BLE-001: INTRODUCTION TO THE INDIAN LEGAL SYSTEM

PART A

Q.3. Explain in detail the right to life and personal liberty enshrined in the constitution of India.

Ans: Rights to life and personal liberty are the most precious of fundamental rights. Articles 21 and 22 of the constitution of India seek to secure these rights.

Art. 21 read “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Thus the article expressly forbids the executive from interfering with the life and liberty of the individuals without the authority of law. This article secures for Indian citizens same rights which the British citizens derive from the famous Magna Carta. Art. 21 oblige the executive to observe the “forms and rules of law when depriving individuals of their rights to life or liberty.” Besides Art 21 individual liberty is also protected by courts by means of writ of Habeas Corpus issued under Arts 32 and 226.

But right to liberty can nowhere be absolute. In the U. S. A., the executive may impinge upon individual liberty if it acts in accordance with “due process of law.” In the U. S. A. the Supreme Court examines the constitutional validity of the law under which executive actions are taken. Executive actions are valid only if the law is constitutional. Thus the “due process” restrains both the executive and the legislature. But in India executive actions in encroaching upon an individual’s liberty is to be confined only within the “procedure established by law.” The Indian Courts do not exercise the right of judicial review over criminal laws. That was the view taken by the Indian Supreme Court in the famous case of A. K. Gopalan vs. the State of Madras. Under this view Indian Courts could restrain only arbitrary executive action but not arbitrary legislation.

This view prevailed till 1978 when in the case of Maneka vs. Union of India; the Supreme Court held that procedure for depriving individual liberty in a law must not be “arbitrary, unfair or unreasonable.” The position today is, the courts not only restrain arbitrary action of the executive, they also examine whether the laws providing for curtailment of liberty are “arbitrary, unfair or unreasonable.”

Art. 22 provides safeguards against arbitrary arrest or detention. The safeguards are three:

1. Even arrested person must he informed of the grounds for his arrest,
2. he must be given the opportunity to consult lawyers of his choice and,
3. he must be produced before the nearest magistrate within 24 hours and his period of detention cannot be extended without magisterial order. Such safeguards however are not available to (1) an enemy alien and (2) persons detained under preventive detention.

The most contentious part of Art 22 is the provision for preventive detention. The constitution empowers the state to resort to preventive detention, i.e. to detain persons without trial and to deny their rights under Art.19, on four grounds. These are:

1. security of a state,
2. maintenance of public order,
3. maintenance of essential services and defence,
4. foreign affairs and security of India.

Any person arrested under preventive detention on any of the above grounds, can have no right to liberty visualized under Art 19 or 21.

However to prevent reckless use of ‘preventive detention, the constitution prescribes some safeguards.

* Firstly, a person may be taken into preventive custody only for a period of 3 months. Extension of the period of arrest beyond 3 months must be referred to an advisory board consisting of persons qualified to be appointed as judges of High Courts.
* Secondly, the persons detained must be given the grounds of their arrest. The state however may refuse to disclose the entire grounds in the public interest.
* Thirdly, the detainees must be given the earliest opportunity to make representation against detention.

Preventive detention, beyond any doubt makes serious encroachment on individual liberty. At the same time, in unstable societies, preventive detention may be unavoidable.

**Q.4. Explain the rule of law. How is it incorporated in the Indian Constitution?**

Ans. Rule Of Law:

To simply understand the meaning of rule of law, it means that no man is above law and also that every person is subject to the jurisdiction of ordinary courts of law irrespective of their position and rank.

Postulates of Rule of Law

**The most famous exposition of the concept of rule of law has been laid down by A.V. Dicey (Law of the Constitution) who identifies three principles which together establish the rule of law:**

1. Supremacy of law - The absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power.
2. Equality before law - Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts; and
3. Predominance of Legal Spirit - The law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts.

Basic Principles of the Rule of Law

* Law is Supreme, above everything and everyone. Nobody is above the law.
* All things should be done according to law and not according to whim.
* No person should be made to suffer except for a distinct breach of law.
* Absence of arbitrary power being the heart and soul of the rule of law.
* Equality before the law and equal protection of the law.
* Discretionary power should be exercised within reasonable limits set by law.
* Adequate safeguard against executive abuse of powers.
* Independent and impartial Judiciary.
* Fair and Just Procedure.
* Speedy Trial

Rule of Law Under Indian Constitution

In order to develop Indian democracy, rule of law has played a great role. At the time of framing of Constitution, the framers had two options i.e. USA and England. Some of the provisions were adopted from USA and some of them were adopted from England. Rule of law was adopted from England by our constitutional fathers and many provisions were incorporated in the Indian Constitution. Indian Constitution is considered to be supreme and no one is above Indian Constitution. Rule of law is also given impliedly in the preamble and such concept is enshrined in Part III of the Indian Constitution.  
  
