a particular candidate is fit for the proposed appointment or not. In addition to the results of the examination, other considerations may also be kept in view making appointment e.g., the viva-voce test.

Inder Prakash Gupta v. State of Jammu and Kashmir, AIR 2004 SC 2523: 2004 AIR SCW 2737: 2004 (2) SCT 680: 2004 (6) SRJ 186: (2004) 5 SCALE 90: 2004 (3) Serv LJ 159 SC: 2004 (3) Supreme 593. Public Service Commissions must scrupulously follow the statutory rules during recruitment and in making appointment.

Additional functions may be assigned to the Union and State Public Service Commission by an Act of Parliament and State Legislature (article 321). The expenses of the Union or a State Public Service Commission, and the salaries and allowances of its members are charged on the Consolidated Fund of India or State, as the case may be (Article 322).

The commission shall submit an annual report on the work done by them to the President or Governor, as the case may be. The reports are to be laid before the Parliament and the State Legislatures, respectively together with a memorandum as regards the cases where the advice of the commission was not accepted and the reasons for such non-acceptance (Article 323).

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CHAPTER 31

Tribunals

(Articles 323A, 323B)

The 42nd Amendment Act introduces an innovation in the Constitution in the form of new articles 323A and 323B. It provides that Parliament may establish tribunals for adjudication of disputes concerning recruitment and conditions of service of persons appointment to public service under Central, State or any local or other authority, or a corporation owned or controlled by Government. The law made by Parliament for the purpose may specify the jurisdiction and procedure of these tribunals and exclude the jurisdiction of all courts, except that of the Supreme Court under article 136, with respect to the service matters falling within the purview of these tribunals.

Article 323A. Administrative tribunals

Explain the Administrative Tribunals

(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may-

- (a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;
- (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
- (c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
- (d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);
- (e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the cause of action on which such suits or proceedings are based had arisen after such establishment;
- (f) repeal or amend any order made by the President under clause (3) of article 371D;
- (g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

The jurisdiction for article 323A lay in the fact that massive case-law was being generated in the country in relation to service matter and too much time of the courts, especially of the High Courts, was being consumed on this type of litigation. Article 323A seeks to relieve the High Courts which used to take cognizance of service matters under article 226.

Article 323A is an enabling provision. Its scope is very wide and is synonymous with article 309. The expression "conditions of service" used in article 323A also occurs in article 309 and means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in such

matters as pension etc., and includes matters of dismissal or termination of the Service of Government servants. Therefore, the tribunals can be endowed with comprehensive jurisdiction in relation to service matters.

Union of India v. Deep Chand Pandey, MANU/SC/0088/1993 : (1992) 4 SCC 432: AIR 1993 SC 382: 1992 AIR SCW 3429: JT 1992 (5) SC 276: 1993 SCC (LandS) 21: 1992 (3) SCJ 229: (1992) 4 SCR 49: 1992 (2) UJ (SC) 714. The question was whether the Central Administrative Tribunal (CAT) has jurisdiction to decide the claims of respondents who were engaged only on casual basis at the office of Central Railway whose services were wrongly terminated. The court held that the scope of article 323A is very wide and by enacting 1985 Act this power has been exercised in almost full measures.

Article 323B. Tribunals for other matters

(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:-

- (a) levy, assessment, collection and enforcement of any tax;
- (b) foreign exchange, import and export across customs frontiers;
- (c) industrial and labour disputes;
- (d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;
- (e) ceiling on urban property;
- (f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;
- (g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;
- (h) rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants;
- (i) offences against laws with respect to any of the matters specified in sub-clauses (a) to (h) and fees in respect of any of those matters;
- (j) any matter incidental to any of the matters specified in sub-clauses (a) to (i).

(3) A law made under clause (1) may-

- (a) provide for the establishment of a hierarchy of tribunals;
- (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
- (c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
- (d) exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;
- (e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority

immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation.-In this article, "appropriate Legislature", in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.

