

History of constitution:-

Entry of Britishers(1600-1765):-

1. Came as a traders and started to establish their business.
2. Established Commercial Contracts.
3. The company secured its charter with the help of Queen Elizabeth.
4. This Charter vested Management into the hands of governor with 24 members of East India Company.
5. The Company granted monopoly of Trade in east.
6. They have been granted the power to keep Armed force for its security.
7. The company started several trading centers in different parts of India.
8. The first of it has been established in 1612 in Surat with the permission of Emperor Jahangir.
9. Then in 1639 in at Musalipattanam, Madras
10. In 1690 at hariharpur in Mahanadi Delta
11. During the same time factories at Bombay, Madras and Culcutta become the chief Presidencies of the Company.

Legislative Power:-

1. In 1601, the charter has granted the governor and the company the power to make, ordain, and constitute such and so many reasonable laws, constitution, orders and ordinances for the good governance of the company
2. This was the Start
3. This step was Historical Germs out of which the Anglo-indian Codes were ultimately developed
4. The charter of 1609 and 1661 had some Powers, but the charter of 1693 had not mentioned any such power, as they were traders

Charter of 1726:-

1. It was a significant charter
2. The Legislative power was vested in the court of directors in England
3. As they were not having any power in India it was considered desirable to vest law making power in those who acquainted with the Indian conditions.
12. Here, the charter authorised the Governor and Council of the Presidencies to make, constitute, and ordain bye-laws, rules and ordinances for the good governance of the company and to impose punishment for their contravention.
13. Till the half of 18th century Britishers had not become a ruling power in India.
14. After the death of Aurangzeb, the Moghul Emperor, India became the battleground of rival.
15. The East India Company took full advantage of this chaotic situation and got the victory of the company in the battle of Plassey in 1757 against Sirajuddaula, Nawab of Bengal, had laid the foundation of the British Empire in India.

Beginning of British Rule(1765-1858):-

1. Grant of Diwani made the East India Company real master of Bengal, Bihar and Orissa.
2. EICo. Started Administration of Civil Justice and Collection of land revenue.
3. They exploited the Indians for their selfish ends.
4. The governor and councillors were appointed.
5. (a) The Governor and council was handling body of civil and Military servants

6. (b) Small salaries and big work to servants
7. A secret committee was appointed by the House of Commons to inquire into the affairs of the company on 13th April, 1772
8. (a) The committee in its reports, exposed many defects and deficiencies in the administration of East India Company and suggested it must be regulated by the parliament
9. (b) Consequently the parliament passed the Regulating Act of 1773

The Act of 1773:-

- a. It was having a great importance
- b. For the first time the right of parliament started to regulate the affairs of the East India Company.
- c. Established a definite system of government of India.
- d. 1. It changed the constitution in England
- e. 2. Recognised the Government of Calcutta
- f. 3. Brought the Presidency of Bombay and Madras under the control of the Governor-General of Bengal.
- g. 4. Established Supreme Court at Calcutta.
- e. **Form of Government:-**
 1. - This Act appointed a Governor-General and four Councillors for the Presidencies in West Bengal.
 2. - This Act vested in them all the Civil and Military Government
 3. Warren Hastings has been appointed as the first governor general in the Act itself.
 4. The Councillors can hold the office for 5 years.
- f. **Legislative power**
- g. **Supreme Court**
 1. The Act provided for the establishment of a supreme court at Calcutta
 2. Appointed a chief justice and three other judges
 3. These judges are to be appointed by the crown and were to hold the office during his pleasure.

The Act of Settlement, 1781:-

1. **Come into force to remove Defects**
2. (1) It exempted the action taken public servant in official capacity from the jurisdiction of the supreme court
3. (2) tied to settle the question of jurisdiction of the court over servant of the company
4. (3) it made it clear as to what law to be applied by the supreme court
5. (4) the act recognised and confirmed the appellate jurisdiction of Governor-General- in Council in cases decided by the Muffassil courts
6. (5) it empowered the Governor General in council to frame regulations for the provincial courts and councils also

The Pitts India Act, 1784:-

- This act has Distinguished the functions of commercial and political functions of the company

The Charter Act of 1813:-

1. The Indian Trade was open for all British Merchants
2. Monopoly of East India company was taken away

The Charter Act of 1833:-

1. This Charter brought important changes in the constitution of legislature in India.
2. The governor-general of Bengal has been appointed as governor-general of India.
3. This Act led centralised power of legislator in him and in governor-general of India.
4. But there was a restriction in power under certain specified matters.

The Charter Act of 1853:-

1. This act separated Legislative Machinery from Executive
2. Created a separate legislative council for India consisting of 12 members
3. The Council of Governor-General was enlarged by 6 additional members
4. This Council consists of Governor-General, the commander in chief, four members of the council and 6 legislative members of which 2 were English judges of Calcutta Supreme court and other 4 members were officially appointed by govt of Madras, Bombay, Bengal, and Agra
5. According to Panniah, it paved (opened) the way for the transfer of Indian territories to the crown

End of the Company Rule(1858-1919):-

1. The Government of India Act, 1858
2. Indian Council Act, 1861
3. Indian Council Act, 1892
4. Morley Minto Reforms-The Indian Councils Act of 1909

The Government of India Act, 1858:-

1. The act transferred the Government of India from the company to the British crown
2. India was governed by and in the name of her Majesty

Indian Council Act, 1861:-

1. It brought about the beginning of the representative institution
2. The benefit of this act was Indians were for the first time associated with the work of legislation

Indian Council Act, 1892:-

1. Modification done in previous act

Morley Minto Reforms -The Indian Council Act of 1909:-

1. Introduced representative and popular element

2. Created post secretary of state (Lord Morley) and Viceroy (Lord Minto)
3. Enhanced the power of legislative Councils of Central and provincial

1919-1947:- Introduction to Self Government

1. The Government of India Act,1919
2. Appointment of Simon Commission
3. The Government of India Act,1935
4. The Cripps Mission was brought in the year 1942 but failed due to no consent from Indians
5. In 1946, The Cabinet Mission came to India on 4th March 1946
6. The Indian Independence Act,1947

Government of India Act,1919:-

- Created due to Montagu-Chelmsford Report
- Morley Minto Reforms failed to satisfy
- Main features of the Act
 - (a) It promised a responsible Government to the Indians
 - (b) Introduced a "Dyarchy system" (Di-archy= double rule system)
 - (c) The object of Dyarchy is to train the natives in the act of self Government
 - (d) In the matter of legislation subjects were divided into Central and provincial
 - (e) The provincial subjects were divided into Reserve and transferred and are governed by Governor
 - (f) The matters of transferred was of lesser important and was transferred to Indian ministers and Governors
 - (g) Central Government
 1. The principle of responsible govt was not introduced in the centre
 2. The central govt remained responsible to British Parliament through the secretary of the state
 - (h) The structure of Government was to remain Unitary
- Shortcomings of the Act of 1919:-

1. The reforms of 1919 has failed to fulfil aspiration of people of India and led to non-cooperation movement to form the swaraj or self government.
2. Nonfulfillment of demand for responsible government.

3. Failure of Dyarchy system:-

- a. Wrong working of this system.
- b. The main difficulty of Indian system is of control of purse (i.e finance)
- c. Finance being the subject under reserve system was placed under the charge of the executive council and not in the hands of the ministers.
- d. It was very difficult for the ministers to implement any progressive measures for the want of funds.

Appointment of Simon Commission:-

1. Due to persistent demand British Government has to appoint a statutory commission known as Simon Commission.
2. This commission was appointed after 10 years of passing of the Government of India Act, 1919. In 1927 the Act had provided for the appointment of the statutory commission.