In case of violation of such rights, one can approach Supreme Court or High Court under Article 32 and 226 of the Indian Constitution. The Constitution of India is enriched with the principles of law i.e. justice, equality and liberty. Any law made by the Central government or State government must be complied in accordance with the Constitution of India. If any law made by the legislature contravenes with the provisions of the Constitution then such law will be declared void.  
  
Under Article 32 of the Indian Constitution, the Supreme Court has the power to issue writs in the nature of Habeas Corpus, mandamus, prohibition, quo warranto, and certiorari. The power of judicial review is also given to Supreme Court in order to prevent any ultra vires law so as to preserve Rule of law.

In India the Constitution is supreme. The preamble of our Constitution clearly sets out the principle of rule of law. It is sometimes said that planning and welfare schemes essentially strike at rule of law because they affect the individual freedoms and liberty in many ways. But the rule of law plays an effective role by emphasizing upon fair play and greater accountability of the administration. It lays greater emphasis on the principles of natural justice and the rule of speaking order in an administrative process in order to eliminate administrative arbitrariness.

Conclusion

The recent expansion of the rule of law in every field of administrative functioning has assigned it is a place of special significance in the Indian administrative law. The Supreme Court, in the process of interpretation of rule of law vis-à-vis operation of administrative power, in several cases, emphasized upon the need of fair and just procedure, adequate safeguards against any executive encroachment on personal liberty, free legal aid to the poor and speedy trial in criminal cases as necessary adjuncts to rule of law. Giving his dissenting opinion in the Death penalty case, Mr. Justice Bhagwati explains fully the significance of rule of law in the following words: The rule of law permeates the entire fabric of the Constitution and indeed forms one of its basic features.

PART B

Q.5. Define executive. Distinguish between political and administrative executive.

Ans. The executive is the part of [government](https://en.wikipedia.org/wiki/Government) exercising [authority](https://en.wikipedia.org/wiki/Authority) in and holding [responsibility](https://en.wikipedia.org/wiki/Moral_responsibility) for the [governance](https://en.wikipedia.org/wiki/Governance) of a [state](https://en.wikipedia.org/wiki/State_(polity)). The executive executes and enforces [law](https://en.wikipedia.org/wiki/Law).

In federal system, the executive does not pass laws (the role of the legislature) or interpret them (the role of the judiciary). Instead, the executive enforces the law as written by the legislature and interpreted by the judiciary. The executive can be the source of certain types of law, such as a [decree](https://en.wikipedia.org/wiki/Decree) or [executive order](https://en.wikipedia.org/wiki/Executive_order). Executive bureaucracies are commonly the source of [regulations](https://en.wikipedia.org/wiki/Regulation).

In systems where the [legislature is sovereign](https://en.wikipedia.org/wiki/Parliamentary_sovereignty), the powers of and the organization of the executive are completely dependent on what powers the legislature grants it and the actions of the executive may or may not be subject to judicial review, something which is also controlled by the legislature. The executive may also have legislative or judicial powers in systems that where the legislature is sovereign, which is often why the executive is instead referred to as the government since it often posses non-executive powers.

Comparison Table Between Politics and Administration (in Tabular Form)

| Parameter of Comparison | | | Politics | Administration |
| --- | --- | --- | --- | --- |
| Definition | | | The activities such as discussion, expression and policy drafting for the governance and allocation of resources are collectively called politics. | The body that is responsible for the implementation of the drafted policies is known as administration. |
| Nature | | | Conflict is an important characteristic nature of the conflict. It is a desired trait for better functioning. | Conflict in administration is not desired. |
| Time period of service | | | Executives who are elected by the people for a specific period | are appointed on a long-term basis. |
| Nature of tenure | | | They remain in office only so long as they command the confidence of the majority members of Parliament. | They remain in office even when the ruling party changes.Their tenure of office is fixed |
| Accountability | | | They are answerable to people for all the consequences of their decisions. | They are not answerable to the people. |
| Type of power given | | | They are more powerful. They take all the final decisions. | They are less powerful. They do not take decisions. Instead they assist political executives in carrying out day-to-day administration. |
| Relevant body | | | The legislative is responsible for the formation of political policies | The executive is responsible for the implementation of these policies. |
| Skill Required | | | It is more of an art, that enables leaders to satisfy people’s needs across constituencies. | It requires scientific skills of management and commitment. |
| Office Holders | | | People involved in politics are elected leader or representatives. | The administration is run by qualified individuals with some relevant skill to the filed they are working in. |
| Example | | | Political leaders like the Prime Minister, Council of Ministers and so on. | Persons working in civil services. For example - IAS, IFS, IPS etc. |
|  |