Explain L. Chandra Kumar case in detail

L. Chandra Kumar v. Union of India, MANU/SC/0261/1997 : AIR 1997 SC 1125: 1997 AIR SCW 1345: JT 1997 (3) SC 589: MANU/SC/0261/1997 : (1997) 3 SCC 261: (1997) 3 SCALE 40: 1998 (2) Serv LJ 124 SC: 1997 (3) Supreme 147. The Supreme Court held that judicial review is the part of basic structure of the Constitution, the court declared clause 2(d) of article 323A and clause 3(d) of article 323B to the extent they exclude the jurisdiction of the High Courts under articles 226, 227 and of the Supreme Court under article 32, unconstitutional. Therefore, the judicial remedies under articles 32, 226 and 227 are now available against the decisions of all tribunals constituted under articles 323A and 323B. The remaining provisions of articles 323A and 323B are valid and operative.

CHAPTER 32

elections

Part XV

(Articles 324-328A)

Free, fair and impartial election is necessary in any democratic country. Explain

In order to ensure free, fair and impartial elections, the Constitution establishes the Election Commission, a body autonomous in character and insulated from political pressure or executive influence. Care has been taken, to ensure that the commission functions as an independent agency free from external pressures from the party in power, or the executive of the day. The commission is set up as a permanent body under article 324(1). It is an all-India body having jurisdiction over elections to Parliament, State Legislature, of the President and Vice-President.

According to article 324(1), the Superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every state and of elections to the officers of President and Vice-President held under this Constitution shall be vested in the Election Commission.

The Election Commission shall consist of the Chief Election Commissioner and such other Election Commissioners as the President may from time-to-time fix. The Chief Election Commissioner and other Election Commissioners are appointed by the President subject to the provisions of any law made by Parliament for the purpose [Article 324(2)].

When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission [Article 325(3)].

The President may appoint, after consultation with the Election Commission, such Regional Commissioners as the President may consider necessary to assist the Election Commission in the discharge of its functions. The Regional Commissioners may be appointed before each general election to the Lok Sabha and the State Legislative Assemblies, and also before the biennial election to the State Legislative Councils [Article 32(4)].

As the Regional Commissioners are appointed by the President in consultation with the Commission to assist it to perform its function, the Election Commissioners are placed on a higher pedestal than the Regional Commissioners. While the Election Commissioners are members of the Election Commission, the Regional Commissioners are not its members.

The President may make rules to determine the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners. This is, however, subject to any law made by Parliament [Article 324(5)].

The tenure of the Chief Election Commission is independent of the executive discretion for he cannot be removed from his office except in the like manner and on the like grounds as a judge of the Supreme Court [Proviso to Article 324(5)].

S.S. Dhanoa v. Union of India, MANU/SC/0399/1991 : AIR 1991 SC 1745: 1991 AIR SCW 1937: JT 1991 (3) SC 290: MANU/SC/0399/1991 : (1991) 3 SCC 567: (1991) 3 SCR 159: 1991 (2) UJ (SC) 555. The Supreme Court held that Election Commissioners cannot be placed on a par with the Chief Election Commissioner in terms of power and authority.

Explain T.N. Seshan case

T.N. Seshan v. Union of India, (1995) 4 SCC 611: 1995 AIR SCW 3341. It has been held by the Supreme Court that in cases of differences of opinion between Chief Election Commissioner and the other Commissioners the rule of majority to apply. Any friction among the members would adversely affect the prestige and efficiency of the Commission.

On the basis of the recommendations of the committee on Electoral Reforms Parliament enacted the Chief Election

Commissioner and other Election Commissioners Conditions of Service) Act, 1991 which provided that subject to the provisions of the Act, salary, pension and other conditions of service of the Chief Election Commissioner shall be equivalent to those of a Judge of the Supreme Court and salary, pension and other conditions of service of other Election Commissioners shall be equivalent to those of a Judge of a High Court.

The Act of 1991 also provided that the Chief Election Commissioner and other Election Commissioners could hold office for a term of 6 years from the date of assuming the office, provided that the Chief Election Commissioner, who attained the age of 65 years before the expiry of his term of 6 years had to vacate the office on attaining the age of 65 years. Similarly, an Election Commissioner who attained the age of 62 years before expiry of his term had to vacate his office on attaining the age of 62 years.

There shall be one general electoral roll for every territorial constituency (article 325). No person shall be ineligible for inclusion in any such roll on grounds only of religion, race, caste, sex or any of them. The elections to the Parliament and State Legislatures are to be held on the basis of adult suffrage. Every person who is a citizen of India and who is not less than 18 years of age is not otherwise disqualified under this Constitution or any law (Representation of People Act, 1950) made by the Legislature on the ground of non-residence, unsoundness of mind, crime or illegal practice, has a right to be registered as a voter (Article 326).