3. The commission was submitted its report in 1930.
4. The report was considered on the Round Table Conference.
5. This Round table conference was consisting of representatives of British Government, and of British India as well the Rulers of the States.
6. A white paper was prepared as a result of this conference and prepared the outlines of the reforms.
7. With the recommendation of the select committee the Government of India Bill was introduced in the parliament and passed with certain amendments as the Government of India Act, 1935

Government of India Act, 1935:-

1. This was the second milestone regarding the full responsible government.
2. This was the lengthy detailed document and complicated having 321 sections and 10 schedules.
3. The basic features of the Act:
 1. The Act created All India Federation, consisting of British India Provinces and such Indian States who desired to come in federation.
 2. Under the previous Act the Government was unitary and in this Act of 1935 proposed a federation taking the provinces and the Indian states as one unit.
 3. At the time of joining each state had to give the assent to join the federation and to sign the Instrument of Accession.
 4. The ruler of Indian States has never given the consent and had the dream of the federation never came into being.
 5. Dyarchy system was abolished at the provincial level and introduced at the centre by the Act of 1935.
 6. The executive authority of the centre was vested in the governor-general.
 7. The federal subjects were divided into two categories a) Reserved and b) Transferred.
 8. Provincial Autonomy:- The Act divided legislative power into provincial and central legislatures.
 9. Federal legislature:- The federal legislature was to consist of two houses.
 10. One is the council of the states and another is legislative assembly.
 11. Provincial Government: The provincial executive was to consist of the governor and a council of ministers to advise him.
 12. The governor was the Head of the Executive.
 13. The governor has been given the 3 types of power a) Discretionary b) Powers exercised in his individual judgement. c) Powers exercised on the advice of the ministers.
 14. As to his responsibility he had the right to override the advice given by the ministers.
 15. Provincial Legislature: After this Act, the legislature of Bombay, Bengal, Madras, Bihar, Assam and the united provinces were made bicameral (i.e. two houses).
 16. Distribution of legislative power between the centre and the provinces.
 17. The federal court was established and its jurisdiction was fixed as original, appellate and advisory.
 18. In 1939, the 2nd world war broke out in Europe.

- 4) The Cripps Mission was brought in the year 1942 but failed due to no consent from Indians.
- 5) In 1946, The cabinet mission came to India on 4th march 1946.
 - The Mission recommended:
 1. There should be a Union of India embodying both British India and the states and with the exception of certain reserve subjects, all subjects were to be retained by the states.
 2. The paramountcy of crown was to lapse.
 3. For the purpose of framing a new constitution a constituent assembly was to be elected.
 4. An interim Government was to be set up having support of major political parties.
 5. The proposal of cabinet mission was accepted and in July 1946 election to constituent assembly took place.
- 6) The Independence Act, 1947-
 16. This Act provides for the creation of two parts i.e. India and Pakistan from 15/08/1947.
 17. Both the dominions were to have a governor-general who was to be appointed by the king.
 18. The constituent assembly of both the dominions were empowered to frame laws for their respective territories till the new constitution came into force.
 19. After 15th aug. 1947, the control of British Govt. over both the Dominions was over and the British power came to an end.
 20. Till the New Constitution were framed, each of the dominions and province were to be governed by the government of India Act, 1935.
 21. The post of secretary of the state for India was to be abolished and taken over by secretary of the commonwealth of Nations.
 22. The Act proclaimed lapse of British Paramountcy over Indian States.

Meaning of Constitution:

23. According to Wade and Phillips, constitutional law is that law which describes the structure, power and functions of the government organs, their relationships with each other and with the people. It consists of both legal as well as non-legal rules. The formal rules are enforceable by the courts as well as non-legal rules are not so enforceable, though accepted as binding by all who are concerned in government.
24. The important aspect with reference to the constitution:-
 - 1) It is document which describes structure power and functions of governmental organs for example legislature executive and judiciary.
 - 2) It speaks about relationship of governmental organ with each other, and
 - 3) It also speak about the relationship of governmental organs with the people.

Salient features and characteristics of Indian Constitution:

1. A comprehensive document :-
25. Largest and most detailed constitution
26. Originally contains 395 articles, 22 parts and 8 schedules
27. Presently having more than 400+ articles, 24 parts and 12
28. Reasons are –

1. Constitution deals with organization and structure not only of the central govt. but also of state.
2. Detailed norms of the centre- State relationship
3. Our constitution has reduced to writing the unwritten conventions, and detailed procedures.
4. There exists various communities and groups in India. To remove mutual distrust amongs them it was felt necessary
5. It was also necessary to include in the constitution detailed provisions of fundamental rights, safeguards to minorities, scheduled tribes, scheduled casts and backward classes.
6. For social welfare constitution includes directive principles of state policies.
7. Besides this fundamental principles many administrative details are also included e.g. provisions regarding citizenship, official language , government services, elective machinery, etc.

2. Modern Constitution:-

== - twentyth century and features are :-

1. The provisions of fundamental rights has been taken from USA.
2. Directive principles of state policy from Ireland.
3. Power of judicial review from the supreme court of USA.
4. Federal set up with strong centre from Canada.
5. Residuary power to the centre from Canada.
6. Emergency provisions from german reich.
7. Parliamentary form of government from UK, etc.

3. Parliamentry form of Government:-

- a. We have followed the British model.
- b. Indian constitution establishes a parliamentary form of government, both of the centree and the states.
- c. The essence of this system is that, though the president is the constitutional head of the state, the real power lies with the council of ministers.
- d. The council of ministers are collectively responsible to the house of people (loksabha)
- e. Article 75(3). The same pattern has been adopted in the states with some modifications.

4. Unique blend of rigidity and flexibility:-

//points remained

5. A federation with strong centre:-

- a. Indian constitution is of a federal type.
- b. It establishes a dual policy, a two tier government system, with the central government at one level and of the state government at the other.
- c. But there are various situations wherein Indian constitution acquires unitary character. E.g. Emergency provisions, appointment of governer, etc.

6. Fundamental rights:-

- a. The part III of Indian constitution (Articles 12 to 35) deals with fundamental rights.
- b. All fundamental rights can be claimed by non-citizens.
- c. However fundamental rights are not absolute but are subject to reasonable restrictions.
- d. To protect these rights constitution has conferred powers on the supreme court (Article 32) and on the High Courts (Article 226)

7. Directive principles of the state policy:-
 - a. The part IV of the Indian Constitution (Articles 36 to 51) deals with the directive principles of state policy.
 - b. They are not enforceable in the court of law.
 - c. According to article 37, these principles are fundamental in the governance of our country , but are not enforceable in the court of law.
 - d. The concept of welfare state is provided in these principles.
 - e. They lay down certain social, economic and political objectives; to achieve the ideal of true democracy.
 - f. It is the duty of the state to apply them while making laws.
8. Fundamental Duties:-
 - a. As per the recommendation of the swaran singh committee by the 42nd amendment act 1976, 10 fundamental duties have been added in the part IV A (Article 51-A) of the Indian Constitution.
 - b. It shall be the duty of every citizen of India to abide by all the fundamental duties.
 - c. It is emphasized that these duties should become a part of the educational process in the country.
 - d. The object is to remind the people that while the constitution confers on them, certain fundamental rights, it also requires the citizens to observe basic norms of democratic conduct and behaviour.
9. Distribution of legislative powers:-
 - a. The Indian Constitution contains three lists under seventh schedule by which distribution of legislative power between union and states has been given.
 - b. Union list contains 97 subjects and parliament has exclusive power to make laws with reference to it.
 - c. State list consists of 66 subjects and legislature of any state has exclusive power to make laws with respect to any of these subjects.
 - d. The concurrent list contains 47 subjects, wherein parliament and legislature of nay state, both have power to make laws with respect to any of these subjects.
 - e. But if law made by state is in conflict with the law made by the Union, then law made by parliament will prevail.
10. Uniformity in all basic matters:-
 - a. Constitution of India has given several provisions to maintain independent judiciary in India.
 - b. Following principles are intended to secure independence and impartiality of the supreme court and high courts in India,
 - i. Appointment of judges by president after consultation with judicial authorities, (Articles a124(2), 217).
 - ii. Security of tenure is guaranteed to every judge, (Articles 123 and 218)
 - iii. Salaries are fixed and cannot be varied by the legislature except during the period of proclaimed emergency, (Article 360).
 - iv. Once appointed their privileges, rights and allowances cannot be altered to their disadvantage, (Articles 125 and 221)
 - v. Supreme court and high court recruit their own staff and frame rules regarding conditions of service, (Articles 146 and 229)
 - vi. Salaries and allowances of judges are not put to vote of legislature (Articles 146 and 229)

- vii. The constitution bars judges of supreme court from pleading or appearing before any court or judicial authority in India after retirement, (Articles 124(7) and 220)
- viii. No discussion can take place in the legislature of a state or in parliament with respect to the conduct of any judge of supreme.

11. Independent Judiciary

//points remained

12. Amending Process:-

1. The constitution provides for the amendment of the constitution in accordance with the procedure laid down under Article 368.
2. Under Article 368, an amendment to the constitution may be initiated by the introduction of the Bill in either House of the Parliament.
3. After that it shall be presented to the President who shall give his assent to the Bill.
4. After receiving the assent of President, the Constitution stands amended.