# Q.8. Give a brief decription of the Directive Principles of the State Policy enshrined in the Constitution of India. Are these principles justifiable.

# Ans. The Directive Principles of States Policy though not enforceable through court of law are regarded as “fundamental in the governance of the country”. They are merely instructions or directives issued to the Legislatures and the Executives or the day-to-day administration of the country. The State is directed to promote the welfare of the people. These are moral precepts, and impose a moral, if not legal duty upon the State to apply these principles in making laws.

## **Conscience of the Constitution**

The majority of Indian Constitution’s provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet despite the permeation of the entire constitution by the aim of national renascence, the core of the commitment to the social revolution lies in **Part IV**, in the Directive Principles of State Policy. These principles are the conscience of the Constitution.

## **List of Directive Principles**

1. Adequate means of livelihood for all citizens.
2. Fair distribution of wealth and material resources among all classes.
3. Equal pay for equal work for men as well as for women.
4. Provision for free and compulsory education for children.
5. To provide work, education and public assistance during unemployment, old age, sickness etc.
6. To improve public health.
7. To raise the level of nutrition and standard of living.
8. To ensure just and humane conditions of work so as to offer full opportunity for enjoyment of leisure, and social and cultural progress.
9. Promoting agricultural and animal husbandry; improving breed of cattle and preventing cow slaughter.
10. To protect monuments of historical and national importance.
11. To establish village panchayats and also to separate the Judiciary from the Executive.
12. To safeguard and promote the interests, educational and economic of the Scheduled Castes and Scheduled Tribes.
13. To promote international peace and security, maintain just and honourable relations amongst nations and encourage the settlement of international disputes by arbitration.

* The main difference between Fundamental Rights and Directive Principle is that whereas the former can be enforced by the Courts, i.e., are justiciable, the latter cannot be questioned in a Court of law, i.e., they are non-justiciable.

### **Conclusion**

The Directive Principles of State Policy as embodied in our constitution **are the basic principles from the point of view of the social and economic order which the framers envisaged that India should attain.**These principles have been borrowed/taken from the Constitution of Ireland. These principles are like a manifesto, an instrument of instructions, a code of moral precepts for the guidance of the Legislatures and the Executive. **They confer to no legal rights and create no legal remedies, and so are non-justifiable. They constitute a charter for India’s development as a Welfare State.**

## Q.9. Define Democracy. Distinguish between direct and indirect democracy.

## Ans. Democracy

A democracy can be stated as a rule of the people, by the people, and for the people. This definition further focuses on the fact that democracy has the potential to fulfil the aspirations and hopes of the people in a country.

In a democratic country, there is significant importance given to the voices of the people, while deciding on the issues pertaining to matters that are important to them.

People of the nation who are 18 years or older are given exercise their right to vote while elections and vote for the representative they believe is most suitable to be their representative and running the government. The candidates with majority of votes wins to election to become the representative. The party with most elected candidates forms the government and runs the state for next five years, until next elections.

People have the right to dissolve the government if it fails to achieve it’s objectives and causes dissent among citizens.