Article 327 empowers Parliament to make provisions with respect to all matters, relating to or in connection with election to Parliament and State Legislature, the preparation of electoral rolls, the delimitation of constituencies and all other connected matters.

A.C. Jose v. Sivan Pillai, MANU/SC/0341/1984 : AIR 1984 SC 921: (1984) 2 SCC 656: 1984 Ker LT 510: 1984 UJ (SC) 558. The Supreme Court held that the Commission had no power outside the provisions of the Act or rules made by the Legislature under article 327. Where there is no Parliamentary Legislation or rule made thereunder the commission is free to pass any orders in respect of conduct of election. The powers of the Commission are meant to be supplement rather than supplant the law in the matters of superintendence, direction and control of elections under article 324.

Article 328 provides that State Legislatures are given power to make laws with respect to all matters relating to, or in connection with the elections to the House or either House of the State Legislature including the preparation of electoral rolls and all other matters necessary for securing the due Constitution of the House or Houses.

Article 329. Bar to interference by courts in electoral matters

Notwithstanding anything in this Constitution,

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Article 329 bars the jurisdiction of Courts in respect of certain electoral matters. Clause (a) provides that the validity of any law relating to delimitation of constituencies or allotment of seats to such constituencies cannot be called in question in any court. Clause (b) bars jurisdiction of Civil Courts to entertain disputes relating to elections to Houses of Parliament or State Legislature.

K. Venkatachalam v. A. Swamickan, MANU/SC/0298/1999 : AIR 1999 SC 1723: 1999 AIR SCW 1353: JT 1999 (3) SC 242: MANU/SC/0298/1999 : (1999) 4 SCC 526: (1999) 3 SCALE 12: 1999 (4) Supreme 333: 1999 (2) UJ (SC) 1064. The Supreme Court has held that article 329(b) which bars interference of courts in electoral matters does not come into play in a case which falls under articles 191 and 193 which provides for disqualification of membership and penalty for sitting and voting when disqualified and the whole of election process is over. In such case, the High Court can interfere under article 226 and declare that he was not entitled to sit in the State Assembly.

The Constitution (19th Amendment) Act, 1966, abolished the jurisdiction of Election Tribunal over election disputes. The Amendment has vested this power in the High Courts. The effect of vesting the power in the High Courts was to expedite decision in election disputes.

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CHAPTER 33

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

(Articles 330-342)

Article 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People

(1) Seats shall be reserved in the House of the People for-

- (a) the Scheduled Castes;
- (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and
- (c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.

Explanation.-In this article and in article 332, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census.

Article 331. Representation of the Anglo-Indian community in the House of the People

Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the people, nominate not more than two members of that community to the House of the People.

Article 332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State.

(3A) Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the re-adjustment, on the basis of the first census after the year 2026, of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be,-

- (a) if all the seats in the Legislative Assembly of such State in existence on the date of coming into force of

the Constitution (Fifty-seventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all the seats except one;

(b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in existing Assembly.]

(3B) Notwithstanding anything contained in clause (3), until there-adjustment, under article 170, takes effect on the basis of the first census after the year 2026, of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy-second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district.

Provided that for elections to the Legislative Assembly of the State of Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Bodoland Territorial Areas District, so notified, and existing prior to the constitution of the Bodoland Territorial Areas District, shall be maintained.

Article 333. Representation of the Anglo-Indian community in the Legislative Assemblies of the States

Notwithstanding anything in article 170, the Governor of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate one member of that community to the Assembly.

Article 334. Reservation of seats and special representation to cease after seventy years

Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to-

(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and

(b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination,

shall cease to have effect on the expiration of a period of seventy years from the commencement of this Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

Article 335. Claims of Scheduled Castes and Scheduled Tribes to services and posts

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the

Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

Article 336. Special provision for Anglo-Indian community in certain services

(1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

Article 337. Special provision with respect to educational grants for the benefit of Anglo-Indian community

During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of annual admissions therein are made available to members of communities other than the Anglo-Indian community.

Article 338. National Commission for Scheduled Castes

How was the National Commission for schedule castes and schedule tribes constituted?

(1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by the rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.

(10) In this article, references to the Scheduled Castes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340 by order specify and also to the Anglo-Indian community.

Article 338A. National Commission for Scheduled Tribes

(1) There shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court of office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.