13. Emergency Provisions:-

There are 3 types of emergency:-

1. Article 352 speaks about National Emergency
2. Article 356 speaks about state emergency if there is failure of Constitutional machinery in the state.
3. Article 260 speaks about Financial Emergency which is not yet imposed in India.

14. Adult Suffrage:-

1. Every man and woman above 18 years of age has been given right to vote.
2. 61st Amendment Act, 1988 reduced the voting age from 21 to 18 years.
3. It was indeed a very bold step on the part of the constitution makers to adopt adult suffrage wherein even illiterate people are also entitled to vote.

15. Preventive Detention:-

1. The constitution has provided for adequate safeguards against arbitrary discretion of the executive or legislature (Article 22), In case of preventive detention
2. If the procedure given under Article 22 is not followed, by the Executive authority then the detention in question is unconstitutional.
3. State is also empowered to enact a law providing for preventive detention of persons, even during peace time, for reasons connected with defence, foreign affairs, security of state, etc.
4. In India Preventive Detention has acquired constitutional status.
5. A.K. Gopalan v. State of Madras, (AIR 1950 SC 27), the court said that, in order to prevent any abuse of freedom by anti-social and subversive elements, which might endanger the national welfare of the infant Republic of India, the Constitution contains a unique, though, pernicious feature in the form of Preventive Detention.

16. Single Citizenship:-

1. The Indian Constitution provides for the single citizenship. i.e., the citizenship of India.
2. In India State citizenship is not recognized.
3. Every person can claim only one citizenship that is citizenship of India.
4. Every Indian enjoys practically the same civil and political rights of citizenship, no matter in which state he resides.
5. Thus even though the constitution of India is federal and provides for a dual polity i.e. Union and the States, but it provides for a single citizenship for the whole of India.
6. In America there is a dual citizenship.

17. Independent Agencies:-

1. The Indian constitution provides for certain independent agencies, which are executing their work without any kind of control by the executive authority.
 2. These authorities are totally immune from any kind of executive interference.
 3. These authorities are discharging very vital role in democratic government like India.viz.
18. Minorities and Backward Classes:-
1. In India there exists various religions, language, cultures,etc
 2. There are some sections of people who are weaker than others, economically, socially and culturally.
 3. The Indian constitution contains very liberal scheme to safeguard the minorities and backward classes.
 4. Several provisions are made for their benefit, e.g. Articles, 16(4), 29,30,etc.
19. Socialist State:-
1. The term socialism literally means a political system which advocates states ownership of the means of production, distribution and exchange.
 2. The word socialist was not there originally in the preamble.
 3. It was added to the preamble by 42nd amendment to the constitution in 1976.
 4. In India there is a democratic socialism.
In G.B. Pant University of Agriculture v. State of U.P.,(AIR 2000 SC 2695), the Supreme court said that , democratic socialism in India aims to end poverty, ignorance, disease and inequality of opportunity. Socialist concept of society should be implemented in the spirit of the constitution.
20. Secular state:-
1. The term “Secularism” means that there is no official religion of India. India as a stste will treat all religion equally without any kind of discrimination.
 2. There is no state preferred religion as such.
 3. No specific protection has been accorded to any religious groups as such.
 4. Several provisions are made with a view to protect secularism in India, Viz; Articles 25 to 28 of the Constitution has given concrete shape to this concept of secularism.
 5. The word secular was not present originally in the preamble of the constitution of India, it was added there to by the 42nd constitutional amendment in 1976.
21. Doctrine of Judicial Review:-
1. Doctrine of judicial review is also one of the salient features of our constitution. It means that , courts have the power to examine laws and executive Acts and test their conformity with the constitution and stroke them down if they are found to be inconsistent with it.
 2. Article 13(2) provides that. The state shall not make any law which takes away or abridges the fundamental rights and any law made in contravention of this provision shall, to the extent of consistency be void.
-In Minerva Mills v. Union of India, (AIR 1980 SC 1789), the Supreme Court held that, judicial review vested in the Supreme court under Article 32 and in the High Court’s under Article 226 is essential and integral feature of the constitution, which ordinarily can never be ousted or excluded.
22. Doctrine of Basic Structure:-
1. Now supreme court has made it clear that the constitution not the parliament – is supreme in India.

2. According to this doctrine there are certain basic features of the constitution , which are immune from the power of amendment given to parliament by article 368 of the constitution; this doctrine has been developed by the supreme court of India ---
-In keshvananda Bharati v. state of kerala, (AIR 1973 SC 1461) SIKRI, C.J. mentioned following as the basic foundation and structure of the Indian Constitution.
 - I. Supremacy of the Constitution.
 - II. Separation of powers.
 - III. Secular character of the constitution.
 - IV. Federal character of the constitution.
 - V. Republican and democratic form of Government, etc.

23. Doctrine of Rule of Law-

1. The Indian Constitution embodies the modern concept of rule of law with the establishment of judicial system which should be able to work impartially and free all the influences.
2. The rule of law means Government on principles of law.
3. The rule of law pervades over entire field of administration, and every organ of state is regulated by the rule of law.

Union Features of Indian Constitution:

Federal or Unitary:-

- a. In certain circumstances the constitution empowers the center to interfere in the state matters.
- b. It also places the state in a subordinate position which violates the federal principles.
- c. In state of west Bengal vs. Union of India, AIR1963 SC 1241, the supreme court held by majority that it is not truly federal.
- d. The constitution establishes a system of Government which is almost quasi-federal.
- e. Professor Wheare: A unitary state with federal features rather than a federal state with subsidiary unitary features.
- f. Jennings: A federation with a strong centralising features.

1. Appintment of Governer:-

- a. The Governer of the States are appointed by the President of India under Art. 155 and 156 and answerable to him.
- b. Governors are constitutional head of the states.
- c. Governors are normally Act on the advice of his ministers.
- d. Governors is requires to send certain state laws for the assent of the President of India.
- e. The president has power to veto those state laws under Art.200, 288(2).
- f. Kerala education Bill, AIR 1958 SC 956. Only one case in which veto used by President.

2. Parliaments power to legislate in the National Interest:-

1. Art. 249 parliaments power to make laws.
2. Parliament is empowered to make laws on any matter enumerated in the state list if the Rajya sabha passes a resolution by 2/3rd majority that is necessary in National Interest.
3. Parliaments power to form new states and alter the boundaries of the states:-
// points remaining
4. Emergency provisions:-
There are three kinds of emergencies:
 1. Emergency caused by war or external aggression or armed rebellion Art.32.
 2. Emergency caused by failure of constitutional machinery in the states Art.356.
 3. Financial Emergency Art. 360.

Essential characteristics of a Federal constitution:-

Is Indian Constitution Federal?

1. Distribution of Powers:-
 - a. The distribution of the powers of the states among a number of co=ordinate bodies each originating in and controlled by the constitution.
 - b. The basis of such distribution of power is of National importance.
 - c. A uniform policy is desirable in the Interest of the Units.
 - d. All the authorities are entrusted with the Union, and
 - e. Matters of local concerns remains with the state.
2. Supremacy of the Constitution:-
 - a. Actually a federal states derives its existence from the constitution in the same way as a corporation derives its existence from the grant by which it is created.
 - b. So every power, executive , legislative or judicial, it may belong to the nation or to the individual state is subordinate to and control by the constitution.
 - c. The constitution in the federal states constitutes the supreme law of land:-
 1. There are 2 institutions which are most important for a federal constitution:-
 - I. The Supreme Constitution
 - II. The written constitution:-
 2. The supreme constitution is essential if the Government is to be federal.
 3. The written constitution is essential if federal government is to work well.
3. A written Constitution:-
 - a. A federal constitution must almost necessarily be a written constitution.