Basically saying, democracy is nothing but the principle of sovereignty of the people. In a democracy, people run their government through their representatives.

| BASIS FOR COMPARISON | DIRECT DEMOCRACY | INDIRECT DEMOCRACY |
| --- | --- | --- |
| Meaning | Direct democracy refers to a form of government wherein citizens out rightly take part in the administration of the government. | Indirect democracy implies a democracy in which people vote for their representative, to represent them in the Parliament. |
| Policies | Government policies are decided by the people themselves. | People elect their representatives to take decisions on government policies. |
| Legislature | Whole community forms legislature. | Representatives of the winning party forms government and are a part of legislature. |
| Suitability  Example | Countries whose population size is small.  Ancient Greek city-states, Switzerland. | Countries whose population size is large.  The prevailing system of democracy in India, USA and UK. |

### Conclusion

Both types of democracy have their benefits. Direct democracy's "one person, one vote" ideology is egalitarian. Indirect democracy creates fewer votes to be counted and is therefore more efficient. It also safeguards people from mob rule, as people can vote for legislators who can focus on governing. On the other hand, indirect democracy can also lead to corruption as the leaders picked by the people can feel isolated from the will of the people and can therefore mismanage the people's resources. While your opinion may be different, I believe that indirect democracy has more good points than bad when it comes to governing a nation. It is a safeguard against mob rule, and it provides for more efficient governance and decision-making. In small groups, such as a class election, direct democracy is the more viable form.

## Q.10. Describe the procedure for accessing information under the Right to Information Act, 2005.

## Ans. RTI: "An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto." The act serves as one of the major economic reform for Indian Economy.

### The RTI Act, 2005 empowers every citizen to:

* Ask any questions from the Government or seek any information.
* Take copies of any governmental documents.
* Inspect any governmental documents.
* Inspect any Governmental works.
* Take samples of materials of any Governmental work

## Process of Filing RTI

* Under the Act, every Public Authority designates an official as the [Central Public Information Officer](https://www.thyrighttoinformation.com/2019/03/11/the-cpio-and-the-faa-under-the-rti-act-2005/) (CPIOs)/State Public Information Officer (SPIO)/Central Assistant Public Information Officer (CAPIO).
* Make the request in writing to the CPIO: For obtaining information, the RTI Applicant can  make request in writing or through electronic means in English or Hindi or in the official language of the area in which he wishes to file his application. [Section 6(1) of the RTI Act, 2005].
* Reducing the oral request into writing: In case the RTI Applicant is unable to make his request in writing, he is entitled to all reasonable assistance from the CPIO/SPIO in reducing his orally made request in writing.
* Sensorily disabled applicant: A sensorily disabled applicant  is entitled to all assistance from the CPIO/SPIO, to enable him to access the information, including such assistance as may be appropriate for inspection.
* It is the PIO's obligation to provide information to citizens of India who request information under the Act.
* If the request pertains to another public authority (in whole or part), it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other within 5 working days.
* In addition, every public authority is required to designate Assistant Public Information Officers (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority.
* Content of the RTI Application: As per Section 6(1), in the RTI Application, the RTI applicant has to only specify:

(i) the particulars of the information required.

(ii)  the [RTI fees](https://www.thyrighttoinformation.com/2019/02/14/fees-under-the-right-to-information-act-2005/).

(iii) one’s name and contact particulars to seek information.

RTI Applications can also be filed [online](https://www.thyrighttoinformation.com/2019/04/08/filing-of-online-rti-applications-and-appeals/).

Q.11. Describe the procedure of passing a Money Bill in the Parliament.

Ans. Money Bills: Money Bills are those that are classified under Article 110 (1) of the Constitution of India. Every Money Bill is essentially a financial bill but not every financial bill is a money bill.

Under article 110(1) of the Constitution, a Bill is 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;  
(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

Procedure for passing a Money Bill:

1. Money Bill can be introduced only in the Lok Sabha on the recommendation of the President. After it is passed by the Lok Sabha it is sent to Rajya Sabha. But before passing it to Rajya Sabha, Speaker must certify it as a Money Bill and if any question arises whether a bill is money bill or not, decision of the speaker is final.
2. Rajya Sabha has restricted powers in case of Money Bill. It cannot reject or amend but can only give recommendations to the Lok Sabha. It must return the Bill within 14 days . Even if it does not return the bill in 14 days, it is deemed to have been passed by the Rajya Sabha.
3. After the Rajya Sabha returns the Bill with or without amendments , Lok Sabha can either accept or reject all or any of the recommendations. And the Bill is deemed to have been passed by both the houses in either case.
4. Then finally, the bill is sent to the President for its assent. President may either give his assent to the Bill or withhold his assent but cannot return the bill for reconsideration of the Houses.

That's how a Money Bill is passed .

It must be noted that there is no provision of joint sitting in case of a Money Bill .

PART C

Write a short note on:

Q.12. Federalism.

Ans. Federalism means the coexistence of a central administrative authority and state or local administrative units in their respective areas. Federalism is an important part of a nation’s political structure by allowing the governing authorities to work separately.