Article 339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes

(1) The President may at any time and shall, at the expiration of ten years from the commencement of this

Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

Article 340. Appointment of a Commission to investigate the conditions of backward classes

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

Article 341. Scheduled Castes

Explain schedule caste and schedule tribes

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 342. Scheduled Tribes

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof], by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

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CHAPTER 34

Official language

(Articles 343-351)

Article 343. Official language of the Union

Explain the official language of the Union

(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of-

(a) the English language, or

(b) the Devanagari form of numerals, for such purposes as may be specified in the law.

Article 344. Commission and Committee of Parliament on official language

(1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to-

(a) the progressive use of the Hindi language for the official purposes of the Union;

(b) restrictions on the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in article 348;

(d) the form of numerals to be used for any one or more specified purposes of the Union;

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.

(6) Notwithstanding anything in article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report.

Article 345. Official language or languages of a State

Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

Article 346. Official language for communication between one State and another or between a State and the Union

The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

Article 347. Special provision relating to language spoken by a section of the population of a State

On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

Article 348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc

Explain language to be used in the Supreme Court and in the High Court

(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides-

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts-

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any

language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

Article 349. Special procedure for enactment of certain laws relating to language

During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

Article 350. Language to be used in representations for redress of grievances

Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Article 350A. Facilities for instruction in mother-tongue at primary stage

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Article 350B. Special Officer for linguistic minorities

- (1) There shall be a Special Officer for linguistic minorities to be appointed by the President.
- (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

Article 351. Directive for development of the Hindi language

It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

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CHAPTER 35

Emergency Provisions

(Articles 352-360)

A novel feature of the Indian Constitution is the way in which the normal peace-time federalism, can be adopted to an emergency situation. The framers of the Constitution felt that, in an emergency, the Centre should have overriding powers to control and direct all aspects of administration and legislation throughout the country. The Indian Constitution envisages three types of emergencies-

- (1) Emergency arising from a threat to security of India or any part of its territory;
- (2) Failure of Constitutional Machinery in a State;
- (3) Financial Emergency.

Article 352. Proclamation of Emergency

Explain national emergency and grounds thereof

(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation.

Explanation.-A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.

(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the proclamation under clause (4):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

(6) For the purpose of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

(7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

(8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation,-

(a) to the Speaker, if the House is in session; or

(b) to the President, if the House is not in session, a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution.

(9) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or armed rebellion] or imminent danger of war or external aggression or armed rebellion, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation.

1. National Emergency.-

Under article 352(1), if the President is satisfied that a grave emergency exists whereby the security of India or any Part thereof is threatened, whether by war, or external aggression, or armed rebellion, he may, by proclamation, make a declaration to that effect, such a proclamation may be made in respect of the whole of India, or such part of the Indian Territory as may be specified in the proclamation. Article 352(1) thus means that the proclamation need not extend to the whole of India. It may be restricted to a part of the Indian territory. A proclamation of emergency under article 352(1) may be made before the actual occurrence of war, external aggression or armed rebellion.

In 1978, article 352 was amended by the 44th Constitutional amendment so as to minimise the chances of abuse of power to declare emergency.

(1) The 'internal disturbance' was replaced by the 'armed rebellion'.

(2) A proclamation of emergency will not be issued by the President unless a recommendation of the Council of Ministers to that effect is communicated to him in writing.

(3) The proclamation of emergency must be approved within one month instead of two months.

(4) A proclamation of emergency ceases to operate automatically at the expiry of six months and can be continued beyond that period only on approval by a resolution of both Houses of Parliament every six months.

(5) The President shall revoke a proclamation of emergency on a resolution of the House of the People to that effect and for that purpose a special sitting of House can be called at a 14 days' notice by one-tenth of the total members of that House.

(6) The enforcement of Fundamental Rights in articles 20 and 21 cannot be suspended at all.

(7) Article 19 now remain unaffected if the ground of proclamation is only armed rebellion and not war or external aggression.

Minerva Mills Ltd. v. Union of India, MANU/SC/0075/1980 : AIR 1980 SC 1789: (1980) 2 SCC 591: 1980 Ker LT 573: 1980 UJ (SC) 727. It has been held that there is no bar to judicial review of the validity of a proclamation of emergency issued by the President under article 352(1). Merely because a question has a political complexion, it is no ground why he could shrink from performing its duty under the Constitution if it raises an issue of constitutional determination. The court's power is limited only to examining whether the limitations conferred by the Constitution have been observed or not.