- b. The foundation of a federal states are complicated contracts.
 - c. It will be practically impossible to maintain the supremacy of the constitution, unless the constitution is reduced in writing.
- 4. Rigidity:-
 - 1. A natural collorary of a written constitution is its rigidity.
 - 2. A constitution which is the supreme law of land must also be rigid.
 - 3. In rigid constitution the procedure of amendment is very complicated and difficult.
 - 4. A constitution of a country is considered to be a permanent document. It is the supreme law of land.
 - 5. This supremacy of the constitution can only be maintained of the method of amendment is rigid.
- 5. Authority of Courts:-
 - 1. As a federal system of constitution works at two level at central and at state level. It is therefore essential to maintain the division of the powers between the two levels of Government:-
 - a. A central level
 - b. At state level
 - 2. This must be done by some independent and impartial authority above and beyond the ordinary bodies(federal or state legislature)
 - 3. In the federal polity the judiciary has the final power to interpret the constitution and guard the entrenched provisions of the constitution.
- 6. Summary:-
 - 1. The Indian constitution possesses all the essential characteristics of a federal constitution.
 - 2. The constitution establishes a dual polity, a system of double government with the central government at one level and state government at other level.
 - 3. There is a division of power between the central and the state governments.
 - 4. Each level of government is supreme in its own sphere.
 - 5. The constitution of India is written and is supreme.
 - 6. The provisions of the Indian Constitution which are concerned with federal principles cannot be altered without the consent of the majority of the states.
 - 7. The Indian constitution establishes a supreme court to decide disputes between union and the states, to interpret finally the provisions of the Indian Constitution.

The Preamble of Indian Constitution:-

- 1. Meaning :
 - a. The word “preamble” has been defined as an Introductory paragraph or part in the statue dead or other document, setting forth the grounds and intention of it.

- b. In *Golaknath vs. State of Punjab*, AIR 1967 SC 1643, it was observed that preamble to an Act sets out the main objectives which the legislation is intended to achieve. It contains a nutshell ideals and aspirations of the Act.
- c. Preamble is the key to open the minds of the makers of the Act.
- d. Preamble is very useful to understand the intention of the makers of the Act and the general purpose of the behind the provisions of the Act.
- e. The preamble to the constitution indicates the type of the Government which the constitution is intended to establish and rights and freedom which the constitution is intended to provide to the citizens.
- f. It indicates that the ultimate source for the validity of and sanction behind the constitution is the will of the people.
- g. In short,
 - i. The purpose it serves (i.e. declaration of the source of the constitution.)
 - ii. A statement of the objectives, and
 - iii. The date of its adoption.

2. Preamble :

- We , the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and o secure to all its citizen:
- 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.

3. Purposes it serves:

- a. It indicates the source from which the constitution comes....people of India.
- b. It contains the enacting clause which brings into force the constitution.
- c. It declares the great rights and freedoms which the people of India intended to secure to all citizens and basic type of government and polity which was to be established.
- d. The preamble declares in unambiguous terms that it is the people of India who have adopted, enacted and given themselves the Constitution.
- e. It declares, therefore, that the source of authority under the constitution is the people of India and there is no subordinate to any external authority.

4. Objectives :

- a. Justice- Social, economic, and political
- b. Liberty – of thought, expression, belief, faith and worship;
- c. Equality – of status and opportunity; and to promote among them all;
- d. Fraternity – Assuring the dignity of the individual and the[unity and integrity of the nation].

5. Preamble whether part of the Indian Constitution?

- a. In *Berubari Case* AIR 1960 SC 845,

- i. The supreme court held that the preamble was not the part of the constitution and therefore it could never be regarded as a source of any substantive powers.
 - ii. The supreme court has said that the “preamble to the constitution is a key open the mind of the makers, and shows the general purpose for which they made the several provisions to the constitution.
 - iii. It says that such powers are expressly granted in the body of the constitution.
 - iv. It has limited application and can be restored to where there is any ambiguity(two meanings) in the statute
- b. In Keshvananda Bharti's case AIR 1973 SC 1461,,
 - i. Supreme court rejected the view of Berubari's case and held that preamble is the part of the constitution.
 - ii. SC- “The preamble of our constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble.
 - iii. The preamble was relied on imposing implied limitations on the amending power of parliament under Art. 368 of the constitution.
 - iv. It was held in this case that, “Basic structure” in the preamble cannot be amended under Art.368.

6. Can preamble be amended under article 368?

- a. As it was argued that preamble cannot be amended as it is not a part of the constitution.
- b. The supreme court, however, held that the preamble is a part of the constitution and, therefore, on this point the berubari's opinion was wrong.
- c. On the question whether the preamble can be amended the majority held that since the preamble is the part of the constitution it can be amended subject to this condition that the basic features in the preamble cannot be amended.

7. 42nd amendment and the preamble:

- a. The amendment has inserted three new words in the preamble that is, secularism socialism and integrity. Actually these concepts were already implicit in the constitution. The amendment merely spell out clearly these concepts in the preamble.
- b. In *Excel wear vs Union of India* the supreme court considered the effect of the word socialist in the preamble the court held that the addition of the word socialist might enable the code to lean more in favour of nationalization and state ownership of an industry.
- c. In *D.S.Narkar versus Union of India*, the supreme court held that the basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave.
- d. The word integrity is intended to put an end to the separatist tendencies and make people feel that every part of India is their home.
- e. Further the word secularism means a state which does not recognize any religion as the state religion. It treats all religions equally. The concept of secularism was already implicit in the constitution.

Scheme of Fundamental rights in Indian Constitution:-

1. Magna Carta of India:
 - a. It was written document which was related to Fundamental Rights.
 - b. It was prepared in England in 1215.
2. Preparation of Fundamental Rights:
 - a. When the preparation of Fundamental Rights were going on at that time we have taken help of US Bill of Rights.
 - b. Our chapter of Fundamental Rights is inspired by US Bill of Rights.
 - c. In India we will get Fundamental Rights in Part III of the Indian Constitution from Art. 12 to Art. 35.
3. Main objective of Fundamental Rights:
 - a. To secure the political freedom of the people.
 - i. The political freedoms are secured by Fundamental Rights.
 - ii. Social and economic freedoms are secured by Directive Principles of State Policy.
 - b. Why Fundamental rights are called Fundamental?

Two reasons:-

 - i. Most important for All- round development of every person.
 - ii. Existence in dignified manner without which a individual cannot survive.
4. Important features of FR:
 - a. FR are check on unlimited powers of the state.
 - i. Unlimited powers
 - ii. Arbitrary powers

FR Imposes restrictions on states and protects individuals
 - b. A viable against the state and not against the person.
 - c. Not absolute

Reasonable restriction can be imposed.
 - d. Can be suspended during the emergency.
 - i. As during emergency Art. 19 automatically gets suspended.
 - ii. Along with this if president of India wants he can suspend other FR's also.
 - iii. Exception of Art. 20 and Art.21
5. Fundamental Rights:
 - a. Right to Equality
 - b. Right to Freedom
 - c. Rights against Exploitation
 - d. Right to freedom of Religion
 - e. Cultural and Educational rights

- f. Right to property :-
 - i. Art.19(1)(f) and Art. 31 Right to property was repealed and added to Art. 300 as constitutional rights or legal was introduced by 44th Amendment Act, 1978.
- g. Right to Constitutional Remedies.

Scheme of Fundamental Duties in Indian Constitution Art. 51-A:-

1. **Fundamental Duties:-**

- a. Part IV A of Indian Constitution consists of Fundamental Duties under Art. 51-A.
- b. This Article was added to the Indian Constitution by 42nd Amendment Act, 1976
- c. Art. 51- A provides 10 fundamental duties to be followed by the individual person i.e. every citizen:-
 - It shall be the duty of every citizen of India
 - i. To abide by the constitution and respect its ideals and institutions, the National Flag and the national anthem.
 - ii. To cherish and follow the noble ideals which inspired our national struggle for freedom;
 - iii. To uphold and protect the sovereignty, unity and integrity of India.
 - iv. To defend the country and render national service when called upon to do so.
 - v. 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.
 - vi. To value and preserve the rich heritage of our composite culture;
 - vii. To protect and improve the natural environment including forests, lakes , rivers and wild life, and to have compassion for living creatures;
 - viii. To develop the scientific temper, humanism and the spirit of inquiry and reform.
 - ix. To safeguard public property and to abjure violence;
 - x. 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;
 - xi. Who is 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.