Federalism allows the states to have greater freedom and take individual decisions within their respective provinces. The Central government can concentrate more on national issues and international relations. The active participation of citizens results in greater awareness about their political and civil rights with a sense of national unity. Differential state power and internal issues often worsen the federation, but the merits of federalism are way more than the demerits.

## Features of the Federal System of India

1. Dual government polity- Governments at two levels – centre and state
2. Division of powers between the centre and states –
   1. Union List
   2. State List
   3. Concurrent List
3. Rigidity of constitution
4. Independent judiciary
5. Dual citizenship
6. Bicameralism

All federations might not have all the above features. Some of them may be incorporated depending on what type of federation it is.

## Federalism in India

India is a federal system but with more tilt towards a unitary system of government. It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system. Article 1 of the Indian Constitution states, ‘India, that is Bharat, shall be a **union of states**’. The word federation is not mentioned in the constitution.

#### Q.13. Certiorari

Ans. Certiorari:

Literally, Certiorari means **to be certified.** The writ of certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court, tribunal or quasi judicial authority.

The jurisdiction to issue certiorari is a supervisory jurisdiction and the High Court exercising it is not entitled to act as an appellate court.

But it is issued against the act or proceedings of judicial or quasi-judicial body where it has not acted judicially. Since the courts are obliged to act in a certain manner the court can issue this writ even when the list is between private individuals.

Certiorari can be issued on following grounds,

* when the body concerned proceed to act without or excess of jurisdiction, or
* fails to exercise its jurisdiction, or
  + there is an error of law apparent on the face of the record in the impugned decision of the body, or
* the findings of fact reached by the inferior tribunal are based on no evidence, or
* it proceeds to act in violation of the principles of natural justice, or
* it proceeds to act under a law which itself invalid, ultra vires or unconstitutional, or

it proceeds to act in contravention of fundamental rights.

Q.14. Doctrine of Severability.

Ans. The Doctrine of Severability means that when some particular provision of a statute offends or is against a constitutional limitation, but that provision is severable from the rest of the statute, only that offending provision will be declared void by the Court and not the entire statute.

### Article 13 of The Constitution of India reads as under:

All laws enforce in India, before the commencement of Constitution of India, in so far as they are inconsistent with the provisions of fundamental rights shall to the extent of that inconsistency be void.

### This can be understood in two dimensions:

1. Article 13 (1) validates all Pre-Constitutional Law and, thereby, declares that all Pre-Constitutional laws in force before the commencement of the Constitution of India shall be void, if they are inconsistent with the fundamental rights.
2. Article 13 (2) mandates the State that it shall not make any law which takes away or abridges the fundamental rights conferred in Part III of Constitution of India and any law contraventions this clause shall be void.

Salient Features:

* Widens the Scope for Judicial Review on Unconstitutional Parts of any Law
* Enables to interpret laws and to review the pre-constitutional and existing laws through a contemporary approach of law
* Restrain from enacting laws that may curtail the fundamental rights guaranteed for the citizens of the country. If a law is partially unconstitutional, it would be deemed ineffective until an amendment is made.
* By adopting the Doctrine of Severability, the Constitution of India upholds the principle of Natural Justice.

Q.15. Council of ministers.

Ans. The Council of Ministers is a traditional name given to the supreme executive organ in the government. It is a body of advisers to a head of state.

Council of Ministers are those ministers who are appointed by the President of India on advice of the Prime Minister from among the representatives elected by the people. Council of Ministers are categorized into three main categories.

1- Cabinet Ministers- They act as head of important ministries of the central government. For e.g- Defense Ministry, Home Ministry, Finance Ministry etc. They are the integral part of Cabinet, as a result of which, they play a very important role in framing policies.

2- Ministers of state- They can be given Independent charge of ministries or can be attached to the cabinet ministers. When attached to the cabinet ministers, they work under the guidance of cabinet ministers. The difference from the cabinet ministers lie in the fact that, they do not attend the cabinet meetings as they are not the part of cabinet (unless specially invited when something related to their ministry is being considered by the cabinet)

3- Deputy Ministers- They are never given independent charge of ministry( unlike ministers of state), and always remain attached to the cabinet ministers or ministers of state. They assist to discharge the political, administrative and parliamentary duties effectively. They are neither part of cabinet nor attend the cabinet meetings.