What are the consequences of the proclamation of national emergency?

Consequences of the Proclamation of emergency.-

These are the following consequences of the Proclamation of emergency-

(1) Extension of Centre's executive power.-According to article 353, during the operation of a proclamation of emergency the executive power of the Union extends to giving of directions to any State as to the manner in which the executive power of the State is to be exercised. The 42nd Amendment Act, made a consequential change in article 353 following the amendment made in article 352. It provides that the executive power of the Union to give directions under clause (a) and the power to make laws under clause (b) shall also extend to any State other than State where emergency is in force, if the security of India or any part of the territory is threatened by activities in or in relation to that part of the territory of India in which the proclamation of emergency is in operation.

(2) Parliament empowered to legislate on State Subjects [article 353(b)].- While the proclamation of emergency is in operation, the Union Parliament is empowered to make laws with respect to any of the matter in the State List. The distribution of legislative power is thus fundamentally changed during emergency.

(3) Centre empowered to alter distribution of revenue between the Union and the State (Article 354).- The President may, while a proclamation of emergency is in operation by the order after the financial arrangement between the State and the Union as provided in articles 268 to 279. Every such order is to be laid before each House of Parliament and will come to an end by the end of the financial year in which the proclamation of emergency cease to operate.

(4) Extension of life of Lok Sabha [Article 83(2)].-While the proclamation of emergency is in operation, the President may extend the normal life of the Lok Sabha by a year each time upto a period not exceeding beyond six months after proclamation cease to operate.

(5) Duty of the Union to Protect State (article 355).-Article 355 imposes a duty on the Union to protect every State against external aggression and internal disturbance and ensure that the Government of every State is carried on in accordance with the provision of the constitution. Article 355 thus imposes the following two obligations on the Central Government:

(1) The duty to protect States from internal disturbance and external aggression.

(2) The duty to see that Government of every State is carried on in accordance with the provisions of the Constitution.

(6) Suspension of Fundamental Rights Guaranteed by article 19.-

Article 358 provides for suspension of the six freedoms guaranteed to the citizens by article 19 of the Constitution. It says that a proclamation of emergency is in operation nothing in article 19 shall restrict the power of the State to make any law or to take any executive action abridging or taking away the rights guaranteed by article 19 of the Constitution.

(7) Suspension of right of enforcement of fundamental rights (article 359).-Article 359 empowers the President to suspend the right to enforce fundamental right guaranteed by Part III of the Constitution. It says that while the proclamation of emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the fundamental rights as may be mentioned in the order (except articles 20 and 21) and all proceedings pending in any court for the enforcement of such rights shall remain suspended for the period during the proclamation is in force or for such further period as may be specified in order.

Define State emergency

2. Provisions in case of failure of constitutional machinery in States (article 356).-

(1) If the President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation-

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People:

Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to five years.

(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless-

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:

Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab.

Articles 356 and 357 provides for meeting a situation arising from the failure of the constitutional machinery in a State, if the President, on receipt of a report from the Governor of a State or otherwise, is 'satisfied that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, the President may by proclamation-

(a) Assume to himself all or any of the functions of the State Government, or the powers of the Governor, or any body or authority in the State other than the State Legislature.

(b) Declare that the powers of the State Legislature are to be exercised by Parliament.

(c) Make such incidental provisions as may appear to him to be necessary or desirable for giving effect to the provisions of the proclamation, the President may even suspend in the whole or in part the provisions of the Constitution relating to any body or authority in the State.

Explain in detail S.R. Bommai case

S.R. Bommai v. Union of India, MANU/SC/0444/1994 : (1994) 3 SCC 1: AIR 1994 SC 1918: 1994 AIR SCW 2946: JT 1994 (2) SC 215: (1994) 2 SCR 644. The court held that secularism is a basic feature of the Constitution and any State Government which acts against that ideal can be dismissed by the President. It was held that in matters of religion the State has no place. No political party can simultaneously be a religious party as well as political party. The court has laid down the following guidelines-

(1) Presidential proclamation dissolving a State Legislative Assembly is subject to judicial review.

(2) If a State Government works against secularism, President's rule can be imposed.