2. Need for Fundamental Duties:

- a. Rights and duties are correlative
 - b. It requires citizens to perform basic norms of democratic conduct and democratic behaviour.
 - c. It was argued that in India people lay emphasis only on rights and not on duties.
 - d. But it was submitted that the view is wrong.
 - e. In our country, the performance of one's duties had been traditional.
 - f. It was also described by the word "kartavya" in the Indian Society and may scripts like Ramayana and Bhagvad Geeta.
 - g. The Geeta and the Ramayana enjoins the people their duties without caring for their rights or fruits,...
- //points remained

- h. The rest of the preamble emphasises only the duties, “justice, social economic and political.
 - i. And secondly fundamental rights are not absolute certain reasonable restriction and curtail these rights in the interest of the citizens or the society.
 - j. In Narendra vs. Union of India, AIR 1960 SC 430, it was observed that, restrictions may sometimes amounts to prohibitions.
3. Sources for Fundamental Duties
- a. After a study it was found that in western countries there are no such duties and obligations of the citizens.
 - b. Among democratic constitution of the worlds, we find mention of certain duties of the citizens inn Japanese constitution.
 - c. In Britain, Canada and Australia the rights and duties of the citizens are governed by the common law and judicial decisions.
 - d. The French constitution makes only a passing reference to duties of citizens. Where as the American constitution only provides fundamental rights and does not refer to duties of the citizens.
 - e. The constitution of the Socialist countries lays great emphasis on the citizens duties. Eg. Yugoslavian constitution Art. 32,36 and 66
4. Enforcement of Fundamental Duties :
- a. The duties are incorporated in the constitution by the 42nd Amendment Act, 1976.
 - b. According to this Act it is the statutory duties and shall be enforceable by law.
 - c. Parliament, by law, will provide penalties to be imposed for failure to fulfil those duties and obligation.
5. Judicial Trends :
- a. M.C. Mehta (2) vs. Union of India, (1983) 1 SCC 471, the Supreme court held that under Art. 51-A(g) , it is duty of central government to introduce compulsory teaching of lessons atleast for one hour in a week on protection and improvement in all the educational institutions of the country.
 - b. Abhilash Textiles vs. Rajkot Municipal Corporation, AIR 1988 Guj 57, in this case the court directed petitioner to stop discharging the effluents from the factory on public road or drainage harming natural environment on the pain of closing the factory will be valid.

Fundamental Rights :-

29. What do you mean by state?

30. Art. 12 State:-

“ 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.:-

1. Government (Union Executives) and Parliament of India[Union Legislature]
2. Government (State Executives) of each state and legislature of each state(State Legislature)

3. Local or other authorities within the territory of India or under the control of the Government of India.

4. Territory of India:-

The territory of India shall comprise-

1. The territories of the states;
2. The union territories specified in the First schedule; and
3. Such other territories as may be acquired.

5. Local authorities:-

- a. According to Sub Sec. (31) of Sec.3 of the general clause Act, 1897, "Local Authorities" shall mean a Municipal Committee, district board, body of Commissioner or other authority legally entitled to or entrusted by the Govt. within the control or management of a municipal or local fund.
- b. According to entry 5 of the list II of the VIIth schedule, "Local Government", includes municipal corporation, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self Govt. or village administration. Village panchayat is also included within the meaning of the term "Local Authorities".

6. Other authorities:-

In Electricity board vs. Mohan Lal, AIR 1967 SC 1857, the supreme court had held that the term, "Other Authorities", includes all the authorities created by the constitution or the statute and on whom powers are conferred by the Law, whether or not they are engaged in performing governmental function. Thus, it is almost settled that the constitutional or the statutory authorities on whom the powers have been conferred by the law are included within the meaning of the term "other authority".:-

Ex. Oil and Natural Gas Corporation, LIC of India, SBI, chief justice of HC, etc.

31. Art. 13 Law inconsistent with the Fundamental Rights:-

1. All laws in force in the territory of India immediately before the commencement of this constitution, in so far 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, rule, 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 a legislature or other competent authority in the territory of India before the commencement of this constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

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

32. Whether the word “Law” includes amendment of the Constitution?

- Art 13 makes it clear that 1. Nothing in Art.13 shall apply to amendment of the constitution of India made under Art. 368 2. The present position is that the word “Law” does not include a constitutional amendment and therefore, Art.13 (2) does not affect the amendment under Art.368.
- Keshavanand Bharti vs State of Kerala AIR 1973 SC 1461.
It was held that,
 - “Parliament can amend the Constitution of India including the provisions relating to Fundamental Rights,
 - But, it cannot change the basic structure of the constitution
- Shankari Prasad vs. Union of India , AIR 1957 SC 458, and Sajjan Singh vs. State of Rajasthan, AIR 1965 SC 845.
 - It was held that
The word LAW in Art 13(2) does not include a constitutional amendment.
Further, it held that, parliament could amend the provisions dealing with the Fundamental Rights.
- In Golak Nath vs. State of Punjab, AIR 1967 SC 1643.
 - The Supreme Court-
 - Overruled the previous decisions,
 - And held that parliament could not amend the fundamental rights.
 - In the case the court has expressed the view that the word “Law” in Art 13(2) includes the constitutional amendments takes away or abridges the fundamental rights, the amendment shall be void.

RIGHT TO EQUALITY (Art-14):-

1) Art.14- “The state shall not deny to any person-

1. Equality before the law.

- a. The term finds place in all the written constitution of the world.
- b. This expression is of English origin.
- c. The concept of equality does not mean absolute equality.
- d. It is somewhat negative concept implying the absence of any special privileges in favour of individuals and the equal subjects of all the classes to the ordinary law.
- e. Equality before law means “among equals the law should be equal and should be equally administered, that a like should be treated a like.”
- f. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age.
- g. And understanding without distinctions of race, religion, wealth, social status, or political influence.
- h. Rule of law:-
 - i. The guarantee of equality before law is an aspect of what Dicey calls the rule of law in England.
 - ii. It means that no man is above the law and that every person, whatever his rank or conditions, is subject to the jurisdiction of ordinary court.

- iii. In *Raghubir Singh vs. State of Haryana*, AIR 1980 SC 1087, it was held that the rule of law imposes a duty upon the state to take special measures to prevent and punish brutality by police methodology.
- iv. In *Indira Nehru Gandhi vs. Raj Narayain*, AIR 1975 SC 2299, it was held that, "The rule of law embodied in Art.14 is the "Basic Feature" of the Indian Constitution and hence it cannot be destroyed even by amendment of the constitution under Art.368 of the constitution.
- v. Exceptions to Rule Of Law:-
 - 1. Equality before law does not mean the power of the private citizen are the same as the power of the public officials. E.g. Police officers.
 - 2. The rule of law does not prevent certain classes of persons being subject to special rules. Eg. Members of Armed forces are governed by Military law, medical practitioners are subjected to the regulations framed by the Medical Council of India, Art. 361 provides immunity president of India and Governors of States, they are not answerable to any court of law during the term of the office.
 - 3. Ministers and other executive bodies.
 - 4. Lawyers, doctors, nurses, members of armed forces and police.

2. The equal protection of the law:-

- a. This expression has been taken from American Constitution.
- b. It is more positive concept implying equality of treatment in equal circumstances.
- c. It emphasizes that equal laws should be applied to all in the same situation and that there should be no discrimination between one person and another.
- d. It means that equals can be treated equally but unequals cannot be treated equally.

Both these expressions are used in Universal Declaration of Human Rights

Both these expressions are aim at establishing what is called "equality of status" in the preamble of the constitution.

Both these expression do not convey the same meaning but they looks like having same meaning.

One common dominant idea to both these expression is that of equal Justice.

2) Art.14-"The state shall not deny to any person

3) Art.14 permits classification but prohibits class legislation.

- a. The equal protection of laws guaranteed by Art.14 does not mean that all laws must be general in character.
- b. It does not mean that the same law should be apply to all persons.
- c. It does not mean that every law must have universal application for, all persons are not, by nature, attainment or circumstances in the same position.
- d. The varying need of different classes of persons often require separate treatment.

- e. From the very nature of society there should be different laws in different places and the legislature controls the policy and enacts laws in the best interest of the safety and security of the state.
- f. In fact, identical treatment in unequal circumstances would amount to inequality.
- g. So, a reasonable classification is permitted but is necessary if society is to progress.
- h. Thus what Article 14 forbids is class-legislation but it does not forbid reasonable classification.
- i. The classification, however, 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.

4) Test of reasonable classification.

- a. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends.
- b. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature.
- c. Classification to be reasonable must fulfil the following two conditions:-
 - i. 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
 - ii. The differentia must have a rational relation to the object sought to be achieved by the Act.
Eg. 12th and 5th student.
- d. The differentia which is the basis of the classification and the object of the Act are two distinct things.
- e. What is necessary is that there must be a nexus between the basis of classification and the object of the Act which makes the classification.
- f. It is only when there is no reasonable basis for a classification that legislation making such classification declared discriminatory.
- g. Thus, the legislature may fix the age at which persons.

5) Basis of reasonable classification.