- (3) No wholesale dismissal of opposition ruled State Governments when a new political party assumes power at the Centre.
- (4) if President's rule is imposed only on political consideration the court can even restore the assembly.
- (5) Imposition of President's rule and dissolution of State Assembly cannot be done together.
- (6) State Assembly can be dissolved only after Parliament approves Central rule.
- (7) The Supreme Court or High Court can compel the Union Government to disclose material on whose basis President's rule is imposed on a State.
- (8) The power of the President under article 356 is a constitutional power, it is not an absolute power. The existence of material is a pre-condition to form the satisfaction to impose the President's rule.

3. Financial Emergency (Article 360)

Article 360. Provisions as to financial emergency

Explain financial emergency

(1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

(2) A Proclamation issued under clause (1)-

- (a) may be revoked or varied by a subsequent Proclamation;
- (b) shall be laid before each House of Parliament;
- (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution-

- (a) any such direction may include-
 - (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;
 - (ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;
- (b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving

in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

Article 360 makes provisions concerning financial emergency. If the President is satisfied that a situation has arisen whereby the financial stability or credit of India, or any part thereof, is threatened, he may by a proclamation make a declaration to that effect.

When such a proclamation is in operation, the centre can give directions to any State to observe such canons of financial propriety as may be specified in the directions. It may also give such other directions as the President may deem necessary and adequate for the purpose. Any such directions may provide for the reduction of salaries and allowances of all or any class of persons serving in the State.

The 44th Amendment makes article 360 self-contained. It provides that the proclamation of financial emergency will cease to be in operation at the expiry of two months unless it has been approved by both Houses of Parliament. Such a proclamation may be revoked or varied by the President by a subsequent proclamation. But if the Lok Sabha is dissolved during the period of two months and resolution is approved by the Rajya Sabha, but not by the Lok Sabha the proclamation shall cease to operate at the expiry of 30 days from the date on which the new Lok Sabha sits unless before the expiry of 30 days a resolution approving proclamation is passed by the Lok Sabha.

The duration of a proclamation of financial emergency will be in operation for two months and unless approved by President it shall cease to operate at the expiry of two months' period.

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CHAPTER 36

Amendment of the Constitution

(Article 368)

Article 368. Power of Parliament to amend the Constitution and procedure there for

Define the power of Parliament to amend the Constitution

In which provision if amendment seeks any change, it requires the ratification by the legislature of States?

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

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, 5[it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill:

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

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

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

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

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

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

In a federal Constitution, power to amend the Constitution is of special importance because it can affect the distribution of powers between Union and states. A federal Constitution is generally rigid in character as the procedure of amendment is unduly complicated. The framers of the Indian Constitution were keen to avoid excessive rigidity. They are anxious to have a document which could grow with a growing nation adapt itself to the changing need and circumstances of a growing people.

His Holiness Kesavananda Bharati Sripadgalvaru v. State of Kerala, MANU/SC/0445/1973 : AIR 1973 SC 1461: (1973) 4 SCC 225: (1973) Supp SCR 1. The machinery of amendment should be like a safety valve, so devised as neither to operate the machine with too great facility nor to require in order to set in motion, an accumulation of force sufficient to explode it. The Constitution makers have kept the balance between the danger of having non-amendable Constitution and a Constitution which is too easily amendable.

The framers of the Indian Constitution provided for a process which is neither too rigid nor too flexible. Article 368 specially deals with amendments but some other articles in the Constitution provide for amendments by ordinary legislative process. Thus, provisions of the Indian Constitution may be amended in the following ways-

(1) By Simple Legislative Process.-

Some articles like 4, 169, 239, 312 and Fifth and Sixth Schedules give authority to Parliament to make amendments by passing a law for this purpose by ordinary legislative process.

(2) By Special Majority.-

The general procedure laid down in article 368 is that a Bill for amendment of the Constitution may be introduced in either House of Parliament but it must be passed by a majority of total membership and 2/3rd majority of members present and voting in each of the two Houses and should receive the assent of the President thereon.

The expression 'total membership' means the total number of members composing the House irrespective of the fact that whether there are vacancies or absentees on any account.

(3) With the consent of State Legislatures.-

According to proviso to clause (2) of article 368, the following provisions can be amended only when a Bill for that purpose is passed by majority of total membership and 2/3rd majority of members present and voting in each House of Parliament and is also ratified by Legislatures of at least 1/2 of the States by resolution before it is presented to the President for his assent-

- (1) Election of the President of India (Articles 54, 55).
- (2) Extent of executive powers of the Union (Article 73).
- (3) extent of the executive power of the State (Article 162).
- (4) Provisions relating to Supreme Court (Ch. IV of Part V, i.e. Articles 124-147).
- (5) Provisions relating to High Courts for States (CH. V of Part VI, i.e., Articles 214-231).
- (6) Provision relating to High Courts for Union Territories (Article 241).
- (7) Distribution of Legislative Power (Ch. I of Part XI i.e., Articles 245-55).
- (8) Any of the Lists of the VII Schedule.
- (9) The representation of states in Parliament (IV Schedule).
- (10) Provisions of article 368.

Amendment of Fundamental Rights.-

The question whether an amendment of Fundamental Rights guaranteed by Part III of the Constitution, is permissible under the Procedure Prescribed by article 368 came before the Supreme Court in number of cases which are-

- (1) Shankari Prasad Singh Deo v. Union of India, MANU/SC/0013/1951 : AIR 1951 SC 458: 1951 ALJ 740: (1951) 2 MLJ 683: 88 Cal LJ 281: 1951 SCJ 775: MANU/SC/0013/1951 : 1952 SCR 89. The first case on amendability of the Constitution, the validity of the Constitution (First Amendment) Act, 1951, curtailing the right to property guaranteed under article 31 was challenged. The amendment was challenged on the ground that it purported to take away or abridge the rights conferred by Part III.

The Supreme Court held that the power to amend the Constitution, including the fundamental rights, was contained in article 368 and that the word 'law' in article 13(2) did not include an amendment of the

Constitution which was made in the exercise of constituent and not legislative power.

(2) Sajjan Singh v. State of Rajasthan, MANU/SC/0052/1964 : AIR 1965 SC 845: 1965 (1) SCJ 377: (1965) 1 SCWR 593: (1965) 1 SCA 875: (1965) 1 SCR 933. The same question was raised in this case and Constitution (Seventeenth Amendment) Act, 1964 was called in question. The Supreme Court approved the majority judgment given in Shankari Prasad's case and held that the words 'amendment of the Constitution' means amendment of all the provisions of the Constitution.

What major propositions are made by Supreme Court in the case of I.C. Golak Nath?

(3) I.C. Golak Nath v. State of Punjab, MANU/SC/0029/1967 : AIR 1967 SC 1643: 1967 All LJ 813: 1967 (2) SCJ 486: (1967) 2 SCA 642: (1967) 2 SCR 762: (1967) 2 SCWR 1006. The validity of the 17th Constitutional Amendment Act was again challenged which inserted certain Acts in Ninth Schedule. The Supreme Court by a majority of 6:5 prospectively overruled its earlier decision in Shankari Prasad and Sajjan Singh cases and held that Parliament had no power from the date of this decision to amend Part III of the constitution so as to take away or abridge the fundamental rights.

These are the following major propositions which can be drawn from the majority opinion in Golak Nath-

- (1) The Substantive Power to amend is not to be found in article 368, this article only contains the procedure to amend the Constitution;
- (2) A law made under article 368 would be subject to article 13(2) like any other law;
- (3) The word 'amend' envisaged only mines modifications in the existing provisions but not any major alterations therein;
- (4) To amend the Fundamental Rights, a Constituent Assembly ought to be convened by Parliament.

24th Amendment Act, 1971.-

In order to remove difficulties created by the decision of Supreme Court in Golak Nath's case Parliament enacted (24th Amendment Act). This amendment has made the following amendments-

- (1) It has added a new clause (4) to article 13 which provides that nothing in this article shall apply to any amendment of this Constitution made under article 368.
- (2) It substituted a new marginal heading to article 368, as 'Power of Parliament to amend the Constitution and Procedure there fore.
- (3) It inserted a new sub-section (1) in article 368 which provides that notwithstanding anything in this Constitution, Parliament may, in exercise of its constituent power amend by way of addition, variation, or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- (4) It has added a new clause (3) to article 368.