- a. Geographical basis.
 - i. //point remained
 - ii. A law may be applicable to one state and not to another.
 - iii. A state may be divided into several geographical regions and a law may be applicable to one and not to others depending on particular circumstances.
 - iv. Krishna Singh v. State of Rajasthan, AIR 1955 SC 795, the validity of Marwar land revenue Act, 1949, was challenged on the ground that it applied only to marwar portion of the state of Rajasthan and not to be violative of Article 14. Supreme court held the law not to be violative of Article 14. It said that the particular conditions of Marwar portion of the state required a special law to be applied there.
 - v. Similarly, fixation of different dates for holding elections in different constituencies according to the various exigencies prevailing in the

locality in which the constituency was situated was held not to violate Article 14.

- b. Classification in favour of the state.
 - i. The state as a person constitutes a different class as, compared with private citizens.
 - ii. It means that the term “person” in Art.14 does not include “state”. Therefore a classification which treats the state, differently from person, may not be violative of the rule of equal protection of law.
 - iii. In other words, discrimination by the state in its own favour.
 - iv. In *sagir ahmad v. state of uttar Pradesh*, AIR 1955 SC728, a monopoly created by the state in its favour was held not to violate Article 14.
 - v. In *baburao vs. Bombay housing board*, AIR 1954 SC 153, a law which exempt the factories run by the government from operation but applied to other factories or local authority was held not to be discriminatory.
- c. Tax laws.
 - i. The state has wide power in selecting persons or objects it will tax and a statute is open to attack on the ground that it taxes some persons and objects and not others.
 - ii. It is open to state to decide the basis of taxation and to alter the same from time to time.
 - iii. The state is not obliged to tax everything in order to tax something.
 - iv. In *Mohan Das vs. state of Karnataka*, AIR 2005 SC 2178, classification based on difference in the value of articles or the economic superiority of the person of incidence have been held not to be violative under Art.14
- d. Special courts and special procedures.
 - i. Parliament of India is empowered to set up special courts and to provide special procedures for the trial of certain “Offences or classes of offences.”
 - ii. Such a law is not violative of Art.14, if it lays down proper guidelines for classifying the offences or classes of cases, to be tried by the special courts.
 - iii. In *basheer vs. state of kerala*, AIR 2002 SC 2757, the supreme court upheld the classification between the cases pending before the court and under investigation on the date of commencement of the Narcotic Drugs and Psychotropic substances(amendment) Act,2001 and cases pending in Appeal. The Amendment was brought with the object of avoidance of delay in trials.
- e. Administrative discretion.
 - i. Administrative authorities may be authorised to exercise certain discretionary powers.
 - ii. These powers are given by Law.
 - iii. Law can also lay down some principles or policy for the guidance of the exercise of the discretion by the executive.
 - iv. *Dist. Registrar vs. canara bank*, 2005(1) SCC 496, the court held that, and administrative discretion is subject to judicial review by the court. So if it is exercised arbitrarily without any guidelines, principles or norms, then that has to be struck down as being violative under Art.14.

- v. Anwar Alis case and Ramakrishna dalmia's case AIR 1958 SC 533, it was observed that a law was struck down by the supreme court on the ground that it did not lay down any definite policy or principles of guidelines for the exercise of discretion by the government.
 - vi. Katthi ranning's case, AIR 1952 SC 175, supreme court has upheld the same kind of the law found in the state with a definite principles or objectives clearly stated "to provide for public safety; maintenance of public order and preservation of peace and tranquility in the state.
 - vii. Re. kerala education bill, AIR 1958 SC 956
- f. Single person laws.
- i. Even the single individual constitutes a class u/Art.14, if there are special circumstances in his favour and not in favour of the others, in such a case a law applicable to a single individual is not violative of Art.14
 - ii. In, chiranjit lal vs. union of India, AIR 1951 SC 41, the supreme court has held that a law would be constitutional even though it related to a single individual if, on account of some special circumstance, or reasons applicable to him and not applicable to others, that single individual could be treated a class by himself.

6) New concepts of equality.

- a. From 1970 Art.14 has acquired the new and important dimensions.
- b. The new concept of equality i.e. protection against arbitrariness has been evolved by the supreme court.
- c. According to supreme court, if the action of the state is arbitrary then it cannot be justified even on the basis of doctrine of reasonable classification.
- d. Every act of the executive which is arbitrary is unequal and is violative of Art.14.
- e. In E.P.Royappa vs State of T.N.,AIR 1978 SC 555, the supreme court rejected the traditional concept of equality based on the doctrine of reasonable classification and laid down new concept of equality. Supreme court said that if the action of the state is arbitrary then it cannot be justified even on the basis of reasonable classification.
- f. In, maneka Gandhi vs. union of India, AIR 1978 SC 597, the supreme court said that , Art.14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. So what is arbitrary is unequal and is violative to Art.14 of the Indian Constitution.
- g. In AIR India vs. Nargesh Meerza, AIR 1981 SC 1829, the supreme court struck down the regulation providing for the retirement of the AIR Hostess on her first pregnancy, as arbitrary and unreasonable and hence violative of Art. 14 of the constitution.

Art.19(1) Right to Freedom:-

- 1) Back bone of fundamental rights.
 - a. //point remained
- 2) Six fundamental freedom:-
 - a. Art.19(1)(a): Freedom of speech and expression:

- i. Says that all citizens shall have the Right to freedom of speech and expression.
- ii. It also states that this right is subject to restriction or limitations imposed under Art.19(2) which empowers the states to put 'Reasonable' restrictions.
 - 1. Ex. Security of the state, friendly relation with the foreign states, public order, decency and morality, contempt of court, defamation, incitement to offence and integrity and sovereignty of India.
- iii. Meaning: Right to express one's own convictions and opinion freely by words of mouth, writing, printing, picture, or any other mode.
- iv. This expression also means freedom of "publication" and this freedom of press is included in it.
 - 1. In *Romesh Thapper vs. State of Madras*, AIR 1950 SC 124, it was observed that, Freedom of speech and of press lay at 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.
- v. Freedom of speech also includes liberty to propagate not one's views only. It also includes the right to propagate or publish the views of other people, otherwise this freedom would not include the freedom of the press. (*Srinivas vs. State of Madras*, AIR 1931 Mad. 70)
- vi. Freedom of speech and expression has special purposes.
 - 1. It helps an individual, to attain self-fulfilment.
 - 2. It assist in the discovery of truth.
 - 3. It strengthens the capacity of the individual in participating in decision making and
 - 4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.
 - 5. Due to this all members of the society should be able to form their own beliefs and communicate them freely to others.
- vii. Cases :
 - 1. *Prabhu datta vs. Union of India*
 - 2. *LIC vs. Manubhai Shah*
- viii. New dimensions to Freedom of speech and expression.
 - 1. Government had no monopoly in electronic media.
 - 2. *Secretary, Ministry of I & B vs. cricket association of Bengal(CAB)*, (1995) 2 SCC 161, it was a historic case, the supreme court has considerably widened the scope and extent of the right to freedom of speech and expression and held that government has no monopoly on electronic media and a citizen Art.19(1)(a) a right to telecast and broadcast to viewers/listeners through the electronic media television and radio any important event.
- ix. Commercial Advertisement:

1. Part of freedom of speech and expression.
 2. In a significant judgement, in *Tata Press Ltd. Vs. Mahanagar telephone Nigam Ltd.* (1995) 5 SCC 139, it was held that commercial speech (advertisement) is a part of freedom of speech and expression u/Art.19(2). Further the court made it clear that the commercial advertisements which are deceptive, unfair, misleading and untruthful could be regulated by the Government.
- x. Freedom of press:
1. In *sakal papers ltd. Vs Union of India*, AIR 1962 SC 305, it was held that the daily newspapers (price and control) order, 1960, which fixed a minimum price and number of pages which a newspaper was entitled to publish was challenged as unconstitutional by the petitioner on the ground that it infringed the liberty of the press.
 2. The court struck down the order rejecting the state's argument. It said that right to freedom of speech and expression cannot be taken away with the object of placing restriction on business activity of a citizen.
- xi. Film censorship valid:
1. *K.A.Abbas vs. Union of India*, AIR 1971 SC 481.
- b. Art.19(1)(b): Freedom of Assembly
- i. Guarantees to all citizens of India Right "to assembly peaceably and without arms."
 - ii. This right of assembly includes:-
 1. The Right to hold meetings.
 2. To take out processions.
 - iii. Restrictions.
 1. //point remained
Restrictions can be imposed under clause 3
 1. Assembly must be non violent.
 2. Must not cause any breach of public peace
 3. If the assembly is disorderly or riotous then it is not protected under Art.19(1)(b) and reasonable restrictions may be imposed under Cl.3 of Art.19 in the interest of 'Sovereignty and integrity of India' or 'Public Order'
- c. Art.19(1)(c): Freedom to form Association.
- i. The constitution of India guarantees to all its citizens the right "to form association and unions."
 - ii. *Damayanti vs. Union of India*, the validity of the *Hindi Sahitya Sammelan Act, 1962* was challenged as violative of Art.19(1)(c). It was held that the Act violated the rights of the original members of the society to form an association guaranteed u/Art/19(1)(c).
 - iii. Right of Association and Armed Forces.
 1. *O.K.A. Niar vs. Union of India*, AIR 1976 SC 1179, an important question was arose whether "civilian" employees, designated as 'non-combatants' such as cooks, chowkidars, laskers, barbers, mechanics, boot-makers, ailors, etc. attached to defence

establishments have right to form associations or unions. The supreme court held that the civilian employees of the defence establishments answer the description of the employees of the members of the Armed Forces within the meaning of Art.33 and therefore were not entitled to form trade unions.

iv. Restrictions.

1. Art.19(4) imposes reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India.

v. In Haji Mohd. vs. District Board, Malda, AIR 1958 Cal. 401, A restriction requiring teacher to take prior permission to engage in political activities was held to be a reasonable restriction. It aimed at preventing teachers from getting mixed up with political institutions.

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

- i. The constitution of India guarantees to all its citizens the right “to move freely throughout the territory of India.”
- ii. This freedom cannot be curtailed by any law except the limits prescribed under Art.19(5).

iii. Restriction :-

- This right is subject to reasonable restrictions mentioned in Art.19(5)

1. In the interest of general public or

- a. In state of uttar Pradesh vs. kaushalya, AIR 1964 SC 416. It was held by the supreme court of India that the Right of movement of prostitutes may be restricted on the ground of public health and in the interest of public morals.

2. For the protection of the interest of any scheduled tribes.

e. Art.19(1)(e): Freedom to reside and to settle

- i. Art.19(1)(e) states that every citizen of India has the right “to reside and settle in any part of the territory of India.
- ii. The object of the clause is to remove the internal barriers with in India or any of its parts. The word “the territory of India” as used in this Article indicates freedom to reside anywhere and in any part of the state of India.

iii. Restriction:-

This right is subject to reasonable restrictions mentioned in Art.19(5).

- a. In the interest of general public or
- b. For the protection of the interest of any scheduled tribes.

f. Art.19(1)(g): Freedom of profession, occupation, Trade or Business.

- i. This Article states that all the citizens have right “to practise any profession or to carry on any occupation, trade or business.
- ii. The right to carry on any occupation, trade or business is not unqualified.
- iii. It can be restricted and regulated by the authority of law.

1. IN *Excel wear vs. Union of India*, AIR 1979 SC 25, the government refused to close down the business. But, it was held by the supreme court that the Sec.25-O of industrial dispute Act,1947, as a whole and Sec.25-R in so far as it relates to the awarding the punishment for violation of Art. 19(1) (g) of the constitution. The court said that no one has right carry on the business if cannot pay even minimum wages to the labourers. He must then close down the business.

iv. Restriction

This right is subject to reasonable restrictions mentioned.

Art.19(6)

- 1) In the Interest of general public or
- 2) Prescribing professional or technical qualification necessary for practising any profession or carryong on any occupation, trade or business.
- 3) Enabling the state to carry on any trade or business to the exclusion of the citizen wholly or prarly.

LIBERTY:-

- 1) Art.21 says that “No person shall be deprived of his life and liberty except according to procedure established by the law.

Thus a person can be deprived of his life or personal liberty of following conditions are complied with-

1. There must be a law, and
2. There must be a procedure established by the law, provided that the procedure is just, fair and reasonable.

- 2) To whom these rights are available?

a. Art 21 guarantees to all persons(citizens and non-citizens) the right to life and personal liberty.

- 3) Against whom it is available?

a. The protection of Art21 is available only when a person is deprived of his life and personal liberty by the state.

b. In *vidya verma vs. shiv Narayan*, AIR 1956 SC 108, it was held that , Art. 21 applies only to the deprivation of life or personal liberty by the state and therefor, a person whose right to life or personal liberty is infringed by private individual is required to seek his remedy under original law.

- 4) Meaning and scope of the right

a. Before the case of *Maneka Gandhi’s* decision Art.21 guaranteed the right to life and personal liberty o citizens only against the arbitrary action of the execuutives, and not form legislative action.

i. //point remained

b. Difference between Art.19 and 21

i. Art.21 guarantee against deprivation (i.e. total loss) of personal liberty while Art.19 affords protection against unreasonable restrictions (which is only partial control) on he right of movement.

- ii. Freedom guaranteed under Art.19 can be enjoyed by a citizen only when he is a freeman and not if his personal liberty is deprived under valid law.
- c. In, *Maneka Gandhi vs. Union Of India*, AIR 1978 SC 597, the supreme court had not only overruled *A.K. Gopalan's* case but also had widened the scope of the word 'Personal Liberty' considerably. The court laid down number of propositions to make Art.21 much more meaningful than hitherto...
 - i. The court said that Art.14 ,19 and 21 are not mutually exclusive. A nexus has been established between these three Articles. A law depriving a person of his personal liberty has to meet the requirement of Art.19 . Also the procedure established by the law in Art.21 must answer the requirement of Art.14 as well.
 - ii. The procedure prescribed by the law has to be fair, just and reasonable. It must not be fanciful, oppressive or arbitrary.
 - iii. The word 'law' in Art.21 does not mean merely an enacted piece of law, but it must incorporate principles of natural justice.

Thus, Art.21 from this case has required following conditions to be get fulfilled before the person is deprived of his personal liberty.

1. There must be a law.
2. The law must provide a procedure.
3. The procedure must be just fair and reasonable.
4. The law must satisfy the requirements of Arts.14 and 19 i.e it must be reasonable.

5) Expanding horizons of Art.21

a. Right to privacy

- i. The expression "personal liberty" includes the right of privacy also and therefore, the right of privacy can be curtailed or taken by following the fair and just procedure established by the law.
 1. In *R.Rajagopala vs. State of T.N.*, (1994) 6 SCC 632, it was held by the supreme court that there should be proper balance between right to privacy and freedom of press. In this case the court said that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. Anything concerning the above matter cannot be published by any person without the consent of the person concerned, whether truthful or otherwise.
 2. In *State of Maharashtra vs. Madhukar Narain Mandlik*, AIR 1991 SC 207, the court has made it clear that the right to privacy is implicit in Art.21 and held that woman, even easy virtue is entitled to privacy and she is entitled to protect her person if there is an attempt to violate it against her wish.
 3. In *Kharak Singh vs. State of U.P.*, AIR 1963 SC 1295, it was held that the domiciliary visits by the police without authority of law will be violative of Art.21.

b. Right to go abroad

- i. Now it is clear that there is a close nexus between Art.21 and Art.19 of the constitution. So, supreme court has taken into consideration Art.19 at the time of interpreting Art.21 of the constitution.