Explain the Kesavananda Bharati case in detail

4. His Holiness Kesavananda Bharati Sripadgalvaru v. State of Kerala, MANU/SC/0445/1973 : AIR 1973 SC 1461: (1973) 4 SCC 225: (1973) Supp SCR 1. In this case the validity of the 24th Constitutional Amendment Act was challenged. This case popularly known as Fundamental Rights case was decided by Supreme Court overruled the much criticized judgment in Golak Nath case but as to power of Parliament to amend the Constitution, the court ruled that article 368 does not enable Parliament to alter the basic structure or framework of the Constitution.

Sikri C.J. held that the basic structure of the Constitution consists of the following features-

- (1) Supremacy of the Constitution.
- (2) Republican and democratic form of government.
- (3) Secular character of Constitution.
- (4) Separation of powers between Legislature, executive and judiciary.
- (5) Federal Character of the Constitution.

Hegde and Mukherjee, JJ., gave the following illustrations of basic features of the Constitution:-

- (1) Sovereignty of India.
- (2) Democratic Character of Government.
- (3) Unity of the Country.
- (4) Essential features of individual freedoms guaranteed by the Constitution.
- (5) Mandate to build welfare State and egalitarian society.

(5) *Indira Nehru Gandhi v. Raj Narain*, MANU/SC/0304/1975 : AIR 1975 SC 2299: (1976) 2 SCR 347: 1975 Supp SCC 1. In this case the Supreme Court applied the theory of basic structure and struck down clause (4) of article 329A which was inserted by the 39th Amendment Act, 1975 on the ground that it was beyond the amending power of Parliament as it destroyed the basic features of the Constitution.

(6) *Minerva Mills Ltd. v. Union of India*, MANU/SC/0075/1980 : AIR 1980 SC 1789: (1980) 2 SCC 591: 1980 Ker LT 573: 1980 UJ (SC) 727. The Supreme Court by 4:1 majority struck down clauses (4) and (5) of articles 368 inserted by the 42nd Amendment Act, on the ground that these clauses destroyed the essential features of the basic structure of the Constitution. Limiting amending power is a basic structure of the Constitution. The court observed:

"Our constitution is founded on a nice balance of power among the three wings of the State, namely, the executive, the legislature and the judiciary. It is the function of the Judges, nay their duty, to pronounce upon the validity of laws".

(7) *S.P. Sampath Kumar v. Union of India*, AIR 1987 SC 386: 1987 Lab IC 222: 1986 JT 996 (2): MANU/SC/0851/1987 : (1987) 1 SCC 124: 1986 (4) Supreme 382: (1987) 1 SCWR 245: 1987 SCJ 401: 1987 (1) UJ (SC) 191. In this case, the constitutional validity of article 323A and the provisions of Administrative Tribunals Act, 1985 was challenged on the ground that the Act by excluding the jurisdiction of the High Courts under articles 226 and 227 in service matters had destroyed the power of judicial review which was a basic structure of the Constitution.

The Supreme Court upheld that the validity of article 323A. It has held that though the Act has excluded the judicial review of High Courts in service matter under articles 226, 227 but it has not excluded judicial review by Supreme Court under articles 32, 136.

(8) *L. Chandra Kumar v. Union of India*, MANU/SC/0261/1997 : AIR 1997 SC 1125: 1997 AIR SCW 1345: JT 1997 (3) SC 589: MANU/SC/0261/1997 : (1997) 3 SCC 261: 1997 SCC(LandS) 577: (1997) 3 SCALE 40: 1997 (3) Supreme 147. The Supreme Court overruled its ruling in the case of *Sampat Kumar* and held the power of judicial review which is the basic feature of the Constitution. The court has held that power of judicial review over legislative action vested in the High Courts under article 226 and Supreme Court under article 32 of the Constitution is an integral and essential feature of the Constitution and formed part of its basic structure.

(9) *I.R. Coelho v. State of Tamil Nadu*, MANU/SC/0595/2007 : AIR 2007 SC 861: 2007 AIR SCW 611: 2007 (3) Mad LJ 423: MANU/SC/0595/2007 : (2007) 2 SCC 1: (2007) 1 SCALE 197: 2007 (1) Supreme

137. The Supreme Court held that any law placed in the Ninth Schedule after April 24, 1974 when Keshvananda Bharati's Judgment was delivered will be open to challenge. The Court said that even though an Act is put in the Ninth Schedule by a Constitutional amendment its provision would be open to challenge on the ground that they destroy or damage the basic structure if the fundamental rights are taken away or abrogated pertaining to the basic feature of the Constitution.

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