1. In *Maneka Gandhi vs. Union of India*, AIR 1978 SC 597, the court held that a person is having right to go abroad and if this right is to be restricted and limited, then the procedure contemplated in Art.21 could not be arbitrary, unfair or unreasonable. Procedure should be just, fair, proper and reasonable.
- c. Right to livelihood.
- i. Supreme court took the view that the right to life in Art.21 would not include livelihood. But then the view of the court underwent a change. With the defining of the word 'life' in Art.21, in a broad and expansive manner, the court came to hold that the right to life guaranteed by Art.21 includes right to livelihood.
 1. In *Olga Telis vs. Bombay Municipal Corp.* (AIR 1986 SC 180), the court held that right to livelihood is born out of right to life, as no person can live without the means of living, that is the means of livelihood.
- d. Right to live with dignity.
- i. The supreme court has used Art.22 in very creative manner to improve the quality of life and to imply there from a bundle of rights for the people. A grand step was taken by the court in expanding the scope of Art.21 when it argued that life in Art.21 does not mean mere animal existence, but it means right to live with human dignity. The court has thus given very extensive parameters to Art.21.
 1. Thus, in *Francis Coralie v. Union Territory of Delhi*, (AIR 1981 SC 746), court held that the right to life includes right to live with human dignity and all that goes with it i.e. the bare necessities of life such as adequate nutrition, clothing and shelter.
- e. Bonded labour system
- i. The bonded labour system is designed to enable a few socially and economically powerful person to exploit weaker section of the society. Now court has ruled out that bonded labour is unconstitutional under Art.23 as it can be regarded as a form of forced labour.
 1. In *Bandhu Mukti Morcha v. Union of India*, (AIR 1984 SC 802), the supreme court issued order to release large number of labourers who were working in stone quarries in the state of Haryana. The court directed the state government to draw up a scheme for a better and more meaningful rehabilitation of the freed labourers.
- f. Capital punishment.
- i. Even though supreme court has upheld the validity of death penalty as an alternative punishment for murder, it has emphasized that the death penalty is an exception rather than a rule and it ought to be imposed only in rarest of rare case, when the alternative option is unquestionably foreclosed.
 1. Thus, in *Bachan Singh v. State of Punjab*, (AIR 1980 SC 898), the court held that death penalty should be awarded in rarest of rare case. Section 302 of IPC which provides for death penalty as an alternative punishment for murder is not unreasonable and is in public interest.
 - *Jagmohan Singh vs. State of Uttar Pradesh* AIR 1947
 - *Rajendra Prasad vs. State of UP*, AIR 1979 SC 916.

- g. Right to compensation.
 - i. A new judicial trend has been evolved in the area of person liberty. Here the attempt of supreme court is to keep the flag of humanity waving all the time in India. Now, it has been settled that an aggrieved person can claim compensation under Art.21, as a fundamental right.
 - 1. In Nilabai behra v. state of orissa, (AIR 1993 SC 1960), awarding compensation in a case of police custodial death, the supreme court has held that, right to compensation is a fundamental right under Art.21 of the constitution. Accordingly, court awarded compensation of 1,50,000/- to the petitioner, who was the mother of victim.
- h. Right to medical help.
 - i. Now court has ruled out that in a welfare state like India, it is the primary duty of the government to provide adequate medical facilities to the people. The government has to discharge this obligation by running hospitals and health centres to provide medical care to those who need them.
 - 1. In permanand katara v. union of India, (AIR 1989 SC 2039), the court said that every doctor whether at a government hospital, or otherwise, has the professional obligation to extend his services with due expertise for protecting life. Art.21 casts on the state an obligation to preserve the life preservation of his life is paramount. Without waiting for the completion of legal formalities, immediate medical help should be given to the victim.
- i. Right to education.
 - i. According to supreme court, the word life includes education because education promotes good and dignified life. Hence, supreme court has implied right to education as a fundamental right under Art.21. Now, by the amendment of 2002, Art.21(A) has been newly inserted in part-III of the constitution which has made right to education, a fundamental right.
 - 1. In Unnikrishnan v. state of Andhra Pradesh, (AIR 1993 SC 2178), the supreme court held that right to education is a fundamental directly flows to life. Till the age of 1, every citizen has a right to free education directly flows right to life. Till the age of 14, every citizen has a right to free education. After that stage, the obligation of state to provide education is subject to the limits of economic capacity and development of the state.
- j. Right to free legal Aid.
 - i. The supreme court has now taken a big innovative step forward in humanizing the administration of criminal justice by suggesting that free legal aid be, the provided by the state to the poor prisoners facing a prison sentence. Thus, state should provide free legal aid to that person who is unable to appoint a lawyer.
 - 1. In khatri v. state of bihar, (AIR 1981 SC 928), the supreme court said that the state government cannot avoid their constitutional obligation to provide free legal service to the poor accused by pledging financial or administrative inability.
- k. Right against sexual harassment.

- i. With a view to protect gender equality in India, Supreme court has now taken serious note of the incidence of sexual harassment at work places, such an incidence according too supreme court has resulted in violation of the fundamental right to gender equality and the right to life and personal liberty-the two most precious fundamental rights.
 - 1. In vishakha v. state of rajasthan, (AIR 1997 SC 3011), the court held that right against sexual harassment of women at work places is a fundamentall right under Art. 21 of the constitution. Everyone is having duty to protect dignity and self-esteem of a working women.
- l. Right to speedy trial.
 - i. Speedy trial as such is not mentioned as a specific fundamental right in the constitution. Nevertheless, supreme court of India has recognized the same to be implicit in the spectrum of Art.21 and has derived the right of an accused to a speedy trial from Art.21. quick justice is now regarded as a Sine-qua-non of Art.21.
 - 1. In Hussain are Khatoon v. State of Bihar, (AIR 1979 SC 1360), the supreme court held that right to speedy trial is a fundamental right under Art.21 and is and essence of criminal justice. The court said that the accused cannot be denied this right even though he did not claim.
- m. Right against hand-cuffing.
 - i. Hand-cuffing is considered as an unreasonable and prima facie inhuman in nature. According to supreme court of India, hand-cuffing cannot be resorted only in extreme circumstances.
 - 1. In Prem Shankar v. Delhi Administration, (AIR 1980 SC 1535), the court held that hand-cuffing should be resorted to only when there was 'clear and present danger to escape' of the accused under-trial, breaking out of police control. In other causes, it is unreasonable and is violative to Art.,21 of the constitution.
- n. Right against custodial violence.
 - i. Supreme court has taken serious note of custodial violence. Custodial violence has been held as an assault on human dignity and perhaps one of the worst crimes in a civilized society governed by the rule of law. According to supreme court, torture by police struck a blow at the rule of law.
 - 1. In Nilabai Behra vs. State of Orissa, (AIR 1993 SC 1960), awarding compensation in a case of police custodial death, the Supreme Court has held that, right to compensation is a fundamental right under Art.21 of the constitution. Accordingly, court awarded compensation of 1,50,000/- to the petitioner, who was the mother of victim.
 - ii. In D.K. Basu v. State of West Bengal, (AIR 1997 SC 610), the court held that any form of torture pr cruel, inhuman or degrading treatment would fall within the inhibition of Art.21. Law enforcing agencies must act within the bounds of law. Supreme court issued several guidelines to investigating agencies which are to be followed at the time of investigation and interrogation of accused.
- o. Right to die.
 - i. Not included.

- ii. In *P.Rathinam vs. Union of India*, (1994) 3 SCC 394, the supreme court has held that right to live includes right not to live a forced life. It includes thus, right to die.
 - 1. Consequently, Sec.309 of IPC which provides punishment for attempt to commit suicide is violative of Art.21 and therefore it is void.
 - iii. In *Gian Kaur vs. State of Punjab*, AIR 1996 SC 946, the supreme court overruled the *P.Rathinam's* case and court made it clear that the right to life guaranteed by Art.21 does not include right to die and therefore sec.309 of IPC is not violative of Art.21.
- p. Mercy killing.
 - i. In *Aruna Ramchandra Shanbag vs. Union of India*, AIR 2011 SC 1290, the court has categorised mercy killing or euthanasia as Active Euthanasia and Passive Euthanasia.
 - ii. Active Euthanasia means the use of lethal substances or force to kill a person, eg. A lethal injection given to a person with terminal cancer who is in terrible agony.
 - iii. Passive Euthanasia means withholding of medical treatment for continuance of life, eg. Withholding of antibiotic where without giving it a patient is likely to die or removing the heart lung machine from a patient in coma.
 - iv. The court has further observed that the general legal position all over the world seems to be that, while Active Euthanasia is illegal, unless there is legislation permitting it. Passive Euthanasia is legal even without legislation provided certain conditions as safeguard are maintained.
- q. Public trial.
 - i. In *Kartar Singh vs. State of Punjab*, (1994) 3 SCC 569, the supreme court has made it clear that right to open or public trial is not absolute. In exceptional circumstances trial can be held in camera.
- r. Right to dignity applicable to body after death
 - i. In *Pt.parmanand kartar vs.Union of India*, (1995) 3 SCC 248, It was held by the supreme court that the right to dignity and fair treatment under Art.21 is not available to a living man but also to his body after death.
- s. Right to pollution free air and water.
 - i. The supreme court has made it clear that right to life under Art.21 includes right to pollution free air and water.
 - 1. *M.C.Mehta vs. UOI*, AIR 1987 SC 965; *M.C. Mehta vs. UOI* , AIR 1988 SC 2217; *Subhash kumar vs. state of bihar*, AIR 1991 SC 